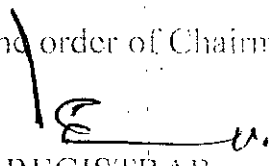


FORM OF ORDER SHEET

Court of _____

Case No. - _____

1044 / 2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	05/05/2023	<p>The appeal of Mr. Zabta Khan presented today by Mr. Javed Iqbal Gulbela Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>12/5/23</u>.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

In S.A No- 1044 /2023

Zabta khan

VERSUS

Govt & Others

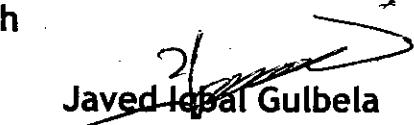
INDEX

S#		Annex	Pages
1.	Service appeal		1-4
2.	Affidavit		5
3.	Copy of retirement documents	"A"	6
5.	Copy of working Paper	"B"	7-8
6.	Copy of letter no So. (INF)4-118/2022/Promotion/Vol-III dated 30-01-2023	"C"	9
7.	Copy of departmental appeal	"D" & D/I	10-11
	Copy of notification of ECP	"E"	12
8.	Wakalat nama		13

Dated: 05/05/2023


Appellant

Through


Javed Iqbal Gulbela
Advocate, Supreme Court
of Pakistan.

Off Add: B-1, Al-Nimrah Centre, Govt College Chowk Peshawar

1)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

In S.A No- _____/2023

Zabta khan, EX Director Information (BPS-19), S/o shakar khan R/o near budni pull charsadda road, house No.1 Street No.1, Mohalla ittefaq town, District Peshawar.

..... Appellant

VERSUS

1. Government of Khyber PakhtunKhwa through Chief Secretary, at Civil Secretariat, Peshawar
2. Secretary information and public relations Department at Civil Secretariat, Peshawar.
3. Secretary Establishment Department at civil secretariat, Peshawar.
4. Director General, Directorate General of information & PRs, Khyber Pakhtunkhwa.
5. Provincial Selection Board through its Secretary.

.....Respondents

APPEAL U/S 4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT -1974 FOR PROMOTION TO THE POST OF DIRECTOR INFORMATION (BPS-19) ON REGULAR BASIS, WHILE NAME OF THE APPELANT HAS BEEN ILLEGALLY IGNORED FOR REGULAR PROMOTION , AND THE DEPARMENTAL APPEAL OF THE APPELANT HAS NOT BEEN RESPONDEND TILL STIPULATED TIME PERIOED

Respectfully Sheweth,

1. That the Appellant is a naturally born bona-fide citizen of Islamic Republic of Pakistan & hails from a respectable family and now retired as Deputy Director Information (personal) (BPS-19) from the office of respondent department, i.e. information and public relation department.
2. That before going to the main epitome of the instant lis, it would be appropriate to mention here that, the Appellant since his appointment i.e. dated 29-05-1993 in the respondents department always remain devoted, dutiful and honest toward his duties and in this way he won appreciation's and honor from his high-ups throughout his career. The appellant served the respondents

2)

department for almost 40 years and retired as Deputy Director Information (BPS-19) on dated 09-02-2023 after attaining the age of superannuation. (Copy of retirement documents is annexed as annexure 'A')

3. That now coming again to the main scenario of the instant case, before retirement till now three (3) post including two director information (BPS-19) and one of Press registrar (BPS-19) were lying vacant in the Directorate General information & Public relations, while the appellant is at the peak of his seniority amongst his colleagues.
4. That the appellant being eligible for regular promotion from all quarters, the administrative department (Information & PRs) via letter no So.(INF)4-118/2022/Promotion/Vol-III dated 30-01-2023 forwarded the case of the appellant for regular promotion in BPS-19 with the plea to considered the promotion matter on circulation basis in case of Provincial selection Board is delayed. (Copy of working paper and letter no So.(INF)4-118/2022/Promotion/Vol-III dated 30-01-2023 is annexed as annexure "B & C ")
5. That after the request of the information and Public relation department, the Provincial selection Board (Establishment department) processed the promotion case of the appellant on circulation basis and took signature from all concerned authority.
6. That after going through from the mandatory formalities and process, the case of the appellant went for approval to competent authority but unfortunately here deuce fate of the appellant prevailed and the genuine case of the appellant was returned on the ground that the election commission of Pakistan vide its notification dated 22-01-2023 has barred the caretaker provincial government from making promotions or major appointments.
7. That this also important to note that the promotion case of the appellant on regular basis is only meant for pensionary benefits and will have no impact on the conduction of free, fair and transparent election in the province.
8. That after exhausted from the supra mentioned staged drama, the appellant preferred departmental appeal to respondent department including chief secretary but here again deuce fate of the appellant prevailed and the departmental representation went futile. (Copy of departmental appeal is annexed as annexure "D")
9. That now after frustrated from every angle the appellant approaches to this hon,ble tribunal for acknowledgment ,recognition and enforcement of his basic rights , upon the following grounds inter alia.

