

BEFORE THE SERVICE TRIBUNAL ,KHYBER PAKHTUNKHWA
SERVICE APPEAL NO. 97 /2023

Mr. Asad Ali Shah, Assistant Treasury Officer (BPS-17) in Siran Right Bank Canal
Project Irrigation Department Mansehra.

..... (APPELLANT)

VERSUS

1. The Provincial Govt: through Chief Secretary, KP, Peshawar.
2. The Chief Secretary Govt of KP, Peshawar.
3. The Secretary Establishment, KP, Peshawar.
4. The Finance Secretary KP, Peshawar.
5. The Director Treasuries & Accounts, KP Peshawar.
6. The Chairman SSRC, KP Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5438

Dated 19/5/2023

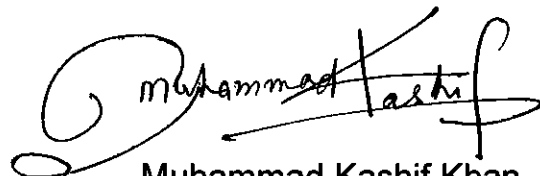
..... (RESPONDENTS)

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 5.

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Deponent



Muhammad Kashif Khan,
Assistant Director IT (BPS-17),
Directorate of Treasuries & Accounts,
Khyber Pakhtunkhwa.
CNIC No: 13503-7466034-3

Dated:

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No 97 /2023

Mr. Asad Ali Shah, Assistant Treasury Officer (BPS-17) in Siran Right Bank Canal Project Irrigation Department Mansehra.

.....(Appellants)

VERSUS

- 1. The Provincial Govt: through Chief Secretary KP, Peshawar.
- 2. The Chief Secretary, Govt: KP, Peshawar.
- 3. The Secretary Establishment KP, Peshawar.
- 4. The Finance Secretary KP, Peshawar.
- 5. The Director, Treasuries and Accounts, KP Peshawar.
- 6. The Chairman SSRC, KP Peshawar.

.....(Respondents)

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 5.

RESPECTFULLY SHEWETH

- 1. That without prejudice to the following, the appeal is bad, both in form as well as in substance.
- 2. That the appeal is not at all maintainable in its present form.
- 3. That the appellant neither has any locus standi nor a cause of action to approach this Honorable Tribunal.
- 4. That the appeal is against the law and rules.
- 5. That the appellant has twisted and banded the true picture of the matter from this honorable Tribunal.
- 6. That the appeal is bad for mis-joinder and non-joinder of necessary parties.
- 7. That the appeal is barred by law and limitation.

FACTS

- 1. Pertains to record.
- 2. Pertains to record, however, the judgement of the honorable Service Tribunal is implemented in letter & spirit.
- 3. Pertains to record, however, as per Section-9 (6) of the Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989, Acting Charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis. Moreover, as per Section-17 (1) (b) of the rules ibid, in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to higher post, retain their inter se seniority as in the lower post. **(Annexure-I)**
- 4. Pertains to record. However, as per Para-VI of Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, promotion will always be notified with immediate effect. **(Annexure-II)**
- 5. Pertains to record. However, the judgement of the honorable courts are about a specific cadre, belonging to the Establishment Department, having separate cadre, structure, service rules, job descriptions etc. and having no relevancy with the appellants' cadre.
- 6. Pertains to record. However, the notification under reference has been issued by relevant authority under distinguishable facts and features which are totally different from the appellants' cadre.

- 7. Pertains to record.
- 8. Incorrect.

Grounds:

- A. Incorrect. The appellant has been treated as per rules and norms of justice as already stated in Para-3 & 4 of the facts above.
- B. Incorrect. As per Section-9 (6) of the Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989, Acting Charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis. Moreover, as per Para-VI of Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, promotion will always be notified with immediate effect.
- C. As per Para-5 of the facts above.
- D. Pertains to record.
- E. Pertains to record.
- F. Pertains to record.
- G. Incorrect. The cadre service rules have been in field since 1981 and amendments have also been made from time to time. Lastly, amendments were made and notified on 10.08.2018 where upon, if the appellants felt aggrieved, he/they may have represented/appealed against it at the time within 30 days as per Khyber Pakhtunkhwa Civil Servants (Appeal) Rules, 1986 but now the same is badly time barred. As far as rules of Controller General of Accounts are concerned, it is a Federal Government department, having concern with the service structure of the appellants' cadre.
- H. Incorrect. Service Rules of the department are rational as no any representation/appeals have been received from any affectee.
- I. Incorrect. The appellant has been treated as per rules/policy.
- J. Incorrect. The appellant has been treated as per rules/policy and no any discrimination has been done to him. Moreover, no such ante-dated benefits are extended to any of his colleague in the appellant's cadre.
- K. That the respondent seeks permission to advance further documents & proofs at the time of hearing.

It is, therefore, respectfully prayed for that the appeal, being devoid of merit and legal force, may kindly be dismissed with cost.

