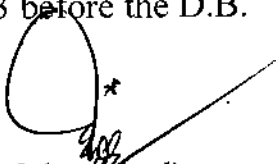


06.01.2023

Clerk of learned counsel for the appellant present. Mr. Muhammad Ayaz, A.O alongwith Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is indisposed today. Adjourned. To come up for arguments on 27.03.2023 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

SCANNED
KPST
Peshawar

05.09.2022

Due to leave of the Worthy Chairman, the Bench is incomplete. Case to come up for the same on 15.11.2022 before the D.B.


Reader

15th Nov. 2022 , Counsel for the appellant present.

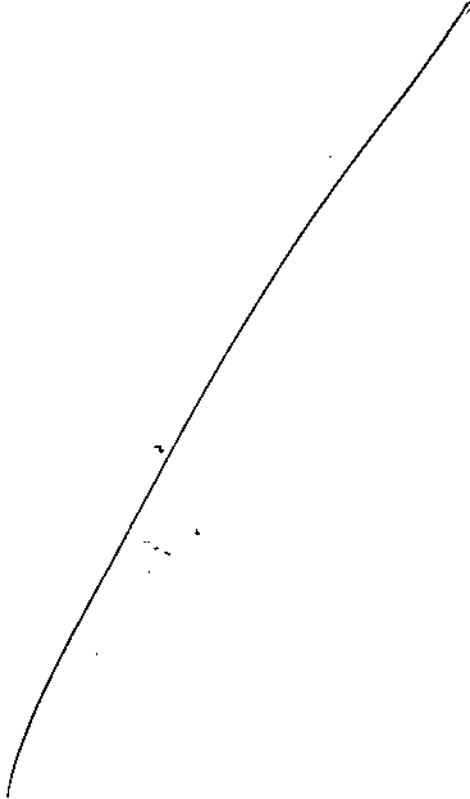
Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate-
General for the respondents present.

Former requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 06.01.2023 before the D.B.

SCANNED
KPST
Peshawar


(FAREEHA PAUL)
Member(E)


(ROZINA REHMAN)
Member (J)




28.01.2022

Learned counsel for the appellant present. Mr. Ayaz Khan, A.O alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not gone through the record due to some domestic engagements. Adjourned. To come up for arguments on 02.03.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member(J)

2-3-22

*Due to retirement of the Honble Chairman
the case is adjourned to come up for
the same as before on 13-6-22*

*Shah
Reader*

13.06.2022

Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant sought adjournment on the ground that his counsel is not available today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 05.09.2022.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)


08.11.2021

Appellant in person present. Mr. Zia Ullah Computer Programmer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant sought adjournment on the ground that his counsel is not available today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 07.01.2022.



(ATIQU-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(SALAH-UD-DIN)
MEMBER (JUDICIAL)

07.01.2022

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Manzoor Khan, Private Secretary for the respondents present.

Representative of the respondents has submitted written reply/comments. Placed on file. To come up for rejoinder, if any and arguments on 20.01.2022 before the D.B.



(Rozina Rehman)
Member (J)

20.01.2022

Appellant present in person Mr. Muhammad Adeel Butt, Addl. AG alongwith Manzoor Ahmad, Private Secretary for the respondents present.

Due to general strike of the Bar, counsel for the appellant is not in attendance. Case to come up for arguments on 28.01.2022 before the D.B.



(Atiq-Ur-Rehman Wazir)
Member (E)



Chairman

21.06.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Farman Shah Junior Clerk for respondent No. 3 present and submitted reply/comments.

Rest of the respondents have not submitted reply/comments. Learned AAG seeks time to contact the respondents. He is required to contact the respondents for submission of reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 08.11.2021 before the D.B.


Chairman

P.S
05.07.2021

Learned Addl. A.G be reminded about the omission and for submission of Reply/comments within extended time of 10 days.


Chairman

01.02.2021

Counsel for the appellant present.

