



Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1654 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	27/01/2021	<p>The appeal presented today by Malik Suleman Khan Advocate may be entered in the Institution Register and put to the Learned Member for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>03/03/21</u></p> <p style="text-align: right;">MEMBER(J)</p>
2-	03.03.2021	<p>The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 28.07.2021.</p> <p style="text-align: right;"> Reader</p>

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. _____/2021

Balqees.....(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary
and others.....(Respondents)

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Affidavit		6
3.	Addresses of the parties		7
4.	Copies of the departmental appeals dated 02/10/2020	A	8-25
5.	Copies of the judgments	B	26-59-e
6.	Wakalat Nama		60

Balqes Feroz.

Appellant

Through

Dated: 22/01/2021

ATTESTED

Malik Sulaman Khan
Advocate High Courts
Of Pakistan.
Cell No. 0331-8234060

①

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE

TRIBUNAL, PESHAWAR.

**Khyber Pakhtunkhwa
Service Tribunal**

Service Appeal No. 1654/2021

Diary No. 1666

Dated 27/1/2021

Balqees (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Saleem R/o Shodag, Tehsil Tangi, District Charsadda.....(Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa, Office Situated at Fort Road, Near Governor House, Peshawar Cantt.
5. The ADO (E&SE) Department, Khyber Pakhtunkhwa, Office situated at Mardan Road, Charsadda.....(Respondents)

Filed day
Registrar

SERVICE APPEAL U/S 4 OF THE KHYBER

PAKHTUNKHWA SERVICE TRIBUNAL ACT,

2

1974, AGAINST THE ILLEGAL ACT OF THE
RESPONDENTS WHEREBY THE
RESPONDENTS DENIED TO PAY THE
APPELLANT THE CONVINCE ALLOWANCES
OF THE SUMMER AND WINTER VACATIONS.

Respectfully Sheweth:

The appellant very humbly submits as under:

1. That appellant is the law abiding citizen of Pakistan and has never ever violated any law of the land in her entire life.
2. That appellant is the Senior Primary School Teacher and presently is designated as Deputy District Officer (Female), Tehsil Tangi and District Charsadda.
3. That appellant is entitled for the convince allowances as mentioned above but the respondents have not paid even a single penny of the same to the appellant till date.

4. That this Hon'ble Tribunal has already allowed the appeal of one of the employee in respect of the same relief.

5. That the appellant filed departmental appeals on dated 02/10/2020 before the respondents but till yet, the needful has not been done by the respondents. (Copies of the departmental appeals dated 02/10/2020 are attached as annexure "A" respectively).

6. That in light of the judgments of the apex Court i.e. (PLD 1996 SC 1185), (PLD 2003 SC 266), (2003 SCMR 1030), (2010 SCMR 421), (2009 SCMR Page-1), (2005 SCMR 499) and (PLD 2003 SC 266), wherein it is held that the benefit of the order shall be given to other employees as well if their cases are the same with the other employees, who's cases had been allowed albeit they were not arrayed as a party to the said case. (Copies of the judgments are attached as annexure "B" respectively).

7. That as per Articles 2-A, 4, 5, 9, 10-A, 25 and 227 of the Constitution of Islamic Republic of Pakistan,

1973, there shall be no discrimination among the same class.

8. That the appeal in hand is well in time and appellant has already exhausted the remedy available under the law.
9. That this Hon'ble Tribunal has ample jurisdiction to entertain the instant appeal and dispose of the same while looking to the law, facts and circumstances of the case in hand.
10. That other points will be agitated by the appellant at the time of arguments with the prior permission of this Hon'ble Tribunal.

It is therefore, very humbly prayed before this Hon'ble Tribunal that on the acceptance of this appeal, the respondents may kindly be directed to provide/ allow/ grant all the convince allowances of the summer and winter vacations to the appellant along with consequential/ back benefits for the sake of justice and good governance.

5

Any other relief may also be granted in favour of the appellant and against the respondents, which deems fit by this Hon'ble Tribunal while looking to the facts and circumstances of the instant appeal, albeit not specifically attached herein, in the instant appeal for the ends of justice.

Baleges Feroz

Appellant

Through

Dated: 22/01/2021

Malik Sulaman Khan
Advocate High Courts
Of Pakistan.

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BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____/2021

Balqees.....(Appellant)

VERSUS

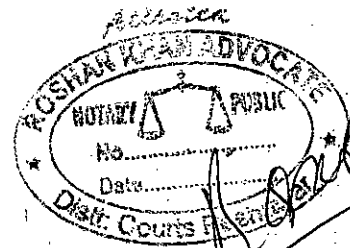
Government of Khyber Pakhtunkhwa, through Chief Secretary and others.....(Respondents)

AFFIDAVIT

I, Balqees (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Saleem R/o Shodag, Tehsil Tangi, District Charsadda, do hereby solemnly affirm and declare on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Balqees-Feroz

DEPONENT



22-01-2021

9

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**

Service Appeal No. _____/2021

Balqees.....(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa, through Chief Secretary
and others.....(Respondents)

ADDRESSES OF THE PARTIES

APPELLANT:

Balqees (Senior Primary School Teacher) Deputy District
Officer (Female) Primary Education Tangi Charsadda Wife of
Muhammad Saleem R/o Shodag, Tehsil Tangi, District
Charsadda.

RESPONDENTS:


1. Government of Khyber Pakhtunkhwa, through Chief Secretary,
Civil Secretariat, Peshawar.
2. The Secretary (E&SE) Department, Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar.
3. The Secretary Finance Department, Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
4. The Accountant General, Khyber Pakhtunkhwa, Office
Situated at Fort Road, Near Governor House, Peshawar Cantt.
5. The ADO (E&SE) Department, Khyber Pakhtunkhwa, Office
situated at Mardan Road, Charsadda.

Balqees Feroz

Appellant

Through

Dated: 22/01/2021

ATTESTED

Malik Sulaman Khan
Advocate High Courts
Of Pakistan.

To

The Respectable ADO, (E&SE) Department,
Khyber Pakhtunkhwa,
Charsadda.

**DEPARTMENTAL APPEAL FOR PROVIDING THE
CONVINCE ALLOWANCE OF THE SUMMER AND
WINTER VACATIONS TO THE APPELLANTS
W.E.F 2011 TILL DATE AS AN ARREAR AND
ONWARD.**

Respected Sir,

The appellants very humbly submit as under:

1. That the appellants are the law abiding citizens of Pakistan, well educated, regular and punctual in duties and have never ever violated any rule of law of the land in their entire lives.
2. That the appellants are related to the respectable profession of teaching since long till date.
3. That convince allowance is admissible to all the Civil Servants and in this respect a Notification No. FD (PRC) 1-1/2011 dated 14/07/2011 was issued.

Later on a revised Notification was also issued on

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dated 20/12/2012 whereby the convince allowance for employees working in BPS-1 to BPS-15 were enhanced/ revised while the employees from BPS-16 to BPS-19 have been treated under the previous notification.

