


Form- A
FORM OF ORDER SHEET.

Court of _____

Implementation Petition No. 353/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3.
1	01.06.2023	<p>The execution petition of Mr. Faheem Ahmad submitted today by Mr. Khaled Mehmood Advocate. It is fixed for implementation report before touring Single Bench at D.I.Khan on <u> </u>. Original file be requisitioned. AAG has noted the next date.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR.

Execution Petition No. 353/2023

In

Appeal No. 7759/2021

Faheem Amad, District Revenue Accountant (ACB), Revenue
and Estates Department D.I.Khan.

..... **PETITIONER**

VERSUS

Government of Khyber Pakhtunkhwa through Secretary,
Board of Revenue, Khyber Pakhtunkhwa, Peshawar and
others

I N D E X

S/N	Description of Documents	Annexure	Page No.
1.	Memo of Petition with affidavit		1-4
2.	Copy of appeal No. 7759/2021	"A"	5-12
3.	Copies of judgment dated 28-09-2022 and application dated 06-12-2022	"B and C"	13-17
4.	Power of Attorney		18

Through

Appellant

Khalid Mahmood
Advocate, High Court
Stationed at D.I.Khan

[Handwritten Signature]
11/6/2023

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR.

Execution Petition No. 353/2023

in

Appeal No. 7759/2021

Faheem Amad, District Revenue Accountant (ACB), Revenue
and Estates Department D.I.Khan.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 5779

Dated 1/6/2023

..... **PETITIONER**

VERSUS

1. **Government of Khyber Pakhtunkhwa** through
Secretary, Board of Revenue, Khyber Pakhtunkhwa,
Peshawar.
2. **Senior Member Board of Revenue**, Khyber Pakhtunkhwa
Peshawar.
3. Commissioner, D.I.Khan Division D.I.Khan.
4. Deputy Commissioner, D.I.Khan.
5. Additional Assistant Commissioner, Revenue, D.I.Khan.

..... **Respondents**

EXECUTION PETITION FOR DIRECTING THE
RESPONDENTS TO IMPLEMENT THE
JUDGMENT DATED 28-09-2022 IN THE
ABOVE TITLED APPEAL IN LETTER AND
SPIRIT.

Respectfully Sheweth,

1. That the above mentioned appeal has been decided by this
August Service Tribunal vides judgment dated 28-09-2022
in the favor of the Petitioner.
2. That the Petitioner filed the appeal against the impugned
office order no. ESTT:V/FINAL seniority
list/DRA/2020/9415-449 dated 20-04-2021 whereby the

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final seniority list of District Revenue Accountants (Regular) as it stood on 31-12-2020 issued by the respondents, depriving the appellant from his due/respective place in the impugned final seniority list is in violation of law, rules, policy and principle of equity.

PRAYER IN APPEAL

A. On acceptance of this appeal, this honorable tribunal may kindly be pleased to direct the respondents to act in accordance with law, policy, rules and principle of equity and to promote the appellant as regular District Revenue Accountant from the date (That is i.e. 20 August 2019) when others (Mr. Abdul Munim and Muhammad Riaz, placed at S.No 10 and 11 of final seniority list) were given the same status/cadre and selected as regular District Revenue Accountant

B. To set aside office order bearing No. Estt:V/final seniority list/DRA/2020/9415-449 dated 20-04-201, whereby the appellant was deprived from his due/respective place in the final seniority list maintained by senior member board of Revenue, Peshawar, being illegal, not sustainable in the eyes of law, arbitrary, perverse, tainted with malafide and of no legal effects and the appellant allowed to be considered on regular basis from 20-08-2019 and thereby promoted to regular District Revenue Accountant being same cadre and

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status as to others (Mr Abdul Munim and Muhammad Riaz, place at S.No 10 and 11 of final seniority list), to together with grant of any other appropriate remedy that this honorable tribunal may determent in the light of relevant circumstances. Copy of appeal is annexed as annexure A

- 3.
- On fixation of the case, after having heard the appellant at great length and accepted the appeal vide judgment dated 28-09-2022. The relevant para 6 is reproduced as under;

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"6. In view of above discussion, the appeal in hand is allowed and it is directed that the appellant shall be deemed to have been regularly promoted as District Revenue Accountant (BPS-14) with affect from 20-08-2019 with all consequential benefit."

Copy of Judgment dated 20-09-2022 and application dated 06-12-2022 are annexed as annexure B and C

4. That the petitioner repeatedly knocked the door of the respondents for implementation of the aforementioned judgment but they are not paying heed to it nor implementing the same.

