29th May, 2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.

2. Learned counsel for the appellant present and requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 03.07.2023 before D.B. P.P given to the parties.

(Muhammad Akbar Khan)
Member (E)

(Kalim Arshad Khan)
Chairman

*Kaleem Ullah

3rd July, 2023

1. Nobody present on behalf of the appellant. Mr. Asif Masood Ali Shah, Deputy District Attorney for respondents present.

2. The case was called time and again but neither the appellant nor his counsel put appearance, therefore, the appeal in hand is dismissed in default. Consign.

3. *Pronounced in open Court in Peshawar given under our hands and seal of the Tribunal on this 3rd day of July, 2023.*

(Rashida Bano)
Member(J)

(Kalim Arshad Khan)
Chairman

Adnan Shah

04.04.2023 Appellant present through counsel.

Asif Masood Ali Shah learned Deputy District Attorney alongwith Riaz Khan Superintendent for respondents present.

File to come up alongwith connected Service Appeal No.239/2016 titled "Muhammad Siddique Vs. Government of Khyber Pakhtunkhwa" on 28.04.2023 before D.B. Parcha Peshi given to the parties.

(Muhammad Akbar Khan)
Member (E)

(Rozina Rehman)
Member (J)

28.04.2023 Appellant present through counsel.

Fazal Shah Mohmand, Additional Advocate General for respondents present.

File to come up alongwith connected Service Appeal No.239/2016 titled "Muhammad Siddique Vs. Government of Khyber Pakhtunkhwa on 29.05.2023 before D.B. Parcha Peshi given to the parties.

(Rozina Rehman)
Member (J)

Mutazem Shah

01.06.2022

Mr. Shahkar Khan, Advocate junior of learned counsel for the appellant present. Mr. Riaz Khan Paindakhel, Assistant Advocate General alongwith Mr. Riaz Superintendent and Mr. Sajid Superintendent for the respondents present.

Junior of learned counsel for the appellant is again seeking adjournment as learned counsel for the appellant is busy in the august Supreme Court of Pakistan. Adjourned. Last opportunity is granted. To come up for arguments on before the D.B on 08.08.2022.

(Mian Muhammad)
Member (E)

(Salah-ud-Din)
Member (J)

04.02.2022 The Tribunal is non-functional, therefore, the case is adjourned to 14.04.2022 before D.B for the same.

Reader

14.04.2022 None for the appellant. Mr. Kabirullah Khattak, Addl. AG for the respondents present. Notices be issued to the appellant and his counsel for arguments on 01.06.2022 before DB.

(Rozina Rehman)
Member (J)

CHAIRMAN

31.08.2021 Mr. Muhammad Asif Yousafzai, Advocate, for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Learned counsel for the appellant stated at the bar that the brief of the instant appeal has been misplaced, therefore, time may be granted to him for arguments. Adjourned. To come up for arguments before the D.B on 04.11.2021.

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

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

04.11.2021 Counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Learned counsel for the appellant requests for time to prepare the arguments. Request is accorded. To come up for arguments on 04.02.2022 before the D.B.

(Rozina Rehman)
Member(J)

Chairman

30.03.2021 Nemo for parties.

Riaz Khan Paindakheil learned Assistant Advocate General present.

Preceding date was adjourned on a Reader's note, therefore, both the parties be put notice be issued to both the parties for 13/07/2021 for arguments, before D.B.

(Atiq ur Rehman Wazir)
Member (E)

(Rozina Rehman)
Member (J)

13.07.2021 Clerk of counsel for the appellant present. Muhamamd Riaz Superintendent alongwith Muhammad Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned To come up for arguments before the D.B. on 31.08.2021

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

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

03.04.2020 Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 30.06.2020 before D.B.

Reader

30.06.2020 Due to Covid-19, the case is adjourned. To come up for the same on 19.08.2020 before D.B.

Reader

19.10.2020 Junior to counsel for the appellant and Addl. AG alongwith Naheed Gul, Assistant for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 28.12.2020 for hearing before the D.B.

(Mian Muhammad)
Member

Chairman

28.12.2020 Due to summer vacation, case is adjourned to 30.03.2021 for the same as before.

Reader

19.12.2019 Lawyers are on strike as per the decision of Peshawar Bar Association. Adjourn. To come up for further proceedings/arguments on 21.02.2020 before D.B. Appellant be put on notice for the date fixed.

Member Member

21.02.2020 Appellant with counsel present. Mr. Ziaullah, DDA alongwith Mr. Zar Muhammad, Assistant for respondents present. Arguments heard. To come up for order on 11.03.2020 before D.B.

Member Member

11.03.2020 Mr. Zia Ullah learned Deputy District Attorney present. Due to rush of work, further proceedings in the case in hand could not be conducted. Adjourned. To come up for order on 03.04.2020 before D.B.

Member Member

26.03.2019 Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney alongwith Mr. Saleem Superintendent for the respondents present. Junior to counsel for the appellant request for adjournment as senior counsel for the appellant is not in attendance. Adjourned. To come up for arguments on 30.05.2019 before D.B.

(Hussain Shah)
Member

(Muhammad Amin Khan khudi)
Member

30.05.2019 Junior to counsel for the appellant present. Asst: AG alongwith Mr. Nizam ud Din, Assistant for respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available today. Adjourned. Case to come up for arguments on 23.07.2019 before D.B.

Member

Member

23.07.2019 Clerk to counsel for the appellant and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Muhammad Saleem, Superintendent for the respondents present. Clerk to counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is not available today. Adjourned to 10.10.2019 for arguments before D.B.

(HUSSAIN SHAH)
MEMBER

(M. AMIN KHAN KUNDI)
MEMBER

26.11.2018 Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourned by way of last chance. To come up for arguments on 06.12.2018 before D.B.

Member Member

06.12.2018 Clerk to counsel for the appellant present. Mr. Kabirullah, Addl: AG for respondents present. Clerk to counsel for the appellant seeks adjournment as counsel for the appeal was busy before the Hon'ble Peshawar High Court. Adjourned. Case to come up for arguments on 22.01.2019 before D.B.

(Ahmad Hassan)
Member

(M. Amin Khan Kundi)
Member

22.01.2019 Learned counsel for the appellant and Mr. Kabirullah Khattak learned Additional Advocate General alongwith Mr. Saleem Superintendent for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up arguments on 26.03.2019 before D.B

(Hussain Shah)
Member

(Muhammad Amin Khan Kundi)
Member

28.06.2018 Junior to counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Mr. Muhammad Saleem Superintendent for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 10.08.2018 before D.B.

(Muhammad Amin Kundi)
Member

(Muhammad Hamid Mughal)
Member

10.08.2018 Junior counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 09.10.2018 before D.B.

(Muhammad Amin Kundi)
Member

(Muhammad Hamid Mughal)
Member

09.10.2018 Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney for the respondents present. Junior to counsel for the appellant seeks adjournment as his senior counsel is not available in today. Adjourned. To come up for arguments on 26.11.2018 before D.B.

Member

Member

29.09.2017 Junior to counsel for the appellant and Mr. Ziaullah, DDA for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 29.12.2017 before this D.B.

Member Chairman

29.12.2017 Clerk to counsel for the appellant and Usman Ghani, District Attorney for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 27.02.2018 before D.B.

Member

27.02.2018 Counsel for the appellant and Additional AG for the respondents present. Learned counsel for the appellant requested that the department be directed to apprise this Tribunal about the availability of vacancy in the quota of appellant with dates. Directions are issued accordingly. To come up for record and arguments on 13.4.2018 before the D.B.

Member Chairman

13.04.2018 Appellant alongwith counsel and Mr. Ziaullah, DDA alongwith Muhammad Aslam, SO (Lit) for the respondents present. The court time is over. To come up for arguments on 28.06.2018 for arguments before the D.B.

Member Chairman

29.11.2016 Counsel for the appellant and Mr. Muhammad Irshad, SO alongwith Mr. Ziaullah, Government Pleader for the respondents present. Rejoinder submitted. Learned counsel for the appellant requested for adjournment. To come up for final hearing on 20.3.2017 before D.B.

Member Chairman

20.03.2017 Counsel for the appellant and Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 29.06.2017 before D.B.

(AHMAD HASSAN)
MEMBER

29.06.2017 Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 29.09.2017 before D.B.

(Gul Zeb Khan)
Member

(Muhammad Amin Khan Kundi)
Member

29.06.2017 Counsel for the appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 29.09.2017 before D.B.

(Gul Zeb Khan)
Member

(Muhammad Amin Khan Kundi)
Member

29.09.2017 Junior to counsel for the appellant and Mr. Ziaullah, DDA for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 29.12.2017 before this D.B.

Member

Chairman

29.12.2017 Clerk to counsel for the appellant and Usman Ghani, District Attorney for respondents present. Arguments could not be heard due to incomplete bench. Adjourned. To come up for arguments on 27.02.2018 before D.B.

Member

08.08.2016 Counsel for the appellant, M/S Sultan Shah, Assistant and Irshad Muhammad, SO alongwith Additional AG for respondents present. Written reply on behalf of respondents submitted, copy whereof handed over to learned Additional AG. To come up for rejoinder and arguments on 29.11.2016 before D.B.

Member

29.11.2016 Counsel for the appellant and Mr. Muhammad Irshad, SO alongwith Mr. Ziaullah, Government Pleader for the respondents present. Rejoinder submitted. Learned counsel for the appellant requested for adjournment. To come up for final hearing on 20.3.2017 before D.B.

Member Chairman

20.03.2017 Counsel for the appellant and Addl: AG for respondents present. Arguments could not be heard due to incomplete bench. To come up for arguments on 29.06.2017 before D.B.

(AHMAD HASSAN)
MEMBER

13.4.2016 Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was serving as Section Officer when promoted as Deputy Secretary on acting charge basis vide order dated 10.7.2004 and there-after regularly promoted as PMS officer on 18.8.2008. That the appellant was entitled to regular promotion w.e.f. the date of availability of vacancy i.e. 10.7.2004 and therefore submitted departmental appeal for retrospective promotion on 26.11.2015 which was rejected on 01.2.2016 communicated to the appellant on 18.3.2016 and hence the instant service appeal on 31.3.2016.

That similarly placed employees were granted promotions with retrospective effect in appeal No. 612-613 of 2008 decided on 13.3.2009, appeal No. 1358/2000 decided on 05.3.2015 and appeal No. 1589/2011 decided on 08.09.2015 and that the appellant is also entitled to the similar treatment by promoting with retrospective effect from 10.7.2004.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 26.5.2016 before S.B.

Appellant Deposited
Security & Process Fee

SCANNED
KPST
Peshawar

Chairman

26.05.2016 Counsel for the appellant and M/S Sultan Shah, Assistant and Muhammad Irshad, SO alongwith Addl. AG for the respondents present. Requested for adjournment. To come up for written reply/comments on 08.08.2016 before S.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 334/2016

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31.03.2016	The appeal of Mr. Azeem Khan presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2	01-04-2016	This case is entrusted to S. Bench for preliminary hearing to be put up thereon 13-04-2016. CHAIRMAN

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 334 /2016

Azeem Khan V/S Govt: of KPK etc.

