

**MOST IMMEDIATE/  
COURT MATTER**

**TIME LIMIT CASE**

**OUT TODAY**



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(JUDICIAL WING)**

No. SO(Lit-III)E&AD/3-176/2022  
Dated: Peshawar, the **27-03-2023**

To,

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Planning Development Department,  
Peshawar.

**Attention: - The Section Officer (Litigation).**

Subject: - **EXECUTION PETITION NO. 601/2022 IN SERVICE APPEAL NO. 763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVT OF KHYBER PAKHTUNKHWA.**

Dear Sir,

I am directed to refer to your department letter No. SO (LIT) P&DD/3-33/E.P No. 601/2022 dated 09.03.2023 on the subject noted above and to enclose herewith a copy of this department letter No. SOR.III (E&AD)9-1/2022 dated 10.03.2023 addressed to Law Department soliciting their opinion/advice in the matter.

I am further directed to inform that hearing in the subject has been also attended on 27.03.2023 and the Tribunal was apprised about the updated position of the case, therefore, the administrative department may also pursue the case in the Law Department for the requisite necessary action please.

**Encls: As Above.**

Yours faithfully,

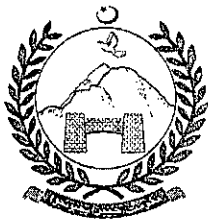
**(MUHAMMAD NOUMAN)  
Section Officer (Lit-III)**

**Endst: of Even No. & Date:**

Copy forwarded to the:-

1. Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar.
2. P.S to Secretary, Establishment Department
3. P.S to Special Secretary, Establishment Department.
4. P.S to Additional Secretary (Judicial), Establishment Department.
5. P.S to Deputy Secretary (Judicial), Establishment Department.
6. Master File.

**Section Officer (Lit-III)**



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(REGULATION WING)

No. SOR.III(E&AD)9-1/2022  
Dated Peshawar, 10<sup>th</sup> March, 2023

To

The Secretary to Government of Khyber Pakhtunkhwa,  
Law Department.

Subject: EXECUTION PETITION NO. 601/2022 IN SERVICE APPEAL NO. 763/2018 TITLED MUHAMMAD BASHIR KHAN VS GOVERNMENT OF KHYBER PAKHTUNKHWA

Dear Sir,

I am directed to refer to the subject cited above and to state that the promotion case of Muhammad Bashir Khan the then Chief of Section (BS-19) and others from the post of Chief of Section (BS-19) to the post of senior Chief of Section (BS-20) on regular basis was received to Establishment Department for consideration of PSB. However, the Provincial Selection Board in its meeting held on 28.12.2017 (Annex-I) deferred promotion of the officer concerned on the grounds that he was not undergone SMC Mandatory training which was required as per Service Rules for the post of Senior Chief of Section (BS-20) (Annex-I). There was a provision of exemption from SMC mandatory training for officers who entered into last two years of their Service but the Establishment Division vide notification dated 30.12.2015 & 15.04.2011 (copies enclosed) waived off that exemption due to which, the officer could not be promoted.

02. Feeling aggrieved, the officer filed a Service Appeal in the Khyber Pakhtunkhwa Service Tribunal requesting therein that the impugned order / recommendation of the Provincial Selection Board may be set aside and he may be granted notional promotion from the date when the post of Senior Chief of Section fall vacant (Annex-II). The Tribunal vide its judgment dated 12.07.2021 (Annex-III) accepted his application and declared that the appellant has got a fit case where principle of "Lex no cogit ad impossibilia" would apply. In the judgement it has been declared that appellant could not undergo for mandatory training of SMC for the


reason that it was not possible for him in the short period of service left till his retirement. Therefore, he is entitled for notional promotion with all accruable benefits from the date i.e. 29.01.2018 (the date of promotion of other panelists) when his promotion was recommended to be deferred for want of SMC. However, it is to mention here that the officer services in BS-19 were regularized on 18.10.2016 and as such he was on probation till 11.12.2017.

03. P&D Department filed a CPLA in the Supreme Court of Pakistan against the judgment of Service Tribunal, however, status quo has not yet been granted. As per policy of the Provincial Government, in case, no stay has been granted against the CPLA filed in the Supreme Court of Pakistan, the judgment of the Service Tribunal is required to be implemented conditionally (**Annex-IV**). Moreover, the appellant has filed an execution petition No. 601 in Service Appeal No. 763/2018, wherein the court has directed respondents to come up with final and conclusive implementation report on 27.02.2023 (**Annex-V**).

04. In view of above, views of Law Department are solicited in the matter as to whether the case of the ex-officer can be placed before the PSB forum despite the fact that he was not eligible for promotion due to the condition of SMC, taking into consideration that it will open a pindora box for similar cases. Moreover, valuable views are also requested as to whether Service Tribunal in light of Sub-Section(b) of Section-4 of Service Tribunal Act, 1974 can pass judgments in a case of promotion deferred on the ground of terms & condition of appointment on promotion.

Encls. As Above:

Yours faithfully,

  
SECTION OFFICER (R-III)  
Phone # 9211793