The Chief Secretary,
Govt: of Khyber Pakhtunkhwa
(RESPONDENT No.1&2)

Secretary Establishment,
Govt: of Khyber Pakhtunkhwa
(RESPONDENT NO. 3)

Secretary Finance,
Govt: of Khyber Pakhtunkhwa
(RESPONDENT NO. 4)
Govt: of Khyber Pakhtunkhwa
Finance Deptt:

Director Treasuries and Accounts
Khyber Pakhtunkhwa
(RESPONDENT NO. 5)



ESTA CODE

**ESTABLISHMENT CODE KHYBER PAKHTUNKHWA
(REVISED EDITION) 2011**

**A COMPENDIUM OF LAWS, RULES AND INSTRUCTIONS
RELATING TO THE TERMS AND CONDITIONS
OF PROVINCIAL CIVIL SERVANTS**

*Amir ul
Gulab*

Amir ul Director
Treasuries & Accounts
Government of Khyber Pakhtunkhwa
Peshawar

**COMPILED BY;
(O&M) SECTION
ESTABLISHMENT & ADMINISTRATION DEPARTMENT**



0997-310413

Statutory provision regarding Appointment.

Section 5 of Civil Servants Act, 1973 - Appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorised by the Governor in that behalf.

**THE NORTH-WEST FRONTIER PROVINCE
CIVIL SERVANTS (APPOINTMENT, PROMOTION &
TRANSFER) RULES, 1989.**

**PART-I
GENERAL**

1. **Short title and commencement:** - (1) These rules may be called the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

(2) They shall come into force at once.

2. **Definitions:**-(1) In these rules, unless the context otherwise requires:-

(a) "Appointing Authority" in relation to a post, means the persons authorized under rule 4 to make appointment to that post;

(b) "Basic Pay Scale" means the Basic Pay Scale for the time being sanctioned by Government, in which a post or a group of posts is placed;

(c) "Commission" means the North West Frontier Province Public Service Commission;

²⁹(d) "Departmental Promotion Committee" means a committee constituted for making selection for promotion or transfer to such posts under a Department, or offices of Government, which do not fall within the purview of the Provincial Selection Board;

³⁰(dd)"Departmental Selection Board" means a Board constituted for the purpose of making selection for initial recruitment /appointment to posts under a Department or office of Government in Basic Pay Scale 17 not falling within the purview of the Commission:

Provided that more than one such committees may be constituted for civil servants holding different scales of pay".

(e) "Departmental Selection Committee" means a committee constituted for the purpose of making selection for initial appointment to posts under a department, or office of Government [in Basic Pay Scale 17 and below not falling within the purview of the Commission];

(f) "Post" means a post sanctioned in connection with the affairs of the Province, but not allocated to all Pakistan Unified Grades ; and

³¹(g) "Provincial Selection Board" means the Board constituted by Government for the purpose of selection of civil servants for promotion or transfer to posts in respect

²⁹ Substituted by Clause (d) of sub-rule (1) of Rule 2 vide Notification No. SOR-I (S&GAD) 4-1/80 (Vol-II) dated 14-01-92.

³⁰ Clause (dd) added by Notification No. SOR-III (S&GAD) 2-7/86, dated 8-12-1994

³¹ Clause (g) substituted by Notification No. SOR-I(S&GAD) 4-1/80/II, dated 14-01-1992.

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whereof the appointing authority under rule 4 is the Chief Minister and shall consist of such persons as may be appointed to it by Government from time to time.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P act XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. **Method of Appointment:-** (1) Appointment to posts shall be made by any of the following methods, namely:-

- (a) by promotion or transfer in accordance with the provisions contained in Part-II of these rules; and
- (b) by initial recruitment in accordance with the provisions contained in Part-III of these rules.

(2) The method of appointment, qualifications and other conditions applicable to a post shall be such as laid down by the Department concerned in consultation with the Services and General Administration Department and the Finance Department.

4. **Appointing Authority:-** The authorities competent to make appointment to posts in various basic pay scales shall be as follows:-

S.No. !	Posts !	Appointing Authority
321.	(a) Posts in Basic Pay Scale 18 and above including posts in Basic Pay Scale 17 borne on any of the following services;	Chief Minister
	(i) Former Provincial Civil Service (Executive Branch);	
	(ii) Former Provincial Civil Service (Judicial Branch); and	
	(iii) Provincial Civil Secretariat Service.	
	(b) Posts in Basic Pay Scale 17 other than those covered by (a) above.	Chief Secretary
2.	Posts in Basic Pay Scale 16.	(a) In the case of Secretariat of the Government of NWFP, the Chief Secretary.
		(b) In case of High Court, the Chief Justice; and
		(c) In the case of Attached Department;

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(i) the Head of Attached Department concerned; and

(ii) In any other case the Secretary of the Department concerned.

3. Posts in Basic Pay Scales ^{6 to 15} 3 to 15.

(a) In the case of civil Servants borne on ministerial establishment of Civil Courts subordinate to High Court, the officer authorized as such by the Chief Justice; and

(b) In other cases

(i) an officer declared under the relevant Delegation of Powers Rules, which shall to this extent be deemed as operative; or

(ii) Where no such appointing authority has been declared, the Secretary to Government or the Head of an Attached Department/ Office, as the case may be.