INDEX

S.NO.	Documents	Annexure	Page No.
1.	Memo of appeal	------	1-4
2.	Copy of Notification (10.07.2004)	A	5-07
3.	Copy of Notification (19.2.2008)	B	8-9
4.	Copy of Service Tribunal Judgment dated 13.3.2009	C	10-15
5.	Copy of S/Court Judgment dated 24.05.2012	D	16-20
6.	Copy of Notification (25.7.2012)	E	21-23
7.	Copy of S/Court Judgment (5.3.2015)	F	24-27
8.	Copy of High Court Judgment (08.09.2015)	G	28-36
9.	Copy of Order sheet dated (01.09.2015)	H	37-39
10.	Copy of Departmental Appeal	I	40-42
11.	Departmental Rejection Order	J	43
12.	Vakalat nama	----------	44

APPELLANT

THROUGH:

(M. ASIF YOUSAFZAI)

&

(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 334 /2016

Mr. Azeem Khan, Deputy Secretary (BPS-18) (Retd)

C&W Deptt: Department. Peshawar.

(Appellant)

VERSUS

1. The Provincial Govt: trough Chief Secretary KPK, Peshawar.
2. The Chief Secretary Govt of KPK, Peshawar.
3. The Secretary Establishment, KPK, Peshawar.
4. The Finance Secretary KPK, Peshawar.

(Respondents)

APPEAL UNDER SEC- 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED. 01.02.2016 COMMUNICATED TO APPELLANT ON 18.03.2016 WHEREBY THE DEPARTMENTAL OF THE APPELLANT WAS REJECTED FOR NO GOOD GROUND.

PRAYER:

Filed to-day
Registrar
31/3/16

THAT ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED. 01.02.2016 MAY BE SET-ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO CONSIDER THE APPELLANT FOR ANTI-DATE PROMOTION ON REGULAR BASIS W.E.FROM 10.07.2004 WITH ALL BACKS AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER THAT MAY ALSO BE GRANTED IN FAVOUR OF THE APPELLANT.

RESPECTFULLY SHEWETH:

1. That the appellant has good service record trough out in his long tenure of 30 years and no compliant has been filed against the appellant so for.

2. That the appellant was previously serving as Superintendent (BPS-16) in the relevant department. Notification was issued on 10.07.2004 by the Provincial Government in consultation with Provincial Selection Board, whereby the appellant was appointed as Section Officer (BPS-17) on Acting Charge Basis with immediate effect. Copy of the said Notification dated 10.07.2004 is attached as Annexure-A).

3. That the appellant had been serving on the above said post in his officiating capacity and it was 19th February, 2008 when the notification with regard to the regularizations of the appellant for the Acting Charge Section Officers to the Section Officer (BPS-17) in Provincial Management Service (PMS) was issued with immediate effect, after serving in PCS Secretariat Cadre from 10.07.2004 to 18.2.2008. Copy of Order is attached as Annexure-B.

4. That in the meanwhile, some colleagues of the appellant being on the same footings have approached to the Service Tribunal and a detailed Judgment with regard to the regularization of the appellant was issued by the Service Tribunal in Appeal No.612 and 613/2008 dated 13.3.2009, whereby the above said relief was granted to the appellants by the Tribunal. Copy of Judgment is attached as Annexure-C.

5. That however, the said Judgment of the Service Tribunal was challenged before the Supreme Court by the Establishment Department and the Honourable Apex Court was kind enough to give an elaborate and detailed judgment with regard to the same grievance on 24.05.2012. Copy of the said Judgment is attached as Annexure-D.

6. That as a result of the above said judgment of the Honourable Supreme Court of Pakistan the notification with regard to the anti- date promotion of the petitioners from the dates of their taking acting charges on the relevant posts was issued. Copy of the said notification dated 25.07.2012 issued by the Establishment Department is attached as Annexure-E.

7. In another case Government of Khyber Pakhtunkhwa Vs Azam Khan, the Supreme Court of Pakistan upheld the decision of the Khyber Pakhtunkhwa Service Tribunal in the Service Appeal No.1358/2000 on 05.03.2015 and granted relief to the appellant. (Annexure-F).

8. In another Writ Petition No.2640-8/2012, Abdus Samad and other Vs Government of Khyber Pakhtunkhwa, the Peshawar High Court Peshawar granted relief to the petitioners by extending the benefit of judgments in the similar cases. Copy of Judgment is attached as Annexure-G.

9. Recently the Khyber Pakhtunkhwa Service Tribunal has decided in the Service Appeal No.1589/2011 Muhammad Jamil Vs Government of Khyber Pakhtunkhwa to allow the benefits of the judgments in the service appeal, cited above in the same manner as was prescribed and indicated in the above judgments (Annexure-H).

10. That after the Judgment of the Service Tribunal, High Court and Supreme Court, the appellant also filed departmental on 26.11.2015 which was also rejected on dated 01.02.2016 and communicated to appellant on 18.03 2016 from the office of C&W Deptt: Peshawar, for no good ground. Copy of departmental appeal and rejection order is attached is attached as Annexure-I & J).

11. That now the appellant comes to this august Tribunal on the following grounds amongst the others.

GROUNDS:

A) That order dated 01.02.2016 is against the law, fact, norm of justice and material on record. Therefore liable to be set aside.

B) That the appellant was promoted to post of BPS-17 on dated 10.07.2004 on acting charge base meaning by that the post of BPS-17 were available at that time and according to Superiors Courts judgment that if post is available then civil servant should be promoted on regular base rather than acting charge base.

C) That the some colleagues of the appellant on the same issue have filed Service Appeals No. 612/2008 and 613/2008 in this Service Tribunal and the Honourable Service Tribunal allowed the appeal and the relief was granted to the appellant. The judgment of the Tribunal was challenged by the Deptt in the Supreme Court of Pakistan which also uphold the decision of the Service Tribunal and the basis of Supreme Court judgment and Service Tribunal Judgment the Establishment Deptt: issued the notification dated 25.7.2012, whereby anti-date promotion was given to the petitioners from the date of their taking charge on relevant posts.

D) That recently similar nature appeal No.1589/2011 was also decided by this Honourable Tribunal in the favour of the appellant.

E) That the appellant is similarly placed person and also entitled for the same benefits.

F) That the appellant was discriminated as many of his colleague have given anti-dated promotion, while the appellant was deprived from the same benefits.

G) That the appellant seeks permission to advance other grounds and proofs at the time hearing.

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

APPELLANT

Azeem Khan

THROUGH:

(M. ASIF YOUSAFZAI)

&

(TAIMUR ALI KHAN)
ADVOCATES, PESHAWAR

GOVERNMENT OF NWFP
ESTABLISHMENT DEPARTMENT

Annex (A)

Dated Peshawar the 10.7.2004.

NOTIFICATION :

NO. SOE.II(ED)3(122)2003:- The Competent Authority in consultation with the Provincial Selection Board is pleased to appoint the following Superintendents/Private Secretaries of the Provincial Secretariat as Section Officers (BS-17) on acting charge basis with immediate effect:-

Sr. NO.	NAME OF OFFICER WITH DESIGNATION	PRESENT POSTING
1.	Mr.Sardar Ali Superintendent	Section Officer (Current Charge), E&A Dept.
2.	Mr. Abdul Raziq Superintendent	Section Officer (Current Charge), Schools & Literacy Department.
3.	Mr. Muhammad Yaqoob Private Secretary	Section Officer (Current Charge), Finance Dept.
4.	Mr. Farmanullah Private Secretary	Section Officer (Current Charge), Governor's Secretariat (FATA).
5.	Mr. Abdul Aziz, Private Secretary	Section Officer (Current Charge)/PS to Minister for Education NWFP.
6.	Mr. Farhad Khan, Private Secretary.	Section Officer (Current Charge), Finance Department.
7.	Mr. Shah Jehan, Private Secretary	Section Officer (Current Charge), Agriculture Dept.
8.	Mr. Johar Ali Shah, Private Secretary.	Private Secretary to Additional Chief Secretary, NWFP.
9.	Mr. Zafeer Gul, Private Secretary	Private Secretary,E&A Department.
10.	Mr. Usman Shah, Private Secretary	Private Secretary, Health Department.
11.	Mr. Samin Jan, Private Secretary	Private Secretary, Food Department.
12.	Mr. Muhammad Qasim, Superintendent	Superintendent, Home & TAs Department.
13.	Mr. Azeem Khan, Superintendent	Superintendent, Governor's Secretariat (FATA).
14.	Mr. Mir Ahmad, Superintendent	Superintendent, Industries, Commerce, Mineral Dev. Labour and Tech. Education Department
15.	Mr. Jehangir Khan, Superintendent	Superintendent, Industries, Commerce, Mineral Dev. Labour and Tech. Education Department
16.	Mr. Ghazi Khan, Superintendent	Superintendent, E&A Department
17.	Mr. Anwar-ul-Haq, Private Secretary	Private Secretary, Health Department
18.	Mr. Mushtaq Ahmad Siddiqi, Private Secretary	Private Secretary, Chief Minister's Secretariat.
19.	Mr. Muhammad Ayub, Superintendent	Superintendent, Education Department
20.	Mr. Qasim Jan, Superintendent	Superintendent, E&A Department.

ATESTED

Cont'd page-2

Section Officer (Current Charge)
Regd. Staff Training Institute
E&A&D, NWFP, Peshawar

