

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

S.A No. 138/2023

Akhtar Iqbal

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5845 (Appellant)

Dated 18-06-23

VERSUS

Secretary Transport & Mass Transport, Khyber Pakhtunkhwa and Others (Respondents)

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Dated: 05/07/2023


DEPONENT

N.D - 07-06-23

Place of Hearing

Peshawar

BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA

S.A. N0.138/2023

Akhtar Iqbal

.....(Appellant)

VERSUS

Secretary Transport & Mass Transit, Khyber Pakhtunkhwa

.....(Respondent)

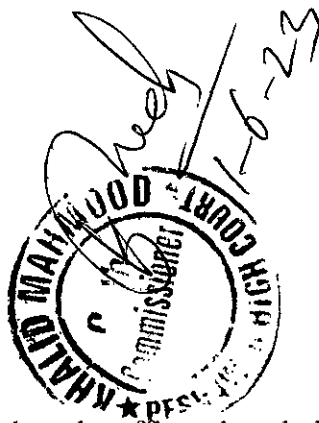
APPLICATION FOR ALLOW PERMISSION TO SUBMIT THE PARAWISE COMMENTS
AND RESTORATION OF THE RIGHT OF DEFENCE IN THE ABOVE TITLED CASE

Respectfully Sheweth,

1. That the above titled case is pending before this Honorable Tribunal for adjudication.
2. That in previous order sheet dated: 04-05-2023, the Worthy Chairman Tribunal passed the orders of Ex-party against the Answering Respondents and the right to file the comments was struck off.
3. That the delay occurred in submitting the Comments on behalf of the respondents is not willfully neither intentionally nor delaying the case, but due to the reason that the notice was not communicated to the concerned litigation cell due to the transfer of additional Secretary, wherein the notice was lying on table without marking to the concerned officers.
4. That any other argument will be raised with permission of the Honorable Tribunal at the time of arguments.

It is therefore, most humbly prayed that on acceptance of this application, this honorable tribunal may kindly permit the respondents to submit their parawise comments and the ex-parte proceedings may kindly be set aside in favor of the Answering Respondents.

Dated: 29-05-2023



Applicant / Respondent

AFFIDAVIT

It is hereby solemnly affirmed and declared on oath that the contents of this application are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honorable Tribunal.

It is further stated on oath that

Deponent

A No. 138/23

Amin A 02

18.04.2023

Clerk off learned counsel for the petitioner present.



SCANNED
KPST
Peshawar

Naeem Amin

Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present and sought time for submission of reply/comments. Learned Additional Advocate General shall intimate the respondents to positively submit reply/comments on next the date. To come up for reply/comments as well as preliminary hearing on 04.05.2023 before the S.B. Parcha Peshi given to the parties.

(Salah-Ud-Din)
Member (J)

4th May, 2023

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

2. Written reply/comments on behalf of the respondents are still awaited. The time provided in Rule-12 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974 for filing reply is 7 days before the date fixed but despite providing opportunity the respondents have not filed the comments. They are thus placed ex-parte and their right to file reply stands struck off. To come up for ex-parte preliminary arguments on 07.06.2023 before S.B. P.P given to the parties.

(Kalim Arshad Khan)
Chairman

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 138/2023

Annex: B D 23

07/6

Akhtar Iqbal S/o Perwaiz Khan,
Presently Posted as Motor Vehicle Examiner BPS-12,
R/o Mohallah Khyber Colony No.2, Tehkal Payyan,
University Road, Tehsil and District Peshawar

APPELLANT

VERSUS

1. Govt of Khyber Pukhtunkhwa through Secretary, Transport and Mass Transit Department Khyber Pukhtunkhwa Civil Secretariat Peshawar.

2. The Director Transport and Mass Transit Department, Khyber Pukhtunkhwa, Office at Benevolent Fund Building, Peshawar Cantt Peshawar.....

RESPONDENTS.

