

بعدالت جناب شیخہ بنتونخواہ سروس ٹری پول، پشاور
تقریری بحث در CA 734/2023
ادیس خان ٹنگ۔۔۔ نام۔۔۔ ڈائریکٹر ہائر ایجوکیشن پشاور

Khyber Pakhtunkhwa
Service Tribunal

Diary No.

4797

Dated

10/4/2023

جناب عالی،

استدما حسب ذیل عرض ہے۔

۱۔ یہ کہ سائل کا والد محکمہ کالج، صوبہ خیبر پختونخواہ (ہائر ایجوکیشن) میں بلور لیہاری انڈنٹ (Lab Attendant) بھرتی ہوا تھا اور سائل کا والد بعد از میڈیکل بورڈ، میڈیکل کے بنیاد پر گورنمنٹ خوشحال خان ٹنگ ڈگری کالج اکوڑہ ٹنگ سے ریٹائرڈ ہوا۔ (صحیح شدہ ریٹائرمنٹ آڈر فائل پر موجود ہے)۔

۲۔ یہ کہ بمطابق روڈز جب کوئی class-iv ملازم میڈیکل کے بنیاد پر ریٹائرڈ ہوتا ہے تو اس کا پچھروڑ کے مطابق بھرتی کیا جاتا ہے۔

Rule 10 of

Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989

۳۔ یہ کہ جب سائل کو بھرتی کیا جا رہا تھا تو اس وقت اور اب بھی نوشہرہ کے مختلف کالجز میں نائب قاصد اور لیب انڈنٹ کی اسامیاں خالی ہیں لیکن سائل کو اس پر بھرتی نہ کیا گیا۔

۴۔ یہ کہ روڈز میں کئی پر یہ موجود نہیں ہے کہ سائل کو اسی کالج میں بھرتی کیا جائے گا جہاں سے اس کا والد ریٹائرڈ ہوا ہے بلکہ ضلع کے کسی دوسرے کالج میں بھی بھرتی کیا جا سکتا ہے جہاں پر مناسب اسامی خالی ہو۔ اس لیے سائل کو بھی دوسرے کالج میں اگر قاصد یا لیب انڈنٹ بھرتی کیا جائے تو سائل مکھور رہے گا۔

۵۔ یہ کہ سائل کو اگر قاصد یا لیب انڈنٹ یا کسی دوسرے مناسب اسامی پر بھرتی کیا جائے تو اس سے کسی کا حق متاثر نہ ہوگا۔ اور مزید یہ کہ روڈز میں بھی اس پر کوئی پابندی نہ ہے بلکہ انہیں واضح طور پر لکھا گیا ہے کہ اچھی اسامی پر بھرتی کیا جائے گا اس بارے میں

Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989

کلیئر ہیں۔ اور انہیں موجود ہے کہ higher pay scale والی اسامی پر بھرتی کیا جائے گا۔

سائل
ادیس خان ٹنگ۔۔

**THE ¹KHYBER PAKHTUNKHWA CIVIL SERVANTS
(APPOINTMENT, PROMOTION & TRANSFER) RULES, 1989**

PART-I

GENERAL

1. **Short title and commencement:** - (1) These rules may be called the ²[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

(2) They shall come into force at once.

2. **Definitions:-**(1) In these rules, unless the context otherwise requires:-

(a) "Appointing Authority" in relation to a post, means the persons authorized under rule 4 to make appointment to that post;

(b) "Basic Pay Scale" means the Basic Pay Scale for the time being sanctioned by Government, in which a post or a group of posts is placed;

(c) "Commission" means the ³[Khyber Pakhtunkhwa] Public Service Commission;

⁴(d) "Departmental Promotion Committee" means a committee constituted for making selection for promotion or transfer to such posts under a Department, or offices of Government, which do not fall within the purview of the Provincial Selection Board;

⁵(dd) "Departmental Selection Board" means a Board constituted for the purpose of making selection for initial recruitment /appointment to posts under a Department or office of Government in Basic Pay Scale 17 not falling within the purview of the Commission:

Provided that more than one such committees may be constituted for civil servants holding different scales of pay".

