

BEFORE THE KHYBER PAKTUNKAWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT, ABBOTTABAD

Service Appeal No: 14129 of 2020

Abdul Waheed Headmaster GHS Baidra Tehsil & District Mansehra Appellant

VERSUS

Government of Khyber Pakhtunkhwa.....

Respondent

Through

1. The secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar.
2. The secretary to Government of Khyber Pakhtunkhwa Finance Department Peshawar.
3. Director Elementary and Secondary Education KPK, Peshawar.
4. District Education Officer Male Mansehra.
5. District Account Officer Mansehra.

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Next Date :- 27/11/2023

Abbottabad

BEFORE THE KHYBER PAKTUNKAWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT, ABBOTTABAD

Service Appeal No: 14129 of 2020

Abdul Waheed Headmaster GHS Baidra Tehsil & District Mansehra Appellant Khyber Pakhtunkhwa Service Tribunal

VERSUS

Government of Khyber Pakhtunkhwa.....

Respondent

Case No. 6346

Dated 10/7/2023

Through

1. The secretary to Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar.
2. The secretary to Government of Khyber Pakhtunkhwa Finance Department Peshawar.
3. Director Elementary and Secondary Education KPK, Peshawar.
4. District Education Officer Male Mansehra.
5. District Account Officer Mansehra.

 PARA WISE REJOINDERS ON BEHALF OF APPELLANT AGAINST THE COMMENTS/REPLY OF THE RESPONDENTS NO 2 & 5.

Respectfully Sheweth:

Rejoinder on behalf of appellant is submitted as under:-

ON PRELIMINARY OBJECTIONS:

- 1 to 8** All objections from SR No.1 to 8 are incorrect and wrong and have no space in law. Respondent had totally failed to produce any legal objections against the appellant. The service tribunal is the proper forum for the Appellant to file the appeal against the impugned order of respondents because the appellant is a civil servant and filed instant service appeal U/S-04 of KPK Service Act, 1974 in the light of the fresh cause of action. The appellant badly suffered due to the order dated 07-10-2020 and filing of appeal against the said order is the basic and the fundamental right of the appellant. Appellant come to this Honorable Tribunal with clean hands but respondent concealed and distorted the material facts from this Honorable Tribunal. The appeal of the appellant was filed well within time, hence maintainable. The Service appeal of appellant is relating to Personal Pay, not related to the matter of increment/arrears of advance increment of the higher educational qualification.

FACTUAL OBJECTION

Para 1 – Record

Para 2– Record

Para 3;

Para (a) Correct Service History

Para (b)(i), Incorrect for the Implementation of Notification No. FD (PRC) 5-2/2002. Dated 30-3-2009

Subject:- “GRANT OF ANNUAL INCRMENT/RUNNING.PAY TO UNTRAINED TEACHER IN THE LIGHT OF SUPREME COURT JUDGEMENT”.

The appellant applied for revised salary slip to get the benefit of untrained period (31-07-1985 to 28-04-1993) to district account office Abbottabad. District Account Office issued a revised salary slip in which the advance increments of M.Ed were not fixed due to maximum of the scale BPS-16 5490. The same was not implemented and challenged in the Honorable Service Tribunal Peshawar. Annexure (A)



(ii) In the scheme of basic pay scales 1983, the benefits of advance increments beyond the maximum of the pay scales explained by a notification No.FD (SR-II)2-123/83 Dated Peshawar the 20th May 1984 by the Government of NWFP Finance department,

Para 2 of the notification state that “It has therefore been decided that such teachers who could not get the full benefit of advance increment provided for in the scheme of basic pay scales shall be allowed to the benefit of advance ~~increment~~ if any, which they could not get on 01-07-1983 in the next higher pay scales after their move over to the such basic pay scales with effect 01-12-1984”.

Honorable Service Tribunal decided of the case of Mr.SULEMAN KHAN SET vs Government of NWFP in an appeal No.846/04 on 10-11-2008.

Finance Dapartment of NWFP implemented the same through Notification No – FD/SO (SR-1) -123/07 dated 10-11-2008. In the light of H.S.T vide order dated 5/9/2007. Annexure “B” “C” “D”

Para(d) Incorrect Pay scales of Government servants revised from 1st June of respective year, Departmental policy to sanction of Advance Increments from the date of passing relevant exams or from the date of Taking over charge against the relevant post as result of appointment.