APPEAL UNDER SECTION 4 OF THE SERVICES TRIBUNAL ACT, 1974, AGAINST THE ILLEGAL ACTION OF THE RESPONDENTS FOR NOT PROMOTING THE SERVICES OF THE APPELLANT FROM MOTOR VEHICLE EXAMINER BPS-12 TO SENIOR / DISTRICT MOTOR VEHICLE EXAMINER BPS-16, DESPITE THE FACTS THAT THE APPELLANT HAVING THE REQUIRED EXPERIENCE AND QUALIFICATION FOR PROMOTION AND ALSO AGAINST THE ILLEGAL IMPUGNED ACTION OF THE RESPONDENTS FOR ADVERTISEMENT THE VACANT SEATS FOR INITIAL RECRUITMENT OF SENIOR MOTOR VEHICLE EXAMINER (BPS-16) AND AGAINST WHICH AN DEPARTMENTAL APPEAL HAS BEEN FILED BY THE APPELLANT TO THE RESPONDENTS ON 19.09.2022 BUT DESPITE EXPIRY OF STATUTORY PERIOD, THE RESPONDENTS FAILED TO DECIDE/COMMUNICATE THE FATE OF THE DEPARTMENTAL APPEAL OF THE APPELLANT IN THE LIGHT OF THE RULES/ NOTIFICATIONS, WHICH ACTION OF THE RESPONDENTS ARE ILLEGAL, UNLAWFUL AND IN EFFECTIVE UPON THE RIGHT OF THE APPELLANT AND THE SAME MAY PLEASE BE DECLARED AS NULL AND VOID AND THE APPELLANT MAY PLEASE BE PROMOTED ON THE BASIS OF SENIORITY CUM FITNESS IN ACCORDANCE WITH LAW AND RULES, REGULATIONS WITH ALL BACK BENEFITS.

RESPECTFULLY SHEWETH.

1. That appellant is the Citizens of Pakistan having domiciled of Khyber Pukhtunkhwa and have high qualified. (Copy of CNIC & educational testimonial arc annexed as A).
2. That appellant was Initially appointed as Motor Vehicle Examiner purely on temporary /Adhac basis vide appointment letter bearing No.dir/Tpt/7-30/appointment /MVEs/2013/801-03 dated 06.02.2014, by the respondent No.2. (Copy of appointment letter of appellant is annexed as B).
3. That thereafter the appellant assumed the charged as MVE in the respondents-department and performed his duties with zeal and zest, and without any complaint from any corner and served the respondents, hence since from the date of appointment, the appellant performing his duties, under the administrative Control of Respondents.

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4. That, It is Important to mentioned here that, the Government of Khyber Pukhtunkhwa passed a bill/ Act of regularization Known as Khyber Pukhtunkhwa Employees of Transport and Mass transit Department (Regularization of Services) Act, 2019, wherein under section 3 of the Act, ibid, the services of the appellant has been regularized by the respondent vide regularization letter dated 18.05.2021 hence the appellant is the regular / permanent civil servant of the respondent-department. (Copy of the regularization Act, 2019 and regularization letter dated 18.05.2021 are annexed as C & D).

5. That the Government of Khyber Pukhtunkhwa, through a Notification Bering No.SO(Admn)/TD/16-8/2012 dated 09.12.2014, notified rules for promotion of Motor Vehicle Examiners BPS-12 to Senior/ District Motor Vehicle examiners BPS-16 through which all Motor Vehicle Examiners will be promoted to Senior Motor Vehicle examiners BPS-16 on basis of 05 years experience and having qualifications and other conditions specified in Column in the appendix to the notification, applicable to the posts in the Directorate of respondents. (Copy of the notification is annexed as E).

6. That, however, on 14.07.2020, special changed has been brought in the above services structure by the provincial Government to the same rank wherein the promotion of all Motor Vehicle examiners has been reduced from 100% to 50% and through the same notification, 40% was given on initial recruitment to hired more qualified Engineers in the respondents-department and through the same notification, 10% quota has been given to the driving school maintenance supervisor BPS-13 with required experience and qualification which is against the set principles of natural justice and fair play and the secured and guaranteed rights of the appellant has been violated by brazenly even the required experience of 05 years mandatory and in this respect, proper representation has been given to the competent authority. (Copy of the notification dated 14.07.2020 is annexed as F).

7. That thereafter, 23.11.2021, the academic qualification of clause 15 of the services rules for senior Motor Vehicle examiners has been reduced to the initial recruitment of MVE BPS-12 through a notification through which some goals has been achieved which is against the rights of the appellant through the same notification of services structure. (Copy of the notification dated 23.11.2021 is annexed as G).

8. That in the light of the new notifications, the respondents advertised the said posts and going to appointed the Senior MVE through initial recruitment vide advertisement 22.07.2022. (Copy of the advertisement is annexed as H).

9. That in this respect, the appellant alongwith other Motor vehicle Examiners. Submitted his joint written departmental appeal to the respondents on 19.09.2022 requested to withdraw the advertisement for the recruitment process of Senior/District MVE BPS-16 and also requested to promoted the existing Motor Vehicle examiners to Senior Motor Vehicle Examiners BPS-16 on the basis of required experience and qualification which appeal has been properly been received by the respondent through dairy No.2813 dated 20.09.2022 but despite lapsed of statutory period under the law, the respondents failed to decide the fate of the appeal of the appellant. (Copy of appeal/ dairy receiving No dated 20.09.2022 SI annexed as I).

