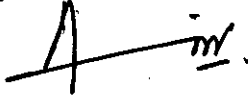


FORM OF ORDER SHEET

Court of _____

Appeal No. 1406/2023

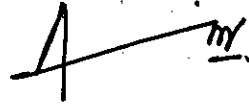
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	22/06/2023	<p>The appeal of Mr. Muhammad Zafullah Khan resubmitted today by him. It is fixed for preliminary hearing before Single Bench at Peshawar on</p> <p style="text-align: right;">By the order of Chairman  REGISTRAR</p>

The appeal of Mr. Muhammad Zafrullah Khan Assistant Director Food Peshawar received today i.e on 15.06.2023 is incomplete on the following score which is returned to the appellant for completion and resubmission within 15 days.

- 1- Index of the appeal is unsigned.
- 2- Page nos. 5, 6, 7, 9, 10 & 25 of the appeal are illegible which may be replaced by legible/better one.
- 3- Approved file covers is not used.

No. 1795 /S.T.


Dt. 16/6 /2023.



REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Muhammad Zafarullah Khan Appellant.

Re-submitted after doing the
needful;


22/06/2023

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO. 1406/2023

Muhammad Zafrullah Khan,
Assistant Director Food (BS-17),
Food Directorate, Peshawar.....

APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa
Through Chief Secretary, Khyber Pakhtunkhwa
2. Government of Khyber Pakhtunkhwa
Through Secretary Establishment,
Khyber Pakhtunkhwa, Peshawar
3. Government of Khyber Pakhtunkhwa
Through Secretary Finance,
Khyber Pakhtunkhwa, Peshawar
4. Government of Khyber Pakhtunkhwa
Through Secretary Food,
Khyber Pakhtunkhwa, Peshawar
5. Director Food, Food Directorate
Khyber Pakhtunkhwa Peshawar.....

RESPONDENTS

INDEX

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4	Seniority List of AFC 2005	B	06
5	Amendment Surplus Pool Policy 2006	C	07
6	Appeal dismissed vide Judgment dated 13.06.2007	D	08-10
7	Larger Bench Judgment dated 15.07.2021	E	11-18
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10	Departmental Appeal dated 17.02.2023	H	21-24
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12	Raised observations dated 04.05.2023	I	25-29
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14	05 years Annual Confidential Report (Receipt Certificate)		

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO 1406 /2023

Muhammad Zafrullah Khan,
Assistant Director Food (BS-17),
Food Directorate, Peshawar.....

APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa
Through Chief Secretary, Khyber Pakhtunkhwa.

2. Government of Khyber Pakhtunkhwa
Through Secretary Establishment,
Khyber Pakhtunkhwa, Peshawar.

3. Government of Khyber Pakhtunkhwa
Through Secretary Finance,
Khyber Pakhtunkhwa, Peshawar.

4. Government of Khyber Pakhtunkhwa
Through Secretary Food,
Khyber Pakhtunkhwa, Peshawar

5. Director Food, Food Directorate
Khyber Pakhtunkhwa Peshawar.....

RESPONDENTS

.....
APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE NOTIFICATION DATED 03/01/2023 TO THE EXTENT WHEREBY THE BENEFITS OF ARREARS WERE NOT ALLOWED TO THE APPELLANT WHICH WERE ALREADY ALLOWED TO THE OTHER SIMILAR CASES OF THE APPELLANTS. THE DEPARTMENTAL APPEAL DATE 17/02/2023 FILED BY THE APPELLANT AGAINST THE NOTIFICATION IS NOT YET RESPONDED EVEN AFTER THE EXPIRY OF THE STIPULATED STATUTORY PERIOD OF TIME
.....

RESPECTED SHEWETH:

PRAYER IN APPEAL

On acceptance of the instant appeal Notification dated 03/01/2023 may very graciously be set aside upto the extent whereby the benefits of arrears were not allowed to the appellant, as the same were allowed to other similar officials/colleague of the appellant.

1. That the appellant was adjusted from Surplus Pool in Food Department against Lower Scale Assistant Food Controller (BS-08) in 2005 while the appellant was serving in (BS-09) in parent department Education as **Annexure (A)**.

2. That the appellant was placed at the bottom of seniority list of that cadre as **Annexure (B)**.

3. That the Government of Khyber Pakhtunkhwa surplus pool amendment policy was issued in 2006 for the purpose to remove anomaly Sub-Para-D was added to Para-6 of the original policy where clarified the status of seniority in case of adjustment against lower scale as **Annexure (C)**.
4. That the appellant filed an appeal in the Khyber Pakhtunkhwa Service Tribunal but unfortunately and without realizing the facts, dismissed vide judgment dated 13.06.2007 that the amendment surplus pool policy was made on 15.02.2006 which has no retrospective application as **Annexure (D)**.
5. That the Khyber Pakhtunkhwa Service Tribunal announced a detail judgment in similar case on 15.07.2021. In this detail judgment the large bench clarified the view of Divisional Bench erroneous and illegal, further directed it was/is being the duty of the department to extend the benefits of judgment of Muhammad Naveed case to all similar placed employees vide lying at Page No. 03 and 06 Column No. 04 and 10 respectively as **Annexure (E)**.
6. That the appellant submitted departmental appeal on 11.05.2022 which was decided by the department to take advice from the law department that whether the appellant is identical in nature with the case of Muhammad Naveed or otherwise, the law department clarified that an appellant may not be precluded from a benefit on the basis of erroneous view if he is otherwise entitled for the same as **Annexure (F)**.
7. That the appellant Ante-dated promotion Notification was issued on 03.01.2023 from relevant time as DFC (BS-16) w.e.f 19.05.2005 and Assistant Director Food (BS-17) from 28.02.2013 but without back benefits was not treated in accordance with laws and rules as **Annexure (G)**.
8. That the appellant submitted departmental appeal on 17.02.2023 to issue corrigendum in Notification No. SOG/Food/1-3 (DPC) 2022/12117 dated 03.01.2023 and the appellant may be declared with back benefits of service. After expiry of 90 days no response has been made to the appellant & thus decided to file an appeal in the Khyber Pakhtunkhwa Service Tribunal to avail such opportunity from the Honorable Tribunal as **Annexure (H)**.
9. That the appellant promotion case from Assistant Director Food (BS-17) to Deputy Director Food (BS-18) submitted to the Establishment Department Khyber Pakhtunkhwa Civil Secretariat Peshawar for the forthcoming Promotion Selection Board (PSB) which is raised observations and also re-submitted with replied accordingly as **Annexure (I)**.
10. That the appellant pray for the acceptance of the instant appeal Inter Alia on the follow up grounds:-


GROUND:-

- A) That the appellant has not been treated accordance with law, hence his rights secured and guaranteed under the law are badly violated.
- B) That the appellant was unfortunately deprived of his fundamental rights and usually made the scape board by the Food Department as well as Establishment Department Khyber Pakhtunkhwa Peshawar.
- C) That the promotion of the appellant from Assistant Director Food (BS-17) to Deputy Director Food (BS-18) is being delaying by the Establishment Department Khyber Pakhtunkhwa Peshawar under such pretention of observations and the appellant is at the verge of Retirement.