6

2. Consequent upon the above the following postings/transfers are hereby ordered with immediate effect:-

S.No	NAME OF OFFICER	FROM	TO
1.	Mr.Sardar Ali	Section Officer (Current Charge), E&A Dept.	Section Officer (Acting Charge), E&A Dept.
2.	Mr. Abdul Raziq	Section Officer (Current Charge), Schools & Literacy Department.	Section Officer (Acting Charge), Schools & Literacy Department.
3.	Mr. Muhammad Yaqoob	Section Officer (Current Charge), Finance Dept.	Section Officer (Acting Charge), Finance Dept.
4.	Mr. Farmanullah	Section Officer (Current Charge), Governor's Secretariat (FATA).	Section Officer (Acting Charge), Governor's Secretariat (FATA).
5.	Mr. Abdul Aziz,	Section Officer (Current Charge)/PS to Minister for Education NWFP.	Private Secretary to Minister for Education NWFP.
6.	Mr. Farhad Khan,	Section Officer (Current Charge), Finance Department.	Section Officer (Acting Charge), Finance Department.
7.	Mr. Shah Jehan,	Section Officer (Current Charge), Agriculture Dept.	Section Officer (Acting Charge), Agriculture Dept.
8.	Mr. Johar Ali Shah,	Private Secretary to Additional Chief Secretary, NWFP.	Private Secretary to Additional Chief Secretary, NWFP.
9.	Mr. Zafeer Gul,	Private Secretary, E&A Department.	Section Officer (Acting Charge), E&A Dept.
10.	Mr. Usman Shah,	Private Secretary, Health Department.	Section Officer (Acting Charge), Health Dept.
11.	Mr. Samin Jan,	Private Secretary, Food Department.	Section Officer (Acting Charge),Health Dept.
12.	Mr. Muhammad Qasim,	Superintendent, Home & TAs Department.	Section Officer (Acting Charge), Home & T.As Dept.
13.	Mr. Azeem Khan,	Superintendent, Governor's Secretariat (FATA).	Section Officer (Acting Charge), Governor's Secretariat (FATA).
14.	Mr. Mir Ahmad,	Superintendent, Industries, Commerce, Mineral Dev. Labour & Tech. Education Dept.	Section Officer (Acting Charge), Industries, Commerce, Mineral Dev. & Tech. Education Dept.
15.	Mr. Jehangir Khan,	Superintendent, Industries, Commerce, Mineral Dev. & Tech. Education Dept.	Section Officer (Acting Charge), Excise & Taxation Dept.
16.	Mr. Ghazi Khan,	Superintendent, E&A Department	Section Officer (Acting Charge), E&A Dept.
17.	Mr. Anwar-ul-Haq,	Private Secretary, Health Department	Section Officer (Acting Charge), W&S Dept.
18.	Mr. Mushtaq Ahmad Siddiqi	Private Secretary, Chief Minister's Secretariat.	Private Secretary, Chief Minister's Secretariat, NWFP.
19.	Mr. Muhammad Ayub,	Superintendent, Education Department	Section Officer (Acting Charge), Information & Public Relation Dept.
20.	Mr. Qasim Jan,	Superintendent, E&A Department.	Section Officer (Acting Charge), E&A Dept.
21.	Mr. Ghazanfar Ali, PCS(SG) BS-17	Section Officer, E&A Dept.	Section Officer, Higher Education Dept.

ATTESTED

CHIEF SECRETARY,
N.W.F.P.

(7)

ENDST: NO. SOE.II(ED)3(122)2003. Dated Peshawar the 10.7.2004.

A copy is forwarded to :-

1. All Administrative Secretaries to Govt of NWFP, Peshawar.
2. Secretary to Governor, NWFP/FATA Sectt:, Peshawar.
3. Secretary to Chief Minister, NWFP.
4. Accountant General, NWFP, Peshawar.
5. S.O. (Secret)/(Admn)/E.IV/E.O/Programmer/Librarian, E&A Dept
6. Officers concerned.
7. P.S. to Chief Secretary NWFP.
8. PS to Additional Chief Secretary NWFP.
9. P.S. to Secretary Establishment NWFP.
10. PAs to All Addl: Secretaries/Dy: Secretaries in E&A Department.
11. Personal files of the officers concerned.
12. Office Order file.

(RASHID KHAN)
SECTION OFFICER (E-II)

ATTESTED

Annexure "B"

TO BE SUBSTITUTED FOR SAME NUMBER AND DATE

GOVERNMENT OF NWFP
ESTABLISHMENT DEPARTMENT

Dated Peshawar the 19th February, 2008

NOTIFICATION:

No: SOE-II(ED)3(45)2007: The Competent Authority, in consultation with the Provincial Selection Board, is pleased to order the promotion of the following Superintendents / Private Secretaries to Provincial Management Service (BS-17) on regular basis with immediate effect:-

Sr. #	Name of officer	Present posting
1.	Mr. Muhammad Sayyar	Section Officer, Works & Services Dept.
2.	Mr.Masood Pervez Siddiqui	Section Officer Home &Tribal Affairs Department.
3.	Mr. Rozam Khan	Section Officer, Home &Tribal Affairs Department.
4.	Mr. Muhammad Naseem	Section Officer, Governor's Secretariat.
5.	Mr. Akhtar Muhammad	Assistant Director, National Accountability Bureau.
6.	Mr. Muhammad Siddique	Section Officer, Finance Department.
7.	Mrs. Tahira Jabeen	Section Officer, Establishment Department.
8.	Mr. Azam Khan	Private Secretary to Chief Minister, NWFP.
9.	Mr. Fazl-e-Rahim	Section Officer, Industries Department.
10.	Mr. Abdul Aziz	Private Secretary to Minister, Law & Parliamentary Affairs, NWFP.
11.	Mr. Farhad Khan	Section Officer, Home &Tribal Affairs Department.
12.	Mr. Muhammad Yaqoob	Additional Private Secretary to Chief Minister, NWFP.
13.	Mr. Shah Jehan.	Private Secretary to Minister for Schools & Literacy, NWFP.
14.	Mr. Johar Ali Shah	Private Secretary to Additional Chief Secretary, NWFP.
15.	Mr.Zafeer Gul	Private Secretary to Minister, Power & Irrigation NWFP.
16.	Mr. Usman Shah	Section Officer, Population Welfare Dept.
17.	Mr. Samin Jan	Section Officer, Health Dept
18.	Mr. Muhammad Qasim	Section Officer, Home & Tribal Affairs Dept
19.	Mr. Azeem Khan	Section Officer, FATA Secretariat.
20.	Mr. Mir Ahmad	Section Officer, Industries Dept.
21.	Mr. Ghazi Khan	Section Officer, Administration Dept.
22.	Mr. Anwar-ul-Haq	Section Officer, Works & Services Dept.
23.	Mr. Mushtaq Ahmed Siddiqui	Private Secretary to Secretary to Chief Minister, NWFP.

ATTESTED

24.	Mr. Muhammad Ayub	Section Officer, Schools & Literacy Dept
25.	Mr. Qasim Jan	Assistant Secretary, Benevolent Fund Cell, Administration Department.
26.	Mr. Umar Farooq	Section officer, Chief Minister's Secretariat.
27.	Mr. Muhammad Humayun	Section Officer, Zakat, Usher, Social Welfare & Women Development Deptt.
28.	Mr. Muhammad Iqbal	Section Officer, Science & Technology & Information Technology Dept.

2- On their promotion the above officers will be on probation for a period of one year in terms of section-6(2) of NWFP Civil Servants Act 1973 read with Rule-15(1) of NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. They shall continue working against their present postings.

CHIEF SECRETARY,N.W.F.P.

ENDST:NO: SOE-II(ED)3(45)2007 Dated Peshawar the 22, February,2008

A copy is forwarded to :-

1. All Administrative Secretaries to Govt of NWFP.
2. Secretary to Governor, NWFP.
3. Principal Secretary to Chief Minister, NWFP.
4. Accountant General, NWFP, Peshawar.
5. Additional Secretary, Benevolent Fund Cell, Administration Department.
6. Additional Director (Admn), National Accountability Bureau, PDA Complex Block-III, Phase-V, Hayatabad NWFP, Peshawar.
7. S.O.(Secret)/(Admn)/E-IV/E.O/Programmer/Librarian, E&A Dept.
8. Officers concerned.
9. P.S. to Chief Minister, NWFP.
10. P.S. to Chief Secretary NWFP.
11. P.S. to Principal Secretary to Chief Minister, NWFP.
12. P.S. to Secretary Establishment NWFP.
13. P.S. to Additional Chief Secretary, NWFP.
14. P.S. to Minister, Law & Parliamentary Affairs, NWFP.
15. P.S. to Minister, Schools & Literacy , NWFP.
16. P.S. to Minister, Power & Irrigation, NWFP.
17. PAs to All Addl: Secretaries / Dy: Secretaries in E&A Department.
18. Personal files of the officers concerned.
19. Office Order file.
20. Manager, Govt Printing Press, Peshawar.

22.2.08

(KHALID ILYAS)
SECTION OFFICER (E-II)

ATTESTED

Annexure 'C' (10)

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 612/2008

Date of Institution. .. 16.04.2008
Date of Decision .. 13.03.2009

Muhammad Iqbal Khattak,
Assistant Political Agent, Khar Bajaur Agency. ... (Appellant)

VERSUS

1. Government of NWFP through Secretary Establishment Department, Peshawar.
2. Govt. of NWFP through Chief Secretary, Peshawar. (Respondents)

APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SOE.II (E&D) 2 (192)2007 DATED 19.2.2008 WHEREBY THE APPELLANT WAS PROMOTED ON REGULAR BASIS W.E.F. 19.2.2008 INSTEAD OF 30.11.1999 AND ORDER NO.SOE-II (E&D) 2(192) WHEREBY HIS DEPARTMENTAL APPEAL WAS DISMISSED.

MR. SHAKEEL AHMAD,
Advocate ... For appellant.

MR. ZAHID KARIM KHALIL, ... For respondents.
Addl. Government Pleader,

MR. JUSTICE (R) SALIM KHAN, .. CHAIRMAN.
MR. BISMILLAH SHAH, .. MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.-The present appeal No. 612 of 2008 by Muhammad Iqbal Khattak and appeal No. 613 of 2009 by Ahmad Khan involved similar questions of law, therefore, these are taken together for arguments and disposal.

2. Muhammad Iqbal Khattak was promoted as Tehsildar on regular basis vide order dated 28.12.1988. He was promoted to PCS(E.G) (BPS-17) on temporary basis vide notification dated 06.03.1996. He contended that many posts became vacant, but the appellant was promoted to (BPS-17) on regular basis on 19.2.2008 with immediate effect, instead of ante-dating of his promotion to the date on which the vacancy fell to his turn in the

(11)

seniority lists of officers of PCS (E.G). His departmental appeal was rejected on 22.03.2008. The present appeal was filed on 16.4.2008 which is within time. The case of Ahmad Khan (Appellant) is similar to the case of Muhammad Iqbal Khattak on facts also. His appeal is also within time.

3. The respondents contested the appeal on many grounds, including the ground that no one could claim a vested right in promotion or in the terms and conditions for promotion to a higher post.

4. We heard the arguments and perused the record.

5. The learned counsel for the appellants contended that the appellants were temporarily posted to BPS-17 post on 06.3.1996, but they remained silent, because they did not have a vested right for promotion to a higher post. The appellants have already been considered for promotion and have been found eligible and fit for regular promotion to BPS-17 post, therefore, the principles embodied in the judgment of the August Supreme Court of Pakistan reported as 1990 SCMR 1321 are not applicable to their cases. In fact, the vacancies had become available for the appellants as early as on 30.11.1999, and it was the responsibility of the official respondents to expeditiously deal with the cases of the appellants for their regular promotion. The appellants could not be punished for no fault on their side, or for delay caused by the official respondents in processing the cases of the appellants. He relied on 1997 PLC (C.S) 77, wherein it has been held in para 3 as under:-

> *"On behalf of the Government it is contended that no civil servant has a right to claim that he should be promoted from a back date even though a vacancy may be existing on the date from which the promotion is being claimed. This is no doubt true but there are no orders by the Government that the respondents/ petitioners should be held up for some time. The delay in making the promotions occurred entirely due to the reason that the officials of the Education Department could not carry out a fairly simple exercise within a reasonable period. In the circumstances it will not be appropriate for this Civil Petition to interfere with the order of the Service Tribunal. Leave is refused."*

ATTESTED EXAMINER

ATTESTED

This judgment was in the petition for leave to appeal against the judgment dated 19.02.1995 of the Punjab Service Tribunal. It is worth-mentioning that

judgments cited as 1990 SCMR 1321 and cited as 1997 PLC (C.S) 77 are in two different aspects of the same subject.