Learned counsel contends that in the garb of implementation of judgment, issued by this Tribunal on 20.09.2019 in Service Appeal No. 1316/2018, the respondents are bent upon to recover the emoluments drawn by the appellant as Senior Clerk BPS-14. The copy of said judgment was also referred to by learned counsel, wherein, no such order was passed.

In view of the submissions of learned counsel and the available record, including memo dated 24.08.2020, instant appeal is admitted to regular hearing subject to all just exceptions. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 28.04.2021 before S.B.

An application for suspension of operation of impugned order dated 24.08.2020 has also been submitted alongwith the appeal. Notice of the application be also given to the respondents for the date fixed. Till next date, the recovery of disputed amount shall not be effected from the appellant.



Chairman.

28.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 21.06.2021 for the same as before.



Reader

SCANNED
KPST
Peshawar



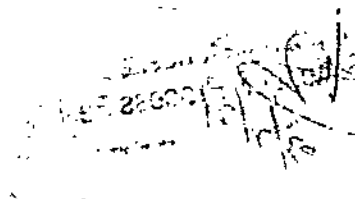
Appellant Deposited
Security & Process Fee
23/4/21

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 636 /2021 21

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/01/2021	<p>The appeal of Mr. Abdul Bais presented today by Mr. Muhammad Maaz Madni Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>01/02/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p style="text-align: right;"></p>
2-		

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

SERVICE APPEAL No. 636 /2021

ABDUL BAIS

VS

GOVT. OF KP
& OTHERS


INDEX

S. NO	DESCRIPTION OF DOCUMENTS	ANNEXURE	PAGE
1	Memo of Appeal	-----	1 - 5
2	Petition for Suspension	-----	6
3	Appointment Order Dated 01-10-2011	A	7
4	Order dated 05-05-2017	B	8
5	Judgment dated 20.09.2020	C	9 - 13
6	Impugned Order dated 24.08.2020	D	14
7	Departmental Appeal dated 22.09.2020	E	15 - 17
8	Vakalatnama	18

20-01-2021


Appellant

Through:


MUHAMMAD MAAZ MADNI,
ADVOCATE, HIGH COURT, PESHAWAR
Khattak Law Associates,
Juma Khan Plaza,
WarsakRaod, Peshawar
0333-9313113, 0345-9090737
muharimad.m3adv@gmail.com

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

SERVICE APPEAL No. 636 /2021

MR. ABDUL BAIS, s/o Anwar ul Haq, Junior Clerk (BPS-11),
o/o Advocate General, Khyber Pakhtunkhwa, Peshawar
r/o Chamkani Mohallah, Kada Khel, Peshawar.

.....APPELLANT

VERSUS

- 1- GOVERNMENT OF KHYBER PAKHTUNKHWA,
Through Secretary, Law, Parliamentary Affairs & Human Rights
Department, Civil Secretariat, Peshawar.
- 2- THE ADVOCATE GENERAL,
Khyber Pakhtunkhwa, High Court Building, Peshawar.
- 3- THE ACCOUNTANT GENERAL, KHYBER PAKHTUNKHWA,
Fort Road, Peshawar Cantt.:

..... RESPONDENTS

**APPEAL UNDER SECTION- 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED
ORDER DATED 24-08-2020 WHEREBY DIRECTION FOR
MAKING RECOVERY OF EMOLUMENTS DRAWN FOR THE
PROMOTED PERIOD OF SENIOR CLERK (BPS-14) IS ISSUED
AND AGAINST NO ACTION TAKEN ON THE
DEPARTMENTAL APPEAL DATED 22-09-2020 OF APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY (90) DAYS**

PRAYER:

That on acceptance of this appeal the impugned order dated 24-08-2020 may very kindly be set aside to the extent of making recovery of emoluments for the promoted period to the post of Senior Clerk (BPS-14) and direction may very kindly be issued not to make recovery of the emoluments drawn in the shape of salary. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Respectfully Sheweth:,

FACTS:

Brief facts giving raise to the instant appeal are as under:

1. That appellant is the Law abiding, Peaceful & bonafide citizen of Pakistan and is a civil servant working under the control of respondents.