Para e. In correct Department sanctioned three advance increments of MEd under pay revisions scheme 1983. Para 5 (i) of Notification 11-8-1991 was not applied.

Para (fgh&i) Incorrect:- Respondent intentionally created a controversial between the two basic pay scales 1983 and 1991 without any legal proof / notification. Same matter is repeated in four different paras i.e (fgh&i) by different pictures just to made misconception and complication in the case to deny the benefits.

Respondent is not updated with the court decisions. Honorable Supreme Court of Pakistan CPLA 526 of 2007 titled Rashid Iqbal vs District Coordination Officer Abbottabad and others passed an order that notification dated 11-08-1991 was applicable to all provincial civil servants in the NWFP without any exception including teachers in the education department of the province. After this judgment, the notification 31-01-1988 is not applicable.

The objection rose by the respondent "contrary to the scheme of BPS-1983, the para 5 (ii) of notification of 1991 and that the concept of following single schemes."

The above mentioned objections was removed by the Honorable Supreme Court of Pakistan in CPL No 118-P of 2009 titled Attaullah Khan vs Executive District Officer School and Literacy Lakki Marwat and others. Mr Attaullah Khan acquired additional qualification of MA (Pashto) and granted three advance increments under the scheme of Basic Pay Scales 1983. Honorable Supreme Court of Pakistan allowed him the benefits of these increments as a personal pay beyond the maximum of the scales under para 5(ii) of basic pay scale of 1991. Annexure "D & E"

Para 4:- Incorrect Notification 11-8-1991 is equally attracted as Notification No FD (SR-II) 2-123/83 dated 20-05-84 of Pay revisions Notification 18-8-1983 Annexure "B&C".

Para 5:- Incorrect Appellant filed a writ petition No 170-A/2018 before The Peshawar High Court Abbottabad Bench under Article 199 of the constitution of Islamic republic of Pakistan but the same was rejected on 21-3-2018.

Para 6:- Correct Case History

Para 7:- Correct Case History

Para 8:- Correct Case History

Para 9:- Submission of appeal to Department on the Guide line of Honorable Supreme Court of Pakistan.

GROUND:-

- A Para-a** Incorrect Appellant not treated with law rules and policy on the subject.
- B Para-b** Incorrect Notification dated 11-8-1991 is a relevant and provide guide line for personal Pay beyond the maximum of the scales and the refusal of the respondent is unlawful.
- C Para-c** Incorrect This para refer to the difference of the pay of same employees having same qualification and length of service.
- D Para-d** In this para, an identical case under similar circumstances The same benefits has been extended by this Honorable Service Tribunal to one Mr. Suleman Khan SET in the service appeal No 846/2004 decided on 21-06-2006 implemented by respondent No.2 vide letter dated 10-11-2008 in light of the direction of the Honorable Service Tribunal vide order dated 05-09-2007 under notification No FD(SR-11)2 - 123/83 Dated 20-05-1984 of Pay revision notification 1983. Annexure B,C,D.
- E Para-e** Correct

It is therefore humbly prayed that, comments of the respondent may kindly be rejected/dismissed with cost and the appeal of the appellant may graciously be accepted.

Dated: 15 / 8 / 2022



(ABDUL WAHEED)

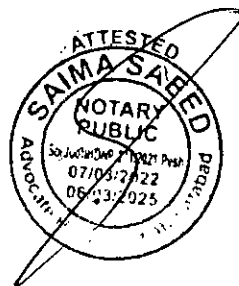
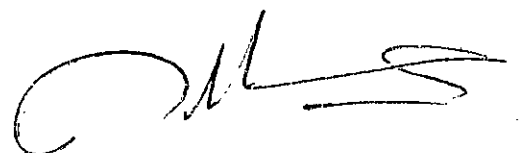
(APPELLANT)

In person

AFFIDAVIT:

I, Mr. Abdul Waheed Headmaster, GHS Baidra, and Tehsil & District Mansehra do hereby solemnly affirm and declare on oath that the contents of forgoing rejoinder are true and correct to the best of my knowledge and belief and that nothing has been concealed therein from this Honorable Tribunal.

Dated: 15 / 8 / 2022

DEPONENT

22/02/23

"B"

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No.FD(SR-II)2-123/83.

GOVERNMENT OF NWFP,
FINANCE DEPARTMENT.

