BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 1283/2015

Date of Institution ... 10.11.2015

Date of Decision ... 26.10.2017

Muhammad Zahid (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, ... CHAIRMAN
MR. GUL ZEB KHAN, ... 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 1988. That on 10.07.2015, a promotion order was made and despite his seniority at S.No. 1 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. He further argued that now the authority has promoted the appellant to the position of Junior Clerk on 15.12.2015 without improvement in qualification of the appellant.

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 had no knowledge of computer and tying. He further argued that the appeal of the appellant has become infructuous as the appellant has been promoted as Junior Clerk on 15.12.2015.

CONCLUSION.

5. The arguments 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. So far as the arguments of the learned Deputy District Attorney regarding the appeal becoming infructuous is concerned, the prayer of the appellant is not only for his promotion but seniority as well when he was not promoted at the relevant time. 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. At present he has already been promoted and keeping in views the latest position, this Tribunal accepts the appeal of the appellant to the extent of granting him seniority. His seniority should be reckoned from 10.7.2015 and he should be placed at his due position. Parties are left to bear their own costs. File be consigned to the record room.

(NIAZ MUHAMMAD KHAN)
CHAIRMAN

(GUL ZEB KHAN)
MEMBER

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 alongwith miscellaneous application for ~~creation~~ Correction of date in the memo of appeal which is placed on file. To come up for arguments on 26.10.2017 before D.B.

(Muhammad Hamid Mughal)
Member

(Gul Zeb Khan)
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 to be maintained.~~

(MUHAMMAD AAMIR NAZIR)
MEMBER

(ASHFAQUE TAJ)
MEMBER

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.

Appellant Deposited
Security & Process Fee

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. 1283/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16.11.2015	The appeal of Mr. Muhammad Zahid resubmitted today by Mr. Munsif Saeed Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order. REGISTRAR This case is entrusted to S. Bench for preliminary hearing to be put up thereon 25-11-15. CHAIRMAN
2		

The appeal of Mr. Muhammad Zahid Qasid Office of the Deputy Commissioner Swabi received today 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. 1757 /S.T,

Dt. 11/11/2015

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.

Counsel for Appellant. 16-11-15

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1283 */2015*

Muhammad Zahid.
Shaukat Ullah

_____ *(Appellant)*

V E R S U S

Secretary Education KPK and others

_____ *(Respondents)*

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S. No.	*Documents*	*Annexure*	*Page No.*
1	*Service Appeal along with Affidavit*		*1-4*
2	*Copy of Seniority List*	*A*	*5*
3	*Copy of 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*
6	*Copy of order dated 21.09.2015*	*E*	*14-17*
7	*Copy of office order dated 21.8.2014*	*F*	*18-19*
6	*Wakalat Nama*		*20*

Appellant

Through

Munsif Saeed
&
Kaleem Ullah
Advocates High Court,
Peshawar

Dated: 06.11.2015

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1283 */2015*

Muhammad Zahid (Qasid BPS-02)
Office of Deputy Commissioner Swabi

(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

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 Qasid (BPS-2) vide order dated 28.08.1988.*

2) *That respondent No. 1prepared seniority list of Naib Qasid in which appellant name placed at Serial No. 1 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.* (copy of order attached 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, Muhammad Zahid (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

ATTESTED
AMJED SHAHEEN OATH COMMISSIONER
Distt: Courts Peshawar

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 PORESENT POST	REMARKS
1	Mr. Muhammad Zahid	BPS-2	Matric (2nd Division)	01.04.1967	28.081988	28.08.1988	
2	Mr. Ubaid Ullah	BPS-2	Matric (2nd Division)	07.03.1971	23.12.1993	23.12.1993	
3	Mr. Faqir Hussain	BPS-2	Matric (2nd Division)	1976	01.01.1995	01.01.1995	
4	Mr. Gul Zameer	BPS-2	Matric (2nd Division)	02.05.1968	05.04.2004	05.04.2004	
5	Mr. Sajid Ali (Chowkidar)	BPS-2	Matric (2nd Division)	11.04.1982	05.04.2004	05.04.2004	
6	Mr. Adil Ahmad	BPS-2	Matric (2nd Division)	01.04.1972	19.04.2004	19.04.2004	
7	Mr. Javed Iqbal	BPS-1	Matric (2nd Division)	02.03.1975	25.02.2008	25.02.2008	
8	Mr. Najmus Saqib	BPS-1	Matric (2nd Division)	12.04.1983	25.02.2008	25.02.2008	
9	Mr. Noor Ullah (Chowkidar)	BPS-1	Matric (2nd Division)	20.04.1986	25.02.2008	25.02.2008	
10	Mr. Ansar Iqbal	BPS-1	Matric(2nd Division)	02.02.1989	25.02.2008	25.02.2008	
11	Mr. Syed Umar Shah	BPS-1	Matric (Ist Division)	1975	15.22.2012	15.02.2012	

DEPUTY COMMISSIONER
SWABI

Annex. "B"

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 PBS-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 final seniority list of Junior Clerks BPS-07 was placed before the Departmental

Attested to be true Copy Advocate

(7)

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.

