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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1282/2015

Date of Institution ... 10.11.2015

Date of Decision ... 26.10.2017

Faqeer Hussain (Qasid BPS-02) office of the Deputy Commissioner, Swabi.
... (Appellant)

VERSUS

1. Deputy Commissioner, Swabi and others. ... (Respondents)

MR. MUNSIF SAEED,
Advocate ... For appellant

MR. MUHAMMAD JAN,
Deputy District Attorney, ... For respondents.

MR. NIAZ MUHAMMAD KHAN,
MR. GUL ZEB KHAN, ... CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUIHAMMAD KHAN, CHAIRMAN.- Arguments of the
learned counsel for the parties heard and record perused.

FACTS

2. The appellant was serving in the office of Deputy Commissioner Swabi as Naib Qasid right from 1995. That on 10.07.2015, a promotion order was made and despite his seniority at S.No. 3 he was ignored and respondent No. 3 who was junior to him was promoted. Against this order, the appellant filed his departmental appeal before the Commissioner, Mardan Division on 27.07.2015 which was

rejected on 21.09.2015 and thereafter the appellant filed the present service appeal on 10.11.2015.

ARGUMENTS.

3. The learned counsel for the appellant argued that according to the method of recruitment 20% seats were reserved for promotion from Qasid and holders of equivalent posts who possessed S.S.C in 2nd division and having at least 3 years service as such. That the appellant fulfilled the said qualification but was not promoted on the ground that he could not qualify the test conducted for promotion by the DPC. The learned counsel for the appellant referred to the promotion and initial recruitment policy of the Provincial Government dated 11.2.1987 wherein it has specifically been mentioned that no test shall be conducted for promotion.

4. On the other hand, the learned Deputy District Attorney argued that the appellant was rightly ignored and respondent No. 3 was rightly promoted on the ground that as per qualification mentioned in Column No. 3 of method of recruitment (which was a necessary qualification for promotee candidates to have speed of 30 words per minute) and that as per the DPC, the appellant has no knowledge of computer and typing.

CONCLUSION.

5. The argument of the learned Deputy District Attorney regarding qualification in column 3 of the method of recruitment is not convincing because in column 3 the qualifications are for initial recruitment and not for promotion. For promotees the qualification and length of service has been given in column No. 5 which is SSC 2nd division with 3 years length of service. The policy of selection for promotion/initial recruitments issued by the Provincial Government on 11.2.1987 clearly states that there shall be no test for promotion to any post in a grade below

grade 16 and the promotion shall be determined on the basis of service record i.e. seniority-cum-fitness. In view of the above discussion, this Tribunal reaches the conclusion that the appellant was wrongly ignored at the relevant time and respondent No. 3 should not have been promoted in his place.

6. In view of the above, this Tribunal accepts the appeal and the respondents are directed to consider the appellant for promotion from due date. Parties are left to bear their own costs. File be consigned to the record room.


(GUL ZEB KHAN)
MEMBER


(NIAZ MUHAMMAD KHAN)
CHAIRMAN

ANNOUNCED
26.10.2017

09. 04.07.2017 Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondent present. Counsel for the appellant submitted rejoinder along with miscellaneous application for ^{Correction} creation of date in the memo of appeal which is placed on file. To come up for arguments on 26.10.2017 before D.B.

(Gul Zeb Khan)
Member

(Muhammad Hamid Mughal)
Member

26.10.2017 Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

This appeal is accepted as per our detailed judgment of today. Parties are left to bear their own costs. File be consigned to the record room.

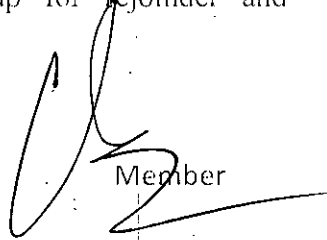
Member

Chairman

ANNOUNCED
26.10.2017

22.08.2016

Appellant in person and Mr. Bakhtiarullah, Assistant alongwith Additional AG for respondents present. None present on behalf of private respondent No. 3. Proceeded ex-parte. Written reply on behalf of respondents No. 1, 2, 4 and 5 submitted. Cost of Rs. 500/- also paid and receipt thereof obtained from appellant. To come up for rejoinder and arguments on 03.11.2016 before D.B.


Member

03.11.2016

Mr. Kalimullah, Advocate for the appellant and Mr. Bakhtiarullah, Assistant alongwith Mr. Muhammad Jan, GP for respondents present. Learned counsel for the appellant requested for adjournment to prepare the case. Request accepted. To come up for rejoinder and arguments on 6-3-17 before D.B.


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

06.03.2017

Appellant in person and Mr. Bakhtiar Ullah, Assistant for respondents present. Arguments could not be heard due to General Strike of the Bar. To come up for arguments on 04.07.2017 before D.B. ~~Status quo be maintained~~


(ASHFAQUE TAN)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

Appellant Deposited
Security & Process Fee



25.11.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Naib Qasid in the office of Deputy Commissioner Swabi and was entitled to promotion as Junior Clerk but ignored vide impugned order dated 11.6.2015 and officials junior to him were promoted where against he preferred departmental appeal which was rejected on 21.9.2015 and hence the instant service appeal on 10.11.2015.

That the appellant was subjected to Computer Test which was not a pre-requisite for promotion and hence the impugned order is not tenable in the eye of law.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 22.3.2015 before S.B.


Chairman

22.03.2016

Appellant in person and Mr. Bakhtiar Ullah, Assistant alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 12.5.2016 before S.B.


Chairman

12.05.2016

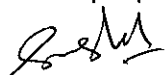

Appellant in person and Mr. Said Badshah, Assistant alongwith Addl: AG for respondents present. Written reply by respondents not submitted despite last opportunity. Requested for further time. Last opportunity is extended subject to payment of cost of Rs. 500/- which shall be borne by the respondents from their own pockets. To come up for written reply/comments and cost of Rs. 500/- on 22.08.2016 before S.B.


Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1282/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16.11.2015	<p>The appeal of Mr. Faqeer Hussain resubmitted today by Mr. Munsif Saeed Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> for REGISTRAR</p>
2		<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>25-11-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Faqir Hussain Qasid Office of the Deputy Commissioner Swabi received to-day i.e. on 10.11.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Appeal may be got signed by the appellant.
- 2- Affidavit may be attested by the Oath Commissioner.
- 3- Law under which appeal is filed is not mentioned.
- 4- Annexures of the appeal may be attested.
- 5- Annexures of the appeal may be page marked according to the Index.
- 6- One copy/set of the appeal along with annexures i.e. complete all respect may ~~be~~ also be submitted with the appeal.

No. 1756/S.T,

Dt. 11/11/2015

Waseem
REGISTRAR -
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Munsif Saeed Adv. Pesh.

Report.

1. objection 1 corrected.
2. objection 2. corrected.
3. objection 3. corrected.
4. objection 4. corrected.
5. objection 5. corrected.
6. objection 6. corrected.

W.F.

Counsel for appellant. 16.11.15

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 1882 /2015

Faqeer Hussain

(Appellant)

VERSUS

Secretary Education KPK and others

(Respondents)

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2	Copy of Seniority List	A	5
3	Copy of ^{minutes to} order dated 26.03.2014	B	6-9
4	Copy of order dated 18.06.2014	C	10-11
5	Copy of DPC dated 11.06.2015	D	12-13
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Appellant

Through

Munsif Saeed

&

Kaleem Ullah

Advocates High Court,

Peshawar

Dated: 06.11.2015

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

Service Appeal No. 1882 /2015

Faqeer Hussain (Qasid BPS-02)
Office of Deputy Commissioner Swabi

K.W.F. Province
Service Tribunal
Diary No. 1340
Dated 10-11-2015

(Appellant)

V E R S U S

- 1) Deputy Commissioner, Swabi
- 2) Commissioner Mardan Division, Mardan
- 3) Najum-us-Saqib (Naib Qasid) Office of Deputy Commissioner Swabi
- 4) Board of Revenue through Senior Member Board of Revenue
- 5) Secretary Finance, Civil Secretariat, Peshawar

(Respondents)

Appeal under section 4 of the Service Tribunal Act, 1974 against the order dated 21.09.2015 of respondent No. 2 where by departmental appeal filed by the appellant against the order dated 10.07.2015 of respondent No. 1 was dismissed.