Dated Peshawar, the 20th May, 1984.

From:

The Secretary to Govt:of NWFP,
Finance Department, Peshawar.

To

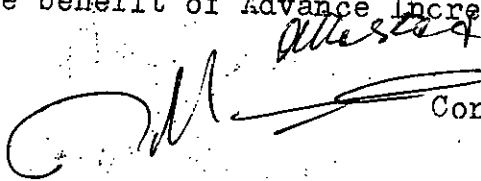
1. All Administrative Secretaries to Government of N.W.F.P.,
2. All Heads of Attached Department in N.W.F.P.
3. All Commissioners of the Division in N.W.F.P.
4. All Deputy Commissioners/Political Agents/District & Session Judges in N.W.F.P.
5. The Secretary to Governor, NWFP, Peshawar.
6. The Registrar, Peshawar High Court.
7. The Secretary, NWFP Service Tribunal.
8. The Secretary, NWFP, Public Service Commission, Peshawar.
9. The Secretary, Board of Revenue, N.W.F.P., Peshawar.

Subject:- ADVANCE INCREMENTS TO SCHOOL TEACHERS ON
ATTAINING HIGHER QUALIFICATIONS.

Sir,

25/5/84
I am directed to refer to para 9 of this Department letter No.FD(SR-I)1-67/83 dated 24/8/1983 and para 2 of letter No.FD(SR-II)2-123/83 dated the 15th December, 1983 and to say that a number of Teachers in different categories were drawing pay at the maximum of their pay Scales on 1st July, 1983 and their pay has also been fixed at the maximum of the respective Basic Pay Scales. Such teachers would be deprived of the benefit of advance increments even if they possessed higher qualifications for which advance increments have been allowed.

2- It has therefore been decided that such teachers who could not get the full benefit of advance increments provided for in the Scheme of Basic Pay Scales, shall be allowed the benefit of Advance Increments, If any,

Attested

Contd:P-2

which they could not get on 1/7/1983, in the next higher Pay Scales after their move-over to such Basic Pay Scale with effect from 1-12-1984.

Your obedient servnat,

I Ahmad
20-5-84
(IFTIKHAR AHMAD)
DEPUTY SECRETARY (REGULATION)

Endst:No.FD(SR-II)2-123/83 Dated Peshawar, the 20th May, 1984.

Copy forwarded, for information, to :-

1. The Martial Law Secretariat, Zone 'B' Peshawar.
2. The Secretaries to Governments of the Punjab, Sind and Baluchistan, Finance Department, Lahore, Karachi and Quetta.
3. All Autonomous/Semi Autonomous Bodies in N.W.F.P.

Fazal Amin
(SAHIBZADA FAZAL AMIN)
Section Officer (SR-II)

Endst:No.FD(SR-II)2-123/83 Dated Peshawar, the 20th May, 1984.

Copy forwarded, for information, to :-

1. The Accountant General, N.W.F.P., Peshawar.
2. The Treasury Officer, Peshawar.
3. All District/Agency Accounts Officers in N.W.F.P.
4. The Director, Local Fund Audit, NWFP, Peshawar.
5. P.S. to the Finance Secretary, NWFP, Peshawar.
6. All P.A.s in the Finance Department.
7. All Budget/Section Officers in the Finance Department.

Fazal Amin
(SAHIBZADA FAZAL AMIN)
Section Officer (SR-II)

Sajjad
Sajjad
SAJJAD

FINANCE DEPARTMENT

NO.FD/SO (SR-1) 2-123/07

Dated: Nov. 10 2008

The Secretary to Govt. of NWFP,
Elementary & Secondary Education,
Peshawar.


SUBJECT: IMPLEMENTATION OF DECISION OF NWFP
SERVICE TRIBUNAL PESHAWAR DATED 21.06.06 IN
SERVICE APPEAL NO.846/04 SULEMAN KHAN SET VS
GOVT. OF NWFP.

Dear Sir,

I am directed to refer to the subject noted above and to state that subject Judgement of NWFP Service Tribunal was re-examined in light of Tribunal directions given on 05.09.2007.

It has been decided to extend the benefit of this Department letter No. FD (SR-II) 2-123/83, dated 20.05.1984 to the present appellants to comply with the Judgement of NWFP Service Tribunal, Peshawar dated 21.06.06 and to allow them the remaining advance increments as per their entitlement on attaining higher qualification.