It is therefore most humbly prayed that on acceptance of this execution, petition the respondents may please be directed to execute the judgment dated 28-09-2022 in letter and spirit.

Appellant

Through Counsel

Khalid Mahmood

Advocate High Court

KRM
11/6/2023

AFFIDAVITE

I, Khalid Mahmood Advocate High Court Counsel for petitioner do hereby solemnly affirm and declare on oath that all the Para-wise contents of this petition have been prepared under instruction of my client and nothing has been concealed deliberately.

Deponent 

CNIC: 121018684087-1



(5) (4)

**BEFORE THE HONORABLE SERVICE TRIBUNAL, KHYBER
PAKHTUNKHWA, PESHAWAR**

Service Appeal No. 7759 of 2021

Fahim Ahmad, District Revenue Accountant (ACB),
Revenue & Estates Department, D.I.Khan.

Appellant

Versus

1. Government of Khyber Pakhtunkhwa through Secretary
Board of Revenue, Khyber Pakhtunkhwa, Peshawar.
2. Senior Member Board of Revenue, Khyber
Pakhtunkhwa, Peshawar.
3. Commissioner, D.I.Khan Division, D.I.Khan.
4. Deputy Commissioner, D.I.Khan.
5. Additional Assistant Commissioner, Revenue, D.I.Khan.

Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AIMED AGAINST THE IMPUGNED
OFFICE ORDER BEARING NO. ESTT:V/FINAL
SENIORITY LIST/DRA/2020/9415-449 DATED
20.4.2021 WHEREBY THE FINAL SENIORITY LIST
OF DISTRICT REVENUE ACCOUNTANTS
(REGULAR) AS IT STOOD ON 31.12.20020 ISSUED BY
THE RESPONDENTS, DEPRIVING THE APPELLANT
FROM HIS DUE/RESPECTIVE PLACE IN THE
IMPUGNED, FINIAL SENIORITY LIST IS IN
VIOLATION OF LAW, RULES, POLICY AND
PRINCIPLE OF EQUITY.

PRAYER IN APPEAL

- a. On acceptance of this appeal, this Hon'ble Tribunal may kindly be pleased to direct the respondents to act in accordance with Law, Policy, Rules and principle of equity and to promote the appellant as regular District Revenue Accountant from the date (i.e 20th August, 2019) when others (Mr. Abdul Munim and Muhammad Riaz, placed at serial No. 10 & 11 of final seniority list) were given the same status/cadre and selected as regular District Revenue Accountant.
- b. To set aside Office Order bearing No. Estt:V/final seniority list/DRA/2020/9415-449 dated 20.4.2021, whereby the appellant was deprived from his due/respective place in the final seniority list maintained by Senior Member Board of Revenue, Peshawar, being illegal, not sustainable in the eyes of law, arbitrary, perverse, tainted with malafide and of no legal effects and the appellant allowed to be considered on regular basis from 20.8.2019 and thereby promoted as regular District Revenue Accountant being same cadre and status as to others (Mr. Abdul Munim and Muhammad Riaz, placed at serial No. 10 & 11 of final seniority list), together with grant of any other appropriate remedy that this Honourable Tribunal may determine in the light of relevant circumstances.

Note:- Addresses given above shall suffice the object of service

Respectfully Sheweth,

The appellant prefers the instant appeal on the grounds hereinafter submitted apropos the following facts.

Concise Facts

1. **That** the appellant has been serving as District Revenue Accountant in the Revenue & Estates Department, D.I.Khan against the vacant post on promotion as acting charge basis since 20th August, 2019 on the recommendation of Departmental Promotion Committee meeting dated 31.7.2019 vide order dated 20.8.2019. Copy of the office order dated 20.8.2019 is enclosed as Annexure A.
2. **That** the respondents issued final seniority list of regular District Revenue Accountant stood on 31.12.2020 whereby certain officials/District Revenue Accountant of Khyber Pakhtunkhwa including Mr. Abdul Munim and Muhammad Riaz (shown at serial No. 10 & 11 of the list) were selected and posted as District Revenue Accountants on regular basis on the recommendations of Departmental Promotion Committee meeting dated 31.7.2019. Copy of the final seniority list of the District Revenue Accountants of Khyber Pakhtunkhwa is enclosed as (Annexure-B).
3. **That** the respondent/SMBR while issuing the final seniority list has altogether ignored this material aspect that the present appellant was posted on *acting charge basis* on 20.8.2019 whereas Mr. Abdul Munim and Muhammad Riaz (mentioned at serial No. 10 & 11 of seniority list) were selected and posted as District Revenue Accountant on the same date i.e 20th August, 2019 on the recommendation of same departmental Promotion Committee meeting held on 31.7.2019 on *regular basis*. Moreso, the matter does not end here, the seniority of appellant and Abdul Munim and Muhammad Riaz were reckoned from the same date i.e 20th August, 2019 but the appellant was not treated at par which is partial and ill-

founder act on the part of respondents. Albeit, the post of District Revenue Accountant was lying vacant and the appellant was discriminated due to assigning acting charge for the District Revenue Accountant which is nullity in the eye of law.

