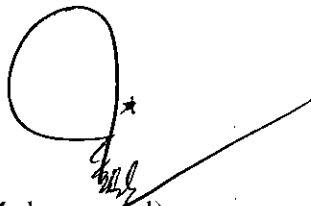


18.10.2022.

Learned counsel for the appellant present. Mr. Muhammad Nisar; Focal Person alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments before the D.B on 28.11.2022.



(Mian Muhammad)
Member (E)



(Salah-ud-Din)
Member (J)

28/11/22

Deleted from list to come up for the same on 7/2/23

10



07.02.2023

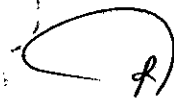
Clerk of counsel for the appellant present. Muhammad Adeel Butt, Additional Advocate General for respondents present.

SCANNED
KOST
Resnawar

File to come up alongwith connected Service Appeal No. 7135/21 titled "Nek Nawaz Khan Vs. Education Department" 15.05.2023 before D.B.



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

23.12.2021

Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, Addl. AG alongwith Yasir Khan, Junior Clerk for the respondents present.

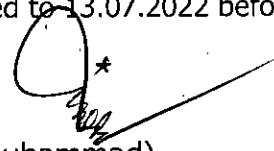
The respondents have not furnished reply/comments and seek further time. Let the respondents be afforded with last opportunity with the warning that in case they fail to submit the written reply/comments on or before next date, their right for reply/comments shall be deemed as struck off by virtue of this order. Case to come up for arguments on 06.04.2022 before the D.B.


Chairman

06.04.2022

Appellant present in person. Mr. Kabirullah Khattak Adl. AG along with Mr. Muhammad Nisar (Focal Person) for respondents present. Written reply has been submitted which is placed on file.

Counsel are at strike. Therefore the case is adjourned to 13.07.2022 before D.B.


(Mian Muhammad)
Member (E)


Chairman

13.07.2022

Junior of learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present.

File to come up alongwith connected Service Appeal No.7135/2021 titled "Neik Nawaz Khan Vs. Education Department" on 18.10.2022 before the D.B.


(Rozina Rehman)
Member (J)


(Salah-Ud-Din)
Member (J)

28.10.2021

Appellant in person present. Memorandum of appeal and the copies of record annexed there with have been perused.

Learned counsel for the appellant states on his own risk that service appeal No. 8647/2020, 8651/2020 and 8650/2020 involving the similar factual and legal position have already been admitted for full hearing and next date in the said appeal is fixed before the D.B-I on 03.02.2022. Subject to all just factual and legal objections this appeal is also admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. Let it be fixed before the S.B on 23.12.2021 for filing of the reply/comments and thereafter is shall be clubbed with the aforementioned appeal.

Appellant's deposited
Security & Process Fee
10/11/21

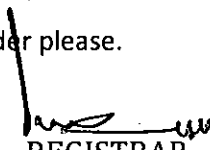

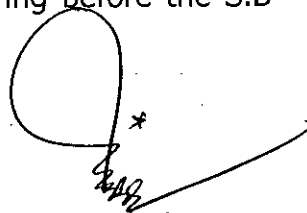

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 7137 /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/08/2021	<p>The appeal of Mr. Liaz Khan resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>10/09/21</u>.</p> <p> CHAIRMAN</p>
	10.09.2021	<p>Clerk of counsel for the appellant present.</p> <p>Due to general strike of the legal fraternity, the case is adjourned. To come up for preliminary hearing before the S.B on 28.10.2021.</p> <p> (MIAN MUHAMMAD) MEMBER (E)</p>

The appeal of Mr. Liaz Khan SCT GMS Ayaz Kot District NW Miranshah received today i.e. on 28.06.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of judgment order dated 22.2.2018 and impugned order dated 31.5.2012 mentioned in para-3 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures-G & H of the appeal are illegible which may be replaced by legible/better one.

No. 1433 /S.T,

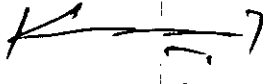
Dt. 29/07 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Siv
2/8/21

Resubmitted after the completion.


2/8/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

LIAZ KHAN

VS

EDUCATION DEPTT:

INDEX

S.N	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal with affidavit	1-4
2.	Service certification	A	5
3.	Pay roll	B	6
4.	Educational testimonial	C	7-12
5.	Impugned notification	D	13-18
6.	Judgment 28-01-2016 & 05-04-2016	E&F	19-25
7.	Notification	G	26
8.	Departmental appeal & Registry receipt	H	27-28
9.	Vakalatnama	29

Dated ___07/2021

APPELLANT

THROUGH:


NOOR MOHAMMAD KHATTAK
ADVOCATE

OFFICE: Flat No.4, 2nd Floor,
Juma Khan Plaza, Near FATA Secretariat,
Warsak Road, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2021

LIAZ KHAN s/o Sherin Khan, SCT (BPS-16),
Govt. Middle School Ayaz Kot Khushali Tehsil Mir Ali, North Waziristan.

.....**APPELLANT**

VERSUS

- 1- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The District Education Officer (Male), District North Waziristan.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF SST (BPS-16) ON THE BASIS OF THE BASIS OF HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24-07-2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO. 1 (B), COLUMN No 3 (i) OF THE TABLE AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL DATED 29-03-2021 OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned service Rules dated 24.07.2014 may kindly be modified to the extent that the condition of 2nd Division/Class be expunged from Column No. 3 (i), Serial No. 1B of the Table and the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary School Teacher (BS-16) from the date when his colleagues and

junior colleagues were promoted with all consequential back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as under:-

- 1- That appellant was initially appointed as Certified School Teacher in the respondent Department since 28-04-1987 and right from the date of appointment the appellant is serving the respondent Department quite efficiently and upto the entire satisfaction of his high ups. Copy of service certificate & Pay roll is attached as annexure **A & B.**
- 2- That appellant is highly qualified person having Master of Art in Islamiyat from Gomal University as well as B. Ed Decrees from reputed & recognized institution of the country. Copy of the Educational Testimonials are attached as annexure **C.**
- 3- That it is pertinent to mention here that the respondent issued the impugned notification dated 24-07-2014 whereby the post of secondary school teachers was restructured and 20% promotion quota to the aforementioned posts was reserved for Primary School Teachers. That according to the said notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. Copy of impugned notification dated 24-07-2014 attached as annexure **D.**
- 4- That it is pertinent to mention here that the respondents denied promotion to some colleagues of the appellant to the post of SST due to having 3rd Division bachelor degree. That feeling aggrieved some colleagues of the appellant filed writ petitions which were allowed in favour fo the petitioners vide judgments dated 05-04-2016 and 28-01-2016 and consequently they were promoted to the post of SST. Copies of the judgments dated 28-01-2016 & 05-04-2016 are attached as annexure **E & F.**
- 5- That it is worth mentioning here that appellant was also denied from promotion due to having 3rd Class Bachelor degree despite the fact that appellant is having second division in higher qualification i.e. Master as well as in B.Ed & M.Ed.