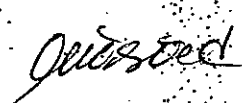
Your Faithfully

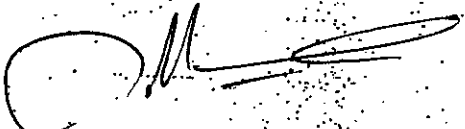

(Haji Inqad Ali Khan)
SECTION OFFICER (SR-1)

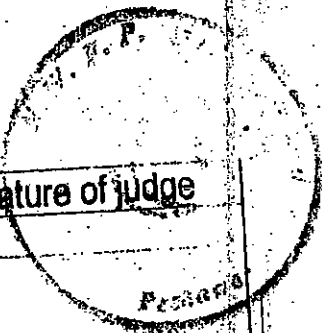
Endst: of even No & date.

Copy forwarded to the:

1. Accountant General, NWFP Peshawar.
2. Registrar NWFP Service Tribunal, Peshawar.
3. Section Officer (Lit-II), Finance Department.

 SECTION OFFICER (SE-1)





S.No	Date of order	Proceedings with signature of judge
1	5.9.2007	<p style="text-align: center;">3</p> <p>Parties present. During the hearing of the case, it was revealed that the Education Department had referred the case of the petitioner to the Finance Department in the light of Pay Revision Rules 1991 which according to the petitioner was not attracted to his case. The Tribunal's judgement also had directed the respondent department to examine the case of the appellant in the light of Pay Revision Rules, 1983. Therefore, the respondent department is once again directed to refer the case of the petitioner to the Finance Department, as indicated in the Tribunal's judgement dated 21.6.2006, for obtaining the Finance department advice and passing a final order on the receipt of the same. Case to come up for further proceedings on 25.10.2007.</p> <p style="text-align: right;">Member.</p>

Handwritten notes:
 12.9.07
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 12.9.07
 12.9.07

Stamp: MEMBER FOR THE TRIBUNAL

Signature: Member.

Signature: Member.

Large handwritten signature at the bottom of the page.

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In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Rana Bhagwandas, ACJ
Mr. Justice Sardar Muhammad Raza Khan

C.P.L.A No. 525 of 2007 *OP. 1504-1505/07*
(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No. 498 of 2006)

Rashid Iqbal Khan

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Rashid Iqbal Khan, in person

For the respondents:

Sardar Shaukat Hayat Khan,
Additional Advocate General, NWFP

C.P.L.A No. 526 of 2007 ✓

(On appeal from judgment of NWFP Service Tribunal, Peshawar dated 24.4.2007 passed in Service Appeal No. 499 of 2006)

Muhammad Haroon Qureshi

Petitioner

Versus

District Coordination Officer, Abbottabad & others

Respondents

Petitioner:

Muhammad Haroon Qureshi, in person

For the respondents:

Sardar Shaukat Hayat Khan,
Additional Advocate General, NWFP

Date of hearing:

19.7.2007

Judgment

Rana Bhagwandas, ACJ – Sole grievance of the petitioners before the NWFP Service Tribunal (hereinafter referred to as the Tribunal) appears to be that after induction in BPS-14 as Elementary School Teachers, in terms of NWFP Government Circular dated 7.8.1991 they are entitled to ~~four advance increments in terms of NWFP Government circular letter No. FD (PRG) 12/39 dated 14.8.1991~~ on acquiring higher qualification MA/MSc. They have been non-suited by the Tribunal vide judgment dated

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24.4.2007 on the premise that they had been placed in higher grade i.e. BPS-14 on acquiring BA/BSc Second Division in terms of Finance Division circular letter No.FD(PRC)1-1/89 dated 7.8.1991, therefore, the provisions of circular letter dated 11.8.1991 issued by the Finance Department would not be applicable to teachers. Tribunal has expressed the view that this circular would be applicable only to ministerial staff, as such, the petitioners were not entitled to the relief claimed by them. Petitioners being aggrieved seek leave to appeal.