6. Ante-dating of promotion, after consideration of the candidate aspiring for such promotion, after he was found eligible and fit for such promotion and is promoted, is an established principle of law. Such a candidate cannot be punished for any delay caused by the department in processing his case for promotion. The order of promotion, therefore, has to be ante-dated to the date on which the vacancy for his turn became available or to the date on which he actually took charge of the post on officiating/acting charge basis, whichever is later.

7. The A.G.P contended that the present appeals were miserably time-barred and both the appellants were estopped by their own conduct to file the present appeals. In fact, the principle embodied in the judgment reported as 1990 SCMR 1321 was applicable to the cases of the appellants from 06.3.1996 to 18.2.2008. They could not claim promotion as of right. The principle embodied in the judgment reported as 1997 PLC (C.S) 77 became applicable to their case on 19.2.2008. Cause of action arose to the appellants for claiming ante-dation of their promotion as prayed for only when their cases were considered for promotion, they were found eligible and fit for promotion, and their promotion orders were issued, though with immediate effect. They filed their departmental appeals within time from the date of the impugned order dated 19.2.2008, and their appeals were rejected on 22.3.2008. They filed Service Appeals on 16.04.2008. The departmental appeals as well as the Service Appeals were well within time.

ATTESTED

8. The A.G.P further contended that, according to the proviso contained in sub-section (2) of Section 22 of the N.W.F.P Civil Servants Act 1973, "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." Judgment cited as 1990 SCMR 1321 was, then, applicable and appellants could not file representation. This stage has already passed. The appellants have been considered for holding the higher post after their promotion to that higher post, and their fitness for such promotion and holding of post has already been determined. The judgment cited as 1997

ATTESTED
EXAMINER
NWFP

(C.S) 77 has become applicable after determination of fitness of the appellants. The question in these cases is not the determination of fitness but is the right of ante-dation of their promotion. The appellants had vested right for consideration of promotion on their turn, whenever it was, and, when found fit on determination of fitness, at any stage, they had a right to claim ante-dation of their promotion to the dates on which the vacancies were available for their respective turns or from the dates on which they actually took the charge of their respective posts, whichever were later in time.

9. The A.G.P also contended that according to sub-rule (6) of Rule 9 of the N.W.F.P Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 "acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis." The appellants have never claimed any vested right for regular promotion to the post which they held on acting charge basis, on the basis of acting charge appointment. In fact, they did not have such a right. They remained silent for a long time, knowing that they did not have such a right on the basis of acting charge appointment. They, however, had a vested right, as civil servants, for consideration for promotion, when the authority was to consider someone for promotion against the vacancy. No other person could be considered till the appellants were so considered. They, therefore, had a vested right for ante-dation of their promotion only when they were regularly promoted, but from the date when the vacancy became available for their turn.

10 The A.G.P further contended that, according to the North West Frontier Province, Provincial Management Service Rules, 2007, notified on 11.05.2007 vide No. SOE.II(ED)2(14)2007, The NWFP Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 were repealed. He was of the view that the N.W.F.P Provincial Management Service Rules, 2007 had come into force at once w.e.f. 11.05.2007, while the orders of promotion of the appellants were issued on 19.02.2008. He submitted that the promotion orders were covered by the new rules, therefore, the appellants could not claim any benefit out of the already repealed rules of 1997. In order to clarify this controversy, it is necessary to reproduce the relevant rules of the N.W.F.P Provincial Management Service Rules, 200

ATTESTED

ATTESTED

(14)

Repeal: The North-West Frontier Province Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 shall stand repealed after the retirement of existing incumbents of both the cadres. Separate seniority list of both the cadres shall be maintained under the existing rules and they shall be promoted at the ratio of 50:50 . The existing incumbents of PCS (E.G) and (S.G) in different pay scales, for the purpose of their promotion, shall continue to be governed under the said service rules till the retirement of the last such incumbent."

The above rule, by itself, clarifies that the rules of 1997 shall not stand repealed before the retirement of the existing incumbents of both the cadres of Secretariat/Executive Groups, and shall remain in force till the retirement of the last such incumbent. It further clarified that separate seniority list of both the cadres shall be maintained under the existing rules. The existing rules for such incumbents are the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997. It was also clarified that such incumbents shall be promoted at the ratio of 50:50. It means that out of each two vacancies, one vacancy shall be given to Secretariat Group, while another vacancy shall be given to the Executive Group. Further clarification is to the effect that the existing incumbents of PCS (E.G) and (S.G) in different pay scales shall continue to be governed under the rules of 1997 for the purpose of their promotion, and this process is to continue till the retirement of last such incumbent. Both the appellants belonged to the Executive Group of Civil Servants. They were to be governed under the N.W.F.P Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 before 11.05.2007, and they have to be governed under the above mentioned rules of 1997 till the retirement of the last incumbent of a post in Secretariat Group/Executive Group.

ATTESTED

11. The cases of the appellants are, therefore, to be governed in accordance with the provisions of Section 8 (quoted above) of the new N.W.F.P Provincial Management Service Rules, 2007. The record shows that vacancies were available for the appellants but they were not promoted at the due time and their cases for promotion were delayed unnecessarily without any fault of the appellants. They, therefore, are entitled to ante-dation of their promotion, against the first available vacancy falling to the turn of each of them or from the date of taking over the charge of that vacancy on officiating/acting charge basis, whichever is later.

ATTESTED

2. In the light of the above, we accept both the appeals, and direct he official respondents to ante-date the promotion of each of the two ppellants to the respective dates on which a vacancy became available for he respective turn of the appellants or from the respective dates of their aking charge of such vacancy on officiating/acting charge basis, whichever s later. The appellants are entitled to the costs of their respective litigation from the official respondents.

ANNOUNCED
11.03.2009

Sd/- Justice M.S. Salim Beg
Chairman

Sd/- Bismillah Khan
Member

Presentation of application 12.3.09
No. of words 2400
Fee 14
14
Date of copy
Date of completion of copy 10-4-09
Date of delivery of copy 10-4-09

ATTESTED

Annexure "D"

(16)

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE [illegible]
MR. JUSTICE [illegible]

C.As. No. 860 to 861 of 2010.
(On appeal against the judgment dt. 11.3.2009 passed by NWFP Service Tribunal, Peshawar in Appeals No. 612 and 613 of 2008).

Govt. of NWFP thr. Secy. Establishment and another. (in both cases)
...Appellants

Versus

Muhammad Iqbal Khattak. (in CA.860/10)
Ahmed Khan. (in CA.861/10)
...Respondents

For the appellants: Mian Muhibullah Kakakhel, Sr.ASC
Miss. Tehmina Muhibullah, ASC.
Mir Adam Khan, AOR.
(in both)

For the respondents: Hafiz S. A. Rehman, Sr.ASC.
Mr. Shakeel Ahmed, ASC
(in both).

Date of hearing: 24.05.2012.

JUDGMENT

EJAZ AFZAL KHAN, J. -- These appeals with the leave of the Court have arisen out of the judgment dated 11.3.2009 of the Service Tribunal whereby appeals filed by the respondents were allowed.

2. The points raised and noted while granting leave read as under:-

> "We have heard the learned counsel at some length. We are inclined to grant leave inter-alia on the point as to whether the legal and factual aspects of the controversy have been dilated upon and decided by the Tribunal in accordance with relevant Rules i.e. Rule 8 of the NWFP, Provincial Civil Service (Secretariat/Executive Group) Rules, 1997 and Rule 9(6) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989. It is also to be examined as to whether the stop-gap-arrangement can be equated to that of regular promotion and besides that the order passed by the learned Service Tribunal could be made applicable to all the

ATTESTED

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

Tehsildars who are [illegible] promotion. Since a short question of law is involved in the matter, therefore, the case be listed after [illegible] subject to limitation. In the meanwhile operation of the impugned judgment shall remain suspended."

3. Learned counsel appearing on behalf of the appellants contended that though the Governor of the Province in consultation with the Provincial Selection Board was pleased to order the promotion of the respondents in BPS-16 as Extra Assistant Commissioner in BPS-17 in the Ex-PCS (E.B) Cadre with immediate effect on purely temporary basis vide notification dated Peshawar 6th March, 1996, yet it could not earn them any benefit or entitle them to a vested right notwithstanding they have been promoted on regular basis with immediate effect vide notification dated 19.2.2008. They, the learned counsel added, could not have claimed any ante-dated promotion even on the occurrence of any vacancy in such scale in violation of Section 8 of the Civil Services Act or Rule 9 of NWFP Civil Service (Executive Group) Rules, 1997, as decidedly promotion is not a vested right. Appeal before the departmental authority, the learned counsel added, or before the Tribunal claiming ante-dated promotion was, therefore, misconceived. The learned Tribunal, the learned counsel maintained, could not have allowed such appeal when it tended to mar the seniority of many others in the run. The learned counsel to support his contention placed reliance on the cases of "Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Punjab, through Secretary, Social Welfare and Zakat, Lahore and 81 others" (PLD 1991 S.C. 82), "Sh. Anwar Hussain, Assistant Director, Labour Welfare, Lahore Region, Lahore. Vs. Government of the Punjab through Secretary, Labour Department and others" (1985 SCMR 1201), "Nazeer Ahmed. Vs. Government of Sindh through Chief Secretry Sindh, Karachi and 2 others" (2001 SCMR 352), "Government of Pakistan through Establishment

ATTESTED

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

Division, Islamabad and 7 others. Vs. Hameed Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others" (PLD 2003 S.C. 110). The learned counsel next contended that a change in scale by means of promotion is not automatic but dependent on a process involving selection, therefore, any change in scale without such process being violative of the relevant law and rules, cannot be maintained. The learned counsel to support his contention placed reliance on the case of "Abid Hussain Sherazi. Vs. Secretary M/o Industries and Production, Government of Pakistan, Islamabad" (2005 SCMR 1742).

4. As against that learned counsel appearing on behalf of the respondents defended the impugned judgment by contending that where a vacancy occurs in the next higher scale, the Civil Servant officiating or working on acting charge basis thereagainst is not considered for promotion or the process of regular promotion is delayed on account of lethargic attitude of the competent authority or any other exigency so-called, the Civil Servant who is subsequently found fit for such promotion on regular basis cannot be deprived of the salary and other consequential benefits attached to such post. Learned counsel to support his contention placed reliance on the case of "Luqman Zareen and others. Vs. Secretary Education, NWFP and others" (2006 SCMR 1938). The learned counsel next contended that though the NWFP Civil Service (Secretariat Group) Rules, 1997 have been substituted by the NWFP Provincial Management Service Rules, 2007 but the rights of the existing incumbents of both the cadres have been protected by Rule 8 of the latter, therefore, the change in rules would not affect the service structure of the respondents or rights accruing thereunder. The learned counsel next contended that if the concluding paragraph of the impugned judgment is read none of the rights of any of the officers including their seniority has been affected.