4. Posts in Basic Pay Scale ^{3 and 5} 1 and 2.

Deputy Secretary incharge of Administration or office, as the case may be.

5. ³³Departmental Promotion & Selection Committee/Board - (1) In each Department or office of Government there shall be one or more Departmental Promotion Committee and Departmental Selection Committee ³⁴(or, as the case may be, Departmental Selection Board), the composition of which shall be determined by the Services and General Administration Department or the Department in consultation with the Services and General Administration Department.

(2) Each such Committee (or the Board, as the case may be), shall consist of at least three members, one of whom shall be appointed as Chairman.

³⁵6. Procedure when recommendation is not accepted:- When an appointing authority for Basic Pay Scale 17 or below does not accept the recommendation of a Departmental Promotion or Selection Committee, or the Departmental Selection Board, as the case may be, it shall record its reasons and obtain order of the next higher authority.

Amir Ahmad
L. Fullah
Amir Ahmad Director
Treasuries & Accounts
Khyber Pakhtunkhwa
Peshawar

³³ The heading of rule 5 substituted by Notification No. SOR-I(S&GAD)2-7/86, dated 8-12-1994.
³⁴ The words inserted by Notification No. SOR-III(S&GAD)2-7/86, dated 8-12-1994
³⁵ Rule-6 substituted by Notification No. SOR-III(S&GAD)2-7/86, dated 8-12-1994

PART-II

APPOINTMENT BY PROMOTION OR TRANSFER

7. **Appointment by Promotion or Transfer.** ³⁶(1) Except as otherwise provided in any service rules for the time being in force, appointment by promotion or transfer to posts in respect whereof the appointing authority under rule 4 is the Chief Minister shall ordinarily be made on the recommendation of the Provincial Selection Board and promotion and transfer to posts other than those falling within the purview of the Provincial Selection Board shall ordinarily be made on the recommendation of appropriate Departmental Promotion Committee".

(2) Appointment by transfer shall be made from amongst the persons holding appointment on regular basis in the same basic pay scale, in which the posts to be filled, exist.

(3) Persons possessing such qualifications and fulfilling such conditions as laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or the Provincial Selection Board for promotion or transfer, as the case may be.

(4) No promotion on regular basis shall be made to posts in Basic Pay Scale 18 to 21 unless the officer concerned has completed such minimum length of service as may be specified from time to time.

8. **Inter-Provincial Transfer:-**(1) Persons holding appointment in BPS 1 to 15 under Federal Government and other Provincial Government may, in deserving cases, be transferred to equivalent posts under these rules:-

Provided that:-

- (i) the Federal Government or the Government of the Province concerned, as the case may be, has no objection to such a transfer;
- (ii) the person seeking transfer possesses the requisite qualification and experience and the post to which his transfer is intended can, under the rules, be filled by transfer;
- (iii) the person concerned holds appointment to the post in his parent Department on regular basis;
- (iv) the person concerned is a bona fide resident of the North-West Frontier Province.
- (v) a vacancy exists to accommodate the request for such a transfer; and:
- (vi) Provided further that in most deserving cases, the merit of which shall be determined on case to case basis and the decision of the Competent Authority in that behalf shall be final, Government may allow transfer of a civil servant in BPS-16 and above, subject to the aforesaid conditions.

(2) A person so transferred shall be placed at the bottom of the cadre strength which he joins for the purpose of determining his seniority vis-à-vis other members borne on the cadre.

³⁶ Sub rule (1) substituted by Notification No. SOR-I(S&GAD)4-1/80/11, dated 14-01-1992.

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(3) It will be the sole discretion of the appointing authority to accept or refuse a request for transfer under this rule and any decision made in this behalf shall be final and shall not be quoted as precedence in any other case.

9. **Appointment on Acting Charge or current Charge Basis.** (1) Where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service the authority may appoint him to that post on acting charge basis;

³⁷Provided that no such appointment shall be made, if the prescribed length of service is short by more than ³⁸[three years].

(2) So long as a civil servant holds the acting charge appointment, a civil servant junior to him shall not be considered for regular promotion but may be appointed on acting charge basis to a higher post.

(3) In the case of a post in Basic Pay Scale 17 and above, reserved under the rules to be filled in by initial recruitment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

(6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

PART-III

INITIAL APPOINTMENT

10. **Appointment by Initial Recruitment :-**(1) Initial appointment to posts ³⁹[in various basic pay scales] shall be made-

- (a) if the post falls within the purview of the Commission, on the basis of Examination or test to be conducted by the Commission; or

³⁷ Full stop at the end of Rule 9 (1) replaced with colon and proviso added by Notification No. SOR-I (S&GAD)4-1/80/Vol-II, dated 20-10-1993.

³⁸ The words one year substituted by Notification No. SOR-I(S&GAD)4-1/80/III, dated 14.3.96.

³⁹ The words in basic pay scale-16 to 21 substituted by Notification No. SOR-I(S&GAD)1-117/91 (C), dated 12-10-1993.