- 6- That appellant being a similarly placed employee approached the respondent to extend him the benefits of the above mentioned judgments, but still in vain.
- 7- That it is also pertinent to mention that establishment department issued a notification dated 15-12-2011 whereby amendment has been made in PMS Rules 2007 by providing that a candidate who has obtained 3rd Division in Bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. Copy of notification is attached as annexure **G.**
- 8- That appellant feeling aggrieved from the inaction of the respondent by not promoting the appellant to the post SST (BPS-16) preferred Departmental Appeal dated 29-03-2021 before the respondents through register post but the same is not responded within the statutory period of ninety days. Copy of the Departmental Appeal dated 29.03.2021 & Registry receipt is attached as annexure **H.**
- 9- That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUND:

- A- That the inaction of the respondent by not promoting the appellant to the post of SST (BPS-16) and notification dated 24-07-2014 is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That appellant is entitled to be promoted to the post of SST (BPS-16) from due date in light of judgments of Peshawar High Court by attracting Principle of Parity as mentioned in the apex court judgment reported as 2009 SCMR page 01.
- D- That the appellant has been discriminated on the subject noted above as other colleague who are having 3rd division are given promotion but the appellant has been deprived from the benefit of promotion to the post of SST (BPS-16).
- E- That the respondents while not promoting the appellant to the post of SST (BPS-16) is against the Law & Rules on the subject

matter and as the respondent violated the Principle of Natural Justice.

F- That the appellant has 2nd division in higher qualification i.e. Master degree and other educational related degrees i.e. B.Ed & M.Ed that entitle to be promoted from the due date in light of notification dated 15-12-2011.

G- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for

Appellant

LIAZ KHAN

Through:

NOOR MOHAMMAD KHATTAK

MUHAMMAD MAAZ MADNI

Advocates, Peshawar

CERTIFICATE:

No such like appeal has earlier been filed between the parties

ADVOCATE

AFFIDAVIT:

I, Liaz Khan s/o Sherin Khan do hereby solemnly affirm that the contents of the above appeal are true and correct to the best of my knowledge & believe and nothing has been concealed from this Honourable Court.



DEPONENT
21505-1615680-1

ANNEXURE "A" (5)

OFFICE OF THE DISTRICT EDUCATION OFFICER

NORTH WAZIRISTAN TRIBAL DISTRICT.



Service Certificate

Certified that Mr. Liaz Khan S/O Sherin Khan has been serving in the Education Department as a SCT at Govt. Middle School Ayaz Kot Khushali Tehsil Mir Ali D.N.W Since 20-09-1990 up to Date.

District Education Officer
Miran Shah N.W.T.D

Abdul Bari Jam
Abdul Bari Jam
S.S. 112 (P.O. 17)
G.M.S. Nandar Khul NWA

Miran Shah-N.W.

S#:524

Pers #: 50186967 Buckle:
Name: Liaz Khan
SENIOR CERTIFIED TEACHER
CNIC No.2150516156801

GPF Interest Applied
16 Active Temporary

PAYS AND ALLOWANCES:

0001-Basic Pay	50,830.00
1000-House Rent Allowance	2,727.00
1210-Convey Allowance 2005	5,000.00
1300-Medical Allowance	1,500.00
1528-Unattractive Area Allow	1,500.00
2148-15% Adhoc Relief All-2013	1,100.00
2199-Adhoc Relief Allow @10%	737.00
2211-Adhoc Relief All 2016 10%	3,764.00
2224-Adhoc Relief All 2017 10%	5,083.00
Gross Pay and Allowances	82,407.00

DEDUCTIONS:

IT Payable	4,859.76	Deducted	9,353.00	TAX:(3609)	1,215.00
GPF Balance	259,992.00			Subrc:	3,340.00
3501-Benevolent Fund					800.00
3990-Emp.Edu. Fund KPK					150.00
4004-R. Benefits & Death Comp:					650.00

Total Deductions

6,155.00

76,252.00

D.O.B
06.11.1966

30 Years 05 Months 010 Days

LFP Quota:
HABIB BANK LIMITED INSIDE PREEDY GATE,
18067900159503

Miran Shah-N.W.

S#:525

Pers #: 50186967 Buckle:
Name: Liaz Khan
SENIOR CERTIFIED TEACHER
CNIC No.2150516156801

GPF Interest Applied
16 Active Temporary

PAYS AND ALLOWANCES:

2247-Adhoc Relief All 2018 10%	5,083.00
2264-Adhoc Relief All 2019 10%	5,083.00

Gross Pay and Allowances

82,407.00

DEDUCTIONS:

IT Payable	4,859.76	Deducted	9,353.00
GPF Balance	259,992.00		

Subrc:

Total Deductions

6,155.00

76,252.00

D.O.B
06.11.1966

30 Years 05 Months 010 Days

LFP Quota:
HABIB BANK LIMITED INSIDE PREEDY GATE,
18067900159503

P-Sec:001- Month:February 2021
Mw6016 -Government Middle Schools
GOVERNMENT MIDDLE SCHOOLS

NTN:
GPF #:
Old #: 21399999999

Mw6016 -529

ANNEXURE B
6

[Handwritten Signature]
S.S. 171
M.S. Haider Khel

GOMAL UNIVERSITY



ANNEAURE C
DERA ISMAIL KHAN

7

Passed/Re-appear/Failed in Agg:

Duplicate

DETAILED MARKS CERTIFICATE

B.A Examination 20 1987 (Annual/Supplementary/ Term.)

Roll No. 790

Mr./Miss. Liaq Khan

The Candidate secured the following marks & has been placed in Third Division.

SUBJECTS	Total No. of Marks Allotted	MARKS OBTAINED	
		In Figures	In Words
1- English	150	46	Forty six only
2- Islamic Studies	150	83	Eighty three
3- Political Science	150	53	Fifty Three
4- Pak study	40	15	Fifteen only
5- Islamiyat	60	34	Thirty four
		/	/
TOTAL	550	231	Two hundred & Thirty one only

THE EXAMINATION WAS TAKEN AS A WHOLE / IN PARTS.

Nº 077051

Date 29-02-1988

Signature
9/3/04
Controller of Examinations
Gomal University, D.I.Khan.