2. That appellant is the employee of the respondents Department and is appointed as Junior Clerk vide order dated 05-10-2011 after fulfilling all the codal formalities required for the post and was posted against the vacant post of Junior Clerk at DI Khan.

Copy of the Appointment Order is attached as Annexure A

3. That, the appellant is serving the Department quite efficiently, whole heartedly and upto the entire satisfaction of his superior and as such the appellant has an unblemished service record.

4. That after working for quite considerable time in the office of Respondent No. 2 as Junior Clerk (BPS-11), the appellant was promoted to the post Senior Clerk (BPS-14) vide order dated 05-05-2017 against the newly created post.

Copy of the Order dated 05.05.2017 is attached as ANNEXURE B.

5. That, in the meanwhile, one of the colleague Mr. Izhar Ahmad Junior Clerk (BPS-11) was proceeded under Khyber Pakhtunkhwa Government Servant (E&D) Rules-2011 and was awarded major penalty of Removal from Service on 01-06-2015 which was later on modified and converted into Minor Penalty of three (03) increments for three (03) years vide order dated 15-09-2015 on his Departmental Appeal.

6. That Mr. Izhar Ahmad challenged the promotion order dated 05-05-2017 of the appellant before the Service Tribunal Khyber Pakhtunkhwa in Service Appeal No. 1316/2018 which was decided vide judgment dated 20-09-2019 with the direction:

“As a sequel to the above, the appeal is remitted to the respondents to again place the case of promotion of Junior Clerks against the post of Senior Clerks before the DPC including the private respondents and the appellant for consideration ...”

Copy of the Judgment dated 20.09.2019 is attached as ANNEXURE C.

7. That the respondents in compliance to implement the judgment dated 20-09-2019, issued the impugned reversion order dated 24-08-2020 whereby promotion order dated 05-05-2017 of the appellant was recalled from the date of passing of the judgment i.e. 20-09-2019 and reverted back to his original position of Junior Clerk (BPS-11) with a further addition in the impugned order dated 24-08-2020 that emolument drawn in lieu of the

promoted post of Senior Clerk (BPS-14) from the date of his promotion i.e. 05-05-2017, be adjusted/recovered.

Copy of the Impugned Order dated 24.08.2020 is attached as Annexure D.

8. That, the appellant feeling aggrieved from the impugned order dated 24.08.2020 preferred Departmental Appeal dated 22.09.2020 to the extent of recovery of emoluments drawn on the promoted post i.e. Senior Clerk (BPS-14) but no response has been received to the appellant within the statutory period of 90 (ninety) days.

Copy of Departmental Appeal dated 22.09.2020 is attached as ANNEXURE E.

9. That, appellants feeling highly aggrieved from the act of the respondent and having no other adequate or efficacious remedy but to file the instant appeal before this Honourable Tribunal on the following grounds amongst other:

GROUND:

- A- That, the act of the respondents while issuing the impugned order dated 24-08-2020 to the extent of recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14) is void ab-initio, unconstitutional, against the Law, fact, Rules, norms of Natural Justice and material available on record hence not tenable in the eye of Law.
- B- That, the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4, 9 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment met out to the appellants is highly discriminatory while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14).
- D- That, the respondent acted in an arbitrary and malafide manner while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14).
- E- That the appellant was validly promoted to the post of Senior Clerk (BPS-14) vide order dated 05-05-2017 and since then the appellant has worked on the post of Senior Clerk (BPS-14) according the best of his abilities and the satisfaction of his high ups till the issuance of the impugned order dated

24-08-2020 whereby the appellant was not only reverted but an illegal direction were issued for recovery of the emolument drawn in the shape of salary since promoted to the post of Senior Clerk (BPS-14) .