4. That the concerned authority without any valid and justifiable reason has stopped/ deducted the convince allowance under the wrong and illegal pretext that the same is not allowable for the vacation period. ***“one of the employee of education department had filed Service Appeal No. 1888 (CS) /2016 before the Federal Service Tribunal Islamabad regarding the same relief which was accepted by the Hon’ble Tribunal vide its order dated 03/12/2018”.***

5. That the appellants are also the similar employees of the Education Department and under the rule of consistency, the appellants are also entitled to be treated alike as allowed in the above mentioned Service Appeal, but the concerned authority is reluctant to grant the convince allowance to the appellants, hence forth, the appellants are

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compelled by the situations to prefer the instant Departmental Appeal for the redressal of their grievances.

6. That the convince allowances have not been paid/ provided to the appellants despite of the fact that they are entitled and eligible for the same.

7. That the Court/ Tribunal of competent jurisdiction have already allowed/ granted the convince allowance of the period of vacations to other similar and same employees of the Government but the appellants are still deprived from the same relief. (Copy of order is attached).

8. That in light of the judgments of the apex Court i.e. (2009 SCMR-1) (2005 SCMR-499) (PLD-2003-SC-266) (PLD 1996 SC 1185), (PLD 2003 SC 266), (2003 SCMR 1030), (2010 SCMR 421), wherein it is held that the benefit of the order shall be given to other employees as well if their cases are the same with the other employees who's cases had been allowed albeit they were not arrayed as a party to the said case. (Copies of the judgments are attached for ready reference).

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(PLD :

2007: S.C: 35)

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9. That the non granting of the same relief (Convince Allowance) to the appellants is the violation of Articles 2-A, 3, 4, 5, 8, 9, 10-A, 25 and 227 of the Constitution of Islamic Republic of Pakistan, 1973.
10. That your good ship has ample authority/ jurisdiction to entertain, adjudicate upon and dispose of the instant Departmental Appeal of the appellants in accordance with law while looking to the facts and circumstances of the case in hand.
11. That other legal, factual, oral or documentary points will be agitated before your good ship if opportunity of personal hearing is provided to the appellants.

It is, therefore, very humbly requested before your good ship that on the acceptance of this Departmental Appeal, the convince allowance of the vacations period may kindly be allowed to the appellants as an arrear w.e.f. 2011 till date and onward for the sake of justice and good governance.

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Any other relief may also be granted in favour of the appellants although the same has not been sought by the appellants in the instant Departmental Appeal if the same is otherwise made out by looking to the facts and circumstances of the case in hand.

Dated: 02/10/2020

Your Obedients

1. Khadija Feroz (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Alam R/o Marghan, Shodag, Tehsil Tangi District Charsadda.
2. Balqees (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Saleem R/o Shodag, Tehsil Tangi, District Charsadda.
3. Shakeela Begum (Primary School Head Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Mumtaz Ali R/o Shodag, Teshil Tangi, District Charsadda.
4. Malik Taj (Senor Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda S/o Taj Muhammad R/o Mangah Dargi, Tehsil and District Charsadda.
5. Nizar Ali (SSS) GHSS, Tarnab Charsadda, S/o Sardar Ali R/o House No. 109, Street No. 7, Sector J-3, Hayatabad, Peshawar.

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6. Ilham Khan, (Certificated Teacher IT) GHSS Tarnab Charsadda, S/o Mian Gul R/o Mohallah Ababakri, Tarnab, Tehsil and District Charsadda.
7. Naeem Ullah Khan (Senior Certified Teacher) GHSS, Tarnab Charsadda, R/o Jalo Turangzai, P.O. Tarnab, Tehsil and District Charsadda.
8. Alamgir (Certificated Teacher) GHSS Tarnab, Charsadda, S/o Sheeren Gul R/o Jalo Turangzai, P.O. GHSS, Tarnab Charsadda.
9. Zaheer Gul (Certificated Teacher) GHSS Tarnab Charsadda, S/o Fazli Wahid, R/o Tala Shah, Gojar Kallay, P.O. Sher Pao, Tehsil Tangi, District Charsadda.
10. Yar Muhammad (Certificated Teacher) GHSS Tarnab Charsadda, S/o Khan Raziq, R/o Near BHU, Dhand Korona, Tarnab, Tehsil and District Charsadda.
11. Fazali Hayat (Senior Certified Teacher) GHSS Tarnab, Charsadda, S/o Fazali Malik, R/o Bara Kandy, P.O. Tarnab, Tehsil and District Charsadda.
12. Gohar Ali, (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Zafar Ali Khan R/o Rasheed Abda No. 2, Mohallah Madina Colony, Peshawar.
13. Bukhari Shah (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Muzammil R/o Mohallah Mando Khel, Tarnab, P.O. Tarnab China, Tehsil and District Charsadda.
14. Akbar Ali (Certificated Teacher) GHSS Tarnab, Charsadda, R/o Akhonzadgan, Tarnab, Tehsil and District Charsadda.
15. Ahmad Ali (Senior Arabic Teacher) GHSS Tarnab, Charsadda S/o Badshah R/o Hwaldar Garhi, Tarnab Tehsil and District Charsadda.

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16. Sher Alam (Senior Theology Teacher) GHSS Tarnab, Charsadda S/o Abdul Muhammad R/o Painsa Khel, Tarnab, Tehsil and District Charsadda.
17. Zia ul Haq (Qari) Government High School Gonda, S/o Atta ul Haq, R/o Ano, P.O. Shabqadar Fort, Tehsil and District Charsadda.
18. Ahmad Ali (Certificated Teacher) District Officer School and Literacy (Male Secondary) Charsadda, R/o Jalo, P.O Tarnab, Tehsil and District Charsadda.
19. Bakhtiar Ahmad (Subject Specialist) GHSS Tarnab, Charsadda, S/o Fazal Wahid R/o Tala Shah Gojar Kallay P.O. Sher Pao, Tehsil and District Charsadda.
20. Muhammad Tariq (Subject Specialist) GHSS Tarnab, Charsadda, S/o Feroz Shah R/o Karka Daudzai P.O. Nahaqi Daudzai, Peshawar.
21. Zahid Qayum (Subject Specialist) GHSS Tarnab, Charsadda S/o Abdul Qayum R/o Katozai, Mohallah Sahib Haq Sahib, Shabqadar, District Charsadda.
22. Riaz ul Haq (Subject Specialist) GHSS Tarnab, Charsadda S/o Atta ul Haq R/o P.O. Shabqadar, Tehsil Shabqadar, District Charsadda.
23. Zahid Rafiq (Subject Specialist) GHSS Tarnab, Charsadda, S/o Muhammad Rafiq Khan R/o Abdu Saeed Khel, Tarnab, Tehsil and District Charsadda.
24. Sheraz Ali (Subject Specialist) GHSS Tarnab, Charsadda, S/o Latif Sher, R/o Mohallah Pir Qala, Shabqadar, District Charsadda.
25. Hazrat Ali (Subject Specialist) GHSS Tarnab, Charsadda S/o Muhammad Qamar R/o Mohallah Malmala, Tarnab, Tehsil and District Charsadda.