Attested to be true Copy, Advocate

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

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 Tanjua ADC Swabi

Khaliq 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

(9)

صدقہ نقل آرڈیننس آف نمبر سنیارٹی لیسٹ بر مقدمہ جناب ڈپٹی کمشنر صاحب ایم ایس

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.

ATTESTED TO BE TRUE COPY
Incharge/Examiner

DEPUTY COMMISSIONER,
SWABI.

OFFICE OF THE DEPUTY COMMISSIONER SWABI.

No. 728 /DC(S)/EA/Misc 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.

DEPUTY COMMISSIONER,
SWABI.

EA/HC
D.C office
Swabi

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true copy

Advocate

Annex-C (10)

نقل حکم از نقل نویس عدالت جناب کمشنر صاحب مردان

18-06-014 16-04-014

COMMISSIONER Mardan Division Mardan

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 D-2

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13-08-014

Advocate

(11)

(2)

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

Commissioner
Mardan Division Mardan

COMMISSIONER Mardan Division Mardan

No. 303 Date of Application 8-9-14
Name of Applicant
Wards SEC Fee SC
Urgent Fee
Sign of Copyist
Date of Preparation 13-08-14

ATTESTED
Examiner/Reader to
Commissioner Court
Mardan Division Mardan
13-08-014

Attested to be true Copy
Advocate

Annx D. (12)

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 filed 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 10and 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)

Attested to be
true copy.
Advocate 17-7-15

(13) (4)

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.

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.

Deputy Commissioner,
Swabi.

Attested to be
true copy.

Advocate

21/09/015

27/07/015

(14)

COMMISSIONER Mardan Division Mardan

IN THE COURT OF COMMISSIONER MARDAN DIVISION, MARDAN.

Muhammad Zahid — Appellant

Versus

Deputy Commissioner/District Collector Swabi etc. — 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

Announced.
21/09/2015

Commissioner
Mardan Division, Mardan
14/10/15

No 567 21/09/015
Date of Application
Name of Applicant
Words 400 Fee
Urgent Fee
Sign of Copyist
Date of Preparation 14/10/015

COMMISSIONER Mardan Division Mardan

Before The Commissioner Mardan Division Mardan

Muhammad Zahid Qasid (BPS-2) office of D.C Swabi
.....Appellant

VERSUS

1. D.C swabi
2. Najub Ul Saqib Naib Qasid .....Respondent

Appeal against the order of respondent No.1 dated 10/07/2015 whereby respondent No.2 is promoted from Naib Qasid)(BPS-7) 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 28/08/1988.

2. That responded No.1 prepared sonority list of Naib Qasid in which appellant name placed at serial No.1 of said seniority list. (Copy of seniority list is attached as Anenx: "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 sevior 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

14/10/015

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.

See Page No. 3

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/Reader to Commissioner Court Mardan Division Mardan

14/10/2015

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

Through

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

No. 567 21/09/015
Date of Application
Name of Applicant
Words 1200 Fee 12
Urgent Fee
Sign of Copyist
Date of Preparation 14/10/015

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

(18) Annex I

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

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. Mumtaz 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
I). 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)

(Mumtaz Ahmad)
Assistant Commissioner
Peshawar
(Member)

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

Attested True Copy
Advocate

(19)

OFFICE OF THE
DEPUTY COMMISSIONER
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

Attested to be
true copy.

Advocate

(20)

5268

پشاور بارایسوسی ایشن، خیبرپختونخواہ

ایڈوکیٹ/دستخط: [illegible]

بارکونسل/بارایسوسی ایشن نمبر: be-11-1916

رابطہ نمبر: 0345-9429198

بعدالت جناب: [illegible] پشاور

دعویٰ: سروس اپیل	منجانب: سائل
علت نمبر:	محمد واحد
مورخہ:	بنام
جرم:	[illegible]
تھانہ:	

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی کارروائی متعلقہ آن مقام کمشنر کیلئے [illegible] کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہرقسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظرثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کارروائی 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 اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وصول 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، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم: 7-11-[illegible]

العبد   گواہ شد   العبد

مقام کمشنر کے لئے منظور ہے

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

DAPP no: 1283/15

BEFORE THE HONORABLE COURT OF REGISTRAR KHYBERPAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Muhammad Zahid *Appeal No.1283/15*

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.*

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.