ATTESTED

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

"Luqman Zareen and others. Vs. Secretary Education, NWFP and others" (2006 SCMR 1938), this Court while dealing with an identical issue held as under :-

> *"It is then a position admitted on all sides that nothing existed in the way of the petitioners on 31.8.2000 which could have disentitled them to regular promotion to the posts in question and that it was only the usual apathy, negligence and bureaucratic red-tapsim which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others. We are of the view that where a post was available against which a civil servant could be promoted; where such a civil servant was qualified to be promoted to such a higher post; where he was put on the said higher post on officiating or acting charge basis only because the requisite exercise of allowing the regular promotion to the said post was being delayed by the competent authority and where he was subsequently, found fit for the said promotion and was so promoted on regular basis then he was entitled not only t the salary attaching to the said posts but also to all consequential benefits from the very date from which he had been put on the said post on officiating or acting charge basis and we hold accordingly".*

While dealing with the reservations of the nature expressed by the learned counsel for the appellant, this Court held as under :-

> *"A bare perusal of these judgments would thus, show that this Court had always accepted the principle that a person who was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc attaching to such a post for the period that he held the same; that he would also be entitled to any other benefits which may be associated with the said post and further that if a vacancy existed in a higher cadre to which a civil servant was qualified to be promoted on regular basis but was not so promoted without any fault on his part and was instead put on the said post on officiating basis then on his regular promotion to the said post, he would be deemed to have been so promoted to the same from the date from*

ATTESTED

ATTESTED

Superintendent
Supreme Court of Pakistan
ISLAMABAD

(25)

which he was allowed to hold the said higher post unless justifiable reasons existed to hold otherwise.

When this being the state of things on factual and legal plain, we don't think the judgment of the learned Service Tribunal is open to any exception. The judgments rendered in the cases of "Wajahat Hussain, Assistant Director, Social Welfare, Lahore and 7 others. Vs. Province of the Punjab, through Secretary, Social Welfare and Zakat, Lahore and 81 others", "Sh. Anwar Hussain, Assistant Director, Labour Welfare, Lahore Region, Lahore. Vs. Government of the Punjab through Secretary, Labour Department and others", "Nazeer Ahmed. Vs. Government of Sindh through Chief Secretry Sindh, Karachi and 2 others", "Government of Pakistan through Establishment Division, Islamabad and 7 others. Vs. Hameed Akhtar Niazi, Academy of Administrative, Walton Training, Lahore and others" and "Abid Hussain Sherazi. Vs. Secretary M/o Industries and Production, Government of Pakistan, Islamabad", (supra) cited by the learned counsel for the appellants are not applicable to the case in hand because of their distinguishable facts and features.

9. For the reasons discussed above, these appeals being without merit are dismissed.

Hon. Mr. Justice Asif Saeed Khan, J
Hon. Mr. Justice Muhammad Athar Saeed, J

Islamabad.
31.5.2012.
MAZ*
'Not Approved for Reporting'

SEAL OF THE SUPREME COURT OF PAKISTAN

Certified to be True Copy

Superintendent
Supreme Court of Pakistan
ISLAMABAD

ATTESTED

SK No:	5828/12 Civil/Criminal
Date of Presentation:	25-5-12
No. of Words:	1800
No. of folios:	18
Requisition Fee Rs:	5.00
Copy Fee in:	11.76
Court Fee stamps:	26-76
Date of Completion of Copy:	31/5/12
Date of delivery of Copy:	31/5/12

Mehtab Adv.

Annexure "E" Annexure E (21)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the July, 25. 2012

NOTIFICATION

NO.SOE-II(ED)2(423)/2010/Vol-II:- In pursuance of Judgment of Supreme Court of Pakistan dated 24.05.2012 in CPLAs No. 860/2010 and 861/2010 titled Govt. of Khyber Pakhtunkhwa through Secretary Establishment and others versus Muhammad Iqbal Khattak and Ahmad Khan and Judgments of Khyber Pakhtunkhwa Services Tribunal dated 13.03.2009 & 09.04.2009 in service appeals No. 612/2008, 613/2008 & 575/2009 titled Muhammad Iqbal Khattak, Ahmad Khan & Latif-ur-Rehman versus Govt. of Khyber Pakhtunkhwa through Secretary Establishment and others, the competent authority is pleased to ante-date the promotion of following PMS BS-17 officers w.e.f the dates as mentioned against each with all back benefits/consequential benefits and re-designate them as PCS(EG) BS-17:-

S.No.	Name of PMS BS-17officer for ante-dated promotion as PCS (EG) BS-17	Date of ante-dated promotion as PCS (EG)
1.	Mr. Muhammad Iqbal Marwat (Retired on 31.07.2009	27.12.2005
2.	Mr. Riaz Muhammad Baloch (Retired on 28.02.2011)	26.01.2000
3.	Mr. Muhammad Farooq	27.12.2005
4.	Mr. Zaarmat Ali (Retired on 05.03.2010)	15.05.2000
5.	Mr. Muhammad Zaheer-ud-Din (Retired on 13.08.2011)	29.05.2000
6.	Mr. Ahmad Khan Orakzai	01.06.2000
7.	Mr. Muhammad Iqbal Khattak	07.06.2000
8.	Mr. Muhammad Javed	10.01.2001
9.	Mr. Azam Jan Khalil	10.02.2001
10.	Mr. Ahmad Jan Afridi	08.04.2001
11.	Mr. Nazar Gul Mohmand	09.04.2001
12.	Mr. Muhammad Hanif (died on 31.03.2010)	14.04.2001
13.	Mr. Tahir Muhammad	27.12.2005
14.	Mr. Muhammad Rafiq (Retired on 01.03.2012)	27.12.2005
15.	Mr. Muhammad Fakhruddin	13.11.2001
16.	Mr. Farzand Ali	03.03.2005
17.	Mr. Rehmatullah Khan Wazir	13.11.2001
18.	Mr. Qaiser Khan	13.11.2001
19.	Mr. Abdul Shakoor Dawar	26.12.2001
20.	Mr. Azizullah Khan Mehsud	13.01.2002

ATTESTED

21.	Mr. Naeem Anwar Khan	09.04.2002
22.	Mr. Loi Khan (Retired on 02.11.2010) ✓	14.04.2002
23.	Mr. Damsaz Khan	29.05.2004
24.	Mr. Habibullah Wazir	23.05.2002
25.	Mr. Zafar Ali Khan	29.05.2004
26.	Mr. Gul Wahid (Retired on 13.03.2011) ✓	31.08.2002
27.	Mr. Abdul Mateen	13.11.2002
28.	Mr. Akbar Jalal	04.03.2003
29.	Mr. Khaista Rehman	24.03.2003
30.	Mr. Shams ul Alam	27.12.2005
31.	Mr. Fazal Rehman	29.05.2004
32.	Mr. Latif ur Rehman (died on 25.10.2010) ✓	27.12.2005
33.	Mr. Rashid Mehood	29.05.2004
34.	Mr. Muhammad Jamil	29.05.2004
35.	Mr. Khurshid Anwar	29.05.2004
36.	Mr. Perhezgar Khan	29.05.2004
37.	Mr. Mushtaq Ahmad	29.05.2004
38.	Mr. Naimatullah (Retired on 24.09.2010) ✓	26.05.2007
39.	Mr. Momin Khan (Retired on 14.06.2010) ✓	27.12.2005
40.	Syed Ismail Ali Shah Gillani	26.05.2007
41.	Mr. Ahmad Khan	09.01.2006
42.	Mr Jan Muhammad	01.02.2005
43.	Mr. Saeed ur Rehman	09.01.2006
44.	Mr. Muhammad Israr(Retired on 02.01.2012) ✓	27.12.2005
45.	Mr. Arshad Naveed	26.03.2005
46.	Mr. Hidayatullah	09.01.2006
47.	Mr. Said Ahmad Jan	17.05.2005
48.	Mr. Abdul Hamid Jan	13.01.2006
49.	Mr. Muhammad Tuhab (Retired on 12.06.2012) ✓	27.04.2006
50.	Mr. Sultanat Khan (Retired on 14.08.2010) ✓	13.04.2006
51.	Mr. Subhanullah (Retired on 12.05.2012) ✓	13.04.2006
52.	Mr. Muhammad Siddique	25.05.2006
53.	Mr Fakhru Zaman	11.09.2006
54.	Mr. Ibadat Khan	11.09.2006
55.	Mian Asfandyar	26.05.2007
56.	Mr. Rasool Khan	26.05.2007
57.	Mr Fida Muhammad (Retired on 30.10.2010) ✓	23.12.2006
58.	Mr. Muntazir Khan	23.12.2006
59.	Mr. Atta-ur-Rehman	31.12.2006
60.	Mr. Shahab Hamid Yousafzai	16.02.2007
61.	Mr. Ihsanullah	16.02.2007
62.	Mr. Ghulam Habib	16.02.2007

ATTESTED

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN.

A copy is forwarded to:-

1. Additional Chief Secretary, Planning & Dev. Department, Khyber Pakhtunkhwa.
2. Additional Chief Secretary(FATA), FATA Secretariat.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. All District Coordination Officers in Khyber Pakhtunkhwa.
9. All Political Agents in FATA.
10. Accountant General, Khyber Pakhtunkhwa.
11. Accountant General(PR) Sub Office, Peshawar.
12. All District Accounts Officers in Khyber Pakhtunkhwa.
13. All Agency Accounts officers in FATA.
14. Officers concerned.
15. P.S to Chief Secretary, Khyber Pakhtunkhwa.
16. P.S to Secretary Establishment, Khyber Pakhtunkhwa.
17. P.S to Special Secretary(Estt) Establishment Department.
18. PAs to AS(E)/AS(HRD)/DS(E) Establishment Department.
19. Office order file.

"IHSAN AFRIDI"

(TABASSUM)
SECTION OFFICER(E-II)

ATTESTED

Annexure-F

40 - 24

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Anwar Zaheer Jamali
Mr. Justice Sh. Azmat Saeed

CIVIL PETITION NO.254-P OF 2013
(On appeal from the judgment dated 21.2.2013 of the Khyber Pakhtunkhwa Service Tribunal, Peshawar passed in Appeal No.1358/2010)

Government of Khyber Pakhtunkhwa through Secretary Establishment Department, Peshawar and others ... Petitioner(s)

Versus

Azam Khan .... Respondent(s)

For the Petitioner (s) : Mian Arshad Jan, Addl. AG KPK

Respondent : In person

Date of hearing : 05.3.2015

ORDER

Anwar Zaheer Jamali, J.- After hearing the submissions of the learned Addl. Advocate General, KPK, we are satisfied that the relief granted to the respondent by the Tribunal in its judgment is in accordance with law. Moreover, there is no substantial question of law of public importance involved in this petition, which may justify invoking the jurisdiction of this Court under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973 by the petitioners. Dismissed. Leave refused.