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26. Ajmal Qadir (Subject Specialist) GHSS Tarnab, Charsadda, S/o Abdul Qadir R/o Dagai Ghulam Qadir, Tehsil and District Charsadda.
 27. Zaheen ullah (Subject Specialist) GHSS Tarnab, Charsadda S/o Rooh Ullah R/o Prang Mohallah Miandad Khel, Charsadda.
 28. Muhammad Ibrahim (Subject Specialist) GHSS Tarnab, Charsadda S/o Muhammad Islam R/o P.O. Sardheri, Mohallah Akbar Abad, Charsadda.
 29. Amir Nawaz Khan (Director of Physical Education) GHSS Tarnab, Charsadda R/o Barlab Begu Khel Road, Mohallah Michan Khel, Lakki Marwat.
 30. Hamayun (Subject Specialist) GHSS Tarnab, Charsadda S/o Saif ur Rehman R/o P.O. Charsadda, Mohallah Said Pao, Charsadda.
 31. Haider Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Sahar Gul R/o Tailian, Prang, Tehsil and District Charsadda.
 32. Muhammad Saeed Khan (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Lal Muhammad R/o Painsa Khel, Tarnab, Tehsil and District Charsadda.
 33. Wajid ur Rehman (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Inayat ur Rehman R/o P.O. Sher Pao, Mohallah Aslam Kalay, Tangi District Charsadda.
 34. Amjad Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Riaz ud Din R/o Spalmai, P.O. Tarnab, Tehsil and District Charsadda.
 35. Shaukat Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Haleem Ullah R/o P.O. Mirza Dher, Tehsil Tangi District Charsadda.

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36. Naimat Ullah (Secondary School Teacher) District Officer School and Literacy (Male Secondary) Charsadda S/o Syed Nazeef R/o Utmanzai, Charsadda.
37. Ameer Jamal Shah (Secondary School Teacher) Government High School Gh Hamid Gul Charsadda, S/o Mubarak Shah R/o P.O. Ashrafia Colony, Sufaid Masjid, Mohallah Afghani Colony Peshawar.
38. Ahmad Zeb (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Muhammad Sarwar Khan R/o P.O. Tarnab, Shahi Kalali, Tehsil and District Charsadda.
39. Saad Ullah Khan (Certified Teacher) GHSS Tarnab, Charsadda S/o Zafar Ali R/o Mando Khel, Tarnab, Tehsil and District Charsadda.
40. Fazali Mabood (Certificated Teacher) GHSS Tarnab, Charsadda S/o Fazli Mahmood R/o Ghazo Dheri, China, Tehsil and District Charsadda.
41. Imdad ul Haq (Theology Teacher) Master Government High School Batagram Charsadda S/o Atta Ullah R/o P.O. Shabqadar, Mathra, District Charsadda.
42. Nia Ullah (Subejct Specialist) GHSS Tarnab, Charsadda R/o Sami ul Haq R/o P.O. Lakaray, Sagi Bala, Tehsil Safi District Mohmand.
43. Jehangir Khan (Subject Specialist I.T) GHSS Hassanzai, Charsadda S/o Abdul Malik R/o Halimzai, Narkhel, Tehsil and District Charsadda.
44. Mohammad Ijaz (Senior Subject Specialist) BPS-16, GHSS Tarnab, Charsadda S/o Behram Khan R/o Hesara Korona, Basher Abda, Tehsil and District Charsadda.

Through

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 3/10/2020
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To

The Respectable Secretary Education KP.
Office situated at Civil Secretariat,
Peshawar.

**DEPARTMENTAL APPEAL FOR PROVIDING THE
CONVINCE ALLOWANCE OF THE SUMMER AND
WINTER VACATIONS TO THE APPELLANTS
W.E.F 2011 TILL DATE AS AN ARREAR AND
ONWARD.**

Respected Sir,

The appellants very humbly submit as under:

1. That the appellants are the law abiding citizens of Pakistan, well educated, regular and punctual in duties and have never ever violated any rule of law of the land in their entire lives.
2. That the appellants are related to the respectable profession of teaching since long till date.
3. That convince allowance is admissible to all the Civil Servants and in this respect a Notification No. FD (PRC) 1-1/2011 dated 14/07/2011 was issued. Later on a revised Notification was also issued on

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Mr. Malik Suleman Khan
Secretary, Education, Peshawar
Civil Secretariat
Peshawar
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compelled by the situations to prefer the instant Departmental Appeal for the redressal of their grievances.

6. That the convince allowances have not been paid/ provided to the appellants despite of the fact that they are entitled and eligible for the same.
7. That the Court/ Tribunal of competent jurisdiction have already allowed/ granted the convince allowance of the period of vacations to other similar and same employees of the Government but the appellants are still deprived from the same relief. (Copy of order is attached).
8. That in light of the judgments of the apex Court i.e. (PLD 1996 SC 1185), (PLD 2003 SC 266), (2003 SCMR 1030), (2010 SCMR 421), wherein it is held that the benefit of the order shall be given to other employees as well if their cases are the same with the other employees who's cases had been allowed albeit they were not arrayed as a party to the said case. (Copies of the judgments are attached for ready reference).

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9. That the non granting of the same relief (Convince Allowance) to the appellants is the violation of Articles 2-A, 3, 4, 5, 8, 9, 10-A, 25 and 227 of the Constitution of Islamic Republic of Pakistan, 1973.
10. That your good ship has ample authority/ jurisdiction to entertain, adjudicate upon and dispose of the instant Departmental Appeal of the appellants in accordance with law while looking to the facts and circumstances of the case in hand.
11. That other legal, factual, oral or documentary points will be agitated before your good ship if opportunity of personal hearing is provided to the appellants.

It is, therefore, very humbly requested before your good ship that on the acceptance of this Departmental Appeal, the convince allowance of the vacations period may kindly be allowed to the appellants as an arrear w.e.f. 2011 till date and onward for the sake of justice and good governance.

ATTESTED

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Mr. Malik Sulaman Khan
Advocate High Court, Federal Shariat
Court & Tribunal
Moh: 7331-8234033/0342-9848326

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Any other relief may also be granted in favour of the appellants although the same has not been sought by the appellants in the instant Departmental Appeal if the same is otherwise made out by looking to the facts and circumstances of the case in hand.

Dated: 02/10/2020

Your Obedients

1. Khadija Feroz (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Alam R/o Marghan, Shodag, Tehsil Tangi District Charsadda.
2. Balqees (Senior Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Muhammad Saleem R/o Shodag, Tehsil Tangi, District Charsadda.
3. Shakeela Begum (Primary School Head Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda Wife of Mumtaz Ali R/o Shodag, Teshil Tangi, District Charsadda.
4. Malik Taj (Senor Primary School Teacher) Deputy District Officer (Female) Primary Education Tangi Charsadda S/o Taj Muhammad R/o Mangah Dargi, Tehsil and District Charsadda.
5. Nizar Ali (SSS) GHSS, Tarnab Charsadda, S/o Sardar Ali R/o House No. 109, Street No. 7, Sector J-3, Hayatabad, Peshawar.