- D) That the Government of Khyber Pakhtunkhwa Establishment clearly quoted that working papers of the officers who are at the verge of Retirement and falling in the promotion zone must be forwarded on priority basis.
- E) That the appellant submitted 05 years Annual Confidential Report to the Administrative Department Food Khyber Pakhtunkhwa for next PSB.
- F) That the appellant being citizen of Pakistan having no other adequate alternate and efficacious remedy available except to approach this Honorable Court in the exercise of its constitutional Jurisdiction for the direction to the respondents to ensure the all back benefits of service.
- G) That the appellant seeks the permission of Honorable Tribunal to rely on additional grounds at the hearing of this appeal.

It is, therefore, humbly prayed that on acceptance of this appeal to issue corrigendum in Notification No. SOG/Food/1-3(PPC) 2022/12177 dated 03.01.2023 and the appellant may be declared with back benefits of service.

~~APPELLANT~~


Muhammad Zafrullah Khan
Assistant Director Food (BS-17)
Food Department

IN PERSON

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

APPEAL NO. _____/2023

Muhammad Zafrullah Khan,
Assistant Director Food (BS-17),
Food Directorate, Peshawar.....

APPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa
Through Chief Secretary, Khyber Pakhtunkhwa.
2. Government of Khyber Pakhtunkhwa
Through Secretary Establishment,
Khyber Pakhtunkhwa, Peshawar.
3. Government of Khyber Pakhtunkhwa
Through Secretary Finance,
Khyber Pakhtunkhwa, Peshawar.
4. Government of Khyber Pakhtunkhwa
Through Secretary Food,
Khyber Pakhtunkhwa, Peshawar
5. Director Food, Food Directorate
Khyber Pakhtunkhwa Peshawar.....

RESPONDENTS

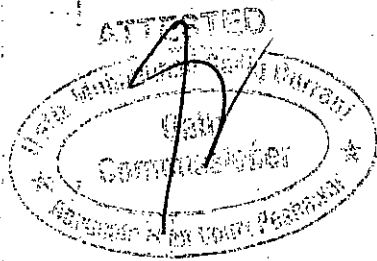
AFFIDAVIT

I Muhammad Zafrullah Khan Assistant Director Food, Food Directorate Khyber Pakhtunkhwa, do hereby solemnly affirm and declare that all the contents of the above appeal are true & correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honorable Tribunal.

DEPONENT

Muhammad Zafrullah Khan
ADF, Food Directorate, KPK
CNIC No. 1210-1495331-5
Cell No. 0346-8995135

15 JUN 2023



Handwritten signature and initials.

BETTER COPY (Page-5)

FOOD DIRECTORATE NWFP
PESHAWAR
No. 5728/ET-542 SPA
Dated 29.04.2005

OFFICE ORDER

In pursuance to the Surplus Pool letter No. SOS.POOL (E&AD) 4-14/99 dated 12-03-2005, and approval of the Minister Food NWFP, conveyed vide Note No.41 dated 25-04.2005, the competent authority is pleased to order adjustment of Mr. Muhammad Zafrullah Khan, Ex-Hostel Superintendent, (BS-09) of the defunct Regional Institute of Teachers Education (Male), D.I.Khan, Government of NWFP, already rendered surplus by his parent Department, as Assistant Food Controller (BS-08) under the Food Directorate, NWFP, Peshawar.

2. Consequent upon his adjustment, Mr. Muhammad Zafrullah Khan is hereby posted in the Office of District Food Controller, D.I.Khan against the existing vacancies of AFC (BS-08) with effect from the date of relieving from his office.
3. Pay drawn by the above official will remain protected in BS-09 according to policy contained in Establishment and Administration Department Circular No. SOR-1 (E&AD)1-200/98, dated 8th June 2001.

SD
DIRECTOR FOOD NWFP
PESHAWAR

No. 5729-41/ET-542/SPA

Dated 29.04.2005

Copy is forwarded to:-

1. PS to Minister for Food, NWFP, for information of Minister Food, NWFP, Peshawar.
2. PS to Secretary Food for information of Secretary Food, NWFP
3. The District Coordination Officer, D.I.Khan.
4. The District Accounts Officer, D.I.Khan.
5. The Principal, R.I.T.E. (Male) D.I.Khan.
6. PA to Director Food, for information of the Director Food, NWFP, Peshawar.
7. The Section Officer Surplus Pool, E&AD, NWFP, Peshawar for information.
8. The Section Officer Food, Government of NWFP, Food Department Peshawar.
9. The Budget Officer/Pay Bill Assistant/Nazir, Food Directorate, NWFP, Peshawar.
10. Muhammad Zafrullah Khan, for information and necessary action.
11. ET-378/Personnel File.

ASSISTANT DIRECTOR FOOD (NWFP)
PESHAWAR

F

~~ASSISTANT DIRECTOR FOR FOOD, NWFP-PAF~~
~~PESHAWAR~~

1. PS to Minister for Food, NWFP, for information of Minister Food, NWFP, Peshawar.
2. PS to Secretary Food for information of Secretary Food, NWFP.
3. The District Coordination Officer, D.I.Khan.
4. The District Accounts Officer, D.I.Khan.
5. The Principal, R.L.T.E. (Male) D.I.Khan.
6. PA to Director Food, for information of the Director Food, NWFP, Peshawar.
7. The Section Officer Surplus Pool, EAAD, NWFP, Peshawar for information.
8. The Section Officer Food, Government of NWFP, Food Department Peshawar.
9. The Budget Officer/Pay Bill Assistant/Nazir, Food Directorate, NWFP, Peshawar.
10. Muhammad Zafarullah Khan, for information and necessary action.
11. ET-378/Personnel File.

Copy is forwarded to:-

No. 5729-47/ET-542/SPA

Dated 29 04 2005

SD
DIRECTOR FOOD, NWFP
PESHAWAR

No. SOR-1 (E&AD) 1-200/98, dated 8th June 2001.

according to Policy contained in Establishment and Administration Department Circular No. SOR-1 (E&AD) 1-200/98, dated 8th June 2001.

3. Pay drawn by the above official will remain protected in BS-09

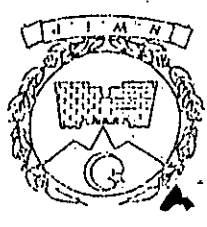
2. Consequent upon his adjustment, Mr. Muhammad Zafarullah Khan is hereby posted in the Office of District Food Controller, D.I. Khan against the existing vacancies of A/C (BS-08) with effect from the date of relieving from his office.

Directorate, NWFP, Peshawar.

surplus by his parent Department as Assistant Food Controller (BS-08) under the Food Institute of Teachers Education (Male), D.I.Khan, Government of NWFP, already rendered Mr. Muhammad Zafarullah Khan, Ex-Hoistel Superintendent, (BS-09) of the defunct Regional dated 25-04-2005, the competent authority is pleased to order adjustment of dated 12-03-2005, and approval of the Minister Food, NWFP, conveyed vide Note No. 41 in pursuance to the Surplus Pool letter No. SOS.P.OOL (E&AD) 4-14-99.