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(b) if the post does not fall within the purview of the Commission, in the manner as may be determined by Government.

⁴⁰(2) Initial recruitment to posts which do not fall within the purview of the Commission shall be made on the recommendation of the Departmental Selection Committee, after vacancies have been advertised in newspapers.

⁴¹Provided that nothing contained in this sub-rule shall apply to the household staff of the Chief Minister House Peshawar, Frontier House Islamabad, Frontier Rest Houses Bannu, Swat and Abbottabad, Frontier House Nathia Galli and Shahi Mehman Khana, Peshawar and any other House to be established by the Government:

⁴²Provided further that the appointment in Basic Pay Scale-^{3 to 5} (1 to 4) shall be made on the recommendations of the Departmental Selection Committee through the District Employment Exchange concerned, ⁴³[or, where in a District, the office of the Employment Exchange does not exist, after advertising the posts in the leading newspapers] ⁴⁴[]

(3) A candidate for initial appointment to a post must possess the educational qualification or technical qualifications and experience and except as provided in the rules framed for the purpose of relaxation of age limit, must be within the age limit as laid down for the post, provided that-

- (i) ⁴⁵where recruitment is to be made on the basis of written examination, then, notwithstanding anything to the contrary contained in any other rules for the time being in force, age shall be reckoned on 1st January of the year in which the examination is proposed to be held;
- (ii) in other cases as on the last date fixed for submission of applications for appointment.

⁴⁶(4) Where a civil servant dies during service, then notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant, or if the child has not attained the age prescribed for appointment in Government service, the widow of such civil servant, to a post in any of the Basic Pay Scales 1 to 15; 1 to 10 3 to 11 in provi. Code posts at BPS 3 to 12 in 2008-09.

Provided that the child or the widow, as the case may be, possesses the minimum qualification prescribed for appointment to the post:

Provided further that if there are two widows of the deceased civil servant, preference shall be given to the elder widow:

Provided also that the appointment under this sub-rule is subject to availability of a vacancy and if more than one vacancies in different pay scales is available at a time, and the child or the widow, as the case may be, possesses the qualifications making him or her

Substituted vide No. SO R-VI (E&AD) 1-3/2011 dt 31-8-2012
Substituted vide No. SO (R-VI) E-AD/1-3/2015 dt 19-4-16.

⁴⁰ Sub rule (2) of Rule-10 substituted by Notification No. SOR-I(S&GAD) 1-117/91 (C), dated 12-10-1993.
⁴¹ Proviso added vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 03-07-2003.
⁴² Proviso added vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 16-03-2004
⁴³ Sentence added in the Proviso vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 23-01-2006.
⁴⁴ 2nd Proviso in sub- rule (2) of Rule 10 was deleted vide Notification No. SOR-VI(E&AD)1-3/2008 dated 09-05-2008 and added again vide Notification No. SOR-VI(E&AD)1-3/2008 dated 03-11-2008.
⁴⁵ Clause (i) substituted vide Notification No. SOR-I(S&GAD)4-1/80, dated 17-5-1989.
⁴⁶ Sub rule (4) substituted vide Notification No. SOR-VI (E&AD)1-3/03/II, dated 05-09-2006.

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eligible for appointment in more than one post, he/she shall ordinarily be appointed to the post carrying higher pay scale.

⁴⁷(5) Notwithstanding anything contained in any rule for the time being in force, two percent of all posts in each basic pay scale to be filled in by initial recruitment shall be reserved for disabled candidates and ten percent of all posts meant for initial recruitment shall be reserved for female candidates:

Explanation-I---For the purpose of reservation under this sub-rule "disability" does not include such disability which hampers in the smooth performance of the duties required of a disabled candidate.

Explanation-II---Ten per cent quota reserved above shall be in addition to the posts exclusively reserved for female candidates.

⁴⁸(6) Notwithstanding anything contained in any rule for the time being in force, five per cent of all posts in each basic pay scale to be filled in by initial recruitment shall be reserved for candidates hailing from earthquake affected areas of District Mansehra, Battagram, Shangla, Kohistan and Abbottabad (Calamity hit area) for a period of three years commencing from 1st February, 2006.

⁴⁹(7) Notwithstanding anything contained in any rule for the time being in force, 0.5 percent of all the posts in each basic pay scale to be filled in by initial recruitment shall be reserved for candidates belonging to minorities in addition to their participation in the open merit:

Provided that, the reservation shall not apply to—

- (i) the percentage of vacancies reserved for recruitment on merit;
- (ii) short term vacancies likely to last for less than one year; and
- (iii) isolated posts in which vacancies occur only occasionally.

11. **Eligibility.** (1) A candidate for appointment shall be a citizen of Pakistan and bona fide resident of the North-West Frontier Province.

Provided that for reasons to be recorded in writing, Government may, in a particular case, relax this restriction.

⁵⁰[(2)]

(3) No person, not already in Government service, shall be appointed to a post unless he produces a certificate of character from the principal, academic officer of the academic institution last attended and also certificates of character from two responsible persons, not being his relatives, who are well acquainted with his character and antecedents.