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Court of Pakistan
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6. Ilham Khan, (Certificated Teacher IT) GHSS Tarnab Charsadda, S/o Mian Gul R/o Mohallah Ababakri, Tarnab, Tehsil and District Charsadda.
7. Naeem Ullah Khan (Senior Certified Teacher) GHSS, Tarnab Charsadda, R/o Jalo Turangzai, P.O. Tarnab, Tehsil and District Charsadda.
8. Alamgir (Certificated Teacher) GHSS Tarnab, Charsadda, S/o Sheeren Gul R/o Jalo Turangzai, P.O. GHSS, Tarnab Charsadda.
9. Zaheer Gul (Certificated Teacher) GHSS Tarnab Charsadda, S/o Fazli Wahid, R/o Tala Shah, Gojar Kallay, P.O. Sher Pao, Tehsil Tangi, District Charsadda.
10. Yar Muhammad (Certificated Teacher) GHSS Tarnab Charsadda, S/o Khan Raziq, R/o Near BHU, Dhand Korona, Tarnab, Tehsil and District Charsadda.
11. Fazali Hayat (Senior Certified Teacher) GHSS Tarnab, Charsadda, S/o Fazali Malik, R/o Bara Kandy, P.O. Tarnab, Tehsil and District Charsadda.
12. Gohar Ali, (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Zafar Ali Khan R/o Rasheed Abda No. 2, Mohallah Madina Colony, Peshawar.
13. Bukhari Shah (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Muzammil R/o Mohallah Mando Khel, Tarnab, P.O. Tarnab China, Tehsil and District Charsadda.
14. Akbar Ali (Certificated Teacher) GHSS Tarnab, Charsadda, R/o Akhonzadgan, Tarnab, Tehsil and District Charsadda.
15. Ahmad. Ali (Senior Arabic Teacher) GHSS Tarnab, Charsadda S/o Badshah R/o Hwaldar Garhi, Tarnab Tehsil and District Charsadda.

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16. Sher Alam (Senior Theology Teacher) GHSS Tarnab, Charsadda S/o Abdul Muhammad R/o Pinda Khel, Tarnab, Tehsil and District Charsadda.
17. Zia ul Haq (Qari) Government High School Gonda, S/o Atta ul Haq, R/o Ano, P.O. Shabqadar Fort, Tehsil and District Charsadda.
18. Ahmad Ali (Certificated Teacher) District Officer School and Literacy (Male Secondary) Charsadda, R/o Jalo, P.O Tarnab, Tehsil and District Charsadda.
19. Bakhtiar Ahmad (Subject Specialist) GHSS Tarnab, Charsadda, S/o Fazal Wahid R/o Tala Shah Gojar Kallay P.O. Sher Pao, Tehsil and District Charsadda.
20. Muhammad Tariq (Subject Specialist) GHSS Tarnab, Charsadda, S/o Feroz Shah R/o Karka Daudzai P.O. Nahaqi Daudzai, Peshawar.
21. Zahid Qayum (Subject Specialist) GHSS Tarnab, Charsadda S/o Abdul Qayum R/o Katozai, Mohallah Sahib Haq Sahib, Shabqadar, District Charsadda.
22. Riaz ul Haq (Subject Specialist) GHSS Tarnab, Charsadda S/o Atta ul Haq R/o P.O. Shabqadar, Tehsil Shabqadar, District Charsadda.
23. Zahid Rafiq (Subject Specialist) GHSS Tarnab, Charsadda, S/o Muhammad Rafiq Khan R/o Abdu Saeed Khel, Tarnab, Tehsil and District Charsadda.
24. Sheraz Ali (Subject Specialist) GHSS Tarnab, Charsadda, S/o Latif Sher, R/o Mohallah Pir Qala, Shabqadar, District Charsadda.
25. Hazrat Ali (Subject Specialist) GHSS Tarnab, Charsadda S/o Muhammad Qamar R/o Mohallah Malmala, Tarnab, Tehsil and District Charsadda.

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26. Ajmal Qadir (Subject Specialist) GHSS Tarnab, Charsadda, S/o Abdul Qadir R/o Dagai Ghulam Qadir, Tehsil and District Charsadda.
27. Zaheen ullah (Subject Specialist) GHSS Tarnab, Charsadda S/o Rooh Ullah R/o Prang Mohallah Miandad Khel, Charsadda.
28. Muhammad Ibrahim (Subject Specialist) GHSS Tarnab, Charsadda S/o Muhammad Islam R/o P.O. Sardheri, Mohallah Akbar Abad, Charsadda.
29. Amir Nawaz Khan (Director of Physical Education) GHSS Tarnab, Charsadda R/o Barlab Begu Khel Road, Mohallah Michan Khel, Lakki Marwat.
30. Hamayun (Subject Specialist) GHSS Tarnab, Charsadda S/o Saif ur Rehman R/o P.O. Charsadda, Mohallah Said Pao, Charsadda.
31. Haider Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Sahar Gul R/o Tailian, Prang, Tehsil and District Charsadda.
32. Muhammad Saeed Khan (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Lal Muhammad R/o Painsa Khel, Tarnab, Tehsil and District Charsadda.
33. Wajid ur Rehman (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Inayat ur Rehman R/o P.O. Sher Pao, Mohallah Aslam Kalay, Tangi District Charsadda.
34. Amjad Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Riaz ud Din R/o Spalmai, P.O. Tarnab, Tehsil and District Charsadda.
35. Shaukat Ali (Secondary School Teacher) GHSS Tarnab, Charsadda S/o Haleem Ullah R/o P.O. Mirza Dher, Tehsil Tangi District Charsadda.

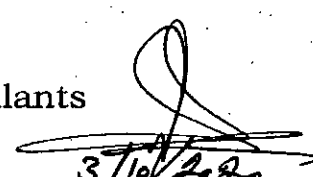
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36. Naimat Ullah (Secondary School Teacher) District Officer School and Literacy (Male Secondary) Charsadda S/o Syed Nazeef R/o Utmanzai, Charsadda.
 37. Ameer Jamal Shah (Secondary School Teacher) Government High School Gh Hamid Gul Charsadda, S/o Mubarak Shah R/o P.O. Ashrafia Colony, Sufaid Masjid, Mohallah Afghani Colony Peshawar.
 38. Ahmad Zeb (Senior Certified Teacher) GHSS Tarnab, Charsadda S/o Muhammad Sarwar Khan R/o P.O. Tarnab, Shahi Kalali, Tehsil and District Charsadda.
 39. Saad Ullah Khan (Certified Teacher) GHSS Tarnab, Charsadda S/o Zafar Ali R/o Mando Khel, Tarnab, Tehsil and District Charsadda.
 40. Fazali Mabood (Certificated Teacher) GHSS Tarnab, Charsadda S/o Fazli Mahmood R/o Ghazo Dheri, China, Tehsil and District Charsadda.
 41. Imdad ul Haq (Theology Teacher) Master Government High School Batagram Charsadda S/o Atta Ullah R/o P.O. Shabqadar, Mathra, District Charsadda.
 42. Nia Ullah (Subejct Specialist) GHSS Tarnab, Charsadda R/o Sami ul Haq R/o P.O. Lakaray, Sagi Bala, Tehsil Safi District Mohmand.
 43. Jehangir Khan (Subject Specialist I.T) GHSS Hassanzai, Charsadda S/o Abdul Malik R/o Halimzai, Narkhel, Tehsil and District Charsadda.
 44. Mohammad Ijaz (Senior Subject Specialist) BPS-16, GHSS Tarnab, Charsadda S/o Behram Khan R/o Hesara Korona, Basher Abda, Tehsil and District Charsadda.