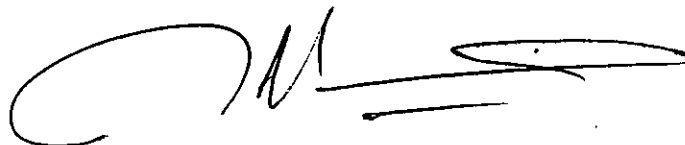
2. We have heard the petitioners, who argued their case in person whereas learned Additional Advocate General, NWFP has appeared on Court notice issued to the respondents. With the assistance of learned Additional Advocate General, we have examined both the circulars, which do not exclude the teachers in the Education Department from the benefits accruing out of circular letter dated 11.8.1991, as on its plain reading it applies to all civil servants in BPS 1 to 15 serving under the Provincial Government. Para 5 of the said circular provides mechanism for grant of advance increments to officials for possessing/attaining higher educational qualification. Para 5, clause (c) caters for the grant of four advance increments on attaining MA/MSc where prescribed qualification is FA/FSc. It would be seen that the petitioners were placed in BS-14 by reason of having acquired the qualification of BA/BSc, Second Division which is the prescribed qualification for the post of Elementary School Teacher. It is not the case of respondent Government that the petitioners have already drawn advance increments on acquiring higher qualification of MA/MSc.

3. Learned Additional Advocate General attempted to argue that in view of the higher scale granted to Elementary School Teachers in pursuance of the circular letter dated 7.8.1991, which was personal to them, the

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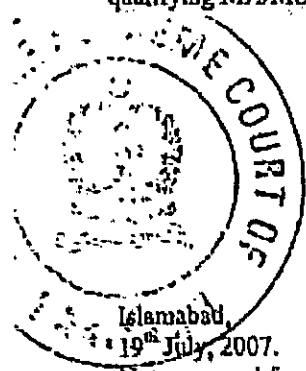
Superintendent
Muzrai, Chitral District

Attested



petitioners would not be entitled to the incentive of advance increments contemplated by circular letter dated 11.8.1991 but he is unable to cite any principle of law or authority for placing this interpretation. We find that, while circular letter dated 7.8.1991 exclusively deals with the scales of pay of school teachers in different categories, circular letter dated 11.8.1991 provides for the revision of basic pay scale and grant of annual increments and advance increments for all Provincial civil servants in NWFP without any exception. Since the teachers or the employees in Education Department have never been expressly or impliedly excluded from the operation of the circular letter, view taken by the Tribunal being erroneous cannot be sustained at law. In fact, it suffers from clear misconception of law and misconstruction of the circular letter (supra).

3. For the aforesaid facts, circumstances and reasons, we are of the considered view that the Tribunal committed a serious error of law, therefore, the impugned judgment is liable to be set aside. Consequently, we convert these petitions into appeals and, on acceptance, declare that the petitioners would be entitled to four advance increments with effect from the date of qualifying MA/MSc exam.



Not approved for reporting.
12/10/07

Chief Justice
Justice

Certified to be true copy

[Signature]
98/11/2007
Superintendent
Supreme Court of Pakistan
ISLAMABAD

Date of Filing	11/7/07
No. of Petitions	3
No. of Petitions	3
Requisition Fee Rs.	500
Copy Fee in:	500
Court Fee stamps:	500
Date of Completion	11/7/07
Copy:	98-11-2007
Date of delivery	8-12-2007
Copy:	
Compared by:	

Received
[Signature]

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12

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE AMIR HANI MUSLIM

CIVIL APPEAL NO. 118-P OF 2009

(On appeal from the judgment of the N.W.F.P.
Service Tribunal, Peshawar, dated 26.1.2009
passed in Appeal No. 1060 of 2008)

Attaullah Khan

Appellant

Versus

Executive District Officer Schools and
Literacy Lakki Marwat and others

Respondents

For the Appellant:

Mr. Waqar Ahmed Seth, AQSC
Mr. Mir Adam Khan, AOR

For the Respondents:

Mr. Naveed Akhtar, Addl. A. G. K.P.K.

Date of Hearing:

16th March, 2011

JUDGMENT

NASIR-UL-MULK, J.- This appeal by leave of the Court is directed against the judgment of the N.W.F.P. (now K.P.K.) Service Tribunal, dated 26.1.2009 whereby the relief of three advance increments granted to the appellant was declined.