Prayer:

On acceptance of this appeal both the orders dated 21.09.2015 of respondent No. 2 and order dated 16.07.2015 of respondent No. 1 may kindly be set aside, being void ab-initio, without any jurisdiction, in violation of laws and rules and settled norms of business and being discriminatory, whereby

~~Filed to-day~~

Registrar.

re-submitted to-day
and filed.

Registrar.

5

2

respondent No. 3 is promoted from Naib Qasid (BPS-1) to the post of Junior Clerk (BPS-11) and the appellant service and eligible for the same post was illegally ignored.

Respectfully Sheweth,

- 1) *That the appellant was appointed as Naib Qasid (BPS-2) vide order dated 01.01.1995.*
- 2) *That respondent No. 1 prepared seniority list of Naib Qasid in which appellant name placed at Serial No. 3 of said seniority list. (Copy of seniority list is attached as Annexure A)*
- 3) *That D.P.C. for promotion of Naib Qasid / Qasid by respondent No.1 on 06.03.2014 to the post of Junior Clerk (BPS-11) was held, whereby respondent No. 3 along with other two Naib Aqsid / Qasid were promoted from Naib Qasid to the post of Junior Clerk vide order dated 26.03.2014, while appellant being senior and eligible for promotion was ignored. (Copy of order dated 26.03.2014 is attached as Annexure B)*
- 4) *That feeling aggrieved, appellant filed an appeal before the worthy commissioner Mardan Division Mardan, which was accepted vide order / judgment dated 18.06.2014, with the direction to the respondent No. 1 that it is held that those candidates who are senior and possess (BPS-2) or higher grade are entitled for promotion to the post of Junior clerk (BPS-11) as per law and rules. (coy of order / judgment is attached as annexure C)*
- 5) *That inspite of judgment passed by respondent No. 1 and rules for promotion of Naib Qasid / Qasid to Junior Clerk is available and clear direction issued by respondent No. 1 in the light of promotion rules and service laws, respondent No. 1*

called DPC for promotion of Naib Qasid / Qasid (BPS-2) to Junior Clerk on 11.06.2015 after one year, in which all rules and judgment of respondent No. 1 is violated vide order dated 11.06.2015. (Copy of DPC dated 11.06.2015 is attached as Annexure D)

- 6) That feeling aggrieved from the above acts of the respondent No. 1 the appellant preferred appeal before the respondent No. 2 which was dismissed vide order dated 21.09.2015. (Annex. E)
- 7) That feeling aggrieved from the above said order the appellant approaches this honourable tribunal on the following grounds amongst others.

GROUNDS

- A) That both the impugned orders dated 11.06.2015 and 21.09.2015 are illegal, against the law and rules on subject.
- B) That valuable rights of the appellant is violated and in the light of rules and regulations the appellant is eligible for promotion, but he has been ignored.
- C) That the law, rules and regulation for promotion clear cut lays down the criteria that promotion should be made on seniority cum fitness basis but this rules is violated by the respondents and respondent No. 3 is promoted illegally.
- D) That in other districts of Khyber Pakhtunkhwa for the promotion of Qasid no tests are conducted while in the present district tests for promotion are introduced just to deprive the appellant from his valuable rights. (Copy of promotion order of other Qaisds from other district of Khyber Pakhtunkhwa is attached as Annexure F)

E) That other grounds will be raised at the time of arguments with prior permission of this honourable tribunal.

It is, therefore humbly prayed that on acceptance of this appeal, both the impugned orders may kindly be set aside and the appellant may kindly be promoted for the post of Junior Clerk being eligible and senior.



Appellant

Through

Munsif Saeed
&
Kaleem Ullah
Advocates High Court,
Peshawar



Dated: 06.11.2015.

AFFIDAVIT

I, Faqeer Hussain (Qasid BPS-02) Office of Deputy Commissioner Swabi, do hereby solemnly affirm and declare on Oath that the contents of service appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this honourable tribunal.



DEPONENT



BEFORE THE HONOURABLE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. _____/15

Faqir Hussain (Petitioner)

V E R S U S

Deputy Commissioner Swabi and others

(Respondents)

Application for correction of mentioning the correct date which is 10.07.2015 which is inadvertently mentioned as 16.07.2015 in the main appeal of the appellant.

Respectfully Sheweth,

- 1) That the above titled appeal is pending adjudication before this honourable court which is fixed for today i.e. 04.07.2017.
- 2) That inadvertently the date of order of respondent No. 1 was mentioned as 16.07.2015 instead of 10.07.2015 which is clerical mistake.
- 3) That there no legal bar in rectifying the correct date as 10.07.2015 in main appeal.

It is, therefore, most humbly prayed that the instant application may kindly be accepted.

Through

Petitioner

Kaleem Ullah
Kaleem Ullah

Advocates High Court,

Peshawar

Dated: 04.07.2017

BEFORE THE HONOURABLE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1282/15

Faqir Hussain

_____(Petitioner)

V E R S U S

Deputy Commissioner Swabi and others

_____(Respondents)

**Rejoinder to the Para-wise comments filed by
the respondents.**

Respectfully Sheweth,

Reply to the preliminary objections:

- 1) Para 1 of preliminary objection of comments is incorrect, against law and facts, hence denied. In reply it is submitted that the appellant has got every much cause of action. Furthermore appellant has also got the locus standie to file the present appeal, whereas the respondents have got no right to deny the claim of the appellant, detail has been given in the main appeal.
- 2) Para 2 of preliminary objection is incorrect, against law and facts. Appeal of the appellant is well within the time.
- 3) Para 3 of preliminary objection is incorrect, against law and facts. In reply it is stated that the appellant has not

concealed anything from this honourable tribunal and has mentioned in detail the whole facts before this honourable tribunal in the shape of appeal, whereas the respondents have concealed material facts from this honorable tribunal as respondents are trying to protect their blue eyed person by infringing valuable and constitutional right of the appellant, furthermore stance of the appellant has been admitted by the respondents by allocating additional charge of Junior Clerk to the appellant which is clear from the office order No. 147/P&DD/Misc dated 19.10.2016. (Copy of office order is attached herewith)

- 4) Para 4 of the preliminary objection is incorrect, in reply it is submitted that the respondents have not come to this honourable tribunal with clean hands, whereas the appellant has come to this honorable court with clean hands.
- 5) Para 5 of the preliminary objection is incorrect, in reply it is submitted that all the necessary and formal parties are made parties to the instant appeal.
- 6) Para 6 of the preliminary objection is incorrect, appeal of appellant is not barred by law but within time.
- 7) Para 7 of preliminary objection is against law and facts, hence denied. In reply it is stated that present appeal is very much maintainable and there is very chance of success, as respondents have already admitted claim of appellant by allocating additional charge of Junior Clerk to the appellant which suggest that the appeal of the appellant is very much maintainable and there is every change of success, furthermore the appellant deserved to be regularly / permanently promoted to the post of Junior Clerk with the relief that the appellant be placed in seniority list a head of the respondent No. 3 being senior to respondent No. 3,

hence appellant is entitled to special cost against respondents.

- 8) Para 8 of the preliminary objection is against law and facts, In reply it is stated that the mandate of the law on the subject has grossly been violated by respondents. As respondent No. 1 issued promotion order to respondent No. 3 in sheer violation of the law since respondent No. 3 was Junior to appellant, therefore appellant is entitle to be promoted to the post of ahead respondent No. 3, and be enlisted senior to respondent No. 3, detail has been given in above paras.