Appellants

Through


3/10/2020.
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1996 S C M R 1185

[Supreme Court of Pakistan]

Before Ajmal Mian, Saiduzzaman Siddiqui and Mukhtar Ahmad Junejo, JJ

HAMEED AKHTAR NIAZI---Appellant

versus

THE SECRETARY, ESTABLISHMENT DIVISION, GOVERNMENT OF
PAKISTAN and others---Respondents

Civil Appeal No.345 of 1987, decided on 24th April, 1996.

(On appeal from the judgment dated 11-12-1986 of the Federal Service Tribunal, Islamabad,
passed in Appeal No. 124(L) of 1980).

Per Ajmal Mian, J.; Saiduzzaman Siddiqui, J. agreeing---

(a) Civil Servants Act (LXXI of 1973)---

---S. 8(4)---Constitution of Pakistan (1973), Art. 212(3)---Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975---Seniority---Merger of four occupational groups of civil servants---Leave to appeal was granted to consider the questions as to whether the seniority list of 1979 was properly prepared in accordance with law and what was the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976; whether when preparing the list of 1979, S. 8(4) of the Civil Servants Act, 1973 and other related provisions of law had been kept in view; whether a civil servant could be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not whether the fact that the respondents in appeal belonged to the different civil services of Pakistan would make any difference; whether one uniform principle of seniority would apply to all members of the Secretariat Group or the officers joining the Group from different sources/cadres would have to be treated differently; if so, whether such treatment with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of Civil Servants Act, 1973 and in that context what was the effect of the abolition of C.S.P. Cadre; whether the eligibility of civil servant for appointment to a selection post conferred any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in that context a civil servant belonging to ex C.S.P. Cadre was entitled to 'automatic promotion to the post of Deputy Secretary after he had completed eight years of service but without the requirement of being actually selected/promoted or appointed; and what was the effect of the Supreme Court judgment in Khizar Haider Malik ad others v Muhammad Rafiq Malik and another 1987 SCMR 78 on the case.

(b) Civil Servants Act, (LXXI of 1973)---

---Ss. 8 & 23---Seniority---Merger of C.S.P and P.S.P cadres and creation of APUG---Seniority of such an officer, who was working in province or elsewhere, could not be distorted/disturbed to his detriment on account of the merger of said groups and creation of APUG and junior of such civil servant could not be made senior to him nor a junior to his junior could be made senior to him but this has to be done within the framework of the rules of reorganization of services---If

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the case of any civil servant does not fall within the ambit of said re-organisation rules, S. 23 of the Civil Servants Act, 1973 can be pressed into service by the President of Pakistan to obliterate the inequitable and unjust result arising out of the merger of the two cadres in respect of seniority of any of the civil servants.

ESTACODE, 1989 Edn., pp. 1014, 1096 and 1097 ref.

(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Constitution of Pakistan (1973), Art.212---Appeal to Service Tribunal or Supreme Court---Effect---If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum.

Per Mukhtac Ahmad Junejo, J.---

(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Appeal to Service Tribunal, scope and extent.

M. Bilal, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellant.

Raja Muhammad Bashir, Deputy Attorney-General and Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Dates of hearing: 7th and 8th April, 1996.

JUDGMENT

AJMAL MIAN, J.---This is an appeal with the leave of this Court against the judgment dated 11-12-1986 passed by the Federal Service Tribunal, Islamabad, hereinafter referred to as the Tribunal, passed in Appeal No.124(1)

of 1980, filed by the appellant, praying for the following reliefs:--

"16. In view of the above, the appellant (who was eventually promoted with effect from 28-8-1980) humbly prays that this honourable Tribunal may kindly direct the respondent No. 1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which he would have been promoted if his name had been put up for the consideration of the C.S.B. according to his seniority. Cost may also graciously be allowed,"

dismissing the same for the reasons recorded in Appeal NO. I 16(R) of 1981, filed by one M. Ramizul Haq.

2. Leave to appeal was granted to consider inter alia the following questions:--

(a) Whether the seniority list of 1979 was properly prepared in accordance with law and what is

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the effect of the reliance from the Government side in the Supreme Court in another appeal on the list of 1976?

(b) Whether when preparing the list of 1979, section 8(4) of the Civil Servants Act, 1973 and other related provisions of law, have been kept in view?

(c) Whether a civil servant can be allowed to count his seniority in a post from a date earlier than the one of his actual regular continuous officiation in that post; if not, whether the fact that the respondents belonged to the defunct Civil Service of Pakistan will make any difference?

(d) Whether one uniform principle of seniority will apply to all members of the Secretariat Group or the officers joining the Group from different source/cadres would have to be treated differently; if so, whether such treatment whether with or without the support of statutory rules or directions would not be in contravention of the relevant provisions of the Civil Servants Act, 1973, and in this context what is that effect of the abolition of the C.S.P. Cadre? and

(e) Whether the eligibility of a civil servant for appointment to a selection post confers any right of seniority in that post and cadre without issuance of a formal promotion/appointment order in accordance with the prescribed procedure and whether in this context a civil servant belonging to ex-C.S.P cadre is entitled to automatic promotion to the post of Deputy Secretary after he completes eight years of service but without the aforementioned requirement of being actually selected/promoted or appointed? and

(f) What is the effect on this case of the judgment of this Court in Khizar Haider Malik and others v. Muhammad Rafiq Malik and another 1987 SCMR 78.?

3. It may be observed that the order of granting leave was recalled on 10-2-1992, but upon review, the same was set aside through an order dated 14-2-1994 and thereby the aforesaid leave granting order was restored.

4. The brief facts are that the appellant joined Pakistan Military Lands and Cantonments Service on the basis of the results of competitive examination held in June, 1960. It is the case of the appellant that in 1967, he proceeded to U.S.A. on study leave and obtained a Master's Degree in Public Administration from the Maxwell School of Public Affairs and Citizenship, Syracuse University. It is also his case that in June/July, 1972, the Planning Division recommended him for promotion to the post of Deputy Secretary to the Government of Pakistan. It is his further case that pending approval of the Establishment Division, Planning Division promoted him as Deputy Secretary by an order dated 9-8-1972. The above order reads as follows:--

"OFFICE ORDER

It has been decided that Mr.Hameed Akhtar Niazi, PML & CS will look after the work of Deputy Secretary (Administration) with immediate effect. He will be designated as Officer on Special Duty (Administration).

Mr. Zafar Iqbal is posted as Deputy Secretary, Programming."

It has also been averred by the appellant that he was promoted as Deputy Secretary on regular basis on 9-4-1973 and posted in the Establishment Division.