Attest
Abdul Baqir Jani
S.S.T. No 171
G.M.S. Mairan, Khan Muz

2

گومال یونیورسٹی

GOMAL UNIVERSITY

DERA ISMAIL KHAN
(N.W.F.P) PAKISTAN

8



(Session 2000)
ANNUAL

LIJAZ KHAN, SON of SHERIN KHAN.

and a student of N.W.AGENCY,

having passed the prescribed examination in APRIL/MAY, 2001

is this day admitted by the GOMAL UNIVERSITY to the DEGREE of

BACHELOR OF EDUCATION

in the SECOND Division in Part I (Theory)

in the SECOND Division in Part II (Skill in Teaching) and

in the SECOND Division in Aggregate.

The Examination was taken as a whole/in parts.

Registered No. 434-85

Roll No. 809

Result declared on DECEMBER 27, 2001

Attested
Abdul Jani
Abdul Jani
S.S.
G.H.S. Hangu District NWA
Countersigned

[Signature]
Controller of Examinations

[Signature]
Vice-Chancellor

Serial No. GU 07241

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

9

GOMAL UNIVERSITY

DERA ISMAIL KHAN
(N.W.F.P) PAKISTAN



(Session 1987 ANNUAL)

LIAZ KHAN. SON of SHERIN KHAN.
and a student of GOVT. COLLEGE, MIRAN SHAH,
having passed the prescribed examination in SEPT/OCTOBER 20 1987,
is this day admitted by the GOMAL UNIVERSITY to the DEGREE of

BACHELOR OF ARTS

in the THIRD Division HE Passed also in as an
~~Additional Optional Subject~~ / Pakistan Studies and Islamiyat as Compulsory Subjects.

The Examination was taken as a whole/~~in parts~~

Registered No. 434-A-85

Roll No. 790

RESULT DEC. ON: FEBRUARY 29, 20 1988

Attested
AB
Abdul Baqi Jan

Countersigned

S. S. Haidar Khan NWA
171

Controller of Examinations

Vice-Chancellor

GOMAL UNIVERSITY



DERA ISMAIL KHAN

10

Passed/Re-appear/Failed in Agg.

DETAILED MARKS CERTIFICATE

B.Ed (Private) Examination 2002 (Annual/Supplementary/ Term)

Roll No. 809

Mr./Miss. Liaq Khan

The Candidate secured the following marks & has been placed in Second Division.

SUBJECTS	Total No. of Marks Allotted	MARKS OBTAINED	
		In Figures	In Words
1. Educational Psychology and Guidance	100	40	Forty only
2. Perspectives of Education	100	56	Fifty six
3. School organization and management	100	42	Forty two
4. Curriculum + Instruction	100	40	Forty only
5. Measurement + Evaluation	100	42	Forty two
6. Methods of teaching English	100	42	Forty two
7. Methods of teaching Islamiat	100	53	Fifty three
8. Educational ideas of western thinkers	100	50	Fifty only
9. Practical skill in teaching	200	107	one hundred and seven only
TOTAL	1000	472	Four hundred + Seventy two

THE EXAMINATION WAS TAKEN AS A WHOLE/ IN PARTS

No. 070810

Date 27/02/2003

Atul Kumar
Controller of Examinations

Gomal University, D.I.Khan.

Atul Kumar
G.S. HAZAR KHAI NW/3

(11)

GOMAL UNIVERSITY

DERA ISMAIL KHAN.
N.W.F.P.
PAKISTAN



Provisional Certificate

This is to certify that Mr. / Miss / Mrs. LIAZ KHAN

Son / Daughter / Wife of SHERIN KHAN

of the Department / Institute of PRIVATE CANDIDATE OF DEPT : BANHU

has passed BA. FINAL, ANNUAL, 2006 Examination held in APRIL, MAY, 2007

in the subject of ISLAMIYAT

He / She was placed in SECOND

division, Securing 576 marks out of 1100

The examination was taken as a whole / in parts.

Dera Ismail Khan.

Dated 14-11-2007

ADDITIONAL CONTROLLER OF EXAMINATIONS

Attested As Filed
S. S. Nadeem Khan
S. S. Nadeem Khan

2.9/11/2007

GOMAL UNIVERSITY



DERA ISMAIL KHAN

(N.W.F.P. PAKISTAN)

Nº 030152

12

DETAILED MARKS CERTIFICATE

M.A ISLAMIYAT FINAL

Held in April-May 2007

Session 2005-2006/Annual

Roll No: 5911

Name: Liaz khan

The Candidate secured the following marks & has been placed in 2nd Division

SUBJECT	Total No of Marks Allotted	MARKS OBTAINED	
		In Figure	In Words
Al-Fiqah	100	50	Fifty
Usool-è-Fiqa	100	44	Forty Four
Taqable Adyan	100	64	Sixty Four
Islam and Other System	100	38	Thirty Eight
Essay.	100	45	Forty Five
Viva Voce	100	60	Sixty
Aggregate Previous	500	275	Two Hundred and Seventy Five
Total Marks	1100	576	Five Hundred and Seventy Six

The Examination was taken as a Whole

Result Declaration Date 14/11/2007

Attested
As per
Abdul Baqir Jan
S.S.T
P.N.S. H.A. NWA

Additional Controller of Examination
City Campus, Gomal University,
Dera Ismail Khan.

Revised wali

ANNEXURE 1

13

Better Copy @ 13 to 18

**GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT**

Peshawar dated the 24th July, 2014.

NOTIFICATION

No.SO(PE) 4-5/SSRC/meeting/2013/Teaching Cadre:- In pursuance of the provision contained in sub rule (2) rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Voli-II date 09.04.2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

- (i) Serial No.1 shall be renumbered as 1B and before serial No.1B, as so renumbered new entries shall be inserted in respective columns, namely:

1	2	3	4	5
1	Subject specialist (BPS-17)	i. At least second class Master Degree or four Years BS Degree in the Relevant subject: and ii. Bachelor of education or Master of education (Industrial Art or Business education) or MA education or equivalent qualification from a recognized university	23 to 35 years	a) fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years' service as such and having qualification mentioned in column No.3. Note: if no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial recruitment: and b) fifty percent by initial recruitment.
1A	Director physical education (BPS-17)	At least second class master Degree in physical Education from a recognized university	22-35 years	a) Fifty percent by promotion on the basis of seniority cum fitness from amongst senior Physical Education Teachers BPS-16 with at least five year's service as senior physical education teacher and physical education teacher and having qualification mentioned in column No.3: Provided that if no suitable person is available from amongst senior physical education teachers for promotion then the post