Reply/ written comments on behalf of Respondent No.1,2,4 & 5.

PRILIMARLY OBJECTIONS.

1. *The appellant has no cause of action/ locus standi to 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 this 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 rejected with special cost.*
8. *Respondent No.1 issued the promotion order after completion of all codal formalities.*

FACTS

1. *Correct. The appellant was appointed as Naib Qasid (BPS-02) vide order dated 28-08-1988.*
2. *Correct. Hence no comments.*
3. *On the recommendation of DPC held on 15-12-2015, the appellant has since been promoted as Junior Clerk (BPS-11) against the 33% reserve quota of class-IV vide order No. 3547/DC(s)/EA dated.31-12-2015 (Copy attached).*
4. *As stated in para No. 3 above.*

5. *Incorrect. No violation of rules/ law has been committed in the appointment/ promotions of Junior Clerk. The process was transparent and merit based.*
6. *Correct to the extent that the appeal was dismissed but on merit.*
7. *Incorrect. The appellant has no cause of action and locus standi to file the instant appeal.*

GROUNDS

A. *Incorrect. Both the orders issued by Respondent No1 and 2are legal, lawful and according to rules.*
B. *Incorrect. No violation has been committed in the entire process of selection/promotion.*
C. *The appellant has been promoted as Junior Clerk (BPS-11) against 33% reserve quota for class-IV employees. He is no more affectee.*
D. *As stated in para-B above.*
E. *No comments.*

In view of the above, facts as the appellant has since been promoted to the post of Junior Clerk (BPS-11), therefore this appeal have no value for trial before the Honorable Tribunal. Hence the instant appeal may kindly be filed please.

19/8/2016

Senior Member
Board of Revenue, Peshawar

Secretary Finance
Khyber Pakhtunkhwa, Peshawar

Commissioner
Mardan Division Mardan

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.

Deponent

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 2362 /ST Dated 31 / 10 / 2017

To

The Deputy Commissioner,
Government of Khyber Pakhtunkhwa,
Swabi.

Subject: - **JUDGMENT IN APPEAL NO. 1283/2015, MR. MUHAMMAD ZAHID.**

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.

BEFORE THE HONOURABLE
KHYBER PAKTHUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/15

Muhammad Zahid _____(Petitioner)

VERSUS

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.

Petitioner

Through

Kaleem Ullah
Advocates High Court,
Peshawar

Dated: 04.07.2017

BEFORE THE HONOURABLE
KHYBER PAKTHUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1283/15

Muhammad Zahid

_____(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 detailer mentioned 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 blue eyed person by infringing valuable and constitutional right of the appellant.

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 promoting the appellant to post of Junior Clerk BPS-11 and now the only remedy sought by appellant against respondents is with regard to seniority, 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 been sheerly 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, is listed

BEFORE THE HONOURABLE
KHYBER PAKTHUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1283/15

Muhammad Zahid

(Petitioner)

VERSUS

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.

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concealed anything from this honourable tribunal and has detailer mentioned 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 blue eyed person by infringing valuable and constitutional right of the appellant.

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 promoting the appellant to post of Junior Clerk BPS-11 and now the only remedy sought by appellant against respondents is with regard to seniority, 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 been sheerly 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, is listed

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 ambiguous, however 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 appellate by promoting respondent No. 3 who is junior to appellant and as per law appellant needs to be promoted ahead of respondent No. 3.

4. Para 4 of the facts of comments are ambiguous, while para 4 of appeal is very much clear and comprehensive.

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 correct 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 ignored statutory rights of the appellant. Furthermore, claim of the appellant has been acknowledged by respondents later on

issuing Office Order No. 3547/DC(S)/EA dated 31.12.2015 Now only grievance of appellant is that junior official had been promoted ahead of appellant which is sheer violation of his statutory rights which need to be rectified and appellant be listed 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.

E. Para E of ground of comments is incorrect, while Para E 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 placed in seniority list ahead of respondent No. 3 and all the back benefits may also be granted in favour of the appellant.

Petitioner

Through

Kaleem Ullah
Advocate 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.

BEFORE THE HONOURABLE
KHYBER PAKTHUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1283/15

Muhammad Zahid

_____(Petitioner)

VERSUS

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 detailer mentioned 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 blue eyed person by infringing valuable and constitutional right of the appellant.

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 promoting the appellant to post of Junior Clerk BPS-11 and now the only remedy sought by appellant against respondents is with regard to seniority, 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 been sheerly 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, is listed

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 ambiguous, however 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 appellate by promoting respondent No. 3 who is junior to appellant and as per law appellant needs to be promoted ahead of respondent No. 3.