- F- That act of the respondents while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14) is against Article-3 which enshrines the Principle of "Equal Pay for Equal Work" and as such the appellant had worked on the post of Senior Clerk (BPS-14) honestly, whole heartedly and with full devotion.
- G- That act of the respondent while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14) is against the Principle of Locus Poententiae as the appellant has worked on the post for quite considerable time and the same is against the judgment passed by the August Supreme Court of Pakistan in case titled **Shams ur Rehman VS Military Accountant General, Rawalpindi & another** which is reported as **2020 SCMR page 188** has declared the recovery of emolument drawn for the higher post as illegal.
- H- That act of the respondents while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14) is against the spirit of the judgment 20.09.2019 passed by this Honourable Tribunal and issuing the impugned order dated 24-08-2020 is nothing but just misinterpretation of the judgment.
- I- That act of the respondent while issuing the impugned reversion order dated 24-08-2020 to the extent of making recovery of emolument for the promoted period from the appellant to the post of Senior Clerk (BPS-14) issued from the office of Respondent No. 2 is illegal on the analogy of a judgment of Lahore High Court, Lahore passed in the case titled **Muhammad Akhtar & 3 Others V/S Board Of Intermediate And Secondary Education, Faisalabad through Chairman and 3 others**, reported as **2020 P L C (C.S.) page 352**.
- J- That, act of the respondents is also a clear violation of Article-38 (e) of the Constitution of Islamic republic of Pakistan which states that:


"to reduce disparity in the income and earning of the individual including the persons in Service of Pakistan".

- K- That the impugned reversion order dated 24-08-2020 has neither been passed in the public interest nor in the exigencies of services rather the order of recovery of emolument for the promoted period to the post of Senior Clerk (BPS-14) have been issued and is illegal.
- L- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.


It is therefore, most humbly prayed that appeal of the appellant may kindly be accepted as prayed for

Dated: 20.01.2021

Appellant:


ABDUL BAIS

Through:


MUHAMMAD MAAZ MADNI
ADVOCATE,
HIGH COURT PESHAWAR

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

SERVICE APPEAL No. _____/2021

ABDUL BAIS

VS

GOVT. OF KP
& OTHERS

**APPLICATION FOR SUSPENSION OF OPERATION OF THE
IMPUGNED ORDER DATED 24-08-2020 TO THE EXTENT
OF MAKING RECOVERY OF EMOLUMENT DRAWN TILL
THE DISPOSAL OF THE ABOVE MENTIONED APPEAL**

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed the appellant before this august service Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned order dated 24-08-2020.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned order dated 24-08-2020 had been issued by the respondents in utter disregard of law and prevailing Rules.

It is therefore, most humbly prayed that on acceptance of this application the impugned order dated 24-08-2020 may very kindly be suspended to the extent of making recovery of emoluments drawn for the promoted period to the post of Senior Clerk (BPS-14) till the disposal of the above mentioned appeal.

Dated: 20-01-2021

APPLICANT


ABDUL BAIS

Through:


MUHAMMAD MAAZ MADNI
ADVOCATE,
High Court, Peshawar

7

9

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR.

OFFICE ORDER

ANNEXURE-A

On the recommendations of the Departmental Selection Committee, Mr. Abdul Bais S/O Anwar ul Haq is hereby appointed as Junior Clerk (BPS-07) against the vacant post in the office of the Additional Advocate General, Khyber Pakhtunkhwa, D.I.Khan with immediate effect on the following terms and conditions:-

1. He will get pay at the minimum of BPS-07, including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. The appointment is subject to the antecedent's verification of the appointee.
3. He shall be governed by the NWFP, Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made there under.
4. He shall, for all intents and purposes, be a Civil Servant except for purpose of pension and gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards Contributory Provident Fund (C.P. Fund) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
5. He shall produce Medical Certificate of fitness before the assumption of charge.
6. In case, he wishes to resign at any time, 14-days notice will be necessary or in lieu thereof 14-days pay will be forfeited.
7. He has to join duties at his own expenses.
8. If he accepts the post on the above terms and conditions, he may report for duty in the office of Additional Advocate General, Khyber Pakhtunkhwa, D.I.Khan within fifteen (15) days of receipt of this offer. In case of failure, this office order shall stand withdrawn.

ADVOCATE-GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.