On Facts:

1. Para 1 of the facts of comments needs no reply.
2. Para 2 of the facts of comments also needs no reply.
3. Para 3 of the facts of comments is against law, facts hence denied, whereas para 3 of the appeal is correct, clear and comprehensive, in reply it is stated that respondents have concealed material facts from this honourable tribunal, neither respondents have not properly replied Para 3 of the appeal, which is very much clear, comprehensive in its contents as respondents violating the law on subject and statutory rights of the appellant by promoting respondent No. 3 who is junior to appellant and as per law appellant needs to be promoted ahead of respondent No. 3, the law on the subject provide that those officials who are senior with reference to their date of appointment and fulfill the other requisite for the promotion shall be promoted without any written test to the post of Junior Clerk.
4. Para 4 of the facts of comments are ambiguous, while para 4 of appeal is very much clear and comprehensive,

furthermore it is submitted that as per law as against the reserved quota for Naib Qasid / Qasid for promotion to the post of Junior Clerk there shall be not written test the only requirement is that those officials who are senior and possess other qualification like SSC certificate and previously 3 years and now 2 years experience shall be promoted subject to availability of vacant post of Junior Clerk. It is important to mention here that the appellant possess all the qualification and requirement to be promoted to the post of Junior Clerk ahead of respondent No. 3, again important to mention here that the respondents as against law has introduced written test for promotion to the post of Junior Clerk just to protect the interest of their blue eyed person, which is sheer violation of the law and the respondents by itself admitted that they have committed gross illegality therefore subsequently they abolished the written test and promoted one Mr. Muhammad Zahid & Mr. Obaid Ullah who are senior and possessed the requisite qualification. (Copy of order is attached herewith)

5. Para 5 of the facts of comments is incorrect whereas Para 5 of appeal is correct, clear and comprehensive.
6. Para 6 of the facts of the comments is incorrect to the extent of dismissal of appeal while rest of the para is incorrect while respondent No. 2 dismissing departmental appeal of the appellant, altogether ignored law and rules on subject, which favoured case of appellant.
7. Para 7 of the comments is incorrect, while Para 7 of appeal is correct. As appellant has got every cause of action and locus standie to file an appeal as respondents have violated statutory rights of the appellant. Furthermore, claim of the appellant has been acknowledged by respondents later on issuing Office Order No. 147/P&DD/Misc dated 19.10.2016 by allocating additional charge of Junior Clerk to the

appellant meaning thereby that the appellant is competent and entitled to be promoted on the post of Junior clerk ahead of respondent No. 3 and the appellant be enlisted Senior to respondent No. 3.

On Grounds:

- A. Para A of ground of comments is incorrect, while Para A of appeal is correct.
- B. Para B of ground of comments is incorrect, while Para B of appeal is correct.
- C. Para C of ground of comments is incorrect, while Para C of appeal is correct.
- D. Para D of ground of comments is incorrect, while Para D of appeal is correct.

It is, therefore, most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may kindly be accepted and the appellant may kindly be regularly promoted to the post of Junior Clerk and be placed in seniority list ahead of respondent No. 3. Any other relief deem fit may also be granted additionally in favour of the appellant.

Petitioner

Through

**Malik Misraf
& Kaleem Ullah**
Advocates High Court,
Peshawar

Dated: 04.07.2017

Certificate: As per instruction of my client I certify that the contents of rejoinder are true and correct the best of my knowledge.

OFFICE ORDER

Consequent upon the recommendation of Departmental Promotion Committee in its meeting held on 15/12/2015, the following Naib Qasid (BPS-02) are here by Promoted as Junior Clerk BPS-11 (8540-595-26390) against the 33% reserve quota of Class-IV, with immediate effect:

S.No.	Name of Official	Designation	Promoted As
1	Muhammad Zahid	Naib Qasid BPS-2	Junior Clerk BPS-11
2	Ubaid Ullah	Naib Qasid BPS-2	Junior Clerk BPS-11

TERMS & CONDITIONS

1. They shall be on probation period for one year which may be extended up to two years if their performance was not satisfactory.
2. Their confirmation would be subject to the satisfaction that they have improved their computer skill.
3. They will get their pay at the minimum of Basic pay Scales including usual allowances as admissible under the rules.


DEPUTY COMMISSIONER
SWABI

OFFICE OF THE DEPUTY COMMISSIONER SWABI

No. 3547/DC(S)/EA.

Dated 31 /12/2015.

Copy forwarded to:

- 1 The Commissioner Mardan Division Mardan.
- 2 The Assistant Commissioner Swabi/Lahor.
- 3 The District Accounts Officer Swabi.
- 4 The Accountant, local Office.
- 5 The Officials Concerned.



DEPUTY COMMISSIONER
SWABI

OFFICE OF THE DISTRICT OFFICER (FINANCE & PLANNING) SWABI

OFFICE ORDER.

For the smooth running of official matters/work the following posting/transfer distribution of work amongst the official of this office is hereby ordered with immediate effect in the best public interest.

S.No	Name of Official	From	To	Remarks
1	Mr. Faqir Hussain N Q	DRI Branch	Diary & Dispatch Clerk in addition to his own duties.	
2	Mr. Zarif Khan N Q	General Duty	Diary & Dispatch Qasid in addition to his own duties.	


District Officer (F&P)
Swabi

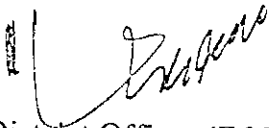
19/10/16

No. 117 P&DD Misc

Dated 15 /10/2016

Copy forwarded to:-

1. The PS to Deputy Commissioner, Swabi.
2. The Programmer DO (F&P) Swabi.
3. The Assistant Programmer DO (F&P) Swabi.
4. Officials concerned for strict compliance.


District Officer (F&P)
Swabi

19/10/16

**FINAL SENIORITY LIST MATRIC PASSED CLASS IV WORKING IN THE OFFICE OF DEPUTY COMMISSIONER
SWABI AS STOOD ON 01.07.2014**

S.NO	NAME OF OFFICIAL	PRESENT SCALE	QUALIFICATION	DATE OF BIRTH	DATE OF APPOINTMENT	DATE OF APPOINTMENT ON THE PRESENT POST	REMARKS
1	Mr. Muhammad Zahid ✓	BPS-2	Matric (2 nd Division)	01.04.1967	28.08.1988	28.08.1988	
2	Mr. Ubaid Ullah ✓	BPS-2	Matric (2 nd Division)	07.03.1971	23.12.1993	23.12.1993	
3	Mr. Faqir Hussain ✓	BPS-2	Matric (2 nd Division)	1976	01.01.1995	01.01.1995	
4	Mr. Gul Zameer	BPS-2	Matric (2 nd Division)	02.05.1968	05.04.2004	05.04.2004	
5	Mr. Sajid Ali (Chowkidar)	BPS-2	Matric (2 nd Division)	11.04.1982	05.04.2004	05.04.2004	
6	Mr. Adil Ahmad	BPS-2	Matric (2 nd Division)	01.04.1972	19.04.2004	19.04.2004	
7	Mr. Javed Iqbal ✓	BPS-1	Matric (2 nd Division)	02.03.1975	25.02.2008	25.02.2008	
8	Mr. Najmus Saqib ✓	BPS-1	Matric (2 nd Division)	12.04.1983	25.02.2008	25.02.2008	
9	Mr. Noor Ullah (Chowkidar)	BPS-1	Matric (2 nd Division)	20.04.1986	25.02.2008	25.02.2008	
10	Mr. Ansar Iqbal	BPS-1	Matric (2 nd Division)	02.02.1989	25.02.2008	25.02.2008	
11	Mr. Syed Umar Shah	BPS-1	Matric (1st Division)	1975	15.22.2012	15.02.2012	

DEPUTY COMMISSIONER
SWABI

*Admitted to be
New copy of J.A
Advocate. N.A.*

Ansar Ali

5

Anna B

(6)

MINUTES OF THE MEETING

A meeting of the Departmental Promotion Committee, Revenue & Estate Department Swabi was held on 06.03.2014 at 12:30 P.M. in the office of the Deputy Commissioner Swabi. The following attended.

- | | |
|--|----------|
| 1. Capt. (R) Kamran Ahmad Afridi DC Swabi | In-Chair |
| 2. Mr. Altamsh Janjua ADC Swabi | Member |
| 3. Mr. Arshad Abbasi Assistant Rep: of BOR | Member |
| 4. Mr. Khaliq Dad Wazir, AAC-I, Swabi | Member |

At the outset of the meeting, the chairman welcomed the participants. Thereafter, agenda items were discussed at length and decisions taken.

PROMOTION OF ASSISTANT BPS-14.

The house was informed, that there are total 16 posts of Office Assistants BPS-14 at the cadre strength of this office, and according to the service rules 25% posts (04 posts) will be filled by direct recruitment while 75% (12 posts) by promotion from amongst the Senior Clerks BPS-09 on the basis of seniority-cum-fitness.

At present 10 posts of Office Assistants are filled up, out of which 02 are directly recruited/appointed while 08 posts are filled by promotion whereas 06 posts are lying vacant. Thus out of 06 vacant posts, 02 posts are required to be filled up by direct recruitment while 04 posts by promoting Senior Clerks. However, there are only 02 Sanctioned posts of Senior Clerks BPS-09 which are filled. Therefore the cases of the incumbents of these posts namely Mr. Ali Baswar and Mr. Jehanzeb Senior Clerks were placed before the committee for scrutiny/consideration. Their service record, and ACRs were perused and debated upon.