4. That inaction of respondents not to place the name of the appellant at his due/respective place in the final seniority list of District Revenue Accountant in Khyber Pakhtunkhwa being most senior and at par position, despite of same status, cadre and date of posting of appellant as to Mr. Abdul Munim and Muhammad Riaz, have improperly exercised of their official duties and having no binding effect upon rights of the appellant under the law and policy of the provincial government. Thus, aggrieved from the inaction on the part of respondents, the appellant filed a departmental appeal/representation with the SMBR, Khyber Pakhtunkhwa, Peshawar against imperfect and partial seniority list of District Revenue Accountant and that too in defiance of the Rules/principle of equity/ Policy of the government made and promulgated on the point. During the pendency of the departmental appeal, the said Mr. Abdul Munim and Muhammad Riaz were promoted to the post of Tehsildar without considering the objections of appellant. (Notification dated 12.10.2021, Annexure-C) whereas the appellant was promoted as District Revenue Accountant on regular basis w.e.f from 06.8.2021 instead of 20.8.2019 (Annexure-D). Consequently, on 20.10.2021, the appeal/representation of appellant was dismissed vide letter dated 20.10.2021. Copy of Departmental appeal and dismissal order thereto of appellant is enclosed as (Annexure-E & F)

5. That disgruntled from the Office Order bearing No. Estt:V/final seniority list/DRA/2020/9415-449 dated 20.4.2021, through which the appellant was deprived from his due/respective place in the final seniority list maintained by respondents from the date when others (Mr. Abdul Munim and Muhammad Riaz, placed at serial No. 10 & 11 of final seniority list) were given the same status/cadre and selected as regular District Revenue Accountant, the appellant

approaches this Honourable Tribunal for redressal of his grievance on inter-alia the following grounds:

G R O U N D S

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a. That the Order bearing No. Estt.V/final seniority list/DRA/2020/9415-449 dated 20.4.2021 through which the appellant was deprived from his due/respective place in the final seniority list maintained by respondents from the date when others (Mr. Abdul Munim and Muhammad Riaz, placed at serial No. 10 & 11 of final seniority list) were given the same status/cadre and selected as regular District Revenue Accountant is against the law, rules & regulations framed thereunder, thus is not maintainable and is liable to be declared void ab-initio.

b. That the appellant is being discriminated by the respondents without any justification, particularly when the present appellant was posted on acting charge basis whereas Mr. Abdul Munim and Muhammad Riaz (mentioned at serial No. 10 & 11 of seniority list) were selected and posted as District Revenue Accountant on the same date i.e 20th August, 2019 on the recommendation of same departmental Promotion Committee meeting held on 31.7.2019 on regular basis. Moreso, the matter does not end here, the seniority of appellant and Abdul Munim and Muhammad Riaz were reckoned from the same date i.e 20th august, 2019 but the appellant was not treated at par with those who were considered for promotion from the initial date i.e 20.8.2019, thus the impugned actions are liable to be set aside by this Honorable Tribunal.

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- c. That the appellant is hard working and devoted person and worked in the department to the best of his ability, discharged his obligation with due diligence dedication to the entire satisfaction of their superiors having no adverse remarks in his service record then there was no occasion for the respondents to have ignored the appellant when in the entire province the seniority of the District Revenue Accountant was maintained.
- d. That it is manifest to say that there is no question mark over the credibility of appellant nor any complaint whatsoever during the service period of appellant lodged, then what prompted the respondents not to consider the appellant in the final seniority order on regular basis, which too, is not sustainable in the eye of law.
- e. That inaction of the respondents by not treating the appellant at par is also in violation of the right enshrined under Article 4 of the Constitution, that provides that citizens equal protection before law, as backdated seniority is granted to the 'other employees' (District Revenue Accountants), who, were selected in regular cadre on the same day when the appellant was assigning acting charge of District Revenue Accountant. Therefore, by doing so, the respondents have granted undue favors through circumvention and obviating of the very framework of the service structure envisaged by law and Rules. Exclusion of appellant from the final seniority list, despite having same status/cadre as to Mr. Abdul Munim and Muhammad Riaz (at serial No. 10 & 11) is highly unjust and discriminatory.
- f. That the right to equality has been declared as a basic feature of the Constitution and that Article 25 ibid guarantees to everyone the equal protection of laws so that everyone, either any candidate of civil post or any other citizen of Pakistan, afforded equal protection and similar treatment. Similarly, Article 4 of the Constitution provides for the

(7)
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protection of the rights of an individual to be treated in accordance with law. The Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 is reproduced hereunder for sake of convenience.