Sd/- Anwar Zaheer Jamali
Sh. Azmat Saeed, J

SEAL OF SUPREME COURT OF PAKISTAN

ATTESTED

Certified to be true c
11.03
Deputy Registrar,
Supreme Court of Pak
Peshawar

Peshawar,
05.03.2015
Not approved for reporting
Sajjad

(25)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1358/2010

Date of Institution. ... 19.7.2010
Date of Decision .. 21.2.2013

Azam Khan son of Azad Khan, Section Officer (Police-I), Home Department, Government of Khyber Pakhtunkhwa, Peshawar.... ..... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary, Establishment Department, Peshawar.
2. Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar..... (Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED NOTIFICATION NO.SOE-III(ED)3(45)2007; DATED 19.2.2008 OF RESPONDENT NO.2, WHEREBY THE APPELLANT WAS PROMOTED TO PROVINCIAL MANAGEMENT SERVICE (BPS-17) ON REGULAR BASIS WITH IMMEDIATE EFFECT ON 19.2.2008 INSTEAD OF 2.12.2003 AND ALSO ORDER DATED 11.6.2010, OF RESPONDENT NO.1 WHEREBY HIS DEPARTMENTAL APPEAL WAS NOT ACCEDED TO IN VIOLATION OF RULES AND REGULATIONS.

MR. SAADULLAH KHAN MARWAT, Advocate ... For appellant.

MR. SHERAFGAN KHATTAK, Addl. Advocate General ... For respondents.

SYED MANZOOR ALI SHAH, ... MEMBER
MR. NOOR ALI KHAN, ... MEMBER

JUDGMENT

SYED MANZOOR ALI SHAH, MEMBER.- This appeal has been filed by Azam Khan, the appellant under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the order dated 19.2.2008 of respondent No.2, whereby he was promoted to Provincial Management Service (BPS-17) on regular basis with immediate effect from on 19.2.2008 instead of 2.12.2003 and against the order dated 11.6.2010, whereby his departmental appeal has been rejected. It has been prayed that on acceptance of the appeal, the respondents may be directed to antedate and regularize promotion of appellant as Section Officer BPS-17 (SG) w.e.f. 2.12.2003 instead of 19.2.2008.

2. Brief facts of the case as averred in the memo: of appeal are that the appellant while serving as Private Secretary in the Civil Secretariat was appointed

ATTESTED

(26)

as Section Officer (BPS-17) on acting charg basis with immediate effect by the competent authority vide order dated 2.12.2003. He was subsequently promoted on regular basis vide notification dated 19.2.2008 with immediate effect instead of ante-dating his promotion w.e.f. 2.12.2003. The appellant agitated the matter several times through appeals/applications to higher authorities for seeking his vested rights regarding ante-dation of his promotion from the date when the vacancy was available in his turn, but in vain. Feeling aggrieved, the appellant filed departmental appeal on 29.4.2010, before the competent authority, which was rejected vide order dated 11.6.2010, hence the present appeal.

3. After receipt of the appeal, pre-admission notices were issued to the respondents. Despite of repeated adjournments for three times, the respondents failed to file written reply. On 15.10.2010, the appeal was admitted to regular hearing. Written reply by the respondents filed on 6.12.2010 and contested the appeal.

4. Arguments heard and record perused.

5. The learned counsel for the appellant argued that a large number of posts of BPS-17 of PCS(Executive & Secretariat Groups) were fallen vacant to the share of promotion quota since long in the Civil Secretariat even then the appellant alongwith others was appointed as Section Officer (BPS-17) on acting charge basis vide order dated 2.12.2003. On 19.2.2008, the appellant was promoted on regular basis with immediate effect instead of ante-dating his promotion when clear vacancy was available for him and deprived him of his legitimate rights. He stated that if a civil servant was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc. attaching to such post for the period that he held the same and also entitled to any other benefits including seniority etc. because it was the duty of the respondent department to promote him on regular basis against a post available for him. He relied on a judgment of the august Supreme Court of Pakistan as reported in 2006-SCMR-1938. He further stated that vide consolidated judgment dated 13.3.2009, in similar nature cases of Muhammad Iqbal Khattak and another in Service Appeal No. 612/2008, wherein on acceptance of the appeal, the official respondents were directed to ante-date promotion of each of the two appellants to the respective dates on which a vacancy became avilable for the respective turn of the appellants or from the respective dates of their taking charge of such vacancy on officiating/acting charge basis, whichever is later. This judgment of the Tribunal has also been upheld by the august Supreme Court of Pakistan vide judgment dated 24.5.2012 in C.As No. 860 to 861 of 2010. The appellant being

ATTESTED

(27)

similarly placed person is also entitled to the same treatment. He requested that the appeal may be accepted as prayed for.

7. The learned AGP argued that the appellant was appointed as Section Officer (BPS-17) purely on temporary basis as well as stop gap arrangement which do not accrue any right. Under sub rule-4 of Rule-9 of (Appointment, Promotion and Transfer) Rules 1989, appointees against a temporary vacant post are liable to reversion till the return of the lien holder of the post against which he was promoted/appointed. Hence acting charge appointment does not confer any right for the purpose of regular promotion. However, the appellant was appointed on acting charge basis against the post reserved for initial recruitment. On promulgation of PMS Rules 2007, a working paper was prepared and placed before the PSB, which in its meeting held on 9.2.2008, considered name of the appellant and recommended for promotion to the post of PMS (BPS-17) on regular basis. So far as the question of back benefits is concerned, the appellant is getting all financial benefits of BPS-17 w.e.f. the date of his appointment on acting basis. He requested that the appeal may be accepted as prayed for.

8. The Tribunal while agreeing with the arguments advanced by the learned counsel for the appellant observes that the appellant was promoted as Section Officer (BPS-17) on acting charge basis vide order dated 2.12.2003. As per ruling of the august Supreme Court of Pakistan if a civil servant was asked to hold a higher post to which he was subsequently promoted on regular basis, was entitled to the salary etc. attaching to such post for the period that he held the same and also entitled to any other benefits including seniority etc. because it was the duty of the respondent department to promote the appellant on regular basis against a post available for him at relevant time. Judgment dated 13.3.2009 in Service Appeal No. 612/2008 has also been upheld by the august Supreme Court of Pakistan vide judgment dated 24.5.2012 in C.As No. 860 to 861 of 2010.

9. In view of the above, the appeal is accepted to the extent that the respondent department is directed to ante-date promotion of the appellant from the date of availability of post in his quota. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
21.2.2013.

Sd/- Syed Mansoor Ali Shah
Member
Sd/- Noor Alam Khan
Member

Certified to be true copy
Service Tribunal,
Peshawar

ATTESTED

Annex – G (28)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W P No 2640-P /2012

1. Abdul Samad
Deputy Secretary (Budget)
Finance Department
Govt. of K.P.K.
Civil Secretariat, Peshawar.

2. Ishtiaq Ahmad,
Deputy Secretary (TPC)
Govt. of K.P.K.
Civil Secretariat, Peshawar

3. Muhammad Ismail Qureshi
Deputy Secretary
Local Govt. & Rural Development Department,
Govt. of K.P.K.
Civil Secretariat, Peshawar

4. Redi Gul
Deputy Secretary
Sports Tourism Archology Musem & Youth Affairs
Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar

5. Taj Muhammad,
Deputy Secretary (Budget)
Finance Department,
Govt. of K.P.K.
Civil Secretariat, Peshawar

6. Muhammad Raees,
Deputy Secretary
Home & Tribal Affairs Department
Govt. of K.P.K.
Civil Secretariat, Peshawar

SEAL OF HIGH COURT
عدالت عالیہ
پشاور

ATTESTED
EXAMINER
Peshawar High Court
15 SEP 2015

ATTESTED

(29)

Judgment Sheet

IN THE PESHAWAR HIGH COURT PESHAWAR
JUDICIAL DEPARTMENT

Writ Petition No. 2640-P/2012

JUDGMENT

Date of hearing: 20-09-2016

Petitioner (Abdul Samad and others) By: Ghulam Nabi (Advocate)

Respondents (Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and others) By: Mr. Mujahid Ali Advocate

.....

WAQAR AHMAD SETH, J.- Through this single judgment we propose to dispose of the instant W.P No.2640-P/2012 as well as the connected W.P No.2696-P/2012, as the question for determination raised in both the writ petitions is one and the same.

2. The petitioners in these writ petitions are the serving and retired employees of the Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar. Their grievance is that they were previously serving as Superintendent/ Private Secretaries (BPS-16/17) in the relevant departments and through notifications issued by respondent No.3 (Secretary Establishment/ Regulation), the petitioners were appointed as Section Officers on current charge basis with immediate effect. According to them, vide another Notification dated 2.12.2011, the Provincial Selection Board regularized the services of the petitioners as Section Officers (BPS-17) with immediate

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court

(30)

effect. It is averred in the petitions that although the notification of their regularization was issued with immediate effect but they were performing their duties on the said posts in officiating capacity with effect from 27.04.2006 and in this respect they made several representations to the competent authority for their regularization of services as Section Officers from the date of their appointment on current/ acting charge basis. It is further stated in the petitions that some of their collogues had approached the Service Tribunal for their ante-date regularization vide Appeal Nos.612 and 613 of 2008 where their appeals were accepted and the relief asked for was granted to them. The said judgment of the Service Tribunal was challenged before the Apex Court by the respondents department and the Hon'ble Supreme Court of Pakistan also affirmed the judgment of the Service Tribunal through an elaborate and detailed judgment dated 24.05.2012. The above judgments of the Service Tribunal as well as the Hon'ble Supreme Court with regard to ante date promotion of their colleagues from the date of their taking acting charge on the relevant posts have been implemented and a proper notification was issued in this regard, however, the petitioners were not given the said relief despite the judgment of the August Supreme Court of Pakistan reported in 1996 SCMR 1185 wherein it has

ATTESTED

(31)

been observed that if the Tribunal or the Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. The petitioners through these writ petitions have prayed that the respondents be directed to extend the same benefit of the judgment of the Service Tribunal and the Apex Court to them, having more than 30 years service at their credit while in the connected W P No 2696-P/2012 the petitioners are now the retired government servants

3 Arguments heard and record perused.

4 Record reveals that petitioners were promoted and appointed as Section Officers on current charge basis, with immediate effect and subsequently, vide another notification dated 02.12.2003, the Provincial Government in consultation with Provincial Selection Board, appointed the petitioners on acting charge basis with immediate effect. The record is also suggestive that in the year 2006, all the petitioners alongwith number of

ATTESTED

EXAMINER

other employees of the same cadre were promoted to the posts of Section Officers BPS-17 on regular basis by the Competent Authority in consultation with Provincial Selection Board. There is no dispute regarding these facts however the dispute started when petitioners claimed regularization with effect from the date of their initial current charge basis / acting charge basis with effect from 22.08.2001 and 03.11.2003 and in this respect they filed their departmental appeals which are pending as yet.

5 We have come across three four judgments of the KPK, Service Tribunal upheld by the apex court in which colleague and batch mates of petitioners were given effect of regularization from the date when they were appointed on current charge / acting charge basis. Even otherwise there are number of precedents without any deviation that if a civil servant was asked to hold a higher post to which he was subsequently promoted on regular basis was entitled to the salary, seniority etc attaching to said post for the period that he held the same, because it was the duty of the department/respondents to promote the incumbent on regular basis against a post available for him at relevant time.