Since both the officials were fulfilling the criteria set for upward promotion, hence the committee unanimously recommended them for promotion as Office Assistant BPS-14.

PROMOTION OF SENIOR CLERK BPS-09.

Consequent upon the promotion of 02 Senior Clerks BPS-09 as Office Assistants BPS-14, 02 posts of Senior Clerks BPS-09 will become available. The post of Senior Clerk BPS-09 is 100% promotion post. The same are required to be filled up by promotion from amongst the Junior Clerks BPS-07 on the basis of seniority-cum-fitness.

The first seniority list of Junior Clerks BPS-07 was placed before the Departmental Promotion Committee.

*Attached to be
true copy
Advocate G. J. A.*

While scrutinizing the service record/ACRs of the official at S.NO.1 namely Mr. Jehanzeb Junior Clerk, the same was found complete. Therefore his case was recommended for promotion as Senior Clerk BPS-09.

Mr. Muhammad Iqbal Junior Clerk who appear at S.No. 2 submitted his written affidavit to the effect that he is not willing to be promoted as Senior Clerk BPS-09 at this stage and further requested to maintain his right of promotion for future. Accordingly the case of next senior most Junior Clerk namely Mr. Nazar Muhammad was placed for promotion before the committee. Since he was fulfilling the criteria set for promotion, hence the committee unanimously recommended Mr. Nazar Muhammad Junior Clerk BPS-07 for promotion as Senior Clerk BPS-09.

PROMOTION OF JUNIOR CLERK BPS-07.

Consequent upon the promotion of 02 Junior Clerks BPS-07 as Senior Clerks BPS-09, 02 posts of Junior Clerk BPS-07 will become vacant besides 01 already vacant post of Junior Clerk. Thus all these 03 posts of Junior Clerk BPS-07 will be required to be filled up. :

The house was informed that there are 23 sanctioned posts of Junior Clerks BPS-07 at the cadre strength of Revenue & Estate Department District Swabi. As per rules, 80% (18 posts) are to be filled by direct recruitment while 20% (05 posts) by promotion from amongst the Qasids/Naib Qasids and other equivalent post who poses SSC 2nd division with at least 03 years service as such on the basis of seniority. The final combined seniority list of Naib Qasids/Chowkidars/ Sweepers/ Malis was placed before the committee for consideration/recommendation for upward promotion as Junior Clerk.

It was decided that eligibility/typing/computer test will be taken from all SSC passed Naib Qasids/Chowkidars/ Sweepers/ Malis. The test was taken under the supervision of Additional Deputy Commissioner, Swabi General Assistant (Revenue) and Superintendent to Deputy Commissioner, Swabi and the following 04 Naib Qasids were placed before the committee for promotion as per priority of recommendation :

- 1. Mr. Najm-us-Saqib Naib Qasid.
- 2. Mr. Muhammad Aamir Naib Qasid.
- 3. Mr. Ansar Iqbal Naib Qasid.
- 4. Mr. Gohar Zaman Naib Qasid.

The committee recommended Mr. Najm-us-Saqib Naib Qasid, Mr. Muhammad Aamir Naib Qasid and Mr. Gohar Zaman Naib Qasid for promotion as Junior Clerks BPS-07, while the case of Mr. Ansar Iqbal Naib Qasid was deferred as was not suitable. Keeping in view previous record like mis-conduct, non punctuality/casual in

*Attested to be
True Copy
Advocate of Jd*

office duty and involvement in the wrongly insertion of mutation in the record of Revenue Record Keeper.


CHANGE OF POSTS.


Consequent upon the promotion of 03 Naib Qasids to the post of Junior Clerks, 03 posts of Naib Qasids will become vacant which will be filled up by change of posts of Chowkidars and Sweepers.


The house was informed that there are Muslims: Namely Mr. Gul Zamir Khan & Mr. Khalil-ur-Rehman working as Sweepers and One Mr. Muhammad Adil Chowkidar presently working as Naib Qasid in Deputy Commissioner Office, Swabi.

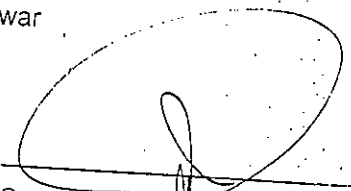
The committee recommended that posts of above mentioned Sweepers and Chowkidar may be changed to Naib Qasid. However, they will perform their duties on the present posts, till the arrival of incumbents of these posts.

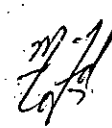
The meeting ended with a vote of thanks from the chair.


Altamash Durrana ADC Swabi


Khalid Dad Wazir, AAC-I, Swabi.


06.3.14.
Mr. Arshad Abbasi Assistant
Representative, BOR Peshawar

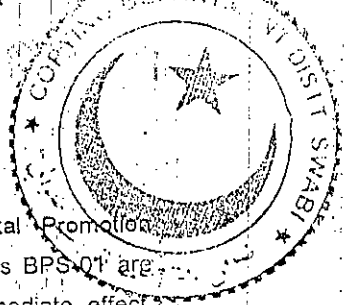

Capt (R) Kamran Ahmad Afridi
Deputy Commissioner, Swabi.

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true copy
Advocate 

cc
Tice
Office

مذکورہ ترقی یافتہ افسران کی ترقی کے لئے اسٹیٹ بورڈ جناب ڈی سی کے پاس درخواستیں جمع ہیں

(9)



OFFICE ORDER.

Consequent upon the recommendation of Departmental Promotion Committee in its meeting held on 06.03.2014, the following Naib Qasids BPS-01 are hereby promoted as Junior Clerk BPS-07 (5800-320-15400) with immediate effect, subject to verification of their academic certificates from the concerned Boards of Intermediate & Secondary Education. *However they will perform that duty till further orders.*

S.No	Name of Official	Designation	Promoted as
1	Mr. Najm-us-Saqib	Naib Qasid BPS-01	Junior Clerk BPS-07
2	Mr. Muhammad Aamir	Naib Qasid BPS-01	Junior Clerk BPS-07
3	Mr. Gohar Zaman	Naib Qasid BPS-01	Junior Clerk BPS-07

Terms & Conditions.

1. They shall be on probation for a period of two years.
2. They will get their pay at the minimum of basic pay scales including usual allowances as admissible under the rules.

~~ATTENTION TO BE PAID COPY~~
~~Member/Examiner~~
~~Swabi~~

DEPUTY COMMISSIONER,
SWABI.

OFFICE OF THE DEPUTY COMMISSIONER SWABI.

No. 728 /DC(S)/EAMisc Dated. 26 /03/2014

Copy forwarded to:-

1. The Commissioner, Mardan Division Mardan.
2. The Secretary, Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
3. The Additional Deputy Commissioner, Swabi.
4. The Assistant Commissioner, Swabi/Lahor.
5. The District Accounts Officer, Swabi.
6. Accountant Local for information & necessary action. He should also verify the academic certificates of the officials from the concerned Boards of Intermediate & Secondary Education.
7. Officials concerned.

we
EA/Hc
D.C office
Swabi

DEPUTY COMMISSIONER,
SWABI.

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true copy
Advocate

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Handwritten numbers: 18-06/019, 16-04/019



IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

Noor Said Appellant
Versus
Deputy Commissioner/District Collector Swabi etc. Respondents

Case No.....
Dated of institution: 16/04/2014
Dated of Decision: 18/06/2014

APPEAL AGAINST THE ORDER DATED 26/03/2014 OF THE DEPUTY COMMISSIONER/DISTRICT COLLECTOR SWABI.

ORDER:-

Through this single consolidated order, I will dispose of the above noted appeal as well as the following five (5) connected appeals as all these appeals have been lodged against a common order which involves the common question of law and facts.

1. Appeal No. /9RCC titled Tilawat Shah Naib Qasid vs DC Swabi etc
2. Appeal No. /9RCC titled Mushtaq Ahmad N/Qasid vs DC Swabi etc
3. Appeal No. /9RCC titled Muhammad Zahid N/Qasid vs DC Swabi etc
4. Appeal No. /9RCC titled Faqir Hussain Naib Qasid vs DC Swabi etc
5. Appeal No. /9RCC titled Ansar Iqbal Naib Qasid vs DC Swabi etc

Through all these appeals, the appellants have challenged the order dated 26/03/2014 of the Deputy Commissioner/District Collector Swabi whereby the present respondents No.2 to 4 have been promoted from the posts of Naib Qasids(BPS-1) to the posts of junior clerks(BPS-7). Feeling aggrieved thereby, the appellants have assailed the said impugned order before this court through the instant appeals.