ATTESTED

				<p>shall be filled by promotion, on the basis of seniority cum fitness from amongst the physical education teachers with at least five years service as such and having qualification mentioned in column No.3;</p> <p>Note:- If no suitable candidate is available in the relevant cadres of the above teachers the post falling in their promotion quota shall be filled by initial recruitment; and</p> <p>b) fifty percent by initial by initial recruitment"; and</p>
--	--	--	--	--

ii) against serial No.1B, as so renumbered for the existing entries the following shall be substituted in respective column, namely:

1	2	3	4	5
1B	Secondary School Teachers (BPS-16)	<p>1. At least second class bachelor degree's from a recognized university on need basis from the following groups with two subject</p> <p>a) (Chemistry, Botany or zoology), Or b) Physics, Maths 'A or B' or statistics Or c) Humanities and other equivalent groups at degree level with English as compulsory subject; And</p> <p>11. Bachelor of Education or Master of education (Industrial Art or business Education) or MA education or equivalent qualifications from a recognized university.</p>	21 to 35 years	<p>1. seventy five percent by promotion on the basis of seniority cum fitness from the district concerned in the following manner:</p> <p>2. forty percent amongst the senior certified teachers BPS-16 with at least five years service as senior certified teacher and certified teacher and having qualification mentioned in column No.3:</p> <p>provided that if no suitable candidate is available from amongst senior certified teachers for promotion then the post shall be filled by promotion on the basis of seniority cum fitness from amongst certified teachers with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>b) four percent from amongst the senior drawing master BPS-16 with at least five years service as</p>

ATTESTED

senior drawing masters and drawing masters and having qualification mentioned in column No.3 ;
provided that if no suitable candidate is available from amongst senior drawing master for promotion then the post shall be filled by promotion on the basis of seniority cum fitness from amongst drawing master with at least five years service as such and having qualification mentioned in column No.3;

c) four percent from amongst the senior Arabic teachers BPS-16 with at least five years service as senior Arabic teachers and Arabic teachers and having qualification mentioned column No.3;
provided that if no suitable candidate is available from amongst senior Arabic teachers for promotion then the post shall be filled by promotion on the basis seniority cum fitness from Arabic teachers with at least five years service as such and having qualification mentioned in column No.3;

d) four percent from amongst the senior theology teachers BPS-16 with at least five years service as senior theology teachers and theology teachers and having qualification mentioned in column No.3;
provided that if no suitable candidate is available from

~~ATTESTED~~

<p>amongst senior theology teachers for promotion then the post shall be filled by promotion on the basis of seniority cum fitness from amongst the Theology Teachers with at least five years service as such and having qualification mentioned in column No.3:</p> <p>e) three percent from amongst the Senior Qari BPS-16 with at least five years service a senior Qari and having qualification mentioned in column No.3: provided that if no suitable candidate is available from amongst the senior Qari then the post shall be filled by promotion on the basis of seniority cum fitness from Qaris with at least five years service as such and having qualification mentioned in column No.3;</p> <p>f) twenty percent from amongst the primary school head teachers BPS-16 with at least seven years service as primary school Head Teachers and senior primary school teachers and primary school teachers and having qualification mentioned in column No.3; provided that if no suitable candidate is available from amongst</p>																			

~~ATTESTED~~

ZAMIN KHAN MOMAND
SECTION OFFICER (PRIMARY)

GOVERNMENT OF KHYBER PAKHUNJWA
 DEPARTMENT OF SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 22nd July, 2014

NOTIFICATION

In pursuance of the provisions contained in rule 12-B of the Government of Khyber Pakhtunkhwa (Public Service) (Appointment, Promotion and Transfer) Rules, 1989, the Government of Khyber Pakhtunkhwa Department of Secondary Education hereby notifies that the Department of Secondary Education will be carrying out recruitment for the post of Teacher (BPS-17) in the subject of Teaching Urdu in the Department of Secondary Education, Peshawar, on the basis of the following conditions:


AMENDMENTS

In the Appendix to the Department of Secondary Education, Peshawar, dated 13.11.2012, the following amendments shall be made:

(1) Serial No. 1 shall be renumbered as 1B and before Serial No. 1B, as so renumbered, the following new entries shall be inserted in the following columns, namely:

Sl. No.	Subject	Qualification	Age	Remarks
1	Subject Specialist (BPS-17)	At least second class Master's Degree or Joint Years BS Degree in the relevant subject, and	23 to 35 years	(a) Fifty per cent by promotion on the basis of seniority cum fitness for the relevant subject from amongst the Secondary School Teachers (BPS-16) with at least five years service as such and having qualification mentioned in column No. 3.
		Bachelor of Education or Master of Education (Childhood or Business Education) or equivalent qualification from a recognized college.		Note: If no suitable candidate is available in the relevant subject, the post falling in the promotion quota shall be filled by initial recruitment.

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1A	 Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University	22-35 years	recruitment, and (b) fifty percent by initial recruitment. (a) Fifty percent by promotion on the basis of seniority cum fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3. Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion then the post shall be filled by promotion on the basis of seniority cum fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3. Note - If no suitable candidate is available in the relevant cadres of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment, and (b) fifty percent by initial recruitment, and
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Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion then the post shall be filled by promotion on the basis of seniority cum fitness from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;

(c) four per cent from amongst the Senior Arabic Teachers (BPS-16) with at least five years service as Senior Arabic Teachers and Arabic Teachers and having qualification mentioned in column No. 3;

Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion on the basis of seniority cum fitness from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3;

(d) four per cent from amongst the Senior Theology Teachers (BPS-16) with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No. 3;

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(ii) against Serial No. 1B as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

1	2	3	4	5
1B	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degrees from a recognized University on need basis from the following groups with two subject:</p> <p>(a) (Chemistry, Botany or Zoology) Or (b) (Physics, Maths, A or B or Statistics) Or (c) (Humanities and other equivalent groups at degree level with English as compulsory subject)</p> <p>and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University</p>	21 to 35 years	<p>Seventy five per cent by promotion on the basis of seniority-cum-fitness from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column No. 3.</p> <p>Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion then the post shall be filled by promotion on the basis of seniority-cum-fitness from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3.</p> <p>(b) four per cent from amongst the Senior Drawing Masters (BPS-16), with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No. 3.</p>