OFFICE ORDER

FOOD DIRECTORATE NWFP
PESHAWAR
No. 5728/ET-542 SPA
Dated 29 04 2005



ANWAR

5

BETTER COPY (Page-6)

SENIORITY LIST OF ASSISTANT FOOD CONTROLLERS IN THE FOOD DEPARTMENT AS STOOD ON 31.08.2005

S.No	Name of Government	Qualification	Date of Birth	Domicile	Date of entry into Government Service	Date of appointment to the present post	Method of recruitment Appointment	Date of Superannuating
1	Sultan Mehmood	M.A	13.10.1948	Peshawar	30.04.1973	26.04.1983	By promotion	12.10.2008
2	Rauf Aman	M.A	12.06.1949	Chitral	03.05.1973	25.04.1985	By promotion	11.06.2009
3	Nasir Khan	B.Com	10.05.1948	B/Agency	05.10.1971	27.05.1993	By promotion	09.05.2008
4	Salim Iqbal	B.A	30.10.1952	Peshawar	10.08.1972	12.10.1995	By promotion	29.10.2012
5	Fida Muhammad	Matric	22.02.1954	Mansehra	22.08.1972	20.10.1995	By promotion	21.02.2014
6	Imtiaz Muhammad	M.Sc	31.03.1972	Batagram	23.11.1995	23.11.1995	By initial recruitment	30.03.2032
7	Rashid Jamal	B.A LLB	07.03.1969	Peshawar	26.11.1995	26.11.1995	By initial recruitment	06.03.2029
8	Nazir-ur-Rehman	M.A	05.04.1970	FR Bannu	16.11.1995	16.11.1995	By initial recruitment	04.04.2039
9	Jamshid Ashraf Baig	F.A	26.07.1952	Peshawar	01.04.1975	23.12.1996	By promotion	25.07.2012
10	Fazle Manan	F.A	02.09.1948	Bajour	01.10.1975	23.12.1996	By promotion	01.09.2008
11	Iqbal Hussain Shah	B.A	25.05.1958	Mansehra	28.04.1977	23.11.1996	By promotion	24.08.2018
12	Sarfaraz Khan	B.A	04.01.1952	Abbottabad	06.06.1977	07.02.1998	By promotion	03.06.2012
13	Jan Nisar	F.A	28.04.1951	Peshawar	13.06.1977	07.02.1998	By promotion	27.04.2011
14	Muhammad Anwar	Matric	04.04.1953	Peshawar	03.06.1973	07.02.1998	By promotion	03.04.2013
15	Mr. Ihsan Ali	F.A	15.01.1951	Mardan	03.05.1973	07.02.1998	By promotion	14.04.2011
16	Abdul Rashid	B.A LLB	01.06.1953	Manshera	02.05.1973	30.08.2000	By promotion	31.05.2013
17	Javed Sultan	Matric	13.01.1956	Bannu	15.07.1975	30.08.2000	By promotion	12.01.2016
18	Asfandar	Matric	17.04.1953	Mardan	03.05.1973	30.08.2000	By promotion	16.04.2013
19	Amanullah Afridi	B.A	05.08.1949	FR Khyber	05.05.1973	30.11.2000	By promotion	04.06.2009
20	Haji Farid Ullah	F.A	28.12.1947	Peshawar	19.05.1973	30.11.2000	By promotion	27.12.2007
21	Aulia Khan	M.A	19.04.1947	Mardan	22.05.1973	01.08.2003	By promotion	18.04.2007
22	Aman Ullah	F.A	09.01.1949	Peshawar	03.05.1973	01.08.2003	By promotion	08.01.2009
23	Afsar Ali Shah	Matric	13.03.1949	Mansehra	01.10.1974	01.08.2003	By promotion	12.03.2009
24	Q. Fida Ur Rehman	B.A	05.02.1963	Bannu	22.06.1982	01.08.2003	By promotion	04.02.2023
25	Muhammad Iqbal	B.A	11.04.1960	Malakand	23.06.1982	01.08.2003	By promotion	10.04.2020
26	Farid Ullah Afridi	F.A	15.10.1958	K.Agency	22.06.1982	20.12.2003	By promotion	14.10.2018
27	Ashfaq Jan Bangesh	F.A	03.04.1950	Kohat	01.10.1974	20.12.2003	By promotion	02.04.2010
28	Muhammad Munir	F.A	24.05.1952	Abbottabad	19.04.1972	20.12.2003	By promotion	23.05.2012
29	Muhammad Zafarullah Khan	B.A	01.01.1963	D.I.Khan	03.10.1986	29.04.2005	Initial recruitment/Adjusted from S.Pool	30.09.2023
30	Sanauallah	M.A	15.11.1948	Bannu	20.08.1976	17.06.2005	By promotion	14.11.2008
31	Khan Zada Khan	F.Sc	15.03.1956	Bannu	25.10.1980	17.06.2005	By promotion	14.03.2016
32	Pir Hashmat Ali Shah	B.Sc	15.08.1951	S.Waziristan	03.10.1974	17.06.2005	By promotion	14.08.2011
33	Muhammad Younis	Matric	01.04.1947	Abbottabad	05.12.1968	17.06.2005	By promotion	31.03.2007

SENIORITY LIST OF ASSISTANT FOOD CONTROLLERS IN THE FOOD DEPARTMENT AS STOOD ON 31.08.2005.