Appellants alongwith their counsel present. Representative of Deputy Commissioner Swabi also present and he submitted parawise comments. Respondents No. 2 to 4 also present, repeated chances were given to them to produce their counsel to argue the case and on 04/06/2014, last opportunity was given to them to produce their counsel to argue the case on next date of hearing i.e. 11/06/2014 but on 11/06/2014 also they failed to produce their counsel. Hence, right of defence of said respondents No.2 to 4 was struck off vide order sheet dated 11/06/2014. Arguments of the learned counsel for the appellants heard and case file as well as parawise comments of DC Swabi thoroughly perused.

From perusal of record of the case and arguments advanced at the bar, it reveals that the appellants were posted as Naib Qasids BPS-2 and BPS-3 with respondent No.1 and they are stood at S.No.8, 10, 12, 13, 23, 36 of the seniority list circulated by DC Swabi vide circulated order dated 31/12/2012 while the respondents No.2 to 4 namely Gohar Zaman, Muhammad Aamir and Najm-us-Saqib are stood at S.No.24, 26 and 34 respectively as per the said seniority list. During the course of arguments, counsel for the

Contd...P/2

See Page No 2

13-08-019

Attested to be true copy. Advocate. [Signature]

appellants contended that as per the District Ministerial Service Rules 2001, the junior clerk BPS-5 should be appointed by promotion of 20% amongst the Naib Qasids who hold the SSC second division and at least three years service experience. He added that as per the explanation of the said rules, the official in BPS-02 shall rank senior to official in BPS-1, irrespective of their length of service. Counsel for the appellants further argued that as per Section 9 of Civil Servant Act 1973, promotion of civil servant shall be made on seniority cum fitness while in case of appointment by recruitment civil servants shall be appointed on the basis of merit amongst the candidates. Representative of DC Swabi produced working papers of appellants as well as of the respondents No.2 to 4, and service books of appellants as well as of the respondent No.2 to 4, which reveals that the appellants are Naib Qasids in BPS-2 while respondents No.2 to 4 are in BPS-1 and as per the seniority list produced by the representative of DC Swabi, the appellants are senior to respondents No.2 to 4 but respondent No.1(DC Swabi) has ignored all these facts and respondents No.2 to 4 were promoted from Naib Qasids BPS-1 to the posts of junior clerks of BPS-7 vide the impugned order dated 26/03/2014 and the appellants being seniors were ignored.

From the above discussion and record produced by the representative of DC Swabi, It is held that those candidates who are senior and possess BPS-2 or higher grade are entitled for promotion to the post of junior clerk as per law and rules.

In view of the above, the impugned order is against law and facts of the case which is therefore set aside and the appeals of the appellants are hereby accepted with the direction to DC Swabi to conduct the DPC afresh keeping in view the District Ministerial Staff Rules 2001. No order as to cost.

File be consigned to record room after necessary completion.

Announced.
18/06/2014



No. 303 8-9-14
 Date of Application 8-9-14
 Name of Applicant Javed
 Wards 850 Fee 80
 Urgent Fee _____
 Sign of Copyist [Signature]
 Date of Preparation 13-08-14

ATTESTED

[Signature]
 Examiner/Reader to
 Commissioner Court
 Mardan Division Mardan

13-08-015

Attested to be

free copy.

Advocate [Signature]

MINUTES OF THE MEETING

The Departmental Promotion Committee meeting regarding promotion of Class-IV against the 20% reserve quota to the post of junior clerk BPS-11 was held on 11.06.2015 at 11.AM in the office of the Deputy Commissioner Swabi.

The following attended the meeting.

- | | |
|---|----------|
| 1. Mr. Matiullah Khan, Deputy Commissioner Swabi | In chair |
| 2. Mr. Qaiser Khan Assistant to Commissioner Mardan | Member |
| 3. Mr. Afsar Ali Shah Assistant Commissioner Swabi | Member |

At the outset of the meeting the chairman welcomed the participants. Thereafter agenda items were discussed at length and decisions taken.

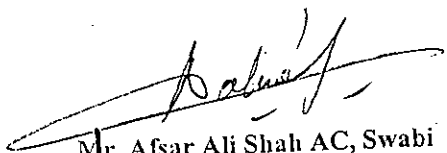
The house was informed that there are 23 sanctioned posts of J/clerk BPS (11) on the cadre strength of Deputy Commissioner Office Swabi. As per rules 80% (18 posts) have already been filled by direct recruitment, while 20% (05 posts) by promotion from amongst the Qasids/ N/ Qasids and other equalent posts having SSC 2nd division qualification with at least three years service as such on the basis of seniority. Two posts have been already filled up by promoting 02 N/ Qasids as J/clerk. Thus three posts to be filled up by way of promotion on seniority cum fitness. Eleven (11) eligible candidates were called for test out of these 08 class-IVs appeared. On queery Five (5) candidates told that they know computer while rest of the candidates stated that they are not computer literates. Test taken from those five (5) candidates. Out of whom One Najam-us-Saqib passed the test while rest of the candidates failed.

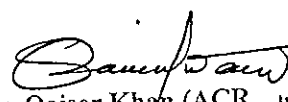
The failed candidates were however given an opportunity to improve their computer skill within two months.


The committee recommended the promotion of Mr. Najam-us-Saqib to the post of J/clerk (BPS-11).

The case of drivers for the grant of senior scales i.e BPS (06) and BPS (07) respectively on completion of 10 and 15 years service was discussed. However as per recommendation of the committee it was felt necessary/ advisable to seek an opinion/clarification from the provincial Government before any further proceeding.

The meeting ended with a vote of thanks from the Chair.

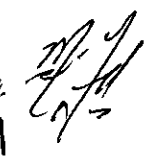

 Mr. Afsar Ali Shah AC, Swabi
 (Member)


 Mr. Qaiser Khan (ACR 11.6.15)
 ACR (Rev), Representative Commissioner
 Mardan Division, Mardan.
 (Member)


 Mr. Matiullah Khan DC, Swabi
 (Chairman)

Alerted to be

five copy



Advocate 

OFFICE ORDER

Consequent upon the recommendation of the Departmental Promotion Committee in its meeting held on 11-06-2015 Mr. Najam-us-Saqib Naib Qasid (BPS-01) is hereby promoted as Junior Clerk BPS-11 (6600-460-20400) with immediate effect, subject to verification of their academic certificates from the concerned Boards of Intermediate & Secondary Education.

Terms & Condition.

1. He will be on probation for a period of two years.
2. He will get his pay at the minimum of basic pay scales including usual allowances as admissible under the rules.


 dc Deputy Commissioner,
 Swabi. 

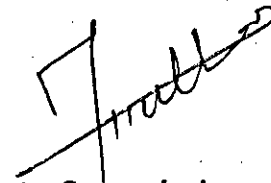

OFFICE OF THE DEPUTY COMMISSIONER, SWABI.

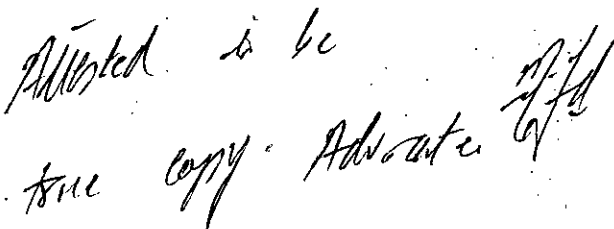
No 1939 /DC/EA

Dated 10 /07/2015.

Copy forwarded to the:-

1. The District Accounts Officer, Swabi.
2. The Assistant Commissioner, Lahor.
3. The Accountant Local office Swabi.
4. Official concerned.


 dc Deputy Commissioner,
 Swabi. 


 Requested to be true copy. Advocate

Amna. E
21/09/15
27/07/15



IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

Faqir Hussain

Appellant

Versus

Deputy Commissioner/District Collector Swabi

Respondent

Case No.....
Dated of institution: 27/07/2015
Dated of Decision: 21/09/2015

APPEAL AGAINST THE ORDER OF RESPONDENT NO.1 DATED 10/07/2015 WHEREBY RESPONDENT NO.2 IS PROMOTED FROM NAIB QASID BPS-1 TO THE POST OF JUNIOR CLERK BPS-11, WHILE APPELLANT BEING SERVITOR BPS 2 THAN RESPONDENT NO.2 IS IGNORED.