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

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Endst. of even No & date

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department, Peshawar
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department, Peshawar
4. The Secretary to Government of Khyber Pakhtunkhwa, Public Service Commission, Peshawar
5. The Accountant General, Khyber Pakhtunkhwa, Peshawar
6. The Director, Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar
7. The Director of Education (I/ATA), Peshawar
8. The Director, Curriculum and Teacher Education, Khyber Pakhtunkhwa, Abbottabad
9. The Director, (P.T.E), Khyber Pakhtunkhwa, Peshawar
10. The Director, ESRU, Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar
11. Manager, Government Printing Press, Khyber Pakhtunkhwa, Peshawar
12. The Deputy Director, EMIS (S&S), Department, Khyber Pakhtunkhwa, Peshawar
13. All District Education Officer (M&T) in Khyber Pakhtunkhwa
14. All District Account Officer in Khyber Pakhtunkhwa
15. All Agency Education Officer in IATA
16. All Agency Account Officer in IATA
17. PS to Governor, Khyber Pakhtunkhwa, Peshawar
18. PS to Chief Minister, Khyber Pakhtunkhwa, Peshawar
19. PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar
20. PS to Minister E&SE, Khyber Pakhtunkhwa, Peshawar
21. PS to Secretary E&SE, Khyber Pakhtunkhwa, Peshawar
22. Master file

(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

ANNEXURE

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PESHAWAR HIGH COURT BANNU BENCH
FORM OF ORDER SHEET

Date of order or other proceedings	Order or other proceedings with signature of Judge (S)
(1)	(2)
28.01.2016	<p>WP No.73-B-2014 Present Mr. Ali Jan Khan Advocate for petitioner: MUHAMMAD GHAZANFAR KHAN :-</p> <ol style="list-style-type: none">1. the petitioner namely Mumtaz Khan son of the Gull Jan, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion in the post of SST in BPS-16 in view of the department promotion committee meeting held on 18.01.2014.2. we have heard learned counsel for the petitioner and gone through the available record of the case.3. Perusal of the record transpires that the petitioner has passed B.A in third division while as per notification bearing No. dated 18.1.2011 the minimum qualification for the post of SST BPS-16 are Bachelor's degree or MA in education bachelor degree in education. The record further shows that the petitioner has also passed M.ed during the year 2000 in second division and M.A History and Pak study during the session 2003 in second division.4. In wake of the above, we direct the respondents to consider the petitioner for promotion to the post of SST BPS-16 in the next departmental promotion Committee meeting on the basis of his degree in MA History and Pak Study coupled with M.ed qualifications. The writ petition is disposed of in the above terms. <p style="text-align: right;">Sd/- ikramullah Khan</p> <p>ANNOUNCED 28.01.2016.</p> <p style="text-align: right;">Sd/-Muhammad Ghazanfar Khan, J</p>

ATTORNEY AT LAW

ANNEXURE

E 19

Date of order or other proceedings	Order or other proceedings with signature of Judge(s)
(1)	(2)
23/01/2016	<p>AYP No. 75-B-2014</p> <p>Present: Mr. Ali Jan Khan advocate for petitioner.</p> <p><u>MUHAMMAD SAJJAD ANSARI KATTAN, J.</u> The petitioner namely, <u>Muhammad SaJJad Ansari Kattan</u> through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to consider him for promotion to the post of SST (LPS-10) in view of the Departmental Promotion Committee meeting held on 18-01-2014.</p> <p>2. We have heard learned counsel for the petitioner and gone through the available records in the case.</p> <p>3. Perusal of records transpires that the petitioner has passed DEX in regard to which a post of SST (LPS-10) has been advertised vide S.O. No. 508/2014 dated 13/1/2014. The alternative qualifications for the post of SST (LPS-10) are second class Bachelors degree or M.A. in Education or Teachers diploma in Education, etc.</p>

AT THE COURT-BANNU, JENGA

Reserve Judge

Signature

Signature

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record further shows that the petitioner has also passed M.Ed. during the year 2000 in second division and M.A. History and Public Study during the session 2003 in second division.

In wake of the above, we have set the respondents to consider the petition for promotion to the post of SSI (BPS-16) in the next Departmental Promotion Committee meeting on the basis of his degree in M.A. History and Public Study awarded with M.Ed. on the basis of which the petition is disposed of in the above terms.

Sd/- Kamal Kaur, J.S.

ANNOUNCED
28/07/2016

Sd/- Muhammad Chaudhary, J.S.

(Handwritten signature and date)
15/7/16

CERTIFIED TO BE TRUE COPY

(Handwritten signature)
15/7/16

Examination Officer
Patil, Swadhikar, Choudhary, Bhatnagar, Bhatnagar
Under Section 107 of the
The Central Staffing Regulations, 1959

ATTESTED
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Judgment Sheet
IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH JUDICIAL DEPARTMENT
Writ Petition No.1041-A/2015

JUDGMENT

1. **IKRAMULLAH KHAN, J:-** Through the instant writ petition under article 199 of the Islamic republic of Pakistan, 1973 the petitioner seeks declaration to the effect that the act of respondent NO, 3 where by the promotion notification dated 28.10.2014 was withdrawn vide impugned notification 24.04.2014 on the ground of having qualification of B.Sc (3rd division) is illegal and without lawful authority and against the judgment of this court passed in W.P.No.58-B of 2014.
2. In essence, the petitioner was initially appointed as certified teacher and, as per entitlement, later on promoted to the post of senior certified teacher (BPS-16) Vide notification dated 28.10.2014. where after the petitioner assumed the charge of the said post on 30.10.2014 and after performing his duties to the satisfaction of his competent authority, on 24.04.2015 respondent No,3 has passed the impugned notification and, as such, the promotion order of the petitioner was withdrawn on the ground having B,SC in third division.
3. Comments were called from respondent No.3 who filed the same, averring therein that though petitioner was promoted to the post of SST vide notification dated 28.10.2014 by respondent No.2 scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.SC third divisioner hence, his promotion order was de-notified by the director elementary and secondary education: Khyber Pakhtunkhwa Peshawar and on the direction of director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.
4. It is further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.sc third division and it was done in light of policy circulated vide Notification No.SO(PE)4-5/SSRC/meeting/2013/teaching cadre dated 24.07.2014 according to which the method of recruitment of SST was specified with a first condition of at least second class BA/Bsc from a recognized university on need basis with two relevant subjects along with second condition of MA education or B.ed from the recognized university further averred that it is the prerogative of the government to enhance, modify or alter the promotion criteria/ policy for the civil servants and a civil servant is not supposed to be treated with a set of rules of his own choice.
5. In response to para-6 of the petition, respondent No.3 averred in the comments that the judgment of this court was announced on 04.06.2015 where as the withdrawal order of the petitioner was passed on 24.04.2015, prior to the announcement of the judgment.
6. The main contention of learned counsel for the petitioner is that this court has already declared the condition of having third division as null and void in its judgment dated 04.06.2015 and the case of the petitioner is on better footing for reason that in referred judgment the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted rather received its benefits from 28.10.2014 to 24.04.2015 and thus the impugned order is illegal, without lawful authority and jurisdiction.