5. It seems that in August, 1973, C.S.P. and P.S.P. cadres were merged into All Pakistan Unified Grades, hereinafter referred to as APUG. It further seems that after the aforesaid merger, four occupational groups were created, namely, Tribal Areas Group, District Management Group,,

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Secretariat Group and Police Group. The appellant opted for the Secretariat Group. It is the case of the appellant that the Gradation List of Deputy Secretaries i.e. of the Secretariat Group was prepared in accordance with the provision of section 8(4) of the Civil Servants Act, 1973, hereinafter referred to as the Act, which provides that "Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post". According to the appellant, the above Gradation List was circulated in June, 1976, wherein the appellant's name appeared at Serial No. 69. However, the appellant learnt in August, 1979, that civil servants belonging to erstwhile Civil Service of Pakistan (C.S.P.), whose names appeared much below the appellant in the aforesaid Gradation Lists of 1976, were being promoted to the rank of Joint Secretary (Grade-20) and his name had not been put up for promotion to the General Selection Board for consideration. He first made efforts to get redress from the department, but eventually, he filed the aforementioned service appeal in the Tribunal, which was dismissed as stated above. After that he filed a petition for leave to appeal in this Court, which was granted to consider the above questions.

6. It may be pertinent to observe that in the above appeal, besides the Federation, 14 civil servants were arrayed as respondents. It may further be observed that, in addition to the above respondents, 7 other civil servants were impleaded pursuant to an application dated 4-1-1988. Dr. Sh. Aleem Mehmood was impleaded as a respondent (respondent No. 23 in the present appeal) on his own application, whereas the applications of Muhammad Aslam and Tariq Junejo for being impleaded, remained pending till today: However, they were heard. One, Malik Zahoor Akhtar, has also appeared though he had not filed any application for getting himself impleaded in the aforesaid appeal.

7. Be that as it may, in support of the above appeal, Mr. M. Bilal, learned Sr. A.S.C. for the appellant, has vehemently contended that after the merger of the two cadres, namely, C. S. P. and P. S. P. and creation of APUG, the Gradation List of the Deputy Secretaries prepared in 1976 could not have been disturbed and that certain civil servants could not have been given seniority over the appellant from a date prior to their regular appointments as the Deputy Secretaries in the above cadre. To reinforce the above submission, reliance has been placed by him inter alia on section 8(4) of the Act and para. 8 of ESTACODE, 1989 Edition, under the caption "Secretariat Group" at Serial No. 19 incorporated on the authority of O.M.No.2/2/75-ACR, dated 12-4-1976.

The aforementioned newly added respondent supports Mr. Bilal's contention.

On the other hand, Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, has contended that seniority inter se of the civil servants belonging to C.S.P. cadre obtaining prior to its merger could not have been distorted to the detriment of any of the above civil servants and, therefore, if C.S.P. officers, who were not actually posted as Deputy Secretaries but were deputed to various Provinces on account of public exigencies, could not have been made junior to civil servants who were junior to them prior to the merger of aforesaid two cadres and who were working as Deputy Secretaries and were senior inter alia to the appellant.

8. It appears that the Tribunal proceeded on the premises as urged by learned Deputy Attorney-General. It may be advantageous to reproduce the relevant portion of the impugned judgment, which reads as follows:--

"It appears that the question of seniority was not examined when persons not being Members of the Service were appointed to APU J with the approval of the President vide Notification No.1/1/73-ARC, dated 14-9-1973. Nevertheless, the seniority lists were prepared of the Deputy Secretaries and Joint Secretaries, etc. and they included only those officers of the former C.S.P. who at the relevant time were serving against these posts. At that time, the Rule for appointment of the Deputy Secretaries was that a C.S.P. Officer who had completed 8 years' service could be

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appointed as Deputy Secretary. No doubt, subsequently by Office Memo. No.3/7/74-AR.II, dated the 20th May, 1974, 12 years period was provided for Grade-19 and for horizontal movement of Grade-18 Officers to the post of Deputy Secretary vide para. 3 of Office Memo. No. 2/2/75-ARC, dated 21-2-1975, but this deviation in the length of service is immaterial as far as C.S.P. Officers are concerned. Their names already existed as Members of C.S.P. and subsequently of APUG. Their seniority was to be changed in accordance with some principle and not by making any, rule affecting their vested right. All Rules made under the Civil Servants Act or the Civil Servants Ordinance have to be construed with prospective operation and not with retrospective operation. All those Rules which affect the former Officers of the C.S.P. have to be applied for the situations existing after the enactment of the Civil Servants Ordinance, 1973, and the Rules made thereunder. The seniority of the C.S.P. Officers in APUG could not, therefore, be distorted. Any seniority to which a Member of the Cadre was entitled before the constitution of Secretariat Group, could not be affected by the provisions of section 8(4) of the Civil Servants Act, 1973. In other words, the seniority of such, a person cannot be destroyed by any subsequent change in the principles of seniority. By making a provision in the relevant Officer Memorandum that seniority shall count from the date when an officer becomes Deputy Secretary or is promoted to Grade-19, whichever is earlier, the distortion in the seniority of other Federal Services was removed, but in case of C.S.P. Officers this formula could not work as there was no scale comparable to Grade-19 (Junior Administrative Grade) and the C.S.P. Officers used to be promoted to the Joint Secretary's grade from Senior C.S.P. Scale which is comparable with Grade-18, and the post of Deputy Secretary was never a promotion post in the cadre. Thus, in our opinion, if after the coming into force of the Civil Servants Act, an officer of former C.S.P. who was senior to his colleagues working as Deputy Secretary in the Secretariat, but an officer who was working, in the Province or elsewhere would, when brought to the Secretariat later, retain his seniority vis-a-vis his own colleagues. In other words, if an officer of the former C.S.P. is appointed as Deputy Secretary in the Secretariat Sub-Group, within APUG, he would count his seniority from the date he completes 8 years of service if any of his colleagues junior to him had already been promoted. It is this principle, which the Establishment Division has applied and we think that this is a proper course by which the distortion in the seniority can be removed."

9. In this regard, it may be pertinent to refer to page 1014 of the ESTACODE,, 1989 Edition, in which under the caption "Reorganisation of APUG in to four Occupational Groups Seniority of members of the Group" at Serial No. 17 has provided as under on the basis of Establishment Secretary's D.O. Letter No.2/4/75-AVI, dated 2-10-1975:--

"Sl. No. 17:

Kindly refer to Establishment Secretary's Circular D.O. Nos.5/1/73ARC, dated the 7th September, 1973, 2/2/73-AVI, dated the 26th November, 1973, and 2/1/74-AVI, dated the 29th May, 1974, alongwith which the combined seniority lists of officers of All-Pakistan Unified Grades in various grades were circulated.

2. In the meantime, the All-Pakistan Unified Grades has been organised into four Occupational Groups---the Secretariat Group, the District Management Group, the Police Group and the Tribal Areas Group. The rules and procedures etc. governing the administration of each of these Groups have already been issued and sent to you vide the Establishment Division's Office Memoranda No.2/2/75-ARC, dated 21st February, 1975 (Secretariat Group) No.2/2/74-ARC, dated 23rd February, 1974 (District Management Group), No.3/2/75-ARC, dated 31st May, 1975 (Police Group) and D.O. No. 1/6/73-ARC, dated 20th October, 1973 (Tribal Areas Group). Consequently the seniority lists have now been drawn up separately in respect of each Group.

