

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 351/2023


Muhammad Rafiq VERSUS Mines and Mineral etc

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Appellant/respondent

Through


Taimur Ali Khan
Advocate High Court
Peshawar

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 351/2023

Muhammad Rafiq

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6328

Dated 7/7/2023

..... (Appellant)

Versus

1. Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Secretary Mines and Minerals department Civil Secretariat Khyber Pakhtunkhwa, Peshawar.
3. Director General Mines and Mineral, Khyber Pakhtunkhwa, Peshawar.
4. Secretary Finance Civil Secretariat Khyber Pakhtunkhwa, Peshawar.
5. Mr. Muhammad Farooq Chief Draftsman, Mines and Mineral Department, Khyber Pakhtunkhwa.

..... (Respondents)

PARA WISE WISE COMMENTS ON BEHALF OF RESPONDENTS 5.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS.

That the appellant submits as under:-

1. That the Appellant has got no cause of action against the respondents.
2. That the instant appeal is not maintainable in its present form.
3. That no vested right of the appellant has been infringed as such the appeal is liable to be dismissed on merit.
4. That the appellant has got no locus standi to file this appeal.
5. That the appellant has not come to this Hon'able Tribunal with clean hands.
6. That the appeal is not tenable and is liable to be dismissed.

7. That the appellant is estopped from filing the instant appeal. That the appeal in its present form is bad, defective hence liable to be dismissed.
8. That the appeal is barred by law and limitation.
9. That the appeal is bad for misjoinder and non-joinder.

ON FACTS.

1. Pertains to record.
2. Pertain to record.
3. Pertain to record. However, it is quite clear that the petitioner was promoted from BPS-16 to BPS-17 as Assistant Director Survey & Drawing vide Notification SO (E)/MDD/2-4/2022/8854/62 dated 18.05.2022 (Annex-A), whereas respondent No. 5 was promoted to the post of Chief Draftsman (BPS-17) vide Notification No. SO-ADMIN/MD/1-6/91Vol-XV/1263-68 dated 30.10.2013 Annexure-B.
4. Incorrect, the petitioner concealed the facts from Tribunal. According to section 8 (5) of the civil Servant Act, 1973, the seniority list prepared under section (1), shall be revised and notified in the official Gazette at least one in a calendar year, preferably in the month of January. Accordingly, after fulfillment of all codal formalities and approval of competent Authority (Secretary Establishment) final seniority list of Chief Draftsman (BPS-17) & Assistant Director (Survey & Drawing) (BPS-17) stood on 30.11.2021 in Mines & Minerals Directorate have been issued and circulated amongst the officers concerned. (Annex-C). However, at the time the petitioner was posted/served as Survey and Drawing Officer (BPS-16) and he was promoted to the post of Assistant Director Survey & Drawing vide Notification dated 18.05.2022. Moreover, as per existing Service Rules required length of service for promotion to the post of deputy Director (S&D) BS-18 is 05 years, which was completed by respondent No. 5.
5. Incorrect. As already explained in Para No. 4 above. The promotion case of respondent No. 5 was processed on notified/final seniority list.

After recommendations of Provincial Selection Board (PSB) and approval of the Competent Authority (Chief Minister) the notification dated 13.12.2022 regarding promotion of respondent No. 5 to the post of Deputy Director (Survey & Drawing) BPS-18 was issued. At the time the petitioner was on one year probation period and **according to Para IV of (f) of the Promotion Policy 2009 Promotion of officer still on probation after their promotion in their existing Basic Scales shall not be considered.** Moreover, required length of service for promotion to the said post is five years and according to Para-III (a) (ii) of the promotion policy **ibid, aggregate marks of efficiency index for promotion to BSP-18 ie 50% Marks as the petitioner having no PERs in BS-17.**

6. According to proviso of Rule (1) (2) of the appeal Rules 1986 provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade. However, the Departmental appeal of the petitioner examined/processed and rejected by the Competent Authority being devoid rules and hence no merit/force.
7. Incorrect, all the requisite documents provided to the petitioner.
8. Incorrect, the petitioner not deprived from both the orders as issued according to existing Service Rules for the said post and promotion policy 2009 of the Provincial Government therefore, the instant service appeal may kindly be dismissed on the following grounds.

GROUND

- A. Incorrect, both the orders dated 13.12.2022 and 20.01.2023 have been issued according to Law/Rules/Policy on facts and record.
- B. Correct to the extent that the appellant was appointed as Surveyor in BPS-11 on 15.10.1986, while respondent No. 5 was appointed as "Draftsman" in BPS-11 but promotion criteria BPS-17 both surveyors and Draftsman in different moreover, according to rule 17 (2) of the APT Rules 1989 seniority in various cadres of civil servant appointed by initial recruitments vis-a-vis those appointed