CTC
OB

No. 9876-78 IAG, dated Peshawar the 01/10 2011

A copy is forwarded for information and necessary action to the:

1. Additional Advocate General, Khyber Pakhtunkhwa, D. I. Khan.
2. District Comptroller of Accounts, D. I. Khan.
3. Mr. Abdul Bais S/O Anwar ul Haq, Resident of Mahalla Qada Khel, Chamkani, Tehsil & District Peshawar.
4. Relevant file.
5. Personal File.

ASSISTANT ADVOCATE-GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.

8

OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

ANNEXURE-B

OFFICE ORDER

The following promotion is hereby ordered in the public interest with immediate effect.

S. No	NAME	PRESENT POSTING	PROMOTED AS
1.	Mr. Abdul Bais <i>Noted to be 6/5/17</i>	Junior Clerk (BPS-11) in Addl. A.G., office at D.I.Khan.	Senior Clerk (B-14) in Addl.A.G. Office, Bannu against the vacant post.
2.	Mr. Qutub ul Arif	Mali (BPS-03)	Junior Clerk (BPS-11) in Addl.A.G. office D.I.Khan.

ADVOCATE-GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.

Endst: No 7667-73 /AG

dated Peshawar, the 05/05/2017.

Copy forwarded for information and necessary action to the:

1. Accountant General, Khyber Pakhtunhwa, Peshawar.
2. Addl. Advocate-General, D.I.Khan
3. Additional Advocate General, Khyber Pakhtunhwa, Bannu.
4. District Comptroller of Accounts, D.I.Khan.
5. District Comptroller of Accounts, Bannu.
6. Officials concerned.
7. Personal file.
8. Office order file

CTC

OB

ADVOCATE-GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.

9

Flag - u

ANNEXURE - C



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1316/2018

Date of Institution ... 05.10.2018

Date of Decision ... 20.09.2019

Izhar Ahmad, Junior clerk, S/O Javed Ahmad, presently posted as Junior/Clerk in Additional Advocate General Office, Khyber Pakhtunkhwa Service Tribunal, Peshawar. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and four others. ... (Respondents)

MALIK HAROON IQBAL,
Advocate

For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

For respondents no. 1 to 3.

MR. M. MAAZ MADNI
Advocate

For respondent no.4

AMIR KHAN CHAMKANI,
Barrister

For respondent no.5

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

MEMBER(Executive)
MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that he joined the office of respondent no.3 as Junior Clerk on 11.04.2011 and performed duty devotedly. That through letter dated 26.07.2014 option/willingness was sought from the appellant for promotion against the post of Senior Clerk. The appellant conveyed

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

CTC
OB

10

his willingness vide application dated 05.08.2014. In the meanwhile disciplinary proceedings were initiated against him and finally major penalty of removed from service was awarded vide order dated 01.06.2015. Subsequently, upon acceptance of his departmental appeal, the major penalty of removal from service was modified/reduce into stoppage of three annual increments for three years vide order dated 15.09.2015. He submitted arrival report on 19.09.2015. Feeling aggrieved, he filed service appeal no. 1311/15 in this Tribunal which was accepted vide judgment dated 10.04.2017. The penalty was further reduced to stoppage of one increment for one year.

03. That vide order dated 13.07.2015 and 5.05.2017 private respondent no.4 and 5 were promoted as Senior Clerk despite being junior to the appellant in the seniority list of junior clerks, issued by the respondents from time to time. As impugned promotion order was passed without observance all codal formalities thus the same was illegal and unlawful.

04. Learned Assistant Advocate General argued that on the charges of misconduct, the appellant removed from service vide order dated 01.06.2015 but on acceptance of departmental appeal, the penalty was converted into stoppage of three annual increments for three years vide order dated 15.09.2015. He submitted arrival report on 19.09.2015. He also invoked the jurisdiction of this Tribunal by way of filing service appeal, whereby the penalty was further reduced to stoppage of one increment for one year. Moreover, seniority alone was not the sole criteria for promotion, fitness of the civil servant was also required to be taken into

[Handwritten signature]

CTC
[Handwritten initials]

ATTESTED

[Handwritten signature]
MEMBER
Cyber Tribunal
Service Tribunal,
Faisalabad

10

consideration. He filed departmental appeal on 05.07.2018, which was badly time barred. Promotions were strictly made in accordance with law and rules.