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3. As already indicated, each group will henceforth be managed under the respective rules quoted above. A member of a particular Group will be governed by prospects of promotion and advancement available within the Group. While entry into other Groups by horizontal movement is possible with the approval of Central Selection Board, there will be no automatic mobility from one Group to the other. In other words, officers shown in any particular Group will now belong to that Group once for all unless specifically selected and approved for movement to another Group.

4. You may now kindly inform the officers under your administrative control accordingly. Officers shown in the Secretariat Group but belonging originally to some other Group may let this Division know finally as to whether they would like to remain in the Secretariat Group or go back to their parent Group. Option once exercised will be final. Such option should reach us not later than 31st October, 1975. Failure to exercise option by that date will be presumed to be an option for the Group where the name appears presently.

5. In the meantime, these lists may be treated as provisional and in case there are any omissions or discrepancies, these may please be communicated to us immediately for rectification."

10. Reference may also be made to paras. 3 and 8 of the ESTOCODE, 1989 Edition, at pages 1096 and 1097 thereof under the caption "Secretariat Group" at Serial No. 19 and which read as under:--

Para. 3 of the ESTACODE: 3. Deputy Secretary.--Appointment to the post of Deputy Secretary will be made in accordance with the following methods: --

(i) By promotion of Grade-18 Officers of Office Management Group and the Secretariat Group on the recommendations of the Central Selection Board.

(ii) By horizontal movement from other Occupational Groups of Grade 19 Officers who have been recommended by the Ministries/Divisions, Departments or Provincial Governments and have been found fit by the Central Selection Board.

(iii) By direct appointment or the recommendations of the Federal Public Service Commission of persons possessing such qualifications and experience etc., as may be prescribed.

Para. 8 of the ESTACODE: 8. Deputy Secretary.--Seniority would be determined from the date of continuous regular officiation as Deputy Secretary, or in a post in Grade-19, whichever is earlier."

11. We may observe that in the present case, section 8(4) of the Act is relevant as it will be covered by the rules framed for regulating APUG. It is evident from afore-quoted para. 4 of ESTACODE, 1989 Edition, at page 1014 that after the creation of Secretariat Group, the civil servants were given the option to opt the above Group or any other Group by 31-10-1975. Whereas above quoted para. 3 of the ESTACODE at page 1096 under the caption "Secretariat Group" at Serial No.19, indicates as to how the appointment to the post of Deputy Secretary will be made i.e. by promotion of Grade-18 Officers by horizontal movement and by direct appointment on the recommendation of the Federal Public Service Commission.

12. It may further be noticed that para. 8 of the above ESTACODE at page 1097 provides that seniority would be determined from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

13. The Tribunal has not taken into consideration that above relevant provisions of the

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ESTACODE while dilating upon the controversy in issue. It should have decided, whether the respondents had exercised the options in terms of aforesaid para. 4 of the above ESTACODE at page 1014, by 31-10-1975 and whether the seniority list was prepared as per aforesaid para. 8 of the ESTACODE, i.e. from the date of continuous regular officiation as Deputy Secretary or in a post in Grade-19, whichever is earlier.

14. There is no doubt that the seniority of an officer, who is working in a Province or elsewhere, cannot be distorted/disturbed to his detriment on account of the merger of above two cadres of C.S.P. and P.S.P. and creation of APUG. His junior cannot be made senior to him nor a junior to his junior can be made senior to him. But, this is to be done within the framework of the rules of reorganisation as given in the above ESTACODE. If the case of any civil servant does not fall within the ambit of the above rules, section 23 of the Act can be pressed into service by the President to obliterate the inequitable and unjust result arising out of the above reorganisation in respect of seniority of any of the civil servants.

15. It was also contended by Mr. Raja Muhammad Bashir, learned Deputy Attorney-General, that since that appellant has already been promoted to Grade-20, the above appeal has become infructuous. However, this contention was refuted by Mr. Bilal and it was urged by him that the appellant is entitled to get his seniority restored according to the rules.

16. In our view, it will be just and proper to remand the case to the Tribunal with the direction to re-examine the above case after notice to the affected persons and to decide the same afresh in the light of above observations. We may observe that if the Tribunal or this Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings; in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum.

17. The above appeal stands disposed of in the above terms, with no order as to costs.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

MUKHATAR AHMAD JUNEJO, J.--My learned brother Ajmal Mian, J. was kind enough to send me draft of the judgment proposed to be delivered by him in Civil Appeal No.345 of 1987 (Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan etc.) With due respects to my learned brother, I am unable to agree with him that this matter be remanded to the Federal Service Tribunal with some directions including the direction to re-decide the case.

The facts of the case have already been given by my learned brother and they need not be reiterated. In the context of the facts given in para.4 of the draft judgment, appellant Hameed Akhtar Niazi filed his appeal before the Federal Service Tribunal under section 4 of the Service Tribunals Act with prayer in the following words:--

"In view of the above the appellant who was eventually promoted with effect from 28-8-1980 humbly prays that this Honourable Tribunal may kindly direct the respondent No.1 to proceed in accordance with law and to declare him to have been promoted before the ineligible and junior officers promoted in August, 1979 and February and May, 1980. It is further prayed that full salary and all other benefits may also kindly be allowed to the appellant from the date on which

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99 33
 he would have been promoted if his name had been put up for the consideration of the C.B.S. according to his seniority. Cost may also graciously be allowed. "

Perusal of the prayer shows that the appellant seeks his promotion from a date earlier than the dates of promotion of certain officers termed by him to be ineligible and junior. According to section 4 of the Service Tribunals Act, a civil servant can invoke jurisdiction of the Tribunal in respect of any of his terms and conditions of service. However, no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade, vide clause (b) of the proviso to section 4 of C the said Act. By asking the Tribunal to direct his promotion on a date earlier than the promotion of ineligible and junior officers, the appellant wanted the Tribunal to determine him to be fit for promotion and to determine the other officers to be ineligible for promotion by labelling them as ineligible. As regards the claim for salary and monetary benefits, the same is again based on the presumptive promotion of the appellant. Since the main relief of promotion cannot be given to the appellant by the Tribunal, the consequential relief can also not be given to him.

In my humble view appellant's appeal before the Federal Service Tribunal was not maintainable and it required to be rejected. In my humble view this appeal merits dismissal.

(Sd.)

Mukhtar Ahmad Junejo, J.

ORDER OF THE COURT

By majority judgment this appeal is allowed, .The case is remanded to the Tribunal in terms of the majority view.

(Sd.)

Ajmal Mian, J.

(Sd.)

Saiduzzaman Siddiqui, J.

(Sd.)

Mukhtar Ahmad Junejo, J.

M.B.A./H-251/S

Appeal allowed

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~~130~~

59

No. 1374

For Insurance Notices see reverse.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Rs. Ps.

130 -

Received a registered
addressed to Sec Education Date-Stamp

Initials of Receiving Officer Sec *Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.
Insured for Rs. (in figures) 130 (in words)

Insurance fee Rs. Ps. (in words) } Weight } Kilo
Name and address } Grams
of sender }

No. 1375

For Insurance Notices see reverse.
Stamps affixed except in case of
uninsured letters of not more than
the initial weight prescribed in the
Post Office Guide or on which no
acknowledgement is due.