(4) Notwithstanding anything contained in sub-rule (3), an appointment by initial recruitment shall be subject to the verification of character and antecedents of the candidate or the person appointed, to the satisfaction of appointing authority.

⁴⁷ Sub rule (5) substituted vide Notification No. SOR-VI (E&AD)1-10/03 (VI), dated 04-12-2007.

⁴⁸ Sub rule (6) inserted vide Notification No. SOR-VI(E&AD)1-3/03 (VI), dated 01-02-2006

⁴⁹ Sub rule (7) added vide Notification No. SOR-VI(E&AD)1-3/08, dated 06-01-2009

⁵⁰ Sub rule (2) of rule-11 deleted vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-06-2008

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(5) No candidate shall be appointed to a post unless he is found, after such medical examination as Government may prescribe, to be in good mental and bodily health and free from physical defect likely to interfere in the efficient discharge of his duties.

12/ Zonal and Divisional representation: - (1) Except as otherwise specifically provided in any rule for the time being in force, initial recruitment to posts in Basic Pay Scales 16 and 17 and other posts in Basic Pay Scales 3 to 15 borne on Provincial cadre shall be made in accordance with the Zonal quota specified by Government from time to time:

⁵¹Provided that initial recruitment to the post of Civil Judge/Judicial Magistrate/Allaqa Qazi (BPS-18) shall also be made in accordance with the zonal quota specified by the Government from time to time.

(2) Initial recruitment to posts in Basic Pay Scales 3 to 15 borne on divisional or district cadre shall be made from amongst bona fide residents of the division or district concerned, as the case may be.

(3) Initial recruitment to posts in Basic Pay Scales ^{3 and 5} 1 and 2 or equivalent shall ordinarily be made on local basis.

PART-IV

AD HOC APPOINTMENT

13. **Requisition to Commission:**-When under any rule for the time being in force, a post is required to be filled in through the Commission, the appointing authority shall forward a requisition on the prescribed form to the Commission immediately after it is decided to fill in the post, or if that is not practicable and the post is filled on ad hoc basis as provided in rule 14, within two months of the filling of the post.

14. **Ad hoc Appointment:**-(1) When the appointing authority considers it to be in the public interest to fill in a post falling within the purview of the Commission urgently, it may, pending nomination of a candidate by the Commission, proceed to fill in such post on ad hoc basis for a period not exceeding ⁵²[one year] by advertising the same in accordance with the procedure laid down for initial appointment in Part-III of these rules.

(2) Short term vacancies in the posts falling within the purview of the Commission and vacancies occurring as a result of creation of temporary posts for a period not exceeding ⁵³[one year], may be filled in by appointing authority otherwise than through the Commission on a purely temporary basis after advertising the vacancy.

⁵¹ Proviso to rule-12 added vide Notification No. SOR-VI(E&AD)1-27/08, dated 03-07-2008

⁵² The words six months replaced with the words one year vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-01-2009.

⁵³ The words six months replaced with the words one year vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-01-2009.

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PART-V

PROBATION AND CONFIRMATION

⁵⁴15. **Probation.** ----- (1) Persons appointed to posts by initial recruitment, promotion or transfer shall be on probation for a period of one year.

(2) The appointing authority, if considers necessary, may extend the probation period for one year as may be specified at the time of appointment.

(3) On the successful completion of probation period, the appointing authority shall, by specific order, terminate the probation:

Provided that if no specific order is issued on the expiry of the first year of probation period, the period of probation shall be deemed to have been extended under sub-rule (2):

Provided further that if no specific order is issued on the expiry of the extended period of probation, the period of probation shall be deemed to have been successfully completed.

16. **Confirmation:-**After satisfactory completion of the probationary period, a civil servant shall be confirmed; provided that he holds a substantive post, provided further that a civil servant shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course or has failed to complete successfully a training prescribed within the meaning of sub-section (3) of Section 6 of the North West Frontier Province Civil Servants Act, 1973.

- PART-VI

SENIORITY

17. **Seniority :-**(1) the seniority inter se of civil servants ⁵⁵(appointed to a service, cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission ⁵⁶[or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher

⁵⁴ Rule-15 substituted vide Notification No. SOR-VI/E&AD/1-3/2009/Vol-VIII dated 16-2-2010.
⁵⁵ Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80, dated 17-05-1989.
⁵⁶ The words inserted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 04-02-1996.

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post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

⁵⁷(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

⁵⁸(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the lower post is the same, the civil servant older in age, shall be treated senior.

18. General Rules: - In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

19. Repeal:- The North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

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⁵⁷ Sub-rule (3) of Rule 17 added vide Notification No. SOR-I(E&AD)4-1/80/IV, dated 28-5-2002.
⁵⁸ Sub-rule (4) of Rule 17 added vide Notification No.SOR-VI (E&AD) 1-3/2008 dated 19th November, 2009.

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Appointment by transfer.