05. Learned counsels for private respondent no. 4 and 5 relied on the arguments advanced by the learned Assistant Advocate General.

CONCLUSION

06. The appellant was serving as Junior Clerk in the office of respondent no.3 since 11.04.2011. Some posts of Senior Clerks. were lying vacant and willingness/option was sought from the eligible employees including the appellant. He tendered option for promotion to the post of Senior Clerk. Thereafter, on the allegations of misconduct departmental enquiry was conducted and major penalty of removal from service was imposed on him vide order dated 01.06.2015. On preferring departmental appeal, the penalty was reduced/ modified into stoppage of three annual increments for three years vide order dated 15.09.2015. He submitted arrival report on 19.09.2015. He also invoked the jurisdiction of this Tribunal by filing service appeal no. 1311/15, which was accepted vide judgment dated 10.04.2017, whereby penalty of three increments was further reduced to stoppage of one annual increment for one year.

07. While the appellant was out of service promotion of private respondent no.4 as Senior Clerk was notified vide order dated 13.07.2015, whereas promotion of private respondent no.5 was made on 05.05.2017. During that period the appellant was in service. The appellant submitted departmental appeal on 05.07.2018.

Learned Asst: AG was asked to produce copy of working paper and minutes of the

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

12

4

DPC meeting in which cases of the aforementioned private respondents were cleared for promotion against the post of Senior Clerk. However, he expressed his inability to arrange the said document. On the other hand, learned counsel for the appellant alleged that promotions were made without holding meeting of the DPC and just to extend undue favor to blue eyed employees working in the office of respondent no.3. Again Asst. AG was unable to rebut the plea of learned counsel for the appellant. Perusal of parawise comments submitted by the respondents were also silent, whether the said promotion cases were placed before the DPC or otherwise. Had it been cleared by the above forum, the respondents could easily use it in their defense. Attention is drawn to Section-5 of Khyber Pakhtunkhwa-Civil Servants Act, 1973 and is reproduced below for ready reference:

"Appointment.-- 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 authorized by the Governor in that behalf.

08. It transpired that promotions referred to above were not made in accordance with the procedure laid down Rule-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989. Therefore, question of limitation hardly carries any weight. It cannot be used as a shield to cover misdeeds of the respondents. Orders of promotion referred to above issued in violation of rules/laid down criteria were patently illegal and unlawful. In order to ensure substantial justice there is ample justification that the respondents should reconsider the promotions against the posts of Senior Clerk of all the candidates including the appellant by placing it before the DPC for decision.

CTC
OB

ATTESTED

BY
Sd/-
Secretary
Khyber Pakhtunkhwa
Civil Servants
Commission
Peshawar

13

09. As a sequel to the above, the appeal is remitted to the respondents to again place the case of promotion of Junior Clerks against the post of Senior Clerks before the DPC including the private respondents and the appellant for consideration. Parties are left to bear their own costs. File be consigned to the record room.

(MUHAMMAD HAMID MUGHAL)
MEMBER

(AHMAD HASSAN)
MEMBER

ANNOUNCED
20.09.2019

Certified to be true copy

EMAN HUSSAIN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application	23-9-2019
Number of Wards	1800-
Copying Fee	22-
Urgent	4-
Total	26-
Name of Applicant	8
Date of Completion of Copy	1-10-2019
Date of Delivery of Copy	1-10-2019

CTC
OB

14



OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 8980-83 /AG

Dated Peshawar, the 24-Aug-2020

Address: High Court Building, Peshawar
Tel No. 091-9212681

Exchange: 091-9213833
Fax No. 091-9210270

To

ANNEXURE-D

Mr. Abdul Bais, Senior Clerk,
Additional Advocate General Office,
Services Tribunal, Khyber Pakhtunkhwa,
Peshawar.