Rs. Ps.

130 -

Received a registered
addressed to Chhara Badda

Initials of Receiving Officer Sec *Write here "letter", "postcard", "packet" or "parcel"
with the word "insured" before it when necessary.
(in words)

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Advocate High Courts & Federal Shariat
Court of Pakistan
Mob: 0331-8234060/0342-9848326

~~ATTESTED~~

Dist. Govt. KP-Provincial
District Accounts Office Charsadda
Monthly Salary Statement (August-2020)

59-B



Personal Information of Miss BALQEES FEROZ d/w/s of FEROZ SHAH

Personnel Number: 00156707 CNIC: 1710211092806 NTN:
Date of Birth: 04.04.1980 Entry into Govt. Service: 01.02.2005 Length of Service: 15 Years 07 Months 001 Days

Employment Category: Vocational Temporary

Designation: SENIOR PRIMARY SCHOOL TEA 80001045-DISTRICT GOVERNMENT KHYBE
DDO Code: CA6021-DEPUTY DISTRICT OFFICER (FEMALE) PRIMARY EDUCATION TANGI CHARASADDA (REGULAR)
Payroll Section: 001 GPF Section: 001 Cash Center: 03
GPF A/C No: Interest Applied: Yes GPF Balance: 337,101.00
Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 14 Pay Stage: 11

Wage type		Amount	Wage type		Amount
0001	Basic Pay	28,050.00	1000	House Rent Allowance	2,214.00
1210	Convey Allowance 2005	2,856.00	1300	Medical Allowance	1,500.00
2148	15% Adhoc Relief All-2013	583.00	2199	Adhoc Relief Allow @10%	397.00
2211	Adhoc Relief All 2016 10%	2,056.00	2224	Adhoc Relief All 2017 10%	2,805.00
2247	Adhoc Relief All 2018 10%	2,805.00	2264	Adhoc Relief All 2019 10%	2,805.00

Deductions - General

Wage type		Amount	Wage type		Amount
3014	GPF Subscription	-2,620.00	3501	Benevolent Fund	-600.00
3990	Emp.Edu. Fund KPK	-125.00	4004	R. Benefits & Death Comp:	-600.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance
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Deductions - Income Tax

Payable: 0.00 Recovered till AUG-2020: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 46,071.00 Deductions: (Rs.): -3,945.00 Net Pay: (Rs.): 42,126.00

Payee Name: BALQEES FEROZ
Account Number: 1473-3
Bank Details: UNITED BANK LIMITED, 211480 MANDHNI MANDHNI, CHARASADA

Leaves: Opening Balance: Aailed: Earned: Balance:

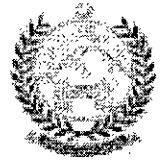
Permanent Address:

City: CA Domicile: - Housing Status: No Official
Temp. Address:
City: Email: balqeesbegumspst@gmail.com

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Court of Pakistan
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Dist. Govt. NWFP-Provincial
District Accounts Office Charsadda
Monthly Salary Statement (August-2019)

59-c



Personal Information of Miss BALQEES FERAZ d/w/s of FERAZ SHAH

Personnel Number: 00156707 CNIC: 1710211092806 NTN:
 Date of Birth: 04.04.1980 Entry into Govt. Service: 01.02.2005 Length of Service: 14 Years 07 Months 001 Days

Employment Category: Vocational Temporary

Designation: SENIOR PRIMARY SCHOOL TEA 80001045-DISTRICT GOVERNMENT KHYBE
 DDO Code: CA6021-DEPUTY DISTRICT OFFICER (FEMALE) PRIMARY EDUCATION TANGI CHARSADDA (REGULAR)
 Payroll Section: 001 GPF Section: 001 Cash Center: 03
 GPF A/C No: Interest Applied: Yes **GPF Balance:** 305,661.00
 Vendor Number: -

Pay and Allowances: Pay scale: BPS For - 2017 Pay Scale Type: Civil BPS: 14 Pay Stage: 10

Wage type		Amount	Wage type		Amount
0001	Basic Pay	26,880.00	1000	House Rent Allowance	2,214.00
1300	Medical Allowance	1,500.00	2148	15% Adhoc Relief All-2013	583.00
2199	Adhoc Relief Allow @10%	397.00	2211	Adhoc Relief All 2016 10%	2,056.00
2224	Adhoc Relief All 2017 10%	2,688.00	2247	Adhoc Relief All 2018 10%	2,688.00
2264	Adhoc Relief All 2019 10%	2,688.00			0.00

Deductions - General

Wage type		Amount	Wage type		Amount
3014	GPF Subscription	-2,620.00	3501	Benevolent Fund	-600.00
3990	Emp.Edu. Fund KPK	-125.00	4004	R. Benefits & Death Comp:	-1,052.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 0.00 Recovered till AUG-2019: 0.00 Exempted: 0.00 Recoverable: 0.00

Gross Pay (Rs.): 41,694.00 Deductions: (Rs.): -4,397.00 Net Pay: (Rs.): 37,297.00

Payee Name: BALQEES FERAZ
 Account Number: 1473-3
 Bank Details: UNITED BANK LIMITED, 211480 MANDHNI MANDHNI,

Leaves: Opening Balance: Availed: Earned: Balance:

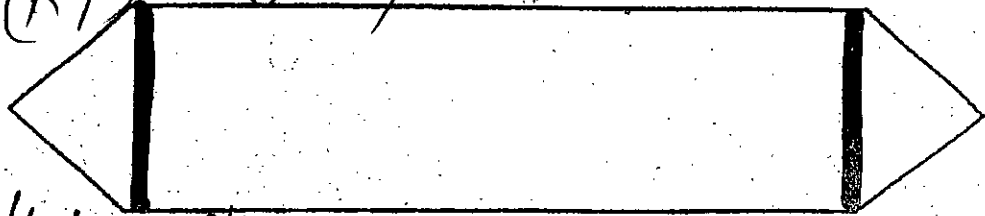
Permanent Address:

City: CA Domicile: - Housing Status: No Official
 Temp. Address:
 City: Email: balqeesbegumspst@gmail.com

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اپریل 2021 = 1454

بعدالت صواب و حسن طر شہونیل



شہاورد

2021ء منجانب ایڈووکیٹ

بنام حکومت پاکستان
مسماہ بلقیس

موزخہ
مقدمہ
دعویٰ
جزم

باعث تحریر آنکہ

مقدمہ مشدرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی دکن کاروائی متعلقہ انڈسٹریل ڈیولپمنٹ
 آن مقام کشیور کیلئے حکومت گلگت بلتستان اور انڈسٹریل ڈیولپمنٹ
 مقرر کر کے اتر کر کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا جائز
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا۔
 کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی
 مذکورہ کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Accepted by

Handwritten signature

ATTESTED

ATTESTED 2021

المترجم 21

العبد وان العبد

کے لئے منظور ہے۔

شہاورد

العبد

العبد

Balqees Ferdous

Mst Balqees

17102-1109280-6

0300-9057722

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