4. Para 4 of the facts of comments are ambiguous, while para 4 of appeal is very much clear and comprehensive.

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 correct 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 ignored statutory rights of the appellant. Furthermore, claim of the appellant has been acknowledged by respondents later on

issuing Office Order No. 3547/DC(S)/EA dated 31.12.2015 Now only grievance of appellant is that junior official had been promoted ahead of appellant which is sheer violation of his statutory rights which need to be rectified and appellant be listed 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.

E. Para E of ground of comments is incorrect, while Para E 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 placed in seniority list ahead of respondent No. 3 and all the back benefits may also be granted in favour of the appellant.

Petitioner

Through

Kaleem Ullah
Advocate 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.

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 ambiguous, however 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 appellate by promoting respondent No. 3 who is junior to appellant and as per law appellant needs to be promoted ahead of respondent No. 3.

4. Para 4 of the facts of comments are ambiguous, while para 4 of appeal is very much clear and comprehensive.

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 correct 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 ignored statutory rights of the appellant. Furthermore, claim of the appellant has been acknowledged by respondents later on

issuing Office Order No. 3547/DC(S)/EA dated 31.12.2015 Now only grievance of appellant is that junior official had been promoted ahead of appellant which is sheer violation of his statutory rights which need to be rectified and appellant be listed 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.

E. Para E of ground of comments is incorrect, while Para E 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 placed in seniority list ahead of respondent No. 3 and all the back benefits may also be granted in favour of the appellant.

Petitioner

Through

Kaleem Ullah
Advocate 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.

Application in Service Appeal No. 1283/2015
Muhammad Zahid Vs. Deputy Commissioner, Swabi etc.

17.11.2017 Mr. Kaleem Ullah, Advocate, counsel for the appellant submitted application for correction of name of counsel for the appellant in the judgment dated 26.10.2016 in service appeal No. 1281/2015.

Application is accepted and in the afore mentioned judgment name of the counsel for the appellant may be read and considered as "Kaleem Ullah Advocate" instead of Mr. Munsif Saeed, Advocate. File be consigned to the record room.

CHAIRMAN

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Muhammad Zahid

_____(Appellant)

Put up to the Court with relevant appeal.

VERSUS

Deputy Commissioner Swabi and others

_____(Respondents)

9/11/17

Reader

Application for correction of Clerical Mistake regarding mentioned the name of petitioner's counsel

Respectfully Sheweth,

1) That the above noted appeal was decided by this honourable tribunal vide order and judgment dated 26.10.2017.
2) That learned counsel for the appellant Mr. Kaleem Ullah Advocate argued the instant appeal but inadvertently name of Mr. Munsif Saeed Advocate now Civil Judge was mentioned as counsel for the appellant.
3) That due to the above said reason the name of the appellant's counsel Mr. Kaleem Ullah Advocate may kindly be mentioned in the order and judgment dated 26.10.2017 of this honourable tribunal.

It is, therefore, most humbly requested that on acceptance of instant application, the name of appellant's counsel Mr. Kaleem Ullah Advocate may kindly be inserted in place of Mr. Munsif Saeed Advocate in the above mentioned order of this honourable tribunal.

Appellant

Through

Kaleem Ullah
Advocate High Court,
Peshawar

Dated: 09.11.2017

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUAL, PESHAWAR

Appeal No. 1283/2015

Date of Institution ... 10.11.2015

Date of Decision ... 26.10.2017

Muhammad Zahid (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, ... CHAIRMAN
MR. GUL ZEB KHAN, ... MEMBER

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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 1988. That on 10.07.2015, a promotion order was made and despite his seniority at S.No. 1 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

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. He further argued that now the authority has promoted the appellant to the position of Junior Clerk on 15.12.2015 without improvement in qualification of the appellant.

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 had no knowledge of computer and tying. He further argued that the appeal of the appellant has become infructuous as the appellant has been promoted as Junior Clerk on 15.12.2015.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

CONCLUSION.

5. The arguments 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. So far as the arguments of the learned Deputy District Attorney regarding the appeal becoming infructuous is concerned, the prayer of the appellant is not only for his promotion but seniority as well when he was not promoted at the relevant time. 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. At present he has already been promoted and keeping in views the latest position, this Tribunal accepts the appeal of the appellant to the extent of granting him seniority. His seniority should be reckoned from 10.7.2015 and he should be placed at his due position. Parties are left to bear their own costs. File be consigned to the record room.

Announced
26.10.2017

SD/- Niaz Muhammad Khan,
Chairman

SD/- Gul Zeb Khan,
Member

Certified to be ture copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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