Subject: **IMPLEMENTATION OF JUDGMENT, DATED 20/09/2019 IN SERVICE APPEAL NO. 1316/2018 (IZHAR AHMAD VERSUS GOVT. OF KHYBER PAKHTUNKHWA ETC)**

Your promotion order bearing No. 7667-73/AG, dated 05/05/2017 as Senior Clerk (BPS-14) has been declared as illegal and ultra-vires by the Services Tribunal, Khyber Pakhtunkhwa in its Judgment, dated 20/09/2019 in Service Appeal No. 1316/2018 (Izhar Ahmad-vs-Govt. of Khyber Pakhtunkhwa etc). You had been put in notice of this Judgment vide earlier correspondence bearing No. 2954-55/AG, dated 18/02/2020 but you had not made any legal recourse to challenge the aforesaid Judgment and since the Fitness Committee has also decided not to file any Appeal vide minutes of the Scrutiny Committee, dated 16/10/2019. Aforesaid Judgment has, therefore, attained finality and has to be given effect.

In pursuance to the aforesaid judgment, your promotion order, dated 05/05/2017 is hereby recalled w.e.from 20/09/2019. You are accordingly reverted back to your original position as Junior Clerk (BPS-11). All the emoluments drawn are also to be adjusted / recovered.

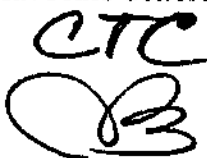
Note: As there is no vacancy of Junior Clerk (B-11) at the moment, therefore, he is adjusted as Senior Clerk (B-14) only for the purpose of pay release as Junior Clerk and shall remain as such till recommendations of Departmental Promotion Committee (DPC) as and when convened.


(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER

Endst. No. & date even

Copy to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Budget & Accounts Officer of this office.
3. PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.



ADMINISTRATIVE OFFICER

(15)

Daily No.
6675

ANNEXURE - E

To

THE HONOURABLE SECRETARY,
Govt. of Khyber Pakhtunkha,
Law, Parliamentary Affairs & Human Rights Department,
Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST 24-08-2020

R/Sir,

Most respectfully states as:

1. That I am appointment as Junior Clerk vide order dated 05-10-2011 after fulfilling all the codal formalities required for the post and was posted against the vacant post of Junior Clerk at DI Khan.
2. That after working for quite considerable time in the office of Ad: Advocate General at DI Khan as Junior Clerk I was promoted to the post Senior Clerk (BPS-14) vide order dated 05-05-2017.
3. That, in the meanwhile, one of my colleague Mr. Izhar Ahmad Junior Clerk (BPS-11) was proceeded under Khyber Pakhtunkhwa Government Servant (E&D) Rules-2011 and was awarded major penalty of Removal from Service on 01-06-2015 which was later on modified and converted into Minor Penalty of three (03) increments for three (03) years vide order dated 15-09-2015 on his Departmental Appeal.
4. That Mr. Izhar Ahmad challenged my promotion order dated 05-05-2017 before the Service Tribunal Khyber Pakhtunkhwa in Service Appeal No. 1316/2018 which was decided vide judgment dated 20-09-2019 with the direction:

"As a sequel to the above, the appeal is remitted to the respondents to again place the case of promotion of Junior Clerks against the post of Senior Clerks before the DPC

CTC
B

including the private respondents and the appellant for consideration.”