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ANNEXURE F

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7. Admittedly, the petitioner was duly promoted to the post of question on 28.10.2014, after the departmental promotion committee evaluated his case /PERs.
8. Now the question for determination before this court would be that when the petitioner actually performed his duties on the promoted post and that too for six long months, then how the respondent No.3 could withdraw earlier promotion order only on the pretext having B.Sc third division.
9. It appears from the record that a division Bench of this had already declared the condition of having third division as null and in its judgment dated 04.06.2015 which fact has also been affirmed by the respondent No.3 in his comments by stating that they were not aware of that judgment at the time of withdrawal of the impugned promotion of the petitioner and when the case of the present petitioner is it par with that of the petitioner there in, rather on better footing because the petitioner was not only promoted to the post in question but he performed his duties for six long months and received its benefits, the impugned notification passed by respondent No.3 is required to be set at naught.
9. It is also a well settled principle of law that once a benefit is granted to a civil servant, cannot taken back from him and, if so, very stringent strong reason are required for the same, which are not available in the case in hand, more so, when the promotion order of similarly placed teachers having B.Sc third division have not been so far withdrawn which is clearly violation of article 25 of the constitution of Pakistan.
10. For the reasons mentioned above, this petition is accepted and the impugned notification dated 24.04.2015 issued by respondent No.3 where by the promotion order of the petitioner was withdrawn is declared to be without lawful authority and, as, such the promotion notification dated 28.10.2014 is hereby restored.

**Announced:
05.04.2016.**

ATTESTED

IN THE PESHAWAR HIGH COURT
JUDICIAL OFFICE

W.P. No. 843 of 2014

FUSION

Date of hearing: _____
Petitioner: Muhammad Aslam Khan
Respondents: 1. The Government of Punjab
2. The Director of Education
3. The District Education Officer
4. The District Education Officer
5. The District Education Officer

SIGNATURE OF PETITIONER
This petition is filed under Article 199 of the Islamic Republic of Pakistan. The petitioner seeks declaration that the order of the respondent No. 3, whereby the petitioner was removed from the post of Senior Certified Teacher dated 28.10.2014, was withdrawn on 24.04.2014 on the ground of having no vacancy (as per provision) is illegal and without jurisdiction.

← Judgment of this court passed in W.P. No. 843 of 2014 →

2. In essence, the petitioner was originally appointed as Certified Teacher and, as per title mentioned in the notification, he was promoted to the post of Senior Certified Teacher on 28.10.2014. On 28.10.2014, the petitioner was removed from the said post on the ground of having no vacancy (as per provision) to the satisfaction of his competent authority on 24.04.2014. Respondent No. 3 has passed the impugned order and, as per

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20.11.2014

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such, the promotion order of the petitioner was withdrawn on the ground of having B.Sc in third division.

3 Comments were called from respondent No 3, who filed the same, averring therein that though petitioner was promoted to the post of SST vide notification dated 23.10.2014 by respondent No 2, but on scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.Sc third divisioner, hence, his promotion order was de-notified by the Director Elementary and Secondary Education, Khyber Pakhtunkhwa Peshawar and on the direction of Director, the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.

4 It has further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.Sc third division and it was done in light of policy circulated vide Notification No SO(PE)45/SSRC/meeting/2013/teaching cadre dated 24.07.2014 according to which the method of recruitment of SST was specified with a first condition of at least second class BA / B.Sc from a recognized University on need basis with two relevant subjects along with second condition of MA, Education or B.Ed from the recognized University. Further averred that it is the prerogative of the government to enhance, modify or alter the promotion

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(Signature)

criteria / policy for the civil servants and the respondents not supposed to be treated with harsher terms of his own choice.

5. In response to Para 4 of the petition a respondent has averred in the comments that the judgment of this court was announced on 04.06.2015 whereas the order made for the petitioner was passed on 24.11.2015 prior to the announcement of the judgment.

6. The main contention of learned counsel for the petitioners that this court has no jurisdiction in the condition of having third division as null and void in its judgment dated 04.06.2015 and the case of the petitioner is never before the court for the reason that on the relevant date the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted after receiving benefits from 28.10.2004 to 24.10.2015 and the promotion was not illegal, without authority and in violation.

7. Admittedly, the petitioner was duly promoted to the post in question on 28.10.2004. The relevant departmental promotion committee evaluated his case (PER).

8. Now the question for determination before this court would be that when the petitioner actually performed his duties on the promoted post and that too for six long months then how the respondent No.3 could withdraw the earlier promotion.

Under the provisions of law, the respondents to

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... for the reasons mentioned above ...
Pakistan

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authority, and as such, it is hereby announced that

28: 04:2016 is hereby restored

Announced

05:04:2016

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
Dated Peshawar the December, 15 of 2011

NOTIFICATION

No. SOE-II (ED) 2(14)2011:-In exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), the Chief MINISTER OF THE Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules 2007, the following further amendment, shall be made, namely:

AMENDMENT

In Schedule-I, against Sr. No.1, in Column No.3, the full stop appearing at the end shall be replaced by colon and thereafter that following proviso shall be added, namely:

“Provided that a candidate who has obtained a 3rd Division or D-Grade in Bachelor's Degree will be eligible for the examination in cases where he/she has obtained a higher Division in Master's Degree”.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

To,

The secretary, E&SE department,
Khyber Pakhtunkhwa, Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF SST (BPS-16) ON THE BASIS OF HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.07.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO, 18 COLUMN NO, 3(i) OF THE TABLE.

Respected Sir,

With due respect it is stated that I was initially appointed as Certified School Teacher in the respondent Department and right from the date of my 1st appointment I am performing my my duties quite efficiently and up to the entire satisfaction of his superiors. During service, later on I was promoted to the post of SCT. That I have the higher qualification of Master in Arts, B.ed in 2nd Division but the authorities issued the impugned Notification dated 24.07.2014 whereby the post of SST was restricted and 20% promotion quota to the aforementioned post was reserved for Certified Teachers. That according to the said Notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. That the concerned authority denied promotion of my some colleagues to the post of SST due to having third class bachelor degree. They were feeling aggrieved filed writ petitions which were allowed in favor of petitioners vide judgment dated 05.04.2016 and 28.01.2016 and consequently they were promoted to the post of SST. That I was also denied from promotion due to having third class bachelor degree despite the fact that I am having second division in higher qualification of Master of Arts, B.ed. That being a similar placed employee approached the concerned authority to extend the same benefit of the above mentioned judgments but in vain. That the establishment Department issued a Notification dated 15.12.2011 whereby amendment has been made in PMS rules 2007 by providing that a candidate who has obtain 3* division In bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. That feeling aggrieved from the inaction of the concerned authority by not considering me for promotion to the post of SST(BPS-16) filed the instant Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal I may very kindly be considered for promotion to the post of SST (BPS-16) from the date when my colleagues and junior colleagues were promoted with all consequential benefits including seniority. Any other remedy which your good self deems fit that may also be awarded in my favor.