Total sanctioned Posts	53
Fill	39
Vacant	07

S.No	Name of Government servant.	Qualification	Date of Birth	Domicile	Date of entry into Government service.	Date of appointment to the present post	Method of Recruitment Appointment	Date of Superannuation
1	Sultan Mehmoed	M.A	13.10.1943	Peshawar	30.04.1973	26.04.1983	By promotion	12.10.2008
2	Rauf Anon	M.A	12.06.1949	Chitral	03.05.1973	25.04.1985	By promotion	11.06.2009
3	Nisar Khan	B.Com	10.05.1948	B/Agency	05.10.1971	27.05.1993	By promotion	09.05.2008
4	Salim Iqbal	B.A	30.10.1952	Peshawar	10.09.1972	12.10.1995	By promotion	29.10.2012
5	Fida Muhammad	Matric	22.02.1954	Mansehra	22.08.1972	20.10.1995	By promotion	21.02.2014
6	Imtiaz Muhammad	M.Sc	31.03.1972	Balagram	23.11.1995	23.11.1995	By initial recruitment	30.03.2032
7	Pashia Jamal	Engg	07.03.1969	Peshawar	26.11.1995	26.11.1995	By initial recruitment	06.03.2029
8	Mazhar-Ul-Ronnu	M.A	05.04.1970	IK Bannu	16.11.1995	16.11.1995	By initial recruitment	04.04.2030
9	Jameel Ashraf Baig	F.A	26.07.1952	Peshawar	01.04.1975	23.12.1996	By promotion	25.07.2012
10	Fazle-Manan	F.A	02.09.1948	Dajour	01.10.1975	23.12.1996	By promotion	01.09.2008
11	Iqbal Hussain Shah	B.A	25.08.1953	Mansehra	28.04.1977	23.11.1996	By promotion	24.08.2018
12	Sarfraz Khan	B.A	04.01.1952	Abbottaba	06.06.1977	07.02.1998	By promotion	03.06.2012
13	Jan Nisar	F.A	28.04.1951	Peshawar	13.06.1977	07.02.1998	By promotion	27.04.2011
14	Muhammad Anwar	Matric	04.04.1953	Peshawar	03.06.1973	07.02.1998	By promotion	03.04.2013
15	Mir Ihsan Ali	F.A	15.01.1951	Mardan	03.06.1973	07.02.1998	By promotion	14.04.2011
16	Abdul Rashid	B.A LLB	01.06.1953	Mansehra	02.05.1973	30.04.2000	By promotion	31.05.2013
17	Javed Sultan	Matric	19.07.1955	Mannu	15.07.1976	30.09.2000	By promotion	12.01.2016
18	Astakhwar	Matric	17.04.1952	Mardan	03.05.1973	30.03.2000	By promotion	16.04.2013
19	Amanullah Afridi	B.A	05.08.1949	FR Khyber	05.05.1973	30.11.2000	By promotion	04.08.2009
20	Hina Farid ullah	F.A	28.12.1947	Peshawar	19.05.1973	30.11.2000	By promotion	27.12.2007
21	Aulia Khan	M.A	19.04.1947	Mardan	22.05.1973	01.08.2003	By promotion	18.04.2007
22	Amar ullah	F.A	09.01.1949	Peshawar	03.05.1973	01.08.2003	By promotion	08.01.2009
23	Afsar Ali Shah	Matric	13.03.1949	Mansehra	01.10.1974	01.08.2003	By promotion	12.03.2009
24	Q.Fida Ur Rehman	B.A	05.02.1963	Bannu	22.06.1982	01.08.2003	By promotion	04.02.2023
25	Muhammad Iqbal	B.A	11.04.1960	Malakand	23.06.1982	01.08.2003	By promotion	10.04.2020
26	Farid Ullah Afridi	F.A	15.10.1958	K.Agency	22.06.1982	20.12.2003	By promotion	14.10.2018
27	Ashfaq Jan Bencash	F.A	03.04.1950	Kohat	01.10.1974	20.12.2003	By promotion	02.04.2010
28	Muhammad Munir	F.A	24.05.1952	Abbottaba	19.04.1972	20.12.2003	By promotion	23.05.2012
29	Muhammad Zafarullah Khan	B.A	01.01.1963	DI Khan	03.10.1986	29.04.2005	Initial recruitment Adjusted from S Post	31.12.2023
30	Sanaullah	M.A	15.11.1957	Bannu	28.08.1976	17.06.200	By promotion	14.11.2008
31	Khan Zada Khan	F.Sc	15.03.195	Bannu	25.10.1980	17.06.200	By promotion	14.03.2016
32	Pir Hashmat Ali Shah	B.Sc	15.08.195	S.Wazirist	03.10.1974	17.06.200	By promotion	14.08.2011
33	Muhammad Younis	Matric	01.04.194	Abbottaba	05.12.1968	17.06.200	By promotion	31.03.2007

Annex B

previously

6

Assistant Director

BETTER COPY (Page-7)

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No. SOR.VI (E&AD)/5-1/2005
Dated Peshawar, the 15th February 2006

To

1. All Administrative Secretaries to Govt. of NWFP
2. The Secretary to Governor, NWFP
3. The Secretary to Chief Minister, NWFP
4. All District Coordination Officers/Political Agents in NWFP
5. The Registrar, Peshawar High Court Peshawar
6. The Registrar, NWFP Service Tribunal Peshawar
7. All Head of Attached Departments
8. The Secretary, NWFP Public Service Commission
9. The Secretary, Board of Revenue NWFP Peshawar
10. All Heads of Autonomous/Semi-Autonomous Bodies in NWFP
11. The Director Anti-Corruption Establishment NWFP Peshawar

Subject: AMENDMENT IN THE SURPLUS POOL POLICY
Dear Sir,

I am directed to refer to the subject cited above and to state that Surplus Pool Policy circulated vide letter No. No. SOR-1(E&AD)1-200/98, dated 8th June 2001 has been reviewed. It has been decided by the competent authority to add following sub paras to the relevant paras of the policy:-

(i) Sub para (c) (v) added to para-5

C(v) In case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.

(ii) Sub para-(d) added to para (6)

(d) In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of the cadre, so as to save him from being rendered surplus again & becoming junior to his juniors.

Yours faithfully,

(MUHAMMAD HAMAYUN)
SPECIAL SECRETARY (REGULATIONS)

Endst No. & Date even

Copy forwarded to:

1. The Accountant General, NWFP Peshawar
2. Private Secretary to Governor, NWFP, Peshawar
3. Private Secretary to Chief Minister, NWFP, Peshawar
4. All District & Agency Account Officers

5. Private Secretary to Chief Secretary NWFP, Peshawar
6. Private Secretary to Senior Minister NWFP
7. Private Secretaries to all the Provincial Ministers NWFP

(Hussain Shah)
Deputy Secretary (Reg-I)

Endst No. & date even

- Copy forwarded to:
1. All Additional/Deputy Secretaries in Establishment and Administration Department NWFP, Peshawar
 2. Director, Staff Training Institute, Benevolent Fund Building Peshawar
 3. All Section Officers/Estate Officer Establishment and Administration Department
 4. Private Secretary to Secretary Establishment Department
 5. Assistant Secretary Benevolent Fund, Establishment and Administration Department
 6. Librarian Establishment & Administration Department

(Muhammad Masood)
Section Officer (Reg-VI)

GOVERNMENT OF NWFP
ESTABLISHMENT & ADMIN. DEPARTMENT
(REGULATION WING)

NO. SOR.VI (E&AD)/5-1/2005
Dated Peshawar, the 15th February 2006.



To

1. All Administrative Secretaries to Govt. of NWFP.
2. The Secretary to Governor, NWFP.
3. The Secretary to Chief Minister, NWFP.
4. All District Coordination Officers/Political Agents in NWFP.
5. The Registrar, Peshawar High Court Peshawar.
6. The Registrar, NWFP Service Tribunal Peshawar.
7. All Head of Attached Departments.
8. The Secretary, NWFP Public Service Commission.
9. The Secretary, Board of Revenue NWFP Peshawar.
10. All Heads of Autonomous/Semi-Autonomous Bodies in NWFP.
11. The Director Anti-Corruption Establishment NWFP Peshawar.

Subject: AMENDMENT IN THE SURPLUS POOL POLICY.

Dear Sir,

I am directed to refer to the subject cited above and to state that Surplus Pool Policy circulated vide letter No. No.SOR-1(E&AD)-1-200/98, dated 5th June 2001 has been reviewed. It has been decided by the competent authority to add following sub paras to the relevant paras of the policy:-

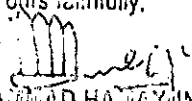
(i) Sub para (c) (v) added to para-5

C(v) in case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.

(ii) Sub para-(c) added to para (6)

(d) In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being declared surplus again & becoming junior to his juniors.