3)

GROUNDS:

- A. That from every angle the appellant has a right to be promote on regular basis to BPS-19 from the date of his personal up gradation i.e 01-03-2018.
- B. That it is a cherished principle of law, that where a law requires a thing to be done in a particular manner, then the same is be done in that manner and not otherwise.
- C. That the policy of the government can safely be interpreted and stretched to bring in its ambit the case of the Appellant.
- D. That from every angle promotion case of the appellant on regular basis is only meant for pensionary benefits and will have no impact on the conduction of free, fair and transparent election in the province.
- E. That from all prospective the illegal act by the respondents are the result of colorful exercise of discretionary powers vested in the Respondents, because of which, the Appellant has been made an escape goat and has been victimized for raising his voice against the illegalities of concern authority.
- F. That after crystal clear notification of election commission of Pakistan wherein the said notification states that "Therefore the election commission of Pakistan was approached for necessary guidanceas to weather meeting of of Provincial Selction Board / Deartmental Promotion Committee can be held otherwise to consider the promotion cases of the officer/officials who are otherwise e;igible for promotion. The commission vide its letter bearing No.F.10(1)2023-Elec-II dated 11-03-2023 has conveyed that the Hon'ble Commission has pleased to accede to the request made by the provincial Government" inspite of that direction the respondents are adamant to give regular promotion to the appellant which is his fundamental right and also guaranteed by Constitution of Islamic republic of Pakistan. (Copy of notification of ECP is annexed as Annexure "E")
- G. That mandate and command of article 4 of the constitution of Islamic republic of Pakistan 1973 is that every citizen has a inalienable right of equal protection of law and to be treated in accordance with law but here what the respondents has done is absolutely against the mandate of article 4.

47
H. That article 25 of the constitution of Islamic republic of Pakistan guaranteed that all citizens are equal before the law and there is no discrimination in between citizens but, in case of appellant the respondent discriminatorily treated the appellant and deprived him from the fruit of promotion. Which is not warranted under the law of land

I. That any other ground not raised here may graciously be allowed to be raised at the time of arguments.

It is therefore, most humbly prayed that on acceptance of the instant appeal, the respondents may kindly be directed to issue regular promotion order of the appellant as director information and public relations department on regular basis w.e.f 01-03-2018 with all back benefits.

Any other relief not specifically asked for may also graciously be extended in favor of the Appellant in circumstances of the case.

Dated: 05/05/2021


Appellant

Through

Javed Iqbal Gulbela
Advocate, Supreme Court
of Pakistan

Saghir Iqbal Gulbela

&

Hamza Durrani
Advocates, High Court
Peshawar

NOTE: -

As per information of my client, no such like appeal for the same Appellant, upon the same subject matter have earlier been filed, prior to the instant one.


Advocate.