4. *Right of individuals to be dealt with in accordance with law, etc.*-(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be and of every other person for the time being within Pakistan.

(2) In particular-

(a) no action detrimental to the life, liberty, body; reputation or property of any person shall be taken except in accordance with law:

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do.

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Thus denial of the rights of appellant to be most senior and deserve at par treatment, like other employees of the District Revenue Accountant in Khyber Pakhtunkhwa such like Mr. Abdul Munim and Muhammad Riaz, is highly unjust, partial, based on discrimination and exploitation.

g. 'That needless to mention' that even in the absence of violation of vested rights of appellant, this Tribunal may examine the vires of the respondents by assessing whether it can be just, fair and in accordance with law for the main reason that so long as the Courts/Tribunal exist, they shall continue to exercise powers and functions within the domain of their jurisdiction and shall also continue to exercise power of judicial review in respect of any discrimination or malafide which comes for examination before the Courts/Tribunal.


h. That it is abundantly clear that appellant is being dealt with in a discriminatory manner through pick and choose which course of action

cannot be allowed to be undertaken being in conflict with the fundamental rights enshrined in law as well as the Constitution of Islamic Republic of Pakistan, 1973.


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- i. That the appellant has vested and legal right and his due right of seniority accrued to him from 20.3.2019, therefore, he ought to have been upgraded/promoted for the post of District Revenue Accountant in BPS-14 on regular basis retrospectively when his most juniors were up-graded/promoted in BPS-14 with all back benefits.
- j. That the exercise of powers by the respondents not to consider the seniority of appellant on regular side as to other employees in Khyber Pakhtunkhwa is not tenable in the eye of law and the respondents have failed to rationalize and regulate their powers, the courts/Tribunal have to intervene where exercise of such powers appears to be arbitrary and capricious.
- k. Counsel of the appellant may please be allowed to raise additional grounds at the time of arguments.

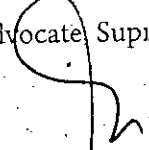
Dated: ___/___/2021

It is therefore, most humbly prayed that Service Appeal may please be allowed as prayed in the prayers' clause of the instant Appeal.


Yours humble appellant
Through Counsel

Dated ___/___/2021


Ahmad Ali Khan
Advocate Supreme Court


Miss Shumaila Awan
Advocate High Court

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Anex (B) (13)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT D.I.KHAN



Service Appeal No. 7759/2021

Date of Institution ... 16.11.2021

Date of Decision ... 28.09.2022

Fahim Ahmad, District Revenue Accountant (ACB), Revenue & Estates
Department, D.I.Khan.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Board of Revenue,
Khyber Pakhtunkhwa, Peshawar and 04 others.

... (Respondents)

MR. AHMAD ALI KHAN,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Precisely stated the averments as raised by the appellant in his appeal are that meeting of Departmental Promotion Committee was held on 31.07.2019 and upon its recommendations, Mr. Abdul Munim and Mr. Muhammad Riaz Tehsil Accountants (BS-07) were promoted to the post of District Revenue Accountants (BS-14) on regular basis, while the appellant was promoted as District Revenue

ATTESTED

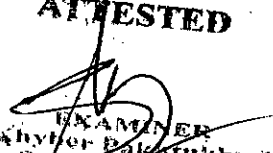

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Khyber Pakhtunkhwa
Services Tribunal
Peshawar

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Accountant (BS-14) on acting charge basis vide separate Notifications dated 20.08.2019. The appellant was also required to have been promoted on regular basis as the post of District Revenue Accountant, to which the appellant was promoted, was laying vacant and the appellant was eligible for promotion on regular basis. The department issued final seniority list of regular District Revenue Accountants vide office order dated 20.04.2021, however the name of the appellant was not included in the same despite the fact that like Mr. Abdul Munim and Mr. Muhammad Riaz, the appellant too was entitled to regular promotion to District Revenue Accountant with effect from 20.08.2019. The respondents treated the appellant with discrimination and did not follow the relevant rules, constraining the appellant to file departmental appeal. In the meanwhile, the appellant was promoted as District Revenue Accountant on regular basis vide order dated 06.08.2021 but with immediate effect instead of retrospective effect. The departmental appeal of the appellant was, however declined vide order dated 20.10.2021, hence the instant service appeal:



2. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal.
3. Learned counsel for the appellant reiterated and supported the grounds agitated in the appeal, while learned Additional

ATTESTED

 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Advocate General supported the grounds agitated by the respondents in their reply/comments.