5. That in compliance to implement the judgment dated 20-09-2019, I was issued with the impugned reversion order dated 24-08-2020 whereby my promotion order dated 05-05-2017 was recalled from the date of passing of the judgment i.e. 20-09-2019 and reverted back to my original position of Junior Clerk (BPS-11) with a further addition in the impugned order dated 24-08-2020 that emolument drawn in lieu of the post of Senior Clerk (BPS-14) from the date of my promotion i.e. 05-05-2017, be adjusted/recovered.
6. That the impugned reversion order dated 24-08-2020 has neither been passed in the public interest nor in the exigencies of services rather the order of recovery of emolument for the promoted period to the post of Senior Clerk (BPS-14) have been issued.
7. That the impugned reversion order dated 24-08-2020 to the extent of recovery of emolument for the promoted period from the applicant to the post of Senior Clerk (BPS-14) issued from the office of Advocate General Peshawar is illegal on the analogy of a judgment of Lahore High Court, Lahore passed in the case titled MUHAMMAD AKHTAR and 3 others V/S BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, FAISALABAD through Chairman and 3 others, reported as **2020 P L C (C.S.) 352**.
8. That the impugned reversion order dated 24-08-2020 is against the Principal of Locus Poenitentiae as in the judgment it has clearly been mentioned that the case of promotion of Junior Clerks against the post of Senior Clerks be place before the DPC for consider but till date no DPC meeting has been called as an approximately year is going to complete while the judgment dated 20-09-2020 has passed. Hence, the same is against the recent judgment passed by the August Supreme Court of Pakistan in case titled **Shams ur Rehman VS Military Accountant General,**

CTC
OB

(17)

Rawalpindi & another which is reported as **2020 SCMR 188** has declared the recovery of emolument drawn for the higher post as illegal.

9. That the impugned reversion order dated 24-08-2020 to the extent of recovery of emoluments is also illegal as the applicant has worked on the post of Senior Clerk (BPS-14) from the date of promotion i.e. 05-05-2017 with full zeal & zest and recovery for the promoted period would amount to force labour, which is against Article-11 of the Constitution of Islamic Republic of Pakistan.

In light of the above, it is therefore, most kindly requested that the impugned reversion order dated 24-08-2020 may be cancelled/modified to the extent of recovery of emoluments drawn for the promoted period to the post of Senior Clerk (BPS-14).

I shall be very thankful to you for this kindness.

Dated: 21-09-2020

CTC


Obediently Yours,



Abdul Bais,
Senior Clerk (BPS-14),
o/o Add: Advocate General,
Service Tribunal Khyber Pakhtunkhwa,
Peshawar.

(POWER OF ATTORNEY)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2021

ABDUL BAIS

VS

GOVT. OF KP & Others


I, Abdul Bais do hereby nominated and appointed **MUHAMMAD MAAZ MADNI**, Advocate, High Court, Peshawar, to be counsel in the above matter for me/us and on my/our behalf as agreed to appear, plead, act and answer in the above court or any appellate court or any court to which the business is transferred in the above matter as and is agreed to sign and file petition, appeals, statements, accounts, exhibits, compromises or other documents whatsoever, in connection with the said matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc and to apply for and issue summons and other writs or subpoena and to apply for and get issued any arrest, attachment or other execution, warrants or order and to conduct any proceedings that may arise there out; and to apply for and receive payment of any or all sums or submit the above matter to arbitration, and to employ an other legal practitioner authorizing him to exercise the power and authorities hereby conferred on the advocate whenever he may think fit to do so.

AND to do all acts legally necessary to manage and conduct the said case in all respects whether herein specified or not, as may be proper and expedient.


AND I/WE hereby agree to ratify and confirm all lawful acts done on my/our behalf; under or by virtue of these present or of the usual practice in such matter. PROVIDED always that I/WE undertake at the time of calling of the case by the court I/MY authorized agent shall inform the advocate and make him appear in the court, if the case, may be dismissed in default, it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

IN WITNESS WHERE OF I/We hereunto set MY/OUR hand to these presents, the contests of which have been explained to and understood by ME/US this _____ day of _____ 2021.

EXECUTANT


(Abdul Bais)

Accepted subject to the terms regarding fees:


MUHAMMAD MAAZ MADNI,
ADVOCATE HIGH COURT, PESHAWAR
BC No. (BC-11-1460)
CNIC No. 17101-9263898-1

OFFICE: KHATTAK LAW ASSOCIATES,
Juma Khan Plaza, Warsak Road, Peshawar.
Contact#: 0333-9313113, 0345-9090737