I am directed to say that rule 7 of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, provides that appointment by transfer to posts should be made:-

- (1) to posts in BPS-2 to 16 on the recommendations of the appropriate Departmental Promotion Committee;
- (2) to posts in BPS-17 and above on the recommendations of the Provincial Selection Board; and
- (3) from amongst the persons possessing qualifications and other conditions prescribed for the posts and holding appointment on regular basis in the same basic pay scale in which the posts to be filled exist.

It has been brought to notice that in some of the departments, appointment by transfer is also made in cases where no provision for appointment by transfer exists in the relevant service/recruitment rules.

I am accordingly directed to clarify that the above provisions regarding appointment by transfer are applicable in only those cases where the appointment by transfer is specifically provided for in the relevant service/recruitment rules or in the method of appointment, qualification etc laid down for each post under sub-rule (2) of rule 3 of the aforesaid rules.

(Authority; No.SORI(S.&CIAD)4-1/80, dated 13th May, 1989)

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Promotion Policy

In order to consolidate the existing Promotion Policy, which is embodied in several circular letters issued in piecemeal from time to time, and to facilitate the line departments at every level in prompt processing of promotion cases of Provincial civil servants, it has been decided to issue the "North-West Frontier Province Civil Servants Promotion Policy, 2009" duly approved by the competent authority, for information and compliance by all concerned. This Policy will apply to promotions of all civil servants holding appointment on regular basis and will come into effect immediately. The Policy consists of the provisions given hereunder:-

I. Length of service.

(a) Minimum length of service for promotion to posts in various basic scales will be as under:

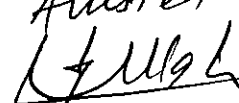
Basic Scale 18 :	5 years' service in BS-17
Basic Scale 19 :	12 years' service in BS-17 & above
Basic Scale 20 :	17 years' service in BS-17 & above

No proposal for promotion shall be entertained unless the condition of the prescribed length of service is fulfilled.

(b) Service in the lower pay scales for promotion to BP-18 shall be counted as follows:

- (i) Half of the service in BS-16 and one fourth in Basic Scales lower than 16, if any, shall be counted as service in Basic Scale 17.
- (ii) Where initial recruitment takes place in Basic Scale 18 and 19, the length of service prescribed for promotion to higher Basic Scales shall be reduced as indicated below:

Basic Scale 19 :	7 years' service in BS-18
Basic Scale 20 :	10 years' service in BS-18 and above. or 3 years' service in BS-19.

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II. Linking of promotion with training:

(a) Successful completion of the following trainings is mandatory for promotions of officers of the Provincial Civil Service / Provincial Management Service to various Basic Scales:

- Mid-Career Management Course at National Institute of Management (NIM) for promotion to BS-19
- Senior Management Course at National Management College, Lahore for promotion to BS-20
- National Management Course at National Management College, Lahore for promotion to BS-21

(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely

technical posts for promotion within their own line of specialization as envisaged in the existing Promotion Policy.

(c) The qualifying thresholds of quantification of PERs for nomination to these trainings are as under:

MCMC	60
SMC	70
NMC	75

(d) There will be no exemptions from mandatory trainings. An officer may, however, request for temporary exemption in a particular moment in time but grant of such exemption would be at the discretion of the competent authority. No such request with regard to an officer would be made by the Government Departments concerned.

(e) Three officers shall be nominated for each slot of promotion on the basis of their seniority. Those unwilling to attend will be dropped at their own expense without prejudice to the rights of others and without thwarting or minimizing the chance of improving the quality of service.

(f) Officers failing to undergo mandatory training in spite of two time nominations for a training shall stand superseded if such failure was not for the reasons beyond the control of the officers concerned.

III. Development of Comprehensive Efficiency Index (CEI) for promotion:

(a) The Comprehensive Efficiency Index to be maintained for the purpose of promotion is clarified as under:

(i) The minimum of aggregate marks for promotion to various grades shall be as follows:

Basic Scale	Aggregate marks of Efficiency Index
18	50
19	60
20	70
21	75

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(ii) A panel of two senior most officers shall be placed before the Provincial Selection Board for each vacancy in respect of promotion to BS-18 & 19. Similarly, a panel of three senior most officers shall be submitted to the Provincial Selection Board for each position in respect of promotion to BS-20 and 21 and the officer with the requisite score on the Efficiency Index shall be recommended for promotion.

(iii) The senior most officer(s) on the panel securing the requisite threshold of the Efficiency Index shall be recommended by the Provincial Selection Board for promotion unless otherwise deferred. In case of failure to attain the requisite threshold, he (she)/they shall be superseded and the next officer on the panel shall be considered for promotion.