Yours faithfully,


(MUHAMMAD HAMAYUN) 15-2-06
SPECIAL SECRETARY (REGULATIONS)

Encls. No. & Date even

Copy forwarded to:

1. The Accountant General, NWFP, Peshawar.
2. Private Secretary to Governor, NWFP, Peshawar.
3. Private Secretary to Chief Minister, NWFP, Peshawar.
4. All District & Agency Account Officers.

BETTER COPY (Page-8)

BEFORE THE HON'BLE SERVICE TRIBUNAL NWFP PESHAWAR.
S.T.A No. 858 2006.

Muhammad Zafrullah Khan,
Assistant Food Controller,
District Food Office,
D.I.Khan.

APPELLANT

VERSUS

1. Secretary Food, Peshawar.
2. Director, Food NWFP Peshawar.
3. Deputy Director Accounts Food Directorate
Peshawar.
4. Assistant Director, Food Co-Ordination,
Food Directorate Peshawar.
5. Regional Audit Officer, Food Directorate
Peshawar.

RESPONDENTS

APPEAL AGAINST THE SENIORITY OF THE PETITIONER ISSUED BY
RESPONDENT NO. 2 VIDE HIS LETTER NO. 1866-85-ET/716 DATED.6.9.2006

PRAYER

ON ACCEPTANCE OF THE INSTANT APPEAL RESPONDENTS MAY BE
DIRECTED/ORDER TO PLACE THE APPELLANT ON THE TOP OF THE
SENIORITY LIST AS PER DIRECTIVES OF THE GOVERNMENT OF NWFP.

BETTER COPY (Page-9 to 10)

Serial No. of Order or Proceeding 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
7.	13.6.2007	<p>Counsel for the appellant and AG for respondent department present. Application not filed. Arguments heard & record perused.</p> <p>This appeal arises against the seniority of the appellant issued by respondent No. 2 vide letter No. 1866-85-ET-716 dated 6.9.2006, with the prayer that on acceptance of this appeal, the respondents be directed to place the appellant on the top of the seniority list as per directives of the Government of NWFP.</p> <p>It appears that the appellant was serving as Hostel Supdt: (BS-9) initially. On being declared as surplus, he was adjusted in the Food Department as Assistant Food Controller (BS-8) w.e.f 29.4.05 and assigned S.No. 29 in the joint seniority list. Now, he claims that according to amendment in the surplus pool policy he should be placed at the top of the seniority list as he was holding the post of BS-9 and was adjusted against the post of AFC (BS-8).</p> <p>The plea of the respondent department is that the appellant was provincially serving as Hostel Supdt: (BS-9) and had furnished his willingness for adjustment as Assistant Food Controller (BS-8). Accordingly the official detailed by surplus pool was adjusted in Food Department as AFC (BS-8). Soon after his adjustment in the NWFP Food Department, he was placed at S.No. 29 of the joint seniority</p>

list issued vide Food Directorate circular letter No. 14577-95/ET-716, dated 15.9.05 which was not objected to by the appellant.

The Tribunal holds that the claim of the appellant is not bonafide. He was adjusted way-back on 29.4.05 as Assistant Food Controller (BS-8). Amendment in the surplus pool policy was made on 15.2.06 which has no retrospective application. As such the appellant cannot claim the benefit of the said amendment in the surplus pool policy on which his claim is based. The instant appeal being merit-less is dismissed, with no order as to costs. File be consigned to the record.

ANNOUNCED

13.6.2007

(ABDUL SATTAR KHAN)
CHAIRMAN
NWFP SERVICE TRIBUNAL
CAMP COUNT D.I.KHAN.

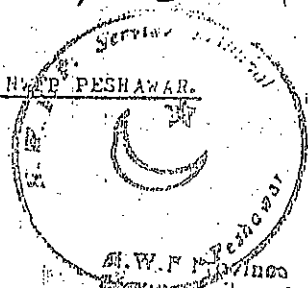
(ADALAT KHAN)
MEMBER

Annex D

8

BEFORE THE HON'BLE SERVICE TRIBUNAL NWFP PESHAWAR.

S.T.A No. 858 2006.



Diary No. 926

Date 21-9-06

Muhammad Zafrullah Khan,
Assistant Food Controller,
Distt: Food Office,
D. I. Khan.

APPELLANT.

V E R S U S .

1. Secretary Food , Peshawar.
2. Director, Food NWFP Peshawar.
3. Deputy Director Accounts Food Directorate Peshawar .
4. Assistant Director ,Food Co-Ordination, Food Directorate Peshawar.
5. Regional Audit Officer, Food Directorate Peshawar.

RESPONDENTS.

re-submitted to-day and filed.

Registered

12/10/06

APPEAL AGAINST THE SENIORITY OF THE PETITIONER ISSUED BY RESPONDENT NO.2 VIDE HIS LETTER NO.1866-85-ET/716 DATED.6.9.2006

PRAYER.

ON ACCEPTANCE OF THE INSTANT APPEAL RESPONDENTS MAY BE DIRECTED/ORDERED TO PLACE THE APPELLANT ON THE TOP OF THE SENIORITY LIST AS PER DIRECTIVES OF THE GOVERNMENT OF NWFP.

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar

ATTESTED

8/25/06

Form No. 210

Form No. 210

Serial No. of Order or Proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
7.	13.6.2007	<p>Counsel for the appellant and AGP for respondent department present. Application not filed. Arguments heard & record perused.</p> <p>This appeal arises against the seniority of the appellant issued by respondent No.2 vide letter No. 1866-85-EM/716 dated 6.9.2006, with the prayer that on acceptance of this appeal, the respondents be directed to place the appellant on the top of the seniority list and per directives of the Government of NWFP.</p> <p>It appears that the appellant was serving as Hostel Supt. (BS-9) initially. On being declared as surplus, he was adjusted in the Food Department as Assistant Food Controller (BS-8) w.e.f. 29.4.05 and assigned S.No. 29 in the joint seniority list. Now he claims that according to amendment in the surplus pool he should be placed at the top of the seniority list as he was holding the post of BS-9 and was adjusted against the post of AFC (BS-8).</p> <p>The plea of the respondent department is that the appellant was previously serving as Hostel Supt. (BS-9) and had furnished his address for adjustment as Assistant Food Controller (BS-8). Accordingly the official detailed by surplus pool was adjusted in Food Department as AFC (BS-8). Soon after his adjustment in the NWFP Food Department, he was placed at S.No. 29 of the joint seniority</p>

15-6-07

ATTESTED

NWFP EXAMINER

Services Division

Peshawar

ATTESTED

Serial No. of Order or Proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
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List issued vide Food Directorate circular letter No. 14577-95/ED-716, dated 15.9.05, which was not objected to by the appellant.

The Tribunal holds that the claim of the appellant is not bonafide. He was adjusted way-back on 29.4.05 as Assistant Food Controller (ES-8). Amendment in the surplus pool policy was made on 15.2.06 which has no retrospective application. As such the appellant cannot claim the benefit of the said amendment in the surplus pool policy on which his claim is based. The instant appeal being merit-less is dismissed, with no order as to costs. File be consigned to the record.

ANNOUNCED
15.6.2007

(ABDUL SATTAR KHAN)
CHAIRMAN
MWP SERVICE TRIBUNAL
CAMP COURT D.I.KHAN.