APPLICANT

LIAZ KHAN, SCT (BPS-16)

The Secretary, ERSE Department,
Khyber Pakhtunkhwa, Peshawar.

Subject:

DEPARTMENTAL APPEAL AGAINST THE INACTION OF THE
RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR
PROMOTION TO THE POST OF SST (BPS-16) ON THE BASIS OF
HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE
SERVICE RULES NOTIFIED ON 24.07.2014 WHEREBY THE
CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN
SERIAL NO.18, COLUMN NO.3(D) OF THE TABLE.

Respected Sir,

With due respect it is stated that I was initially appointed as Certified School Teacher in the respondent Department and right from the date of my 1st appointment I am performing my duties quite efficiently and up to the entire satisfaction of his superiors. During service later on I was promoted to the post of SCT. That I have the higher qualification of Master in Arts, Sec'd in 2nd Division but the authorities issued the Impugned Notification dated 24.07.2014 whereby the post of SST was restricted and 20% promotion quota to the abovementioned post was reserved for Certified Teachers. That according to the said Notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. That the concerned authority denied promotion of my some colleagues to the post of SST due to having third class bachelor degree. They were feeling aggrieved filed with petitions which were allowed in favor of petitioners. Writ judgment dated 05.04.2016 and 28.01.2016 and consequently they were promoted to the post of SST. Then I was denied to from promotion due to having third class bachelor degree. As a result therefore that I am having second division in higher qualification of Master in Arts, Sec'd. The being a similar placed employee approached the concerned authority to extend the same benefit of the above mentioned judgments but in vain. That the establishment Department issued a Notification dated 15.12.2014 whereby amendment has been made in BPS rules 2007 by providing that a candidate who has obtain 3rd division in bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. That feeling aggrieved from the inaction of the concerned authority by not considering me for promotion to the post of SST (BPS-16) filed the instant Departmental appeal before your good self.

It is therefore most humbly prayed that on acceptance of this Department appeal may very kindly be considered for promotion to the post of SST (BPS-16) from the date when my colleagues and junior colleagues were promoted with all consequential benefits including seniority. Any other remedy (which) your good self seems fit that may also be awarded in my favor.

Dated: 29.03.2021

APPLICANT

Umar Khan, SST (BPS-16)

GNS Ayaz Kot Khushali

North Waziristan District Miranshah

No. 1287

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VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO: _____ OF 2021

Liaz Khan (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt. (RESPONDENT)
(DEFENDANT)

I/We Liaz Khan
Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2021

Liaz

CLIENTS |
Accepted
NOOR MOHAMMAD KHATTAK
Kamran Khan
KAMRAN KHAN
Umer Farooq Mohmand
UMER FAROOQ MOHMAND
Said Khan
SAID KHAN
& Haider Ali
HAIDER ALI
ADVOCATES

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No. 7137 /2021

1. **LIAZ KHAN S/O Sherin Khan, SCT (BPS-16), Govt. Middle School Ayaz Kot Khusali Tehsile Mirali, North Waziristan**

-----**Appellant**

VERSUS

1. The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
4. The Director Education (E&SE) Department, Khyber Pakhtunkhwa; Peshawar
5. District Education officer (M), District North Waziristan, Miranshah

-----**Respondents.**

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4	Promotion Policy 24/07/2014	A	5-11

Assistant District Education Officer

North Waziristan Tribal District

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No. 7137 /2021

1. LIAZ KHAN S/O Sherin Khan, SCT (BPS-16), Govt. Middle School Ayaz Kot Khusali Tehsil Mirali, North Waziristan

-----Appellant

VERSUS

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4. The Director Education (E&SE) Department, Khyber Pakhtunkhwa; Peshawar
5. District Education officer (M), District North Waziristan, Miranshah

----- Respondents.

Comments on behalf of respondent No.1 to 5

Respectfully Sheweth:

Preliminary Objection:

- That the appellant has got no cause of action, locus standi to file the instant appeal.
- That the appellant has not come to this honorable Tribunal with clean hands.
- That the appellant has concealed material facts from this Honorable Tribunal.
- That the appeal is not maintainable in the present form.
- That the appellant has estopped by his own conduct to bring the present appeal.
- That the appeal is badly time barred as there is no appeal on record on part of the appellant in the respondent department.
- That the appellant is lacking prescribed qualification i.e Third division and not eligible for promotion under the in-vogue rules/policy.

On facts:

- 1) That Para-1 pertains to record.
- 2) That Para-1 pertains to record.
- 3) That para-3 is correct to the extent that 20% promotion quota was reserved from 75% for promotion to the post of SST from the eligible Primary School Teachers, Policy is attached as **(Annexure A)**.
- 4) That the appellant is misleading this Honorable Tribunal by and exerting illegal pressure through instant appeal. The respondent department is bound to abide by the rules/policy in-vogue, the policy dated 24-07-2014 for promotion to the post of SST General is;
 - I. "At least second class bachelor's Degree from a recognize university on need basis from the humanities and other equivalent groups at Degree level with English as compulsory Subject"
And
 - II. Bachelor of Education or Master of Education(Industrial Art or Business Education) or equivalent qualification from a recognize university, attached as **(Annexure A)**In view of the said policy, appellant is with 3rd division, so he is not eligible for promotion
- 5) That the appellant is not eligible as he is not fulfilling required criteria, i.e. the appellant is with 3rd division in Bachelor Degree.
- 6) That the appellant is not eligible as he is not fulfilling required criteria i.e. the appellant is with 3rd division in Bachelor Degree, so he is not entitle/eligible under the in-vogue policy/rules, furthermore, there is no appeal on record on part of the appellant in the Respondent Department.

- 7) The detail reply is already submitted under Para-4 above while the respondent Department has its own rules/policy for promotion and induction, which is attached as (Annexure A)
- 8) That the appellant is not eligible as he is not fulfilling required criteria i.e. the appellant is with 3rd division in Bachelor Degree, so he is not entitle/eligible under the in-vogue policy/rules, furthermore, there is no appeal on record on part of the appellant in the Respondent Department.
- 9) Legal, The respondent also submits on following grounds inter alia.