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(b) Marks for quantification of PERs, Training Evaluation Reports and Provincial Selection Board evaluation shall be assigned as under:-

S.No.	Factor	Marks for promotion to BS-18 & 19	Marks for promotion to BS-20 & 21
1.	Quantification of PERs relating to present grade and previous grade(s) @ 60% : 40%	100%	70%
2.	Training Evaluation Reports as explained hereafter.	--	15%
3.	Evaluation by PSB	--	15%
	Total	100%	100%

(c) A total of fifteen (15) marks shall be allocated to the Training Evaluation Reports (Nine marks @ 60% for the training in the existing BPS and Six marks @ 40% in the preceding BS). Evaluation of the reports from the Training Institutions shall be worked out as under:-

- (i) It shall be on the basis of Grade Percentage already awarded by the National School of Public Policy (National Management College and Senior Management Wing) and its allied Training Institutions as provided in their reports.
- (ii) Previous reports of old Pakistan Administrative Staff College and old NIPAs where no such percentage has been awarded, points shall be worked out on the basis of weighted average of the percentage range of grades followed by these Institutions as reflected in table-A below:

TABLE-A

Old PASC & NIPAs

Category	Range	Weighted Average	Points of PASC @ 60%=9	Points of NIPAs @ 40%=6
A. Outstanding	91-100%	95.5%	8.60	5.73
B. Very Good	80-90%	85%	7.65	5.10
C. Good	66-79%	72.5%	6.52	4.35
D. Average	50-65%	57.5%	5.17	3.45
E. Below Average	35-49%	42%	3.78	2.52

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(iii) Grades from National Defence University will be computed according to the weighted average based on the Grading Key for the range provided by the NDU as reflected in Table-B below:

TABLE-B
NATIONAL DEFENCE UNIVERSITY

Category		Range	Weighted Average	Points @ 60%=9
A.	Outstanding	76-100%	88%	7.92
B-Plus.	Very Good	66-75.99%	71%	6.39
B-High.	Good	61-65.99%	63.5%	5.71
B-Average.	Average	56-60.99%	58.5%	5.26
B-Low.	Below Average	51-55.99%	53.5%	4.81
B-Minus.	Below Average	46-50.99%	48.5%	4.36
C.	Below Average	40-45.99%	43%	3.87
F.	Below Average	35-39.99%	37.5%	3.37

(d) The officers who have been granted exemption from mandatory training having attained the age of 56 years or completed mandatory period of serving in a Training Institution upto 27-12-2005, may be awarded marks on notional basis for the training factor (for which he/she was exempted) in proportion to the marks obtained by them in the PERs.

(e) Status quo shall be maintained in respect of officers of special cadres such as teachers, doctors, professors, research scholars and incumbents of technical posts for promotion within their own line of specialty. However, for calculation of their CEI, 70% marks shall be assigned to the quantified score of PER s and 30% marks shall be at the disposal of the PSB,

(f) For promotion against selection posts, the officer on the panel securing maximum marks will be recommended for promotion. Thirty marks placed at the disposal of the Provincial Selection Board in such cases shall be awarded for technical qualification, experience and accomplishments (research publications relevant to the field of specialism).

(g) Since three of the aspects of performance i.e. moral integrity, intellectual integrity, quality and output of work do not figure in the existing PER forms, the grades secured and marks scored by the officer in overall assessment shall be notionally repeated for the other complementary evaluative aspects and form the basis of quantification.

(h) The performance of officers shall be evaluated in terms of the following grades and scores:

		Upto 11 th June, 2008	From 12 th June, 2008
1.	Outstanding	--	10 Marks
2.	Very Good	10 marks	8 marks
3.	Good	7 marks	7 marks
4.	Average	5 marks	5 marks
5.	Below Average	1 mark	1 mark

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(i) The outstanding grading shall be awarded to officers showing exceptional performance but in no case should exceed 10% of the officers reported on. The grading is not to be printed in the PER form but the reporting officer while rating an officer as "outstanding" may draw another box in his own hand in the form, initial it and write outstanding on the descriptive side. Convincing justification for the award shall be recorded by the reporting /countersigning officer. The discretion of awarding "outstanding" is to be exercised extremely sparingly and the award must be merited.

(j) The quantification formula and instructions for working out quantified score are annexed.

IV. Promotion of officers who are on deputation, long leave, foreign training:

- a) The civil servants who are on long leave i.e. one year or more, whether within or outside Pakistan, may be considered for promotion on their return from leave after earning one calendar PER. Their seniority shall, however, remain intact.
- b) The civil servants who are on deputation abroad or working with international agencies within Pakistan or abroad, will be asked to return before their cases come up for consideration. If they fail to return, they will not be considered for promotion. They will be considered for promotion after earning one calendar PER and their seniority shall remain intact.
- c) ⁷⁸In case of projects partially or fully funded by the Federal or Provincial Government, where PERs are written by officers of Provincial Government, the condition of earning one calendar PER shall not be applicable. The officers on deputation to projects shall be considered for promotion. However, after promotion they will have to actualize their promotion within their cadre.
- d) The civil servants on deputation to Federal Government, Provincial Government, autonomous/semi-autonomous organization shall be considered for promotion and informed to actualize their promotion within their cadres. They shall have to stay and not be allowed to go back immediately after promotion. Such stay shall be not less than a minimum of two years. If he/she declines his/her actual promotion will take place only when he/she returns to his/her parent cadre. His/her seniority in the higher post shall, however, stand protected.
- e) The cases of promotion of civil servants who have not successfully completed the prescribed mandatory training (MCMC, SMC & NMC) or have not passed the departmental examination for reasons beyond control, shall be deferred.
- f) Promotion of officers still on probation after their promotion in their existing Basic Scales shall not be considered.
- g) A civil servant initially appointed to a post in a Government Department but retaining lien in a department shall not be considered for promotion in his parent department.