(ADALAT KHAN)
MEMBER

Received by
MWP Service Tribunal
D.I. Khan

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ATTESTED

Anney E //

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No. 349/2017

Date of Institution ... 13.04.2017

Date of Decision ... 15.07.2021

Noor Khan (AFC BPS-14) son of Gulfam Khan
R/O Village Abdara, Ghari Tajik Muhammad Post Office University
of Peshawar, Tehsil and District, Peshawar.

... (Appellant)

VERSUS

Director Food, Khyber Pakhtunkhwa, Peshawar and 37 others.

... (Respondents)

Mr. TAIMUR HAIDER KHAN,
Advocate

--- For appellant.

MR. RIAZ AHMED PAINDAKHEL,
Assistant Advocate General

--- For official respondents.

Mr. ABDUL HAMEED,
Advocate

--- For private respondents.

MR. SALAH-UD-DIN
MS. ROZINA REHMAN
MR. ATIQ-UR-REHMAN WAZIR

--- MEMBER (JUDICIAL)
--- MEMBER (JUDICIAL)
--- MEMBER (EXECUTIVE)

JUDGMENT:

SALAH-UD-DIN, MEMBER:-

Precise facts forming the

background of the instant service appeal are that the appellant was serving as Mono Operator (BPS-07) in the Government Printing and Stationary Department Peshawar. In view of Government Surplus Pool Policy 2001, the appellant was adjusted as Food Grain Inspector (BPS-06) in the Food

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EXAMINER
Khyber Pakhtunkhwa
Services Tribunal
Peshawar
ATTESTED

Department in the year 2004. The appellant was then promoted as Assistant Food Controller in the year 2016. One Muhammad Naveed, who was serving as Senior Clerk (BPS-07) in the office of Deputy Commissioner Mansehra was also declared surplus and was adjusted in the Food Department in BPS-06 in the year 2006, however like the appellant, he was also placed at the bottom of the seniority list of the officials of BPS-06. The said Muhammad Naveed was also promoted as Assistant Food Controller in the year 2016. In order to gain his proper position in the seniority list, Muhammad Naveed filed Service Appeal bearing No. 831/2015 before this Tribunal, which was allowed vide judgment dated 15.08.2016 and directions were issued to the department to place him at the top of seniority list of BPS-06 in the year 2006, when he was adjusted in the Food Department. In pursuance of the aforementioned judgment, a revised seniority list was issued in the year 2016, wherein Muhammad Naveed was placed at the top of the seniority list. The appellant being adjusted in the same department in the year 2004, claimed seniority on the same yardstick, adopted for giving seniority to Muhammad Naveed, however his departmental appeal was rejected vide order dated 06.04.2017, therefore, he approached this Tribunal through filing of service appeal for redressal of his grievance.

2. It is pertinent to mention herein that the instant appeal was initially allowed by this Tribunal vide judgment dated 08.02.2018, however the same was challenged before august Supreme Court of Pakistan through filing of Civil Petitions No. 264-P and 1676 of 2018, which were allowed vide order dated 29.06.2018. The relevant portion of the order is reproduced as below:-

"Resultantly, these petitions are converted into appeals and allowed, the impugned judgment is set-aside and the matter is remanded to the learned Tribunal to implead all those who would be effected by the decision of the Tribunal and pass a fresh decision after giving them an opportunity of

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 EXAMINER
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hearing. As there is seemingly a conflict between two judgments of the learned Tribunal itself, therefore, the matter is referred to the Chairman of the learned Tribunal who shall constitute a Larger Bench to resolve the conflict".

3. During the post remand proceedings, the appellant submitted amended appeal by impleading private respondents No. 4 to 38, who are employees of Food Department. The official as well as private respondents contested the appeal by way of submitting respective replies.

4. Learned counsel for the appellant has argued that this Tribunal, while deciding the Service Appeal of Muhammad Naveed has held him entitled to the desired seniority position in the seniority list, in light of sub para (d) of para-6 of Surplus Pool Policy 2001; that the judgment passed by this Tribunal in favour of Muhammad Naveed has attained finality and in view of judgment of august Supreme Court of Pakistan, reported as 1999 SCMR 1, the department was required to have treated the appellant at par alongwith the said Muhammad Naveed as well as other similarly placed employees; that Muhammad Naveed was adjusted in the year 2006 while the appellant has been adjusted in the year 2004, therefore, the appellant would have ranked senior even to Muhammad Naveed, in case the department had granted due seniority to the appellant in the year 2006; that in view of numerous rulings of worthy superior courts, the appellant was not even required to file any departmental or service appeal for redressal of his grievance, as it was the duty of the department to have extended the benefits of judgment of Muhammad Naveed's case to all similarly placed employees; that the department has maliciously deprived the appellant of his due seniority for the purpose of extending benefit to its blue eyed employees.

5. Mr. Abdul Hameed, Advocate, representing the private respondents, has argued that the appellant was adjusted in the Food Department in the year 2004 and as per the prevalent Surplus Pool Policy 2001, the appellant was rightly

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placed at the bottom of seniority list of officials of BPS-06; that the appellant is seeking seniority on the basis of amendment made in the Surplus Pool Policy on 15.02.2006, however the said amendment is having no retrospective effect, therefore, the appellant cannot claim seniority on the basis of the said amendment; that the case of the appellant is distinguished from that of Muhammad Naveed and is identical to the case of other employees namely Muhammad Akbar and Muhammad Saleem Iqbal, who alongwith the appellant were adjusted in the year 2004; that in its judgment rendered in the appeals of Muhammad Akbar and Muhammad Saleem Iqbal, this Tribunal has though extended the benefits of Muhammad Naveed case to the said employees, however it was held that they should be placed junior to all those AFCs, who were directly recruited prior to the promotion of Muhammad Akbar and Muhammad Saleem Iqbal; that the department while following the judgment rendered by this Tribunal in the appeals of Muhammad Akbar and Muhammad Saleem Iqbal, had issued seniority list, wherein the appellant as well as the said employees were rightly placed juniors to the direct recruits; that the amended appeal filed by the respondents is in contravention of the remand order passed by the august Supreme Court of Pakistan as the appellant has changed cause of action and has also impleaded certain employees, who are not at all necessary parties in the instant appeal; that the appellant has been treated in accordance with law by placing him at due position in the seniority list, therefore, his appeal is liable to be dismissed.

6. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General, representing the official respondents, adopted the arguments advanced by the learned counsel for private respondents.

7. Arguments heard and record perused.

8. The controversy between the parties is with regard to seniority. In order to appreciate the matter in a proper perspective, para-6 of Surplus Pool Policy issued by the Establishment and Administration Department (Regulation

ATTESTED



Wing) vide Notification dated 08.06.2001, is reproduced as below:-

"06. FIXATION OF SENIORITY

The interse seniority of the surplus employees after their adjustment in the various departments will be determined according to the following principles:-

- (a) In case a surplus employee could be adjusted in the respective cadre of his parent department, he shall regain his original seniority in that cadre.
- (b) In case, however, he is adjusted in his respective cadre but in a department other than his parent department, he shall be placed at the bottom of the seniority list of that cadre.
- (c) In case of his adjustment against a post in corresponding basic pay scale with different designation/nomenclature of the post, either in his parent department or any other department, he will be placed at the bottom of the seniority list.