ORDER:-

Brief facts of the case are that the appellant was appointed as Naib Qasid in BPS-1 on 28/08/1988. During the service seniority list of Naib Qasids of the Deputy Commissioner Office Swabi has been prepared and the name of the present appellant was placed on at serial No.1. a meeting of DPC for the promotion of class-IV against the 20% reserve quota to the post of junior clerks BPS-11 was held in the office of Deputy Commissioner Swabi on 11/06/2015 under the Chairmanship of Deputy Commissioner Swabi. In the said DPC one Najub ul Saqib Naib Qasid has been promoted to the post of junior clerk on 10/07/2015. Aggrieved with the said order, the present appellant has come to this court in appeal.

Applicant with counsel present and representative of Deputy Commissioner Swabi present and submitted comments for the department, placed on file. Arguments of the learned counsel for the appellant heard. Record perused.

From the perusal of record it reveals that there are 3 posts are required to be filled up by the way of promotion on seniority cum fitness eleven eligible candidates were called for test out of those 08 class-IV appeared on query five candidates told that they know computer while rest of the candidates stated that they are not computer literates and only five (05) candidates give computer test. From those five candidates only one Najub ul Saqib passed the test while rest candidates failed.

Further more the department has given chance to the present appellant to improve their computer skill within two months.

Keeping in view above discussion I am of the considered view that there is no any force in present appeal. Hence, dismissed. No order as to costs.

File be consigned to record room after necessary completion.

ATTESTED

Examiner/Reader to
Commissioner Court
Mardan Division Mardan

14/10/15

No. 569
Date of Application 21/09/15
Name of Applicant
Wards 400 Fee 400
Urgent Fee
Sign of Copyist
Date of Preparation

Announced.
21/09/2015

Commissioner
Mardan Division, Mardan



14/10/15

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21/09/15

27/07/15

Before The Commissioner Mardan Division Mardan

FAqir Hussain Qasid (BPS-2) office of D.C Swabi
.....Appellant

VERSUS

1. D.C swabi
2. Najub Ul Saqib Naib QasidRespondent

Appeal against the order of respondent No.1 dated 10/07/2015 whereby respondent No.2 is promoted from Naib Qasid (BPS-2) to the post of Junior clerk (BPS-11), while appellant being servitor (BPS-2) than respondent No.2 is ignored, which is illegal, against law, rules, facts and violation of order/ judgment this Hon'able court dated 18/06/2014.

Respectfully Sheweth:

1. That appellant was appointed as Naib Qasid (BPS-2) vide order dated 01/01/1995.
2. That responded No.1 prepared sonority list of Naib Qasid in which appellant name placed at serial No.3 of said seniority list. (Copy of seniority list is attached as Annex: "A").
3. That D.P.C for promotion of Naib Qasid / Qasid by respondent No.1 on 06/03/2014 to the post of Junior Clerk (BPS-11) was held by respondent No.1 on 06/03/2014, whereby respondent No.2 along with other two Naib Aqsid/ Qasid were promoted from Naib Qasid to the post of Junior Clerk vide order dated 26/03/2014, while appellant being servitor most and eligible for promotion was ignored. (Copy of order dated 26/03/2014 is attached as Annex: "B").
4. That feeling aggrieved, appellant filed an appeal before the worthy commissioner Mardan Division Mardan, which was accepted vide order/ judgment dated 18/06/2014, with the direction to the responded No.1 that it is held that those candidates who are seviror and possess (BPS-2) or higher grade are entitled for promotion to the post of junior clerk (BPS-11) as per law and rules. (Copy of order/ judgment is attached as Annex: "C").

See Page No 2

14/10/15

- 2
- 2 (2) (16)
5. That inspite of judgment passed by this Hon'able court and rules for promotion of Naib Qasid/ Qasid to Junior Clerk is available and clear direction issued by this Hon'able court in the light of promotion rules and service laws, respondent No.1 was called D.P.C for promotion of Naib Qasid/ Qasid (BPS— 2) to junior clerk on 11/06/2015 after one year , in which all rules and judgment of this Hon'able court is violated vide order dated 11/06/2015. (Copy of DPC dated 11/06/2015 is attached as Annex: "D").
 6. That on the wrong comments of D.P.C dated 11/06/2015, respondent No.2 is promoted from Naib Qasid (BPS-1) to junior clerk (BPS-11_ vide impugned order dated 10/07/2015, while appellant being senior most and eligible for the promotion is ignored, which is illegal, against law, rules, facts and violation of order/ judgment of this Hon'able court dated 18/06/2014. (Copy of impugned order dated 10/07/2015 is attached as Annex: "E").
 7. That the impugned order of responded No.1 dated 10/07/2015 is illegal, against law and facts and violation of order/ judgment dated 18/06/2014 of this Hon'able court and appellant is entitled on the following grounds:-

GROUNDS:-

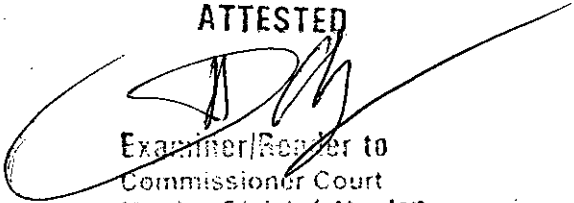
Because respondent No.1 has violated the section-9 of civil servant Act, 1973 coupled with the appointment, promotion and transfer Rules 1989, because when competent authority passed any order against the finding of D.P.C , then he should explain reason for the same.

Because respondent No.1 has violated their own rules, which is circulated vide letter dated 13/06/2006, whereby in para No.9 of said rule for promotion of junior clerk in column of remarks (explained that BPS-02, would be considered seior tant Naib Qasid (BPS-01) but respondent No.1 has ignored the same and on the basis of said rules this Hon'able court passed order/ judgment dated 18/06/2015. (Copy is attached as Annex: "F").

Because as per law and rules, promotion of civil servant should be made on the basis of seniority- cum-fitness but respondent No.1 has violated the same because appellant is senior than responded No.2 as per seniority list and service.

That appellant is serving as Naib Qasid BPS-02, while respondent No.2 are serving as Naib Qasid (BPS-01) hence appellant is senior

ATTESTED


Examiner/Recorder to
Commissioner Court
Mardan Division Mardan

14/10/015

See Page No
23

14/10/015

(3)

3

(3)

(17)

than respondent No.2 and appellant was recommended by Tehsildar/ Assistant Commissioner Lahore vide supplication dated 29/01/2014.

It is, therefore, most humbly prayed that on acceptance of this appeal, order of respondent No.1 dated 10/07/2015 may please be set aside and appellant may please be promoted from Naib Qasid to the post of Junior clerk against the post of responded No.2 with all back benefits. Any other relief deemed fit may also be graciously awarded.

Dated

Appellant *[Signature]*

Through *[Signature]*
Yaqoob Khan Advocate
High Court at Distt: Courts
Mardan

AFFIDAVIT

That the contents of the appeal are true and correct to the best of my knowledge and belief.

Deponent *[Signature]*

No. 569 21/09/015
Date of Application
Name of Applicant *[Signature]*
Wards 1200 Fee 1200
Urgent Fee
Signature of Copyist *[Signature]*
Date of Preparation 14/10/015

ATTESTED
[Signature]
Examiner/Reader to
Commissioner Court
Mardan Division Mardan
14/10/015

**MINUTES OF THE DEPARTMENTAL PROMOTION COMMITTEE MEETING
HELD ON 19/08/2014 UNDER THE CHAIRMANSHIP OF DEPUTY
COMMISSIONER PESHAWAR.**

(18)

A meeting of Departmental Promotion Committee was held on 19/08/2014 at 11:00 AM under the chairmanship of Deputy Commissioner Peshawar to consider promotion case of Class-IV against the vacant post of Junior Clerk BPS-11 in the office of Deputy Commissioner, Peshawar.