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After recommendations of Provincial Selection Board (PSB) and approval of the Competent Authority (Chief Minister) the notification dated 13.12.2022 regarding promotion of respondent No. 5 to the post of Deputy Director (Survey & Drawing) BPS-18 was issued. At the time the petitioner was on one year probation period and **according to Para IV of (f) of the Promotion Policy 2009 Promotion of officer still on probation after their promotion in their existing Basic Scales shall not be considered.** Moreover, required length of service for promotion to the said post is five years and according to Para-III (a) (ii) of the promotion policy **ibid, aggregate marks of efficiency index for promotion to BSP-18 ie 50% Marks as the petitioner having no PERs in BS-17.**

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GROUND

- A. Incorrect, both the orders dated 13.12.2022 and 20.01.2023 have been issued according to Law/Rules/Policy on facts and record.
- B. Correct to the extent that the appellant was appointed as Surveyor in BPS-11 on 15.10.1986, while respondent No. 5 was appointed as "Draftsman" in BPS-11 but promotion criteria BPS-17 both surveyors and Draftsman in different moreover, according to rule 17 (2) of the APT Rules 1989 seniority in various cadres of civil servant appointed by initial recruitments vis-a-vis those appointed

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otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre read with of sub section (4) of Section of the Khyber Pakhtunkhwa Civil Servants Act, 1973 seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to the post. Thus the petitioner was promoted from BPS-16 to BPS-17 as Assistant Director Survey & Drawing vide Notification dated 18.05.2022 (Annex-A), whereas respondent No. 5 was promoted to the post of Chief Draftsman (BPS-17) vide Notification No. SO-Admin/MD)1-6/91/Vol-XV/1263-68 dated 30.10.2013 (Annex-B). method of recruitment to the post of Deputy Director Survey & Drawing (BPS-18) **is by promotion on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Survey & Drawing) Chief Draftsman with at least five year service as such or if no suitable officer is available from promotion then by initial recruitment.** Applying the said rules the respondent No. 5 (Muhammad Farooq) was considered by the competent forum for promotion to the post of Deputy Director (Survey & Drawing) BS-18 on regular basis and the petitioner not considered due to recently promoted to the post of Assistant Director (Survey & Drawing) on 18.05.2022 and remained on probation for a period one year in term of Section 06 (2) of the Khyber Pakhtunkhwa, Civil Servants Act, 1973 read with Rule-15 (1) of Khyber Pakhtunkhwa Civil (Appointment, Promotion, and Transfer) Rules, 1989 (Annex-A).

- C. Incorrect, no fundamental right of the petitioner is violated under the Constitution Islamic Republic of Pakistan 1973.
- D. Incorrect, as already explained in Para 3,4,5,6 & 7 of the facts and Para B of the grounds.
- E. Incorrect, promotion cannot be made on experience but it has to be done after full filling requisite criteria.
- F. Incorrect, as already explained in Para 3,4,5,6 & 7 of the facts and Para B of the grounds.

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G. That the respondent No 5 seeks permission of this Hon'able Tribunal to advance other grounds and proofs at the time of hearing.

In view of the above, it is humbly prayed that, the service appeal filed by the appellant be dismissed with cost being baseless frivolous and misconceived and against the facts on the grounds please.

Dated 06.07.2023

Respondent No. 5

Through:

TAIMUR ALI KHAN
Advocate

Affidavit

It is affirm that the contents of this reply are true and correct and noting has been concealed from this Hon'able Tribunal.


06.07.2023

DEPONENT

Annexure A

Annexure A
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Government of
Khyber Pakhtunkhwa
Minerals Development Department

Dated Peshawar, 18th May, 2022

NOTIFICATION

No.SOE(MDD)/2-4/2022: The Competent Authority on the recommendations of the Departmental Promotion Committee is pleased to promote Muhammad Rafique, Survey & Drawing Officer (BS-16) to the post of Assistant Director (Survey & Drawing) BS-17 in the Directorate General, Mines & Minerals, Khyber Pakhtunkhwa, on regular basis, with immediate effect.

On his promotion, the above named Assistant Director (Survey & Drawing) BS-17 will remain on probation for a period of one year extendable for another one year in terms of Section 6 (2) of Khyber Pakhtunkhwa, Civil Servants, Act, 1973 read with Rule-15 (1) of Khyber Pakhtunkhwa Civil servant (Appointment, Promotion and Transfer) Rules, 1989.

Consequent upon the above promoted officer is allowed to actualize his promotion against the post of Assistant Director (Survey & Drawing) BS-17 in the Directorate General of Mines & Minerals, Khyber Pakhtunkhwa, being single cadre post

-Sd-
Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Dev. Department

No.SOE(MDD)/2-4/2022 / 8554-62

Dated Peshawar, 18th May, 2022

Copy forwarded to:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. The Directorate General of Mines, Khyber Pakhtunkhwa, Peshawar.
3. PS to Advisor to Chief Minister for Mines & Minerals, Khyber Pakhtunkhwa.
4. PS to Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar.
5. PS to Secretary Minerals Dev. Department Khyber Pakhtunkhwa, Peshawar
6. Officer Concerned
7. Personal File.
8. Office order file.
9. Master File

(Hafiz Abdul Jalil)
Section Officer (Estt.)
Ph# 091-9223559



ATTESTED

Place the copy of this order in the concerned files
18/05/2022
M. J. M

Annexure-B



GOVERNMENT OF
KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT DEPARTMENT

Dated Peshawar, the 30th October, 2013

NOTIFICATION

No.SO-Admn(MD)1-6/91/Vol-XV.- The Competent Authority, on the recommendation of Departmental Promotion Committee, is pleased to promote Mr. Muhammad Farooq, Draftsman (BPS-11) to the post of Chief Draftsman (BPS-17) in the Directorate General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar on regular basis with immediate effect.