6 The apex court of the country while upholding the said judgments as referred above of the colleague and

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court
16 SEP 2015

batch mats of the petitioners in civil appeal No.860 to 861 of 2010 decided on 24.05.2012 has held as under:-

"There is no dispute with the proposition that the terms and conditions of the service of the respondents in view of the provision contained in Rule 8 of NWFP Civil Service (Secretariat Group) Rules, 2007 shall continue to be governed by the erstwhile rules. There is also no dispute with the proposition that if the respondents were to hold a post on acting charge basis, they could also hold the same on regular basis. In the case of Luqman Zareen and others Vs Secretary Education NWFP and others 2006 SCMR 1938 this court while dealing with the identical issue has held that it is then a position admitted on all sides that nothing existed in the way of the petitioners on 31.08.2000 which could have disentitled them to regular promotion to the posts in question and that it was only the usual apathy, negligence and bureaucratic red-tapism which had deprived the petitioners of the fruits that they deserved. The petitioners could not be permitted to be punished for the faults and inaction of others. We are of the view that where a post was available against which a civil servant was qualified to be promoted to such a higher post, where he was put on said higher post on officiating or acting charge basis only because the requisite exercise of allowing the regular promotion to the said post was being delayed by the competent authority and where he was subsequently found fit for the said promotion and was so promoted on regular basis then he was entitled not only to the salary attaching to the said posts but also to all consequential

ATTESTED

EXAMINER
Peshawar High Court
16 SEP 2015

ATTESTED

(34)

benefits from the very date from which he had been put on the said post on officiating or acting charge basis and we hold accordingly.

While dealing with the reservations of the nature expresses by the learned counsel for the appellant this court held that A bare perusal of these judgments would thus show that this court had always accepted the principle that a person who was asked to hold a higher post to which he was subsequently promoted on regular basis was entitled to the salary etc attaching to such a post for the period that he held the same, that he would also be entitled for any other benefits which may be associated with the said post and further that if a vacancy existed in a higher cadre to which a civil servant was qualified to be promoted on regular basis but was not so promoted without any fault on his part and was instead put on the said post on officiating basis then on his regular promotion to the said post he would be deemed to have been so promoted to the same from the date from which he was allowed to hold the said higher post unless justifiable reasons existed to hold otherwise.

"When this being the state of things on factual and legal plain we do not think the judgment of the learned Service Tribunal is open to any exception.

7 After the dismissal of civil appeal the respondents vide notification dated 25th July 2012 regularized the civil servant by given ante-date the promotion of all the civil servants who were appointed w.e.f acting charge basis. The said notification was produced by counsel for the petitioner.

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court
05 SEP 2015

at the time of arguments which was available at page 33 of the writ petition. In addition to above cited judgments there are number of judgments which clearly show that it has become a continuous practice that whenever regular promotion is given by the competent authority, the effect is always given from the date of current / acting charge basis. In this respect reliance is placed on 1998 SCMR 969 & 2006 SCMR 1938.

8. The only stance of the respondents, argued at the bar is regarding jurisdiction in view of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. In this respect it is an admitted fact that there are orders of tribunal as well as apex court, deciding the same point of law, relating to the terms of service of a civil servant, that covers not only the case of civil servants who litigated, but also for other civil servants, who may have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of such judgment of the tribunal or of the apex court be extended to other civil servants, who may not be party to said litigation, instead of compelling them to approach the tribunal or any other legal forum. Reliance in this respect is made on 1996 SCMR 1185, 2005 SCMR 499, 2003 SCMR 1030. In view of which this court has the jurisdiction to entertain the writ petition.

ATTESTED
EXAMINER
Peshawar High Court
16 SEP 2010

(36)

9 Indeed, the cited judgment of the apex court and the number of judgments of service tribunal KPK annexed and referred by the petitioners shows that it was a question of law given the regularization antedation from the date of acting charge, therefore in view of which petitioners cannot be compelled to approach the service tribunals being civil servants which in fact is a longer and time consuming exercise.

10 In view of the above the writ petition is allowed as prayed for. In the connected writ petition, both the petitioners stands retired during this time and as such while extending the benefits of the judgment, they are also entitled to the same relief and thereafter their retiring benefits as well.

Sd/- Waqar Ahmad Seth
JUDGE

Announced
08.09.2015

Sd/- Musarrat Hilali
JUDGE

F. Jan

6784

Date of Presentation of Application 08/9/15
Pages 18
Copying Fee
Urgent Fee
Total
Date of Preparation of Copy 16/9/15
Date Given For Delivery 16/9/15
Date of Delivery of Copy 16/9/15
Received By

CERTIFIED TO BE TRUE COPY
Peshawar High Court
16 SEP 2015

ATTESTED

Annexure - H (37)

BEFORE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 1529 /2011

Muhammad Jamil S/o Haji Danish,
Deputy Secretary, Govt. of KPK,
Home Department, Peshawar ..... Appellant

Versus

1. Secretary, Govt. of KPK, Establishment and Administration Department, Peshawar
2. Chief Secretary, Govt. of KPK, Peshawar. ..... Respondents

APPEAL UNDER SECTION 4 OF SERVCE TRIBUNAL ACT 1974 AGAINST NOTIFICATION NO. SOE-2(ED)3(45)99, DATED 10.02.2003 OF R.NO.1 WHEREBY SERVICES OF APPELLANT WERE REGULARIZED WITH IMMEDIATE EFFECT INSTEAD OF 10.07.1995 OR FROM THE DATE OF FALL OF VACANCY OR ORDER DATED 23.08.2011 OF R.NO.2 WHEREBY REPRESENTAITON OF APPELLANT WAS MADE FILED FOR NO LEGAL REASON.

Respectfully Sheweth,

1. That appellant was initially appointed as Steno Grapher in the department and was promoted to the post of Section Officer BPS-17 with effect from 31.05.1995 on temporary/staff gap arrangement till further orders. The name of the appellant appears in the notification at S.No. 14. (Copy as annex "A")

ATTESTED

38

Sr. No.	Date of order/ proceedings	Order or other proceedings with signature of Judge/ Registrar
1	2	3
1.		KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. Appeal No. 1589/2011 Muhammad Jamil Versus Secretary, Government of Khyber Pakhtunkhwa, Establishment Deptt. etc. JUDGMENT 01.09.2015 ABDUL LATIF, MEMBER.- Counsel for the appellant (Mr. Saadullah Khan Marwat, Advocate) and Government Pleader (Mr. Muhammad Jan) for the respondents present. 2. The instant appeal has been filed by the appellant Muhammad Jamil under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against notification No. SOE-2(ED)3(45)99, dated 10.2.2003, whereby services of the appellant were regularized with immediate effect instead of 10.7.1995 or from the date of occurrence of vacancy to his share and against order dated 29.8.2011 of respondent No.2 whereby his representation was filed. 3. The broad facts and legal issues raised in this case are the same as in the case in Service Appeal No. 612/2008

ATTESTED

Khyber Pakhtunkhwa Service Tribunal Peshawar

ATTESTED

decided on 13.3.2009, Appeals No. 574/2009, 575/2009, 576-597/2009 decided on 09.4.2009. This appeal is also disposed of with the same directions as issued vide judgment in Service Appeal No. 575/2009, decided on 09.4.2009 with further directions to the respondents to ascertain that the appellant in the instant case is a person similarly placed with the appellants of the mentioned cases and is entitled to the benefits of the judgment in service appeals cited above and to examine and decide the case of the appellant in the same manner as was prescribed and indicated vide judgment mentioned above. The appeal is disposed of accordingly. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
01.09.2015.

Certified to be TRUE COPY
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 2.9.2015
Number of Words 1200
Copying Fee 8
Urgent
Total 8
Name of Copyist
Date of Completion of Copy 14.9.2015
Date of Delivery of Copy 14.9.2015

ATTESTED

Annexure I (40)

To,

The Chief Secretary,
Govt: of Khyber Pakhtunkhwa
Peshawar.

Subject:- **APPEAL FOR PROMOTION ON REGULAR BASIS FROM THE DATE OF OCCURRENCE OF VACANCIES / ACTING CHARGE BASIS.**

Respected Sir,

I alongwith other officers of Civil Secretariat had submitted a joint appeal on dated 04-04-2013 on the subject noted above, but action is still awaited. I beg to submit again as under:-

i. That the appellant was serving in the Civil Secretariat Peshawar against the post of Deputy Secretary (BPS-18) on regular basis.

ii. That the appellant has got at his credit a long tenure of service standing more than 35 years.

iii. That the appellant was previously serving as Superintendent (BPS-16) in the relevant department. Notification was issued on 02-12-2003 by the Provincial Government in consultation with Provincial Selection Board, whereby the appellant was appointed as Section Officer (BPS-17) on Acting Charge Basis with immediate effect. Copy of the said notification dated 10-07-2004 attached as **Annexure-A.**

iv. That the appellant had been serving on the above said post in his officiating capacity and it was 19th February, 2008 when the notification with regard to the regularizations of the appellant for the Acting Charge Section Officers to the Section Officer (BPS-17) in Provincial Management Service (PMS) was issued with immediate effect **(Annexure-B)**, after serving in PCS Secretariat Cadre from 02-12-2003 to 18-02-2008.

v. That right from the issuance of the above said notification, the appellant has been struggling for his right of regularization from the date of his acquiring the Acting Charge i.e 10-07-2004.

vi. That in the meanwhile, some colleagues of the appellant being on the same footings have approached to the Service Tribunal and a detailed judgment with regard to the regularization of the appellant was issued by the Service Tribunal in Appeal No. 612 & 613/2008 dated 13.03.2009, whereby the above said relief was granted to the appellants by the Tribunal. Copy of judgment is attached as **Annexure-C.**

vii. That, however, the said judgment of the Service Tribunal was challenged before the Supreme Court by the Establishment Department and the Honorable Apex Court was kind enough to give an elaborate and detailed judgment with regard to the same grievance on 24.05.2012. Copy of the said judgment is attached as **Annexure-D.**

viii. That as a result of the above said judgment of the Honorable Supreme Court of Pakistan the notification with regard to the anti-date promotion of the petitioners from the dates of their taking Acting Charges on the relevant posts was issued. Copy of the said notification dated 25.07.2012 issued by the Establishment Department is attached herewith as **Annexure-E.**

ATTESTED

(Contd: page – 2)