2. The appellant is a school teacher who had acquired additional qualification of M.A. (Pushto) on 26.9.2001. He, along with others, was granted three advance increments on attaining the additional qualification. It is the grievance of the appellant that the benefit of the pay, as a result of increments, was not granted to him. The learned counsel for the appellant has referred to para 5(ii) of the notification dated 11.8.1991 which states that "The advance increments shall be allowed at the time of recruitment or acquisition of higher qualification whichever is later. In cases where the employee is already at the maximum of the scale, he may be allowed the number of advance increments beyond the maximum of the scale as

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Registrar
Supreme Court of Pakistan
Peshawar

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personal pay to be absorbed at the time of his move-over/promotion." It is contended that the appellant had reached the maximum scale but the advance increments had not been absorbed in the appellant's pay at the time of his promotion from BPS-16 to BPS-17. In the comments filed by the respondents before the Service Tribunal, the following plea was taken in para 4 for denying the relief to the appellant:-

"The para is not based on facts. At the time of fixation his pay has been fixed Rs. 5490/- on the maximum of BPS-16. In the light of the Government N.W.F.P. Peshawar Finance Department No. FD-SRV/2-123/2001 dated 23.10.2001 duly verified by Accountant General NWFP vide his No. H.24(110)LM/Vol-11/5255-56 dated 26/12/2003 in similar nature case of Mr. Dil Jan SET GHS Daulat Khel, (Copy attached) that the three advance increments as a personal pay over and above the maximum of the relevant scale is not admissible to the teaching staff. Hence, he is not entitled for the said benefit."

3. In the notification dated 23.10.2001 relied upon in the above comments, the Finance Department, Government of N.W.F.P. had declined the relief mentioned in para 5(ii) of the notification dated 11.8.1991 to teachers on the ground that it is only for the benefit of government officials and is not admissible as a general principle in case of Basic Pay Scale Rules 1983. This view of the Finance Department was contrary to the view point of the Accountant General Office. From the past correspondence and para 4 of the comments filed by the respondents, the only reason for declining the relief to the appellant was that the benefit of para 5(ii) of the notification of 11.8.1991 was not extendable to teaching staff. The question as to whether the notification dated 11.8.1991 was applicable to the teaching staff of the Provincial Government came under discussion before this Court in case of

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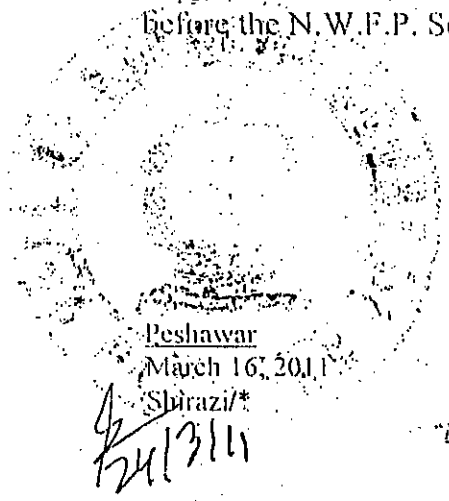
[Signature]
 Assistant Registrar
 Supreme Court of Peshawar
[Signature]

[Signature]
 Justice of Peace

Rashid Iqbal Khan v District Coordination Officer, Abbottabad and others (C.P.L.A. No.525 of 2007) and it was held that the said notification was applicable to all provincial civil servants in N.W.F.P. without any exception, including teachers in the Education Department of the Province. This judgment dated 19.7.2002, has, therefore, settled the issue that the appellant would be entitled to the benefit of para 5(ii) of the notification dated 11.8.1991. That notification clearly declares that an employee who acquires additional qualification but has reached the maximum of the scale would be granted the advance increments beyond the maximum scale as personal pay that would be absorbed in his pay at the time of his promotion. The Tribunal has not examined the case from the above perspective. The appeal is, therefore, allowed, the impugned judgment is set aside and the appellant is granted the relief prayed for in the appeal filed by the appellant

Before the N.W.F.P. Service Tribunal.

Sd/- Nasir-ul-Mulk, J
Sd/- Amir Hami Muslim, J



Asst. Registrar
Supreme Court of Pakistan
Peshawar.
17/11

"NOT APPROVED FOR REPORTING"

G.R. No. 446 P/2011
 Date of presentation of Application 17/05/2011
 No of Words 9
 No. of Folios 9
 Requisite Fee 5.00
 Copying Fee 5.00
 Court Fee stamps 10.58
 Date of completion 17-05-2011
 Date of Delivery 17-05-2011
 Compared by [Signature]
 Received by M. Zahoor Bumbhajan
 Total Amount [Signature]
 Advance Rs [Signature]
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Quisrad
[Signature]