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10. That the appellant being aggrieved from the non-consideration of the representation and going to appointment the fresh recruitment by respondents and deprived the appellant from his legitimate and secured rights of promotion to Senior Motor vehicle examiner BPS-16 on the basis of experience and qualification, the appellant is approached this Hon'ble Tribunal on the following ground inter alia:-

GROUNDS :-

- a. That the action and inaction of the respondents for not considering the appellant for promotion on the basis of seniority cum fitness as well as not to decide the departmental representation within stipulated period, is void ab-initio; arbitrary, without jurisdiction, Coram-non-judice, illegal and without any lawful authority hence untenable in eye of law and the appellant is liable to be promoted on the basis on seniority, qualification and experience under the relevant rules with all back benefits.
- b. That the appellant having the accrued right for promotion on the basis of seniority from Motor vehicle examiner BPS-12 in the light of Doctrine accrued rights and legitimate expectancy to Senior/District Motor vehicle examiners BPS-16 but, the said rights have been violated by the respondents by advertisement the said posts through Initial recruitment which deprived the appellant from the said rights hence the appellant is entitled for the secured and guaranteed rights in accordance with rules.
- c. That appellant has been deprived from the legal rights which are clear violation of Article 4 and 25 of Constitution of the Islamic republic of Pakistan 1973.
- d. That the respondents through the same rules with the political interference promoted similar placed MVE BPS-12 to senior MVE BPS-16 vide letter dated 02.03.2017 with immediate effect as per services structure rules but the appellant has been discriminated from their fundamental and Constitutional rights as guaranteed in the Constitution of Islamic republic of Pakistan 1973. (Copy of the letter dated 02.03.2017 is annexed as J)
- e. That as per rules and notifications, the appellant having the requisite qualifications and experience for the posts and non-considering of the case for promotion is in utter disregard of law, rules, regulations and service structure as well.
- f. That the law and rules guarantees equal treatment but the appellant being at par with and similarly placed employees of the respondents-department, has been discriminated. Reliance is placed on **2009 SCMR page-1**.
- g. That it is also to be mentioned here that junior to the appellant has been promoted from maintenance Supervisor BPS-13 to Senior Motor Vehicle Examiners BPS-16 which is also in share violation of law and rules vide letter dated 25.05.2022. (Copy of the letter dated 25.05.2022 is annexed as K).
- h. That Article-4 of the Constitution of Islamic Republic of Pakistan 1973, commands that all the citizens without any discrimination shall be dealt in accordance with the law and rules, so enforcement of the law leaves no room for creating any distinction or discrimination between the citizen who having equal footing.

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- i. That Article-4 and 8 of the Constitution of Islamic Republic of Pakistan 1973, makes it clear that deviation from law has not to be countermanded, this is an assurance to the people of Pakistan that people of authority shall treat them in accordance with law and each one is bound by these stipulations of the Constitution of Islamic Republic of Pakistan, 1973.
 - j. That under section 21 and section 24-A of the General Clauses Act, once a rights has been extended and created to the individual through a proper manner by the competent authority, then no one has power to undo it, and on this score alone, the appellant is entitled for the promotion as per rules on the basis of seniority cum fitness to Junior Clerk BPS-11 with all back benefit.
 - k. That the respondents by not promoting the appellant on the basis of seniority cum fitness is also against the norms of natural justice and fair play and of directions of the apex Court in different judgments and the respondents have make mockery of his policy by itself as well as the rules on the subject matter.
 - l. That in the peculiar facts and circumstances of the case, the Interference of this Hon'able Tribunal is warranted under the Law.

It is, therefore, most humbly prayed that on acceptance of this appeal:-

- 1. Non-Consideration of the appellant for promotion for on basis of seniority cum fitness from Motor vehicle Examiner BPS-12 to Senior/District Motor Vehicle examiner BPS-16 in accordance with the services structure rules is in utter violation of law, rules, regulations, fundamental rights and Constitution of Islamic Republic of Pakistan, 1973 and may please be declared as such.***
- 2. Appropriate directions may kindly be issued to the respondents-department to treat the appellant at par rules and promote appellant on basis of seniority cum fitness from Motor vehicle Examiner BPS-12 to Senior/District Motor Vehicle examiner BPS-16 in accordance with the services structure rules with the similar place employees with all back benefits.***
- 3. Also issued Appropriate directions to withdraw from the advertisement for the initial recruitment of the Senior Motor vehicle examiners BPS-16 in the light of facts and circumstances of the instant matter.***
- 4. Any other relief which is deem proper and not specifically asked by the Appellants may be pleased be granted to the Appellant in the circumstances.***

THROUGH

APPELLANT

JALAL-UD-DIN

ADVOCATES, HIGH COURT &

REHMAT KHAN KUNDI

Advocate Peshawar