NOTE:

In case the officer/official declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall lose the facility/right of adjustment/absorption and would be required to opt for premature retirement from Government service.

Provided that if he does not fulfill the requisite qualifying service for premature retirement he may be compulsorily retired from service by the competent Authority."

9. A perusal of the above-mentioned reproduced para-6 sub-para (c) of the policy letter dated 08.06.2001 would show that in case of adjustment of a surplus employee against a post in corresponding basic pay scale with different designation/nomenclature of the post, was to be placed at the bottom of seniority list. It is no where mentioned in the said para-6 that an employee is to be placed at the bottom of the

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MANAGER
PERSONNEL
RAJIV POKHRIYA
RAJIV POKHRIYA

seniority list even if he is adjusted against a post lower than his original scale. It appears that it was in this backdrop that through subsequent Circular dated 15.02.2006, issued by Establishment and Administration Department (Regulation Wing), sub-para (d) was added to para-6 of the original policy issued vide Notification dated 08.06.2001. The added sub-para (d) of para-06 is reproduced as below:-

"In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again and becoming junior to his juniors."

10. The subsequent Circular dated 15.02.2006, was actually issued with a view to remove the anomaly, therefore, the appellant could legally claim his seniority on the basis of the same. If it is presumed that the effect of subsequent circular is to be considered prospectively, then an employee otherwise junior to the appellant, if adjusted against a lower post after the issuing of the subsequent circular dated 15.02.2006, would be placed senior to the appellant.

11. An effort was made by the learned Assistant Advocate General as well as learned counsel for private respondents to distinguish the case of Muhammad Naveed from that of the appellant on the ground that Muhammad Naveed was adjusted in the year 2006, therefore, he was given the benefit of subsequent circular issued on 15.02.2006. A perusal of the record would, however, show that the said Muhammad Naveed was adjusted on 26.01.2006, while the subsequent circular was issued on 15.02.2006. It is thus clear that both the appellant as well as Muhammad Naveed were adjusted in the Food Department after the issuance of subsequent Circular dated 15.02.2006 and on this touchstone, Muhammad Naveed case was on the same footing as that of the appellant. The appellant was thus also entitled to the same benefit as granted to Muhammad Naveed by this Service Tribunal in Service Appeal bearing No. 831/2015 decided on 15.08.2016 and the department was required to have placed the appellant at the

top of seniority list pertaining to the year 2004, in which the appellant was adjusted in the Food Department. August Supreme Court of Pakistan in its judgment reported as 2009 SCMR 1 has graciously held as below:-

"We have considered the arguments of both the parties and have gone through the record and proceedings of the case in minute particulars. The matter has already been decided by this Court in the case of Mst. Naseem Akhtar (supra), and it has been held that the appointment orders of the respondents as PTC Teachers were genuine. It was held by this Court in case of Hameed Akhtar Niazi v. The Secretary, Establishment Division, Government of Pakistan and others 1996 SCMR 1185 that if a Tribunal or this Court decides a point of law relating to the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of a good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation instead of compelling them to approach the Tribunal or any other legal forum. This view were reiterated by this Court in the case of Tara Chand and others v. Karachi Water and Sewerage Board, Karachi and others 2005 SCMR 499 and it was held that according to Article 25 of the constitution of Islamic Republic of Pakistan, 1973, all citizens are equal before law and entitled to equal protection of law."

12. In the judgment delivered by this Tribunal in the case of Muhammad Naveed, no condition of placing him as junior to direct recruits was imposed, while in the later common judgment, delivered by this Tribunal in the service appeals of Muhammad Akbar and Muhammad Saleem Iqbal, the benefit of Muhammad Naveed's case was though extended to them, however it was directed that the direct recruits should be placed senior to them. It appears that the logic behind the earlier judgment was based on the principles that had Muhammad Naveed been placed at the top of the seniority list

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ATTACHED

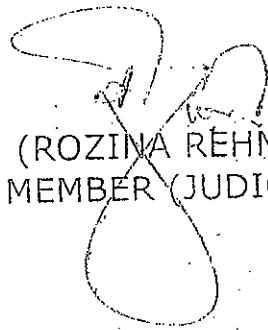
MANAGER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

of BPS-06 in the year 2006, then he would have been promoted prior to the direct recruits that is why the Tribunal did not put the condition of placing Muhammad Naveed as junior to the direct recruits. While going through the subsequent judgment, it appears that this Tribunal had overlooked this aspect of the matter that had the appellant Muhammad Akbar and Muhammad Saleem Iqbal were given due seniority in the year 2006, then they would have been promoted prior to the direct recruits, who were appointed through initial recruitment in the year 2015.

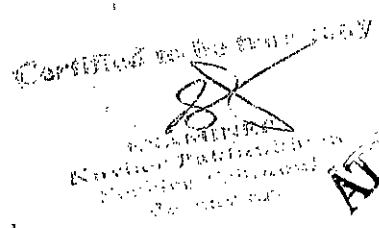
13. In its remanding order, august Supreme Court of Pakistan has held that the Tribunal shall implead all those who would be affected by the decision of the Tribunal and shall pass a fresh decision after giving them an opportunity of hearing. The contention of learned counsel for the respondents that unnecessary parties have been impleaded as respondents is, therefore, misconceived and thus not tenable.

14. In light of the above discussion, the appeal in hand is allowed and the respondents are directed to grant seniority to the appellant by considering him at the top of concerned seniority list pertaining to the year 2004, with all back benefits. Parties are left to bear their own costs. File be consigned to the record room.


ANNOUNCED
15.07.2021


(ROZINA REHMAN)
MEMBER (JUDICIAL)

(SALAH-UD-DIN)
MEMBER (JUDICIAL)

Certified to be true copy

 NATIONAL COMMISSION FOR HUMAN RIGHTS
 KARACHI
 15/07/2021

ATTENDED



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



Amey F
GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

No. SOI(OP-1)/L.D/IS-2/2022/KC
DATED PESH: THE 03RD OCTOBER, 2022

To

The Secretary,
Government of Khyber Pakhtunkhwa,
Food Department.

Attention: Section Officer (General)

Subject: ADVICE REGARDING DECLARATION OF ANTEDATED PROMOTION AS DFC & ADF WITH BACK BENEFITS.

Dear Sir,

I am directed to refer to your Department's letter No.SOG/1-3/DFC/2022/11765 dated 15-09-2022 on the subject noted above and to state that Khyber Pakhtunkhwa Service Tribunal's divisional bench vide order dated 13-06-2007 dismissed the appeal of Mr. Zafar Ullah for seniority and held that "amendment in the sui plus pool policy was made on 15-02-2006, which has no retrospective application". Thereafter, in another identical case Larger Bench of Service Tribunal held "the subsequent circular dated 15-02-2006 was actually issued with a view to remove the anomaly, therefore, the appellant could legally claim his seniority on the basis of the same". Hence, by implication, Larger Bench declared the view of divisional bench erroneous and illegal. Therefore, an applicant may not be precluded from a benefit on the basis of an erroneous view, if he is otherwise entitled for the same.