4. Arguments have already been heard and record perused.

5. Keeping in view the respective arguments of both the sides, a perusal of the record would show that a meeting of Departmental Promotion Committee regarding promotion of Tehsil Accountants (BS-07) of Kohat, Kolai Palas, D.I.Khan and Torghar Districts to the post of District Revenue Accountants (BS-14) was held on 31.07.2019 under the Chairmanship of Senior Member Board of Revenue Khyber Pakhtunkhwa, Peshawar. Upon recommendations of the aforementioned Departmental Promotion Committee, Mr. Abdul Munim and Mr. Muhammad Riaz were promoted as District Revenue Accountants on regular basis, while the appellant was promoted as District Revenue Accountant on acting charge basis vide separate Notification of the same date i.e 20.08.2019. There is no denial of the facts that the appellant was eligible and qualified for promotion to the post of District Revenue Accountant at the time of meeting of the Departmental Promotion Committee, which was held on 31.07.2019. The appellant was, though, promoted as District Revenue Accountant on acting charge basis vide order dated 20.08.2019, however, he has been later on promoted on regular basis vide order dated 06.08.2021 but with immediate effect. The appellant was working on the post of the District Revenue Accountant on acting charge basis with effect from

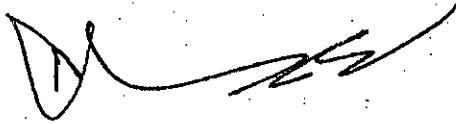
ATTESTED

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar


20.08.2019 and as he was subsequently promoted to that post on regular basis vide order dated 06.08.2021, therefore, he is entitled to all the benefits, which are associated that the said post. Reliance is placed on 2006 PLC (C.S) 1159.

6. In view of the above discussion, the appeal in hand is allowed and it is directed that the appellant shall be deemed to have been regularly promoted as District Revenue Accountant (BPS-14) with effect from 20.08.2019 with all consequential benefits. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
28.09.2022



(KALIM ARSHAD KHAN)
CHAIRMAN
CAMP COURT D.I.KHAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

Certified to be true copy

**Khairatullah
Service Tribunal
Peshawar**

Date of Presentation of Application 23/5/23
Number of Words Page 4
Copying Fee 20/-
Urgent 5/-
Total 25/-
Name of _____
Date of Completion of Copy 23/5/23
Date of Delivery of Copy 23/5/23

To

The Senior Member,
Board of Revenue, Khyber Pakhtunkhwa,
Peshawar.

Subject: - IMPLEMENTATION OF JUDGEMENT OF LEARNED KHYBER
PAKHTUNKHWA SERVICES TRIBUNAL DATED 28/09/2022 BY
PROMOTING AS REGULAR TEHSILDAR (BS-16).

Respected Sir,

With due respect it is submitted:-

1. That applicant is serving as District Revenue Accountant in the Revenue & Estates Department, D.I.Khan since 20th August, 2019.
2. That according to decision / recommendations of Departmental Promotion Committee meeting held on 31/07/2019, services of some juniors were regularized.
3. That keeping in view the decision / recommendations of Departmental Promotion Committee meeting held on 31/07/2019, those junior officials were also promoted as Tehsildar in BPS-16 vide Government of Khyber Pakhtunkhwa, Revenue & Estates Department Notification No. Estt: I/DPC/Tehsildar/2021 26901-09 dated 12/10/2021.
4. That aggrieved by the decision / recommendations of Departmental Promotion Committee meeting held on 31/07/2019, the applicant challenged the decisions / recommendations of the Departmental Promotion Committee before the learned Khyber Pakhtunkhwa, Services Tribunal by submitting Service Appeal, "Fahim Ahmad versus Senior Member, Board of Revenue, Khyber Pakhtunkhwa".
5. That after hearing the case, the learned Khyber Pakhtunkhwa, Services Tribunal accepted the Service Appeal vide judgment dated 28/09/2022 (Copy enclosed herewith).

It is requested that in compliance with the judgment of learned Khyber Pakhtunkhwa, Services Tribunal dated 28/09/2022, the name of the applicant may kindly be placed in the seniority list according to merit and the applicant may also be considered for promotion as Tehsildar (BPS-16) on regular basis with effect from 12/10/2021.

Thanks.

Yours obediently,

(FAHIM AHMAD)

District Revenue Accountant, D.I.Khan