5)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR

In S.A No- _____/2023

Zabta khan

VERSUS

Government of K.P.K & Others

AFFIDAVIT

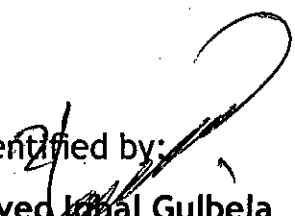
I, Zabta khan, EX Director Information S/o shaker khan , do hereby solemnly affirm and declare on oath that the contents of the instant Service Appeal is correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT

CNIC:13101-1010074-7

CELL: 0313-9908648

Identified by:


Javed Iqbal Gulbela
Advocate, Supreme Court of
Pakistan





Annex "A" 6)
GOVERNMENT OF KHYBER PAKHTUNKHWA
INFORMATION & PUBLIC RELATIONS
DEPARTMENT
091-9223527

No. SO.Estt: (INF)1-18/2022/PF
Dated Peshawar the 1st December, 2022

NOTIFICATION

No. SO.Estt: (INF)1-18/2022/PF:

In terms of Section- 13(1) (ii) of the Government Khyber Pakhtunkhwa Civil Servant Act 1973, Mr. Zabita Khan, Deputy Director Information (BS-19 Personal), Directorate General Information and Public Relations, Khyber Pakhtunkhwa, shall stand retired from Govt. Service on 08.02.2023 on attaining the age of superannuation.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
INFORMATION & PRs DEPARTMENT

Copy of the above is forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Directorate General Information & PRs, Khyber Pakhtunkhwa, Peshawar.
3. P.S to Secretary Information & PRs Khyber Pakhtunkhwa.
4. Mr. Zabita Khan, Deputy Director Information, DG IPRs, Khyber Pakhtunkhwa.
5. Personal File of the officer concerned.
6. Master File

Section Officer (Establishment)

JAVED JOBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)

Annex "B"

WORKING PAPER FOR PROVINCIAL SELECTION - BOARD

DEPARTMENT

INFORMATION

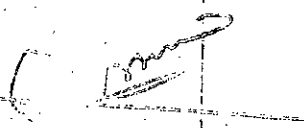
- 1. Nomenclature of the post / Basic scale Director Information / Press Registrar (BPS-19)
- 2. Service/Group/Cadre Provincial Cadre / Information
- 3. Sanctioned strength of the cadre 04

		Direct	Promotion	Transfer
i.	Percentage of share	-	100%	-
ii.	No. of posts allocated to each category	-	04	-
iii.	Present occupancy position	-	01	-
iv.	No. of vacancies in each category	-	03	-

JAVED IQBAL GULBELA
 Advocate
 Supreme Court of Pakistan
 (ASC # 5317)

- v. How did the vacancies under promotion quota occurred and since when? There are 04 sanctioned posts (Annex-A) of Director Information (BPS-19) / Press Registrar (BPS-19) out of which 03 posts are lying vacant due to Retirement of Mr. Gul Karim, Mr. Ata ul Haq and Mr. Sibghatullah (Annex-B)
- vi. Recruitment rules By promotion on the basis of seniority-cum-fitness, from amongst holder of the post of the Deputy Directors Information, Public Relations Officers to Governor and Station Directors (BS-18) with twelve years service in BPS-17 and above. (Annex-C)
- vii. Required length of service Twelve years in BPS-17 & above; as per service rules
- viii. Whether to be promoted on regular basis or appointed on acting charge basis? Regular basis
- ix. Minimum required score on Efficiency index Sixty (60)

Signatures:



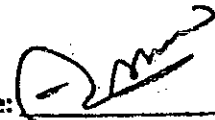
7

Annex B

PANEL OF DEPUTY DIRECTORS INFORMATION, PUBLIC RELATIONS OFFICERS TO GOVERNOR AND STATION DIRECTORS (BS-18) (BPS-19) PERSONAL FILE FOR CONSIDERATION													
Sr No.	Seniority	Name of Officer with qualification	Date of Birth	Date of 1 st Entry into Govt. Service	Date of Appointments / Promotion to BS-17	Date of regular appointment/promotion to the present scale	Whether fulfilled the prescribed length of service	Quantified score	Missing PERS (if any)	Disciplinary proceedings (if any)	Case (if any) in any court of law including NAB/Plea bargaining with NAB	Mandatory training for promotion	Remarks
1	1	Mr. Salim Khan	10-05-1965	29-05-1993	29-05-1993	15-03-2021	Yes	58.61	No	No	No	Nil	Eligible
2	3	Mr. Mubashir Rahim Malik	20-12-1963	29-05-1993	29-05-1993	15-03-2021	Yes	59.32	No	No	No	Nil	Eligible
3	5	Mr. Zabita Khan	09-02-1963	01-10-1987	29-05-1993	15-03-2021	Yes	58.07	No	No	No	Nil	Eligible

- Certified that the officers at S.No 2 & 4 of the Seniority list have already been retired.
- Certified that the officer included in the panel are eligible for promotion in all respects.
- Certified that no disciplinary action/proceedings or criminal charges in any court of law are pending against any of the officers including in the panel.