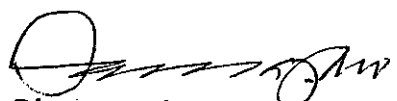
Grounds:

- A. **Incorrect and Denied**, The appellant is exerting illegal pressure on the respondent department through instant appeal and the respondent department has acted according to the rules/policy.
- B. **Incorrect and Denied**, The Respondent department did not violate Article 4&25 of the constitution of the Islamic republic of Pakistan 1973 and has been acted according to the rules and policy.
- C. **Incorrect and Denied**, the Respondent Department is bound to abided by the law /Rules and Policy.
- D. **Incorrect and Denied**, Detail Reply has already been submitted above under Para-4above on facts.
- E. **Incorrect and Denied**, Detail Reply has already been submitted above under Para-4above on facts.
- F. **Incorrect**.
- G. Respondents are also seeking permission of the Honorable Tribunal to produce additional grounds and proofs at the time of Hearing.

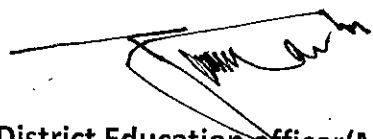
PRAYER:

In the light of the above stated facts, it is requested to dismiss the case of the appellant.

Respondent No. 4


 Director Education (E & SE)
 Khyber Pakhtunkhwa Peshawar

Respondent No. 5


 District Education officer (M)
 North Waziristan Tribal District

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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No. 7137 /2021

1. **LIAZ KHAN S/O Sherin Khan, SCT (BPS-16), Govt. Middle School Ayaz Kot
Khusali Tehsile Mirali, North Waziristan**

-----**Appellant**

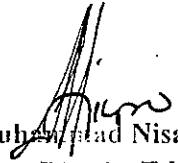
VERSUS

1. The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
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4. The Director Education (E&SE) Department, Khyber Pakhtunkhwa, Peshawar.
5. District Education officer (M), District North Waziristan, Miranshah

-----**Respondents.**

AFFIDAVIT

I, Muhammad Nisar Focal Person Litigation, DEO North Waziristan do solemnly affirm and declare that the Comments of Respondent No 4&5 in the Appeal.NO 7137/2021 is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

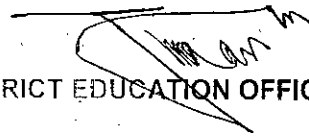

Muhammad Nisar

**Assistant District Education Officer
North Waziristan Tribal District**

4

AUTHORITY LETTER

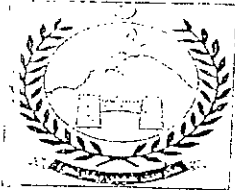
This office has the honor to state that Mr. Muhammad Nisar has been serving in the District Edu: Office as Focal Person Litigation. He has been given the authority to attend all kinds of court case. So he may be considered as representative of the District Edu: officer, N.W.T.D



DISTRICT EDUCATION OFFICER
NORTH WAZIRISTAN Tribal District

Annexure (A)
consist of 7 pages

5



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Peshawar, dated the 24th July, 2014.

NOTIFICATION

No.SO(PE)4-5/SSRC/Meeting/2013/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Vol-II dated, 09-04-2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:-

AMENDMENTS

In the Appendix:-

(i) Serial No. 1 shall be renumbered as 1B and before Serial No. 1B, as so renumbered, the following new entries shall be inserted in respective columns, namely:

1	2	3	4	5
"1	Subject Specialist (BPS-17)	i. At least second class Master's Degree or four years BS Degree in the relevant subject; and ii. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification from a recognized University.	23 to 35 years	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, for the relevant subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3. Note: If no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial

(1)

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6

LA	Director Physical Education (BPS-17)	At least second class Master's Degree in Physical Education from a recognized University.	22-35 years	<p>recruitment; and (b) fifty percent by initial recruitment.</p> <p>(a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst Senior Physical Education Teachers (BPS-16), with at least five years service as Senior Physical Education Teacher and Physical Education Teacher and having qualification mentioned in column No. 3;</p> <p>Provided that if no suitable person is available from amongst Senior Physical Education Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Physical Education Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>Note:- If no suitable candidate is available in the relevant cadres of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment; and</p> <p>(b) fifty percent by initial recruitment"; and</p>
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Annex
"A"

(B)

(7)

(ii) against Serial No. 1B, as so renumbered, for the existing entries, the following shall be substituted, in respective columns, namely:

1	2	3	4	5
1B.	Secondary School Teacher (BPS-16)	<p>I. At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject</p> <p>(a) (Chemistry, Botany or Zoology), Or (b) (Physics, Maths "A" or "B" or Statistics) Or (c) (Humanities and other equivalent groups at degree level with English as compulsory subject;</p> <p style="text-align: center;">and</p> <p>II. Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualifications from a recognized University.</p>	21 to 35 years.	<p>Seventy-Five per cent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner:</p> <p>(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and having qualification mentioned in column No.3:</p> <p style="padding-left: 40px;">Provided that if no suitable candidate is available from amongst Senior Certified Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(b) four per cent from amongst the Senior Drawing Masters(BPS-16), with at least five years service as Senior Drawing Masters and Drawing Masters and having qualification mentioned in column No.3:</p>

Act
CTC

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				<p>Provided that if no suitable candidate is available from amongst Senior Drawing Masters for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Drawing Masters with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(c) four per cent from amongst the Senior Arabic Teachers(BPS-16), with at least five years service as Senior Arabic Teachers and Arabic Teachers, and having qualification mentioned in column No.3:</p> <p>Provided that if no suitable candidate is available from amongst Senior Arabic Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Arabic Teachers with at least five years service as such and having qualification mentioned in column No. 3;</p> <p>(d) four per cent from amongst the Senior Theology Teachers(BPS-16), with at least five years service as Senior Theology Teachers and Theology Teachers and having qualification mentioned in column No.3:</p>
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(187) (9)

Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;

(e) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No. 3;

Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;

(f) twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No. 3;

Provided that if no suitable candidate is available from amongst

Ans
CTC

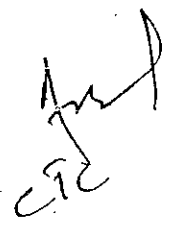
				<p>Primary School Head Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least seven years service as Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No.3:</p> <p>Provided further that if no suitable candidate is available from amongst Senior Primary School Teachers for promotion then the post shall be filled from amongst Primary School Teachers with at least seven years service as such and having qualification mentioned in column No. 3; and</p> <p>(ii) twenty Five percent by initial recruitment.</p> <p>Note:</p> <p>I. If no suitable candidate is available in the relevant cadre of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment.</p> <p>II. Posts of General SST and SSTs-1 Science and SST-2 Science shall be filled by promotion or initial recruitment, each on need basis separately."</p>
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(11)

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa. Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa. Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa. Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa. Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa. Peshawar.
22. Master file


(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)