(e) "Departmental Selection Committee" means a committee constituted for the purpose of making selection for initial appointment to posts under a department, or office of Government [in Basic Pay Scale 17 and below not falling within the purview of the Commission];

(f) "Post" means a post sanctioned in connection with the affairs of the Province, but not

¹ For the words "NWFP" or "North-West Frontier Province", wherever occurred, the words "Khyber Pakhtunkhwa" substituted by the Khyber Pakhtunkhwa Laws (Amendment) Act, 2011 (Khyber Pakhtunkhwa Act No. IV of 2011) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 2nd April, 2011

² Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

³ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁴ Substituted by Clause (d) of sub-rule (1) of Rule 2 vide Notification No. SOR-I (S&GAD) 4-1/80 (Vol-II) dated 14-01-92.

⁵ Clause (dd) added by Notification No. SOR-III (S&GAD) 2-7/86, dated 8-12-1994

(6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

PART-III

INITIAL APPOINTMENT

10. **Appointment by Initial Recruitment** :- (1) Initial appointment to posts ²⁵[in various basic pay scales] shall be made-

- (a) if the post falls within the purview of the Commission, on the basis of Examination or test to be conducted by the Commission; or
- (b) if the post does not fall within the purview of the Commission, in the manner as may be determined by Government.

²⁶(2) Initial recruitment to posts which do not fall within the purview of the Commission shall be made on the recommendation of the Departmental Selection Committee, after vacancies have been advertised in newspapers.

²⁷Provided that nothing contained in this sub-rule shall apply to the household staff of the Chief Minister House Peshawar, ²⁸[Khyber Pakhtunkhwa] House Islamabad, ²⁹[Khyber Pakhtunkhwa] Rest Houses Bannu, Swat and Abbottabad, ³⁰[Khyber Pakhtunkhwa] House Nathia Galli and Shahi Mehman Khana, Peshawar and any other House to be established by the Government:

³¹Provided further that the appointment in Basic Pay Scale-³²[3 to 5] shall be made on the recommendations of the Departmental Selection Committee through the District Employment Exchange concerned, ³³[or, where in a District, the office of the Employment Exchange does not exist, after advertising the posts in the leading newspapers] ³⁴[]

²⁵ The words in basic pay scale-16 to 21 substituted by Notification No. SOR-I(S&GAD)1-117/91 (C), dated 12-10-1993.

²⁶ Sub rule (2) of Rule-10 substituted by Notification No. SOR-I(S&GAD) 1-117/91 (C), dated 12-10-1993.

²⁷ Proviso added vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 03-07-2003.

²⁸ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

²⁹ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

³⁰ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

³¹ Proviso added vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 16-03-2004

³² Substituted by Notification No. SO(R-VI)E&AD/1-3/2015, dated April 19, 2016.

³³ Sentence added in the Proviso vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 23-01-2006.

³⁴ 2nd Proviso in sub- rule (2) of Rule 10 was deleted vide Notification No. SOR-VI(E&AD)1-3/2008 dated 09-05-2008 and added again vide Notification No. SOR-VI(E&AD)1-3/2008 dated 03-11-2008.

(3) A candidate for initial appointment to a post must possess the educational qualification or technical qualifications and experience and except as provided in the rules framed for the purpose of relaxation of age limit, must be within the age limit as laid down for the post, provided that-

- (i) ³⁵where recruitment is to be made on the basis of written examination, then, notwithstanding anything to the contrary contained in any other rules for the time being in force, age shall be reckoned on 1st January of the year in which the examination is proposed to be held;
- (ii) in other cases as on the last date fixed for submission of applications for appointment.