JAVED IQBAL GULBELA
 Advocate
 Supreme Court of Pakistan
 (ASC # 5317)

Signature: 
 Designation: Secretary Information & PRs,
 Govt. of Khyber Pakhtunkhwa
 Dated: _____



Annex "C" 9)

GOVERNMENT OF KHYBER PAKHTUNKHWA
INFORMATION, PUBLIC RELATIONS
DEPARTMENT,

No. SO (INF)4-118/2022/Promotion/Vol-III
Dated Peshawar the 30th January, 2023

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department

Attention: Section Officer (PSB)

Subject:- PROMOTION OF OFFICERS OF INFORMATION DEPARTMENT FROM
BS-18 TO BS.19

Dear Sir,

I am directed to refer to Establishment Department letter No: SO(PSB) ED/1-11/2022/ P-30 Dated 24/01/2023 on the subject noted above and to state that the requisite documents are attached for further necessary action at your end.

I am further directed to state that Mr. Zabita Khan, Deputy Director Information (BS-19 Personal) is although in the promotion zone, however, he is going to be retired from service on 08-02-2023. It is therefore, requested that in case of delaying PSB meeting the officer at S# 5 i.e Mr. Zabita Khan, Deputy Director Information (BS-19 Personal) may be considered for promotion on circulation basis, please.

Yours faithfully


Section Officer (Estt:)

Copy of the above is forwarded to:-

- 1) PS to Secretary Information, PRs Department.
- 2) PS to Director General Information & PRs Khyber Pakhtunkhwa.
- 3) Master file.


Section Officer (Estt:)

JAVED TOBAL GULBELA
Advocate
Bar Council of Pakistan
(BSC P 5317)

Annex "D" 10)

To

The Director General,
Directorate General of Information & PRs,
Khyber Pakhtunkhwa

Subject: **REQUEST FOR PROMOTION ON CIRCULATION BASIS**

Dear Sir,

It is stated that I am going to retire on 09-02-2023 and I would miss the next meeting of provincial selection committee (PSB). Presently I am working as a Director Information BPS-19 (Personal).

It is, therefore, requested that my case may kindly be forwarded to the quarters concerned for consideration my promotion to (BPS-19, regular) on the basis of circulation and oblige.

Yours sincerely

(Zabita Khan)

Director Information,
(BPS-19, Personal)

DGIPRs, KP

Dated: 18-01-2023

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASS# 5317)

Subject: - APPEAL FOR PROMOTION AGAINST THE POST OF DIRECTOR INFORMATION (BS-19) ON REGULAR BASIS VIA CIRCULATION

R/Sir,

With due reverence it is stated that I retired from Government service on February 09, 2023 after attaining the age of superannuation i.e. 60 years (Annex-I). Before retirement, the undersigned pleaded for regular promotion in BPS-19 as three (3) posts including two of Director Information (BS-19) and one of Press Registrar (BS-19) were lying vacant in the Directorate General Information & Public Relations, Khyber Pakhtunkhwa (Annex-II). The said posts are still lying vacant. The Administrative Department (Information & PRs) via letter No. SO (MIS)-118/2022/Promotion/Vol-III dated January 30, 2023 forwarded my case for regular promotion in BPS-19 with the plea to consider my promotion on circulation basis in case the PSB meeting is delayed (Annex-III).

Yielding to the request of the Information & PRs Department, the PSB Section (Establishment Department) processed the promotion case of the undersigned on circulation basis and took signatures from all concerned members. However, before forwarding my promotion case to the Competent Authority for approval, a caretaker government came into power in the province and the Establishment Department retained my case on the ground that the Election Commission of Pakistan vide its notification dated 22-01-2023 has barred the Government Provincial Government from making promotions or major appointments under Section-230 of the Election Act, 2017 (Annex-IV). This treatment has deprived me of my own right of promotion in BS-19 on regular basis.