2. The officer, on promotion will remain for a period of one year in terms of section-6 (2) of Khyber Pakhtunkhwa, Civil Servants Act, 1973 read with rule-15 (1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989.

3. Consequent upon the above, Mr. Muhammad Farooq, on promotion to BPS-17 as Chief Draftsman is hereby transferred from the office of Assistant Director Mineral Development, Abbottabad and posted as Chief Draftsman (BPS-17) in Headquarter's Office, Directorate General, Mines & Minerals, Khyber Pakhtunkhwa Peshawar against the vacant post with immediate effect.

Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department

1263-68

Ends: No.SO-Admn(MD)1-6/91/Vol-XV

Dated Peshawar the, 30th October, 20

Copy is forwarded to: -

1. ✓ The Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officer, Abbottabad.
4. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department.
5. The officer concerned.
6. The Manager, Govt. Printing Press, Peshawar.

325

11-10-13

A.D.A.

31-10-13

(SYED WALI KHAN)
Section Officer (Establishment)

9

Amirul C

Government of Khyber Pakhtunkhwa
Mineral Development Department

Dated Peshawar, the 07th February, 2022

NOTIFICATION

No. SO (E/MDD/2-3/2021) In pursuance of section 8(1) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rules, 1st Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, the competent Authority is please to notify circulate final information of Chief Draftsman (BS17) & Assistant Director (Survey & Drawing) BS-17, in Directorate General of Mines & Minerals, Khyber Pakhtunkhwa, as it stood on 30.11.2021 for general information.

Sl. No.	Name of Officer	Qualification	Date of Birth With Domicile	Date of 1 st entry into Government Service	Regular appointment/promotion to the present post			Present place and date of posting Director Licensing
					Date	BPS	Method of Rec./Appt	
	Muhammad Farooq Chief Draftsman	DAE CIVIL	16.01.1971 Marshehra	01.02.1991	01.11.2013	17	By Promotion	Office of ADM Abbottabad
	Mr. Shahid Farooq Assistant Director (S&D)	Matric <i>Retired From Service</i>	11.02.1962 Peshawar	05.10.1982	17.01.2019	17	By Promotion	HQ Office Peshawar 16.10.2016

SECRETARY MINERAL DEVELOPMENT DEPARTMENT
KHYBER PAKHTUNKHWA

Dated Peshawar, 07.02.2022

(Signature)
SECTION OFFICER (ESTT)
07/02/22

No. SO (E/MDD/2-3/2021)

Copy forwarded to:

1. Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
2. Private Secretary to Secretary Minerals Development Department, Khyber Pakhtunkhwa, Peshawar.
3. The Manager, Government Printing & Stationary Department, Khyber Pakhtunkhwa, Peshawar.
4. Officer Concerned.

B

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ATTESTED

Better Copy

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C

Governments of Khyber Pakhtunkhwa
Mineral development department

Dated Peshawar the 07, February, 2022

NOTIFICATION

NO. SO/EMDD/2-3/2021: In pursuance of the Khyber Pakhtunkhwa Civil Servant Act 1973 Civil servant appointment Promotion and transfer rules 1989, the competent authority is pleased to certified Chief Draftsman (BPS-17) and Assistant Director Survey & Drawing BPS-17 as Director General of Mines and Mineral Khyber Pakhtunkhwa dated 30.11.2020.

S. No	Name of officer	Qualification	Date of birth with domicile	Date of 1 st entry into Government Service	Regular appointment promotion of the present post			Present place and date of posting director Licensing
					Date	BPS	Method of Rec/Appt	
1.	Muhammad Farooq Chief Draftsman	DAE Civil	16.01.1971 mansehra	04.02.1991	01.11.2013	17	By promotion	Office of ADM Abbottabad
2.	Mr. Shahid Farooq Assistant Director (S&D)	Metric	11.02.1962 Peshawar	05.10.1982	17.01.2019	17	By promotion	H/Q Officer Peshawar 16.10.2016

SECRETARY MINERAL DEVELOPMENT DEPARTMENT
KHYBER PAKHTUNKHWA

Dated 07.02.2023

NO. SO/EMDD/2-3-2/2021

Copy forwarded to

1. Director General Mines and Mineral Khyber Pakhtunkhwa Peshawar.
2. Private Secretary to Secretary Mineral Development department Khyber Pakhtunkhwa Peshawar.
3. Manager Government printing and Stationary department Khyber Pakhtunkhwa Peshawar.
4. Office Concerned.

(hafiz Abid Jalal)
Section Officer (Estt)

Dated 07.02.2022

APPROVED