⁷⁸ para 1 (iv)(c) substituted vide circular letter No. SORIV/E&AD/1-16/2006, dated 19.4.2010

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However, in case he returns to parent department, he would be considered for promotion only after he earns PER for one calendar year.

h) A civil servant who has resigned shall not be considered for promotion no matter the resignation has yet to be accepted.

V. Deferment of Promotion:

(a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if

- (i) His inter-se-seniority is disputed/sub-judice.
- (ii) Disciplinary or departmental proceedings are pending against him.
- (iii) The PER dossier is incomplete or any other document/ information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control.

(b) The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cease to exist. The cases falling under any of the above three categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.

(c) If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake is noticed.

(d) If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/ Departmental Promotion Committee and is declared fit for promotion to the next higher basic scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section (4) of Section 8 of the North-West Frontier Province Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior.

(e) If a civil servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year.

(f) If a civil servant is recommended for promotion to the higher basic scale/post by the PSB/DPC and the recommendations are not approved by the competent authority

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within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

VI. Date of Promotion:

Promotion will always be notified with immediate effect.

VII. Notional Promotion:

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

VIII. Promotion of Civil Servants who are awarded minor penalties.

- (a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.
- (b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

IX. Promotion in case of pending investigations by NAB:

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion fora which may take a considered decision on merits of the case.

- 2. All the existing instructions on the subject shall stand superseded to the above extent, with immediate effect.

Arrested
L. J. Malik
 Armty Director

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA
SERVICE APPEAL NO. 97 /2023

Mr. Asad Ali Shah, Assistant Treasury Officer (BPS-17) in Siran Right Bank Canal
Project Irrigation Department Mansehra.

..... (APPELLANT)

VERSUS

1. The Provincial Govt: through Chief Secretary, KP, Peshawar.
2. The Chief Secretary Govt of KP, Peshawar.
3. The Secretary Establishment, KP, Peshawar.
4. The Finance Secretary KP, Peshawar.
5. The Director Treasuries & Accounts, KP Peshawar.
6. The Chairman SSRC, KP Peshawar.

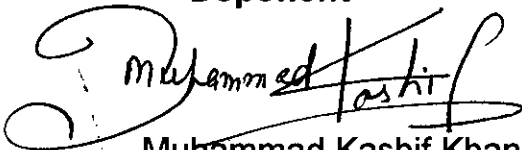
..... (RESPONDENTS)

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 5.

AFFIDAVIT

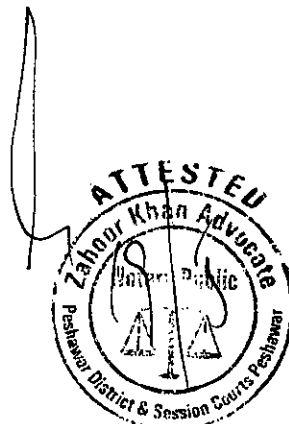
I, Muhammad Kashif Khan, Assistant Director IT (BPS-17), o/o the Directorate of Treasuries & Accounts Khyber Pakhtunkhwa do hereby solemnly affirm and declare on Oath that the contents of joint para wise comments / reply in light of order/directions of the Honorable Service Tribunal Khyber Pakhtunkhwa on behalf of the respondent No. 1 to 5 are true and correct to the best of my knowledge & belief and that nothing has been concealed from this Honorable Court.

Deponent



Muhammad Kashif Khan,
Assistant Director IT (BPS-17),
Directorate of Treasuries & Accounts,
Khyber Pakhtunkhwa.
CNIC No:

Identified By:





**Directorate of Treasuries &Accounts
Khyber Pakhtunkhwa**

Treasury Block, District Courts Compound, Behind Jamia Masjid, Khyber Road,
Peshawar, Phone & Fax: 091-9211856

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No.1-68/23/S.Tribunal

Dated Peshawar the 18.05.2023

AUTHORITY LETTER

Mr. Muhammad Kashif Khan, AD (I.T.), o/o Directorate of Treasuries & Accounts, Khyber Pakhtunkhwa Peshawar is hereby nominated and authorized to attend the honorable Khyber Pakhtunkhwa Service Tribunal Peshawar on 19-05-2023 in appeal No. 97 titled Mr. Asad Ali Shah Vs Government of Khyber Pakhtunkhwa & Others on behalf of Respondent No. 05 i.e. Director Treasuries & Accounts, Khyber Pakhtunkhwa, Peshawar.

He is also authorized to submit all sort of documents, statements and replies etc in the said court, on behalf of Director Treasuries and Accounts, Khyber Pakhtunkhwa.

**Director
Treasuries & Accounts
Khyber Pakhtunkhwa**

**Director
Treasuries & Accounts
Khyber Pakhtunkhwa
Peshawar**