The following attended:-


1. Syed Zaheer-ul-Islam Shah,
Deputy Commissioner, Peshawar Chairman
2. Mr. Sharifullah,
Superintendent Board of Revenue,
Khyber Pakhtunkhwa, Peshawar Member
3. Mr. Muntaz Ahmad,
Assistant Commissioner, Peshawar Member

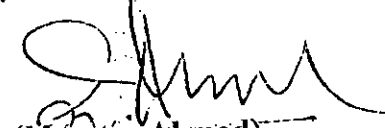
Opening the discussion, the Assistant Commissioner Peshawar intimated that as stated in the Working Paper there are 28 sanctioned posts of Junior Clerks BPS-11 in the office of Deputy Commissioner, Peshawar out of which 27 have already been filled in and remaining 1 is vacant due to the promotion of Mr. Shahid Ali to the post of Senior Clerk on 31/12/2013. The said vacant post is falling to the share of promotion quota. As per Recruitment Rules 20% of the total posts are to be filled in by promotion from amongst the Class-IV on the basis of seniority cum fitness whereas 80% by initial recruitment, the breakup of which is as under:-


Total Sanctioned Posts of J/Clerk:	28
1). 80% quota reserved for initial recruitments	22.00
II) 20% quota reserved for promotion amongst Class-IV	06.00

The Departmental Promotion Committee examined service records of all the eligible Class-IV included in the panel, unanimously agreed and found fit Mr. Nasir Khan, Senior most Naib Qasid (BPS-02) for promotion to the post of Junior Clerk (BPS-11) on regular basis and recommended him as such:-

Meeting ended with the vote of thanks.


(Sharifullah)
Superintendent, Board of Revenue,
Khyber Pakhtunkhwa, Peshawar
(Member)


(Muntaz Ahmad)
Assistant Commissioner
Peshawar
(Member)


(Syed Zaheer-ul-Islam Shah)
Deputy Commissioner, Peshawar
(Chairman)

Revised date
One copy of
Adm. file

OFFICE OF THE
DEPUTY COMMISSIONER (19)
PESHAWAR

Dated Pesh. the 21/08/2014

OFFICE ORDER:

No. 9427 /DC(P)/EA. On the recommendation of Departmental Selection Committee held on 19/08/2014. Mr. Nasir Khan S/O Wali Muhammad. Naib Qasid (BPS-02) of this office is hereby promoted as Junior Clerk (BPS-11) with immediate effect.

On promotion the above official will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Khyber Pakhtunkhwa Civil Servant (Appointment/Promotion/Transfer) Rules-1989.


Deputy Commissioner
Peshawar

Endst: No. 9428-34 DC(P)/EA




Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Secretary, Board of Revenue, Estate and Revenue Department, Khyber Pakhtunkhwa, Peshawar alongwith copy of minutes of meeting.
3. Additional Deputy Commissioner, Peshawar.
4. Assistant Commissioner, Peshawar.
5. Accounts Officer, Budget and Accounts Section DC Office Peshawar for further necessary action.
6. Mr. Nasir Khan S/O Wali Muhammad.
7. Personal File/Office order File.



Deputy Commissioner
Peshawar

*Plotted to be
true copy.*

Advocate J. J. Khan

	  <p>5270</p>
<p>ایڈووکیٹ/دستخط: _____ بارکوسل ابار ایسوسی ایشن نمبر: <u>be-11-1976</u> رابطہ نمبر: <u>0343-9499198</u></p>	<p>پشاور بار ایسوسی ایشن، خیبر پختونخواہ</p>

بعدالت جناب: خیبر پختونخواہ ہائی کورٹ، پشاور

<p>منجانب: <u>سائل</u></p>  <p>بنام</p> <p>دینی و سولہ عدالت عالیہ پشاور</p>	<p>دعویٰ: <u>سرمایہ رسیل</u></p> <p>علت نمبر: _____</p> <p>مورخہ: _____</p> <p>جرم: _____</p> <p>تھانہ: _____</p>
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باعت تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
 ان مقام کے لئے مکمل نمبر سے مقدمہ رسیل کے حکم کے تحت دراصل کو ذمہ دار مقرر
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
 راضی نامہ کرنے و تقریر حالت و فیصلہ برطاعت دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا تاخیر یا بظرف یا اہیل کی برآمدگی اور منسوخی، نیز
 دائر کرنے اہیل نگرانی و نظارتی و پیروی کرنے کا اختیار 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 ہو گا اور صاحب
 مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہو گا دوران مقدمہ
 میں جو خرچہ ہر جہان التوائے مقدمہ کے سبب سے ہو گا وہ وکیل موصوف و قبول کرنے کا حقدار 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 مندرجہ

Attested by

المرقوم: 7-11-11

العواہ شد _____

مقام _____ کے لئے منظور ہے۔

Handwritten signature

BEFORE THE HONORABLE COURT OF REGISTRAR KHYBERPAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

Faqir Hussain

Appeal No.1282/15.

Naib Qasid (BPS-02) Office of DC Swabi..... **Appellant**

Versus

1. Deputy Commissioner, Swabi.
2. Commissioner Mardan Division Mardan.
3. Najum-us-Saqib (Naib Qasid) Office of the Deputy Commissioner Swabi.
4. Board of Revenue through Senior Member Board of Revenue.
5. Secretary Finance, Civil secretariat, Peshawar..... **Respondent.**

Reply / written comments on behalf of respondent No.1,2,3,4,5

PRILIMARLY OBJECTIONS.

1. The appellant has no cause of action/ locus standi file the present appeal.
2. The present appeal is badly time barred.
3. The appellant has concealed the material facts from this Honorable tribunal hence liable to be dismissed.
4. The appellant has not come to Honorable tribunal with clean hands.
5. That the appeal is bad for mis joinder and non joinder of necessary parties.
6. That the present appeal is barred by law.
7. That the present appeal is bad in its present form hence not maintainable and liable to be dismissed with special cost.
8. This honorable tribunal is no jurisdiction to adjudicate the appeal.

FACTS.

1. Para No 1, correct to the extent that the appellant was appointed as Naib Qasid (BPS-02) vide order dated. 01-01-1995.
2. Para No. 2 is correct. Hence no comments.
3. Para No. 3 is correct to the extent that the Respondent No. 1 promoted the Naib Qasid to the post of Junior clerk on the basis of seniority cum fitness, according to law and rules. But Appellant did not succeed to qualify the test for promotion/ said post. Hence appellant did not promote.
4. Para No. 4 is incorrect to the extent that appellant did not pass typing test for promotion which was mandatory provision for the said post. (copy of the test result is as "A")
5. Para No. 5 is incorrect that the Respondent No. 1 called the DPC meetings so many times but due to some official works / engagement the DPC meetings were postponed.

6. Para No.6 is, incorrect that appeal was dismissed by Respondent No.2 on the basis of available record
7. Para No.7 is incorrect to the extent that the appellant has no cause of action and locus standi the instant appeal is baseless and merit less hence liable to be dismissed.

GROUND.

- A Para No.A is incorrect. The candidate/ promottee was promoted according to rules and regulations. Those candidates/ promotes were promoted who passed/ qualified the typing test which is mandatory provision for said post on the recommendation of the DPC which is a legal forum.
- B Para No. B is incorrect. The Respondents have issued the order after the completion of the all proceeding which was required for the said promotion. Hence in accordance with Law.
- C Para No. C is incorrect. The promotion has been made on seniority cum fitness basis. Therefore this promotion order was issued after completion of legal requirements/ formalities. As he failed to pass the exam for promotion.
- D Para No. D is incorrect. The appellant has been dealt with in accordance with law.

It is, therefore humbly prayed that on acceptance of this reply the instant appeal filed by the appellant may graciously be dismissed with cost.

Ah. I. I. K.
 Senior Member 19/8/2016
 Board of Revenue, Peshawar

[Signature]
 Commissioner
 Mardan Division Mardan

[Signature]
 Secretary Finance
 Khyber Pakhtunkhwa, Peshawar

[Signature]
 Deputy Commissioner
 Swabi

CERTIFICATE.

Certified that all the contents of the reply are true and correct according to the knowledge and no facts have been concealed.