41

ix. In another case Government of Khyber Pakhtunkhwa Vs Azam Khan, the Supreme Court of Pakistan upheld the decision of the Khyber Pakhtunkhwa Service Tribunal in the service appeal No.**1358/2000** and granted relief to the appellant **(Annexure-F).**

x. In another writ petition No.2640-8/2012, Abdus Samad and others Vs Government of Khyber Pakhtunkhwa, the Peshawar High Court Peshawar granted relief to the petitioners by extending the benefit of judgments in the similar cases **(Annexure-G).**

xi. Recently the Khyber Pakhtunkhwa Service Tribunal has decided in the Service appeal No.1589/2011 Muhammad Jamil Vs Government of Khyber Pakhtunkhwa to allow the benefits of the judgments in the service appeal, cited above in the same manner as was prescribed and indicated in the above judgments **(Annexure-H).**

xii. That in the light of the above noted facts the appellant also did not approach to the Honorable Service Tribunal as his case being totally identical to the cases of the Civil Servants who had agitated the above said matter before the different forums including the Service Tribunal, High Court and the Honorable Supreme Court of Pakistan, hence the appellant is therefore, legally entitled to be treated alike and any denial from his above said right from the Establishment Department side will not only be un-constitutional, discriminatory and also contradictory to their own notification issued above for the regularization of the other Civil Servants being on the same footings.

xiii. That by not extending the benefit of the judgment of August Supreme Court mentioned above to the appellant, Establishment Department is also in clear violations of the directions as issued by the Supreme Court of Pakistan contained in 1996 SCMR 1185, the relevant partition where of is reproduced below for the ready reference:-

> **"we may observe that if the tribunal or this court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated but also of other civil servants who may have not taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. The above view was reiterated in 2005 PLC (CS) 368 and followed in 2006 PLC (CS) 11".**

xiv. That the Establishment Department is under obligation in terms of Article 190 of Constitution of Islamic Republic of Pakistan, 1973 to act in accordance with and to comply with the above un-equivocal direction of the Apex Court and extend the benefit of the above said judgment to the appellant was equally entitled to the same relief and refrain from forcing them to individually approach the Service Tribunal for the same relief as has already been granted by the different legal forums including the Honorable Supreme Court of Pakistan.

ATTESTED

Contd: page – 3

Annexure J

(43)

IMMEDIATE

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

NO.SOE-II(ED)3(610)/2003
Dated Peshawar the **February 01, 2016**

To

Name of officer	Present posting / Address
Mr.Shah Jehan (PMS BS-18)	D.S PHE Deptt
Mr.Usman Shah (PMS BS-18)	D.S Health Deptt
Mr.Farhad Khan (PMS BS-18)	D.S Environment Deptt
Mr.Muhammad Ayub (PMS BS-18)	D.S RR&S Deptt
Mr.Azeem Khan Khattak (PMS BS-18), Retired Deputy Secretary	C/O C&W Department
Mr.Anwar-ul-Haq (PMS BS-18)	D.S E&SE Deptt
Mr.Muhammad Naseem (PMS BS-18)	D.S Finance Department
Mr.Muhammad Siddique (PMS BS-18)	D.S Finance Department

SUBJECT: **APPEALS FOR PROMOTION ON REGULAR BASIS FROM THE DATE OF OCCURRENCE OF VACANCIES / ACTING CHARGE BASIS**

Dear Sir,

I am directed to refer to your appeal on the subject and to inform that the same being devoid of merit has been regretted by the competent authority.

Yours faithfully,

01.02.16

SECTION OFFICER (E-II)

ATTESTED

قیمت 10 روپے

43831

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ/دستخط: _____

بار کونسل/بار ایسوسی ایشن نمبر: _____

رابطہ نمبر: _____

بعدالت جناب: K.P.K, Service Tribunal, Peshawar

دعویٰ: _____

علت نمبر: _____

مورخہ: _____

جرم: _____

تھانہ: _____

منجانب: عظیم خان

بنام گورنمنٹ K.P.K

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے محمد آصف یوسفزئی، سعود خان ایڈووکیٹ، ضمیر علی خان

کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہو گا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا وہ وکیل موصوف وصول کرنے کا حقدار ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے۔

المرقوم: _____

العبد _____ گواہ شد _____ العبد

مقام _____ کے لئے منظور ہے

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeals No. 334 of 2016

Azeem Khan ..... (Appellant)

Versus

1. Chief Secretary, Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.

..... (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2 & 3

BRIEF

The appellants have requested for antedation of their promotion in BS-17 w.e.f. the date of their acting charge appointment in BPS-17. These officers while working as Supdt / Private Secretaries were appointed as Section Officers on acting charge basis against the posts falling under initial recruitment quota under rule 9(3) of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. Later on, they were promoted as PMS BS-17 on regular basis upon availability of vacancies in their share. According to rule 9(6) of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, "acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis". Hence, plea of the appellants for antedation of their promotion is not justified. The judgements of Services Tribunal and Peshawar High Court, Peshawar referred by the appellants in cases of Mr. Muhammad Jamil and Mr. Abdul Samad & others respectively are also challenged by this department in Supreme Court of Pakistan and are subjudice.

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appellants have got no cause of action/locus standi to file the instant appeals against the respondents.
2. That the appeals are not maintainable.
3. That the appellants have presented the facts in manipulated form which disentitles them for any relief whatsoever.
4. That the appeals are barred by law/time.
5. That this Honourable Tribunal lacks jurisdiction in the matter.
6. That the appellants have suppressed material facts from the Tribunal.
7. That the appellants have not come to the Tribunal with clean hands.
8. That the appellants are estopped to file the instant appeals due to their own conduct.
9. That the appeals are bad for non-joinder of necessary parties.
10. That the instant appeals are hit by Section 4(1) (b) (ii) of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974.
11. That the appeals are hit by laches.

ON FACTS:

1. Needs no comments / Pertains to record.

2. Correct. Pertains to record.

3. Upon availability of vacancy in their share, the appellants were promoted to PMS BS-17 on regular basis in 2008 and PMS rules were promulgated at that time. Moreover, as per rules, promotion is always notified with immediate effect.

4. Incorrect. The referred appeals i.e. 612 & 613/2008 were filed by Mr. Muhammad Iqbal Khattak and Mr. Ahmad Khan, who belonged to PCS (EG) cadre. As posts were available in their share, hence Services Tribunal, Khyber Pakhtunkhwa ordered to antedate their promotion and the said judgment of Services Tribunal was also upheld by the Supreme Court of Pakistan. Accordingly, their promotion was antedated.

5. As explained above.

6. As explained in Para 4 above.

7. Incorrect. The Service Tribunal, Khyber Pakhtunkhwa had only directed to antedate promotion of Mr. Azam Khan w.e.f the date of occurrence of vacancy in his share. The said judgment of Services Tribunal was also upheld by the Supreme Court of Pakistan. As the promotion of the officer was made at the right time, hence a compliance report has been forwarded to Supreme Court of Pakistan as well as Services Tribunal, Khyber Pakhtunkhwa.

8. The Provincial Government in consultation with Law Department has filed CPLA in the Supreme Court of Pakistan against the referred judgment of Peshawar High Court, Peshawar and the case is subjudice.

9. The Provincial Government in consultation with Law Department has filed CPLA in the Supreme Court of Pakistan against the referred judgment of Services Tribunal, Khyber Pakhtunkhwa and the case is subjudice.

10. Incorrect. The departmental appeals of the appellants were rejected as they were devoid of merit and appellants were not entitled for grant of antedation of promotion.

ON GROUNDS:

A. Incorrect. The letter dated 27.11.2015 vide which the appellants were informed about rejection of their departmental appeals is justified, according to law, norms of justice and is liable to be kept intact.

B. Incorrect. The appellants were appointed to the post of Section Officer on acting charge basis against the posts falling under initial quota under rule 9(3) of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. No posts were available in their share for promotion.

C. Incorrect. The case of appellants is not identical to the referred cases of Mr. Iqbal Khattak and Mr. Ahmad Khan as both belonged to PCS (EG) cadre and posts were available in their share. Their promotion was antedated as Supreme Court of Pakistan also upheld the judgment of Khyber Pakhtunkhwa Services Tribunal in Service appeal No. 612 & 613 of 2008.

D. This department in consultation with Law Department filed CPLA in the Supreme Court of Pakistan against the referred judgment of Services Tribunal and the case is subjudice.

E. Incorrect. The cases of appellants are altogether different from the cases of Mr. Iqbal Khattak & Mr. Ahmad Khan as already explained above. Howéver, the instant appeals are similar to the cases of Mr. Abdul Samad & others in Service appeal No. 2640-8/2012 and Appeal No. 1589/2011 filed by Mr. Muhammad Jamil wherein relief has been granted to the appellants by Peshawar High Court, Peshawar & Services Tribunal Khyber Pakhtunkhwa respectively. However, this department in consultation with Law Department has filed CPLA in Supreme Court of Pakistan against above mentioned judgments and cases are still subjudice.

F. Incorrect. As explained earlier.

G. The respondents may also be allowed to forward additional grounds.

In the light of the above mentioned submissions / facts, the instant appeals being devoid of merits, legal footing and badly time barred may be dismissed.

(Respondents No.1&2)

Secretary Finance Department
(Respondent No.3)

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 334/2016

Azeem Khan VS Govt: of KPK & others

.....

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-11) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. Admitted correct by the respondents as the service record of the appellant is present in the concerned department.

2. Admitted correct by the respondents as the service record of the appellant is present in the concerned department.

3. Incorrect. The appellant was appointment as SO (BPS-17) on acting charge basis in 2004 which means that post of BPS-17 is available at that time and according to superior Courts judgment that if post is available then civil servant should be promoted on regular base rather than acting charge base.

4. Incorrect. The post was also available at the time of promotion of the appellant on acting charge basis as the appellant was promoted on acting charge basis at that time and according to superior Courts judgment that if post is available then civil servant should be promoted on regular base rather than acting charge base.

5. As explained above.

6. As explained in para 4 above.

7. Incorrect. While para 7 of the appeal is correct.

8. Not replied according to para 8 of the appeal. Moreover para 8 of the appeal is correct.

9. Not replied according to para 9 of the appeal. Moreover para 9 of the appeal is correct.

10. Incorrect. The appellant has good cause of action therefore he departmental appeal which was also rejected for no good ground.

GROUNDS:

A) Incorrect. The impugned orders dated 01.02.2016 is against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.

B) Incorrect. The appellant was promoted to the post of BPS-17 on dated 10.7.2004 on acting charge base which means that post the post of BPS-17 was available at that time.

C) Incorrect. While para C of the appeal is correct.

D) Not replied according to para D of the appeal. Moreover para D of the appeal is correct.

E) Incorrect. The case of the appellant is similar to the cases mentioned in para E of the appeal, therefore the appellant is similarly placed person and also entitled for the same relief.

F) Incorrect. As explained earlier.

G) Legal.

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

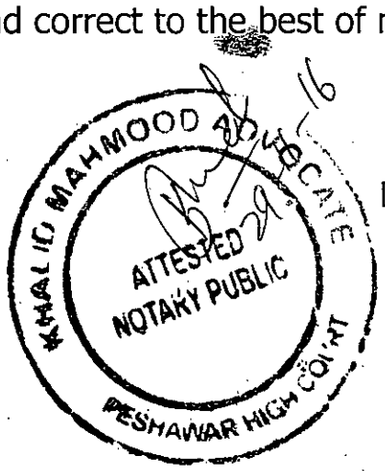
APPELLANT

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
&
(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.



DEPONENT