It merits a mention here that my promotion in BS-19 on regular basis is only meant for pensionary benefits and will have no impact on the conduction of free, fair and transparent elections in the province.

It is, therefore, requested that my promotion case, being a rightful and genuine one, may be re-considered on compassionate grounds and I be given promotion against the vacant post of Director Information (BS-19) to meet the ends of justice, please.

Encl: AA

Contact No. 03139900648

Email: zohbatamehmand@gmail.com

Yours faithfully

[Handwritten signature]
27/1/23
(ZABITA KHAN)

Ex-Deputy Director Information (BS-19 Personal)

JAVED IQBAL GULBELA
Advocate
Supreme Court of Pakistan
(ASC # 5317)



Annex "E" 10)
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(REGULATION WING)

No. SO(Policy)/E&AD/2-3/General
Dated Peshawar, the April 04, 2023

To

1. The Additional Chief Secretary, P&D Department.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
4. All Divisional Commissioners in Khyber Pakhtunkhwa.
5. All Deputy Commissioners in Khyber Pakhtunkhwa.
6. All Heads of Attached Departments.
7. All Heads of Autonomous/Semi-Autonomous Bodies in Khyber Pakhtunkhwa.
8. The Registrar, Peshawar High Court, Peshawar.
9. The Registrar, Khyber Pakhtunkhwa Services Tribunal.
10. The Secretary, Khyber Pakhtunkhwa Public Service Commission.

Subject: - INSTRUCTIONS REGARDING PROCESSING OF PROMOTION CASES AND HOLDING OF THE MEETINGS OF DEPARTMENTAL PROMOTION COMMITTEE/ PROVINCIAL SELECTION BOARD.

Dear Sir,

I am directed to refer to the subject noted above and to state that section 230(2) of the Election Act, 2017 provides, inter alia, that Caretaker Government shall not make promotion or major appointments of public officials but may make acting or short term appointments in the public interest. Therefore the Election Commission of Pakistan was approached for necessary guidance as to whether meetings of PSB/DPC can be held or otherwise to consider promotion cases of the officers/officials who are otherwise eligible for promotion. The Commission vide its letter bearing No. F.10(1)/2023-Elec-II dated 11.03.2023 (copy enclosed) has conveyed that the Honorable Commission has been pleased to accede to the request made by the Provincial Government.

2. I am therefore, directed that all the Provincial Government Departments may process the cases accordingly.

Yours faithfully,


Issa Muhammad Khan
Section Officer (Policy)

Enclosed As Above.

Copy forwarded to the:

1. PS to Secretary Establishment Department.
2. PS to Special Secretary (Regulation), Establishment Department.
3. PA to Additional Secretary (Reg-II), Establishment Department.
4. PA to Deputy Secretary (Policy), Establishment Department.


JAVED IQBAL GULE Section Officer (Policy)

Advocate
Supreme Court of Pakistan
(ASC 15317)

وکالت نامہ

بعدالت: صہ۔ سرس مرزوی
 صاحب خاصہ نام: صہ ملک
 منجانب: رسالت دعویٰ سرس مرزوی
 تاریخ: 5-5-2023

باعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی وجوابدی۔

بمقام: کیلے جاویدا قبال گل بیلہ ایڈوکیٹ سپریم کورٹ آف پاکستان

کو بدیں شرط وکیل مقرر کیا ہے۔ کہ میں ہر پیشی کا کوڈ یا بزرگیہ مختار خاص رو بروعدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر دالت کرونگا، اگر پیشی پر من مظهر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کی کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کوکل پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب کو عرضی دعویٰ و جواب دعویٰ اور درخواست جرائے ڈگری و نظر ثانی اپیل و گرانہ ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپروٹاشی و راضی نامہ فیصلہ پر خلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یا کطرفہ درخواست حکم انتہائی یا قرتی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادائیگی علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزوی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا بیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر دی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کرونگا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ دیا کہ سندر ہے۔

مورخہ: 22-22-22 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

Accepted by