[Signature]
 Deponent

Deponent

Deponent

م

مبلغ 5000 روپے جو کہ ان کے پاس ہے

تسلیت رقم 1282 روپے

د
22/08/16

د
22.08.16

BEFORE THE HONOURABLE
KHYBER PAKTHUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Appeal No. 1282/15

Faqir Hussain

(Petitioner)

V E R S U S

Deputy Commissioner Swabi and others

(Respondents)

**Rejoinder to the Para-wise comments filed by
the respondents.**

Respectfully Sheweth,

Reply to the preliminary objections:

- 1) Para 1 of preliminary objection of comments is incorrect, against law and facts. hence denied. In reply it is submitted that the appellant has got every much cause of action. Furthermore appellant has also got the locus standie to file the present appeal, whereas the respondents have got no right to deny the claim of the appellant, detail has been given in the main appeal.
- 2) Para 2 of preliminary objection is incorrect, against law and facts. Appeal of the appellant is well within the time.
- 3) Para 3 of preliminary objection is incorrect, against law and facts. In reply it is stated that the appellant has not

concealed anything from this honourable tribunal and has mentioned in detail the whole facts before this honourable tribunal in the shape of appeal, whereas the respondents have concealed material facts from this honorable tribunal as respondents are trying to protect their blue eyed person by infringing valuable and constitutional right of the appellant, furthermore stance of the appellant has been admitted by the respondents by allocating additional charge of Junior Clerk to the appellant which is clear from the office order No. 147/P&DD/Misc dated 19.10.2016. (Copy of office order is attached herewith)

- 4) Para 4 of the preliminary objection is incorrect, in reply it is submitted that the respondents have not come to this honourable tribunal with clean hands, whereas the appellant has come to this honorable court with clean hands.
- 5) Para 5 of the preliminary objection is incorrect, in reply it is submitted that all the necessary and formal parties are made parties to the instant appeal.
- 6) Para 6 of the preliminary objection is incorrect, appeal of appellant is not barred by law but within time.
- 7) Para 7 of preliminary objection is against law and facts, hence denied. In reply it is stated that present appeal is very much maintainable and there is very chance of success, as respondents have already admitted claim of appellant by allocating additional charge of Junior Clerk to the appellant which suggest that the appeal of the appellant is very much maintainable and there is every change of success, furthermore the appellant deserved to be regularly / permanently promoted to the post of Junior Clerk with the relief that the appellant be placed in seniority list a head of the respondent No. 3 being senior to respondent No. 3,

hence appellant is entitled to special cost against respondents.

- 8) Para 8 of the preliminary objection is against law and facts. In reply it is stated that the mandate of the law on the subject has grossly been violated by respondents. As respondent No. 1 issued promotion order to respondent No. 3 in sheer violation of the law since respondent No. 3 was junior to appellant, therefore appellant is entitled to be promoted to the post ahead respondent No. 3, and be enlisted senior to respondent No. 3, detail has been given in above paras.

On Facts:

1. Para 1 of the facts of comments needs no reply.
2. Para 2 of the facts of comments also needs no reply.
3. Para 3 of the facts of comments is against law, facts hence denied, whereas para 3 of the appeal is correct, clear and comprehensive, in reply it is stated that respondents have concealed material facts from this honourable tribunal, neither respondents have not properly replied Para 3 of the appeal, which is very much clear, comprehensive in its contents as respondents violating the law on subject and statutory rights of the appellant by promoting respondent No. 3 who is junior to appellant and as per law appellant needs to be promoted ahead of respondent No. 3, the law on the subject provide that those officials who are senior with reference to their date of appointment and fulfill the other requisite for the promotion shall be promoted without any written test to the post of Junior Clerk.
4. Para 4 of the facts of comments are ambiguous, while para 4 of appeal is very much clear and comprehensive,

furthermore it is submitted that as per law as against the reserved quota for Naib Qasid / Qasid for promotion to the post of Junior Clerk there shall be not written test the only requirement is that those officials who are senior and possess other qualification like SSC certificate and previously 3 years and now 2 years experience shall be promoted subject to availability of vacant post of Junior Clerk. It is important to mention here that the appellant possess all the qualification and requirement to be promoted to the post of Junior Clerk ahead of respondent No. 3, again important to mention here that the respondents as against law has introduced written test for promotion to the post of Junior Clerk just to protect the interest of their blue eyed person, which is sheer violation of the law and the respondents by itself admitted that they have committed gross illegality therefore subsequently they abolished the written test and promoted one Mr. Muhammad Zahid & Mr. Obaid Ullah who are senior and possessed the requisite qualification. (Copy of order is attached herewith)

5. Para 5 of the facts of comments is incorrect whereas Para 5 of appeal is correct, clear and comprehensive.
6. Para 6 of the facts of the comments is incorrect to the extent of dismissal of appeal while rest of the para is incorrect while respondent No. 2 dismissing departmental appeal of the appellant, altogether ignored law and rules on subject, which favoured case of appellant.
7. Para 7 of the comments is incorrect, while Para 7 of appeal is correct. As appellant has got every cause of action and locus standie to file an appeal as respondents have violated statutory rights of the appellant. Furthermore, claim of the appellant has been acknowledged by respondents later on issuing Office Order No. 147/P&DD/Misc dated. 19.10.2016 by allocating additional charge of Junior Clerk to the

appellant meaning thereby that the appellant is competent and entitled to be promoted on the post of Junior clerk ahead of respondent No. 3 and the appellant be enlisted Senior to respondent No. 3.

On Grounds:

- A. Para A of ground of comments is incorrect, while Para A of appeal is correct.
- B. Para B of ground of comments is incorrect, while Para B of appeal is correct.
- C. Para C of ground of comments is incorrect, while Para C of appeal is correct.
- D. Para D of ground of comments is incorrect, while Para D of appeal is correct.

It is, therefore, most humbly prayed that on acceptance of this rejoinder the appeal of the appellant may kindly be accepted and the appellant may kindly be regularly promoted to the post of Junior Clerk and be placed in seniority list ahead of respondent No. 3. Any other relief deem fit may also be granted additionally in favour of the appellant.

Petitioner

Through

Malik Misraf
& Kaleem Ullah
Advocates High Court,
Peshawar

Dated: 04.07.2017

Certificate: As per instruction of my client I certify that the contents of rejoinder are true and correct the best of my knowledge.

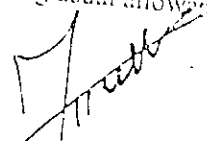
OFFICE ORDER

Consequent upon the recommendation of Departmental Promotion Committee in its meeting held on 15/12/2015, the following Naib Qasid (BPS-02) are hereby Promoted as Junior Clerk BPS-11 (3540-595-26390) against the 33% reserve quota of Class-IV, with immediate effect:

S.No.	Name of Official	Designation	Promoted As
1	Muhammad Zahid	Naib Qasid BPS-2	Junior Clerk BPS-11
2	Ubaid Ullah	Naib Qasid BPS-2	Junior Clerk BPS-11

TERMS & CONDITIONS

1. They shall be on probation period for one year which may be extended up to two years if their performance was not satisfactory.
2. Their confirmation would be subject to the satisfaction that they have improved their computer skill.
3. They will get their pay at the minimum of Basic pay Scales including usual allowances as admissible under the rules.

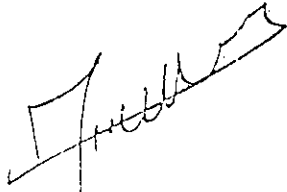

DEPUTY COMMISSIONER
SWABI

OFFICE OF THE DEPUTY COMMISSIONER SWABI

No. 3547/DC(S)/EA.

Dated 31 /12/2015.

- Copy forwarded to:
1. The Commissioner Mardan Division Mardan.
 2. The Assistant Commissioner Swabi/Lahor.
 3. The District Accounts Officer Swabi.
 4. The Accountant, local Office.
 5. The Officials Concerned.



DEPUTY COMMISSIONER
SWABI

OFFICE OF THE DISTRICT OFFICER, FINANCE & PLANNING SWABI

OFFICE ORDER

For the smooth running of official matters work the following posting transfer distribution of work amongst the officials of this office is hereby ordered with immediate effect in the best public interest.

S.No.	Name of Official	From	To	Remarks
1	Mr. Faqir Hussain N Q	DRI Branch	Diary & Dispatch Clerk in addition to his own duties.	
2	Mr. Zahir Khan N Q	General Duty	Diary & Dispatch Qasid in addition to his own duties.	

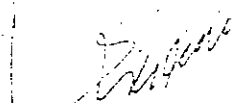

19/10/16
District Officer (F&P)
Swabi

No. 117 P&DD:Misc

Dated 17 /10/2016

Copy forwarded to:-

1. The PS to Deputy Commissioner, Swabi.
2. The Programmer DO (F&P) Swabi.
3. The Assistant Programmer DO (F&P) Swabi.
4. Officials concerned for strict compliance.


19/10/16
District Officer (F&P)
Swabi

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2363 /ST

Dated 31 / 10 / 2017

To


The Deputy Commissioner,
Government of Khyber Pakhtunkhwa,
Swabi.

Subject: -

JUDGMENT IN APPEAL NO. 1282/2015, MR. FAQEER HUSSAIN.

I am directed to forward herewith a certified copy of Judgement dated 26.10.2017 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.