³⁶[4 Where a civil servant dies or is rendered incapacitated or invalidated permanently during service or retired on medical board, notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant or if the child has not attained the age prescribed for appointment in Government service, the widow or wife as the case may be, of such civil servant, to a posts in any of the basic pay scales 3 to 11 in Provincial cadre post and basic pay scales 3 to 12 in District cadre posts:

Provided that the child or the widow or wife, as the case may be, possesses the minimum qualification prescribed for appointment to the post:

Provided further that if there are two widows or wives of the deceased civil servant, as the case may be, preference shall be given to the elder widow or wife:

Provided also that appointment under this sub-rule is subject to availability of a vacancy and if more than one vacancies, in different pay scales, are available at a time and the child or the widow or wife, as the case may be, possesses the qualifications eligible for appointment in more than one post, such child or the widow or wife, as the case may be, shall ordinarily be appointed to the post carrying higher pay scale:

Provided also that the provision of this sub-rule shall not be applicable to posts falling within the purview of the Commission.]

³⁷(5) Notwithstanding anything contained in any rule for the time being in force, two percent of all posts in each basic pay scale to be filled in by initial recruitment shall be reserved for disabled candidates and ten percent of all posts meant for initial recruitment shall be reserved for female candidates:

Explanation-I---For the purpose of reservation under this sub-rule "disability" does not include such disability which hampers in the smooth performance of the duties required of a disabled candidate.

³⁵ Clause (i) substituted vide Notification No. SOR-I(S&GAD)4-1/80, dated 17-5-1989.

³⁶ Substituted by Notification No. SO(R-VI)E&AD/1-3/2015, dated April 19, 2016.

³⁷ Sub rule (5) substituted vide Notification No. SOR-VI (E&AD)1-10/03 (VI), dated 04-12-2007.

Explanation-II---Ten per cent quota reserved above shall be in addition to the posts exclusively reserved for female candidates.

³⁸(6) Notwithstanding anything contained in any rule for the time being in force, five per cent of all posts in each basic pay scale to be filled in by initial recruitment shall be reserved for candidates hailing from earthquake affected areas of District Mansehra, Battgram, Shangla, Kohistan and Abbottabad (Calamity hit area) for a period of three years commencing from 1st February, 2006.

³⁹(7) Notwithstanding anything contained in any rule for the time being in force, ⁴⁰[three] percent of all the posts in each basic pay scale to be filled in by initial recruitment shall be reserved for candidates belonging to minorities in addition to their participation in the open merit:

Provided that, the reservation shall not apply to—

- (i) the percentage of vacancies reserved for recruitment on merit;
- (ii) short term vacancies likely to last for less than one year; and
- (iii) isolated posts in which vacancies occur only occasionally.

11. **Eligibility.** (1) A candidate for appointment shall be a citizen of Pakistan and bona fide resident of the ⁴¹[Khyber Pakhtunkhwa].

Provided that for reasons to be recorded in writing, Government may, in a particular case, relax this restriction.

⁴²[(2)]

(3) No person, not already in Government service, shall be appointed to a post unless he produces a certificate of character from the principal, academic officer of the academic institution last attended and also certificates of character from two responsible persons, not being his relatives, who are well acquainted with his character and antecedents.

(4) Notwithstanding anything contained in sub-rule (3), an appointment by initial recruitment shall be subject to the verification of character and antecedents of the candidate or the person appointed, to the satisfaction of appointing authority.

(5) No candidate shall be appointed to a post unless he is found, after such medical examination as Government may prescribe, to be in good mental and bodily health and free from physical defect likely to interfere in the efficient discharge of his duties.

³⁸ Sub rule (6) inserted vide Notification No. SOR-VI(E&AD)1-3/03 (VI), dated 01-02-2006

³⁹ Sub rule (7) added vide Notification No. SOR-VI(E&AD)1-3/08, dated 06-01-2009

⁴⁰ Subs. vide Notification No. SORIV/E&AD/1-10(Minority)/2008, dated 08.01.2014.

⁴¹ Subs.by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁴² Sub rule (2) of rule-11 deleted vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-06-2008