2. The decision that whether the case of Mr Zafar Ullah Asstt. District Food Controller is identical in nature with the case of Mr. Muhammad Naveed Khan or otherwise, is an Administrative matter. Therefore, the Administrative Department may decide the same on the analogy of rules of good governance as incorporated in the dictum of the Apex Court in 1996 SCMR 1185, by making like for like comparison, at departmental level accordingly.

Yours faithfully,


Section Officer (Opinion-3)

Endst: of even No. & date.

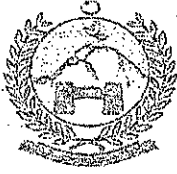
Copy forwarded to the:-

1. PS to Secretary, Law Department.
2. Master File.

ATTESTED
H

Annex "G"

20



GOVERNMENT OF KHYBER PAKHTUNKHWA
FOOD DEPARTMENT

Dated Peshawar the 03-01-2023

☎ 091-9225373

✉ fooddepartmentkpk@gmail.com

📺 @fooddepartmentkpk

🐦 @foodsecretariat

NOTIFICATION

No. SOG/Food/1-3(DPC)/2022/12177 In Pursuance of the revised surplus pool amended policy dated 15-02-2006 and subsequent decision of the Service Tribunal in case title service appeal No. 349 of 2017 Noor Khan etc V/S Director Food Khyber Pakhtunkhwa, Peshawar and others and advice of law Department, Vide letter No. SO(OP-I)/LD/15-2/2022/KC/11490-92 dated 03-10-2022 and the Departmental Promotion Committee meeting held on dated 25-10-2022, the Competent Authority is pleased to promote Muhammad Zafarullah Khan, Assistant Director Food antedated promotion from relevant time as District Food Controller (BS-16) with effect from 19-11-2005 and Assistant Director Food (BS-17) from 28-02-2013 without arrears.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
FOOD DEPARTMENT

Copy for information/further necessary action to the:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director Food, Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officers Khyber Pakhtunkhwa, Peshawar.
4. PS to Minister Food, Khyber Pakhtunkhwa, Peshawar.
5. PS to Secretary Food, Khyber Pakhtunkhwa, Peshawar.
6. Officer concerned.
7. Personal File of the officer.

(AFTAB AHMED AWAN)
SECTION OFFICER (GENERAL)
FOOD DEPARTMENT KHYBER PAKHTUNKHWA

ATTESIED

The Honorable Chief Secretary,
Khyber Pakhtunkhwa,
Peshawar.

Subject: - CLAIM OF BACK BENEFITS AND ISSUE CORRIGENDUM IN NOTIFICATION NO. SOG/FOOD/I-3(DPC) /2022/12177 DATED 03-1-2023

R/Sir,

With great reverence and humble submission I beg to submit my grievances as under:-

1. That the appellant was adjusted from surplus pool one step lower scale on 29-04-2005 in Food Department as AFC BS-08 while he was served in parent Department BS-09 as Annexure "A").
2. That the Government of Khyber Pakhtunkhwa surplus pool amendment policy was issued in 2006 vide SOR-VI (E&AD) 5-1-2005 dated 15th February 2006 for the purpose to remove anomaly sub para-D was added to para-6 of the original policy where in the issue regarding seniority in case of adjustment against lower post has been clarified. Meanwhile the appellant filed an appeal in Khyber Pakhtunkhwa service tribunal but unfortunately dismissed vide order dated 13-06-2007 that the amendment surplus pool policy was made on 15-02-2006 which has no retrospective application as Annexure "B"), but in another identical case one Muhammad Naveed FGI availed the said opportunity with complete back benefits vide appeal No. 831/2015 allowed on 15-08-2016 as (Annexure "C").
3. That the appellant is entitled to avail the opportunity with back benefits as the Khyber Pakhtunkhwa Service Tribunal also announced a detailed judgment in similar case on 15-07-2021 vide appeal No. 349/2017 title Noor Khan vs Government of Khyber Pakhtunkhwa. In this detailed judgment the large Bench clarified the view of Divisional Bench erroneous and illegal but quoted that it was / is being the duty of Department to extend the benefits of judgment of Muhmmmad Naveed case to all similarly placed employees vide lying at judgment page No. 03 and 06 column No. 04 and 10 respectively as (Annexure "D").
4. That the appellant submitted department appeal on 11-05-2022 but it was decided to take advice from Law Department that whether the case of

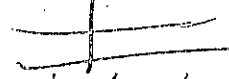
appellant is identical in nature with the case of Muhmmad Naveed or otherwise, the Law Department clarified that an appellant may not be precluded from a benefit on the basis of an erroneous view if he is otherwise entitled for the same as (Annexure "E").

5. That the appellant promotion from relevant time Notified by the Government of Khyber Pakhtunkhwa Food Department without back benefits and BS-18 case was submitted to the Establishment Secretary for the forthcoming PSB, vide No. SOG/Food/I-3(DPC)/2022/12177, dated 03-01-2023 and SOG/Food/1-3/PSB/2023/2053, dated 18-01-2023 respectively as (Annexure (F&G)).
6. That the appellant is at the verge of retirement but deprived of his fundamental rights while the detailed judgment of the service tribunal Khyber Pakhtunkhwa that in view of numerous rulings of worthy superior courts that the appellant was not even required to file any Departmental or service appeal for redressal of his grievances but to have extended the benefits of judgment of Muhammad Naveed case to similar cases vide lying at judgment page No. 03.

It is therefore, humbly prayed that the appellant may please be treated in light of Article 25 of the constitution of Islamic Republic of Pakistan 1973 that all citizen are equal in the law and entitled to avail equal protection rights.

I hope that my grievances will be considered favorably.

Yours sincerely,



17/02/2023

Muhammad Zafrullah Khan
Assistant Director Food
Food Directorate Peshawar

Copy:

P/S to Secretary Food Khyber Pakhtunkhwa Food Department Peshawar.

Yours sincerely,


17/02/2023

Muhammad Zafrullah Khan
Assistant Director Food
Food Directorate Peshawar

To

The worthy Secretary,
To Govt of Khyber Pakhtunkhwa,
Food Department,
Peshawar.

Subject: APPEAL FOR DECLARATION OF ANTEDATED PROMOTION AS
DFC & ADF WITH BACK BENEFITS.

Respected Sir,

Appeal as infra:-

1. That the appellant was adjusted in Food Department in one step lower scale as AFC (BS-08) from the surplus pool of Khyber Pakhtunkhwa on 29-04-2005 and placed at the bottom of seniority list according to the policy instructions at the time while the appellant was served in Edu: Department in BP-09- (As Anex-A,B,C) respectively.
2. That the appellant claimed later on seniority at the top of seniority list through Service Tribunal Khyber Pakhtunkhwa in light of surplus pool amendment policy 2006 issued by the Govt of Khyber Pakhtunkhwa vide No. SOR-VI (E&AD)5-1-2005 dated 15th Feb 2006. In this amendment policy, sub para (D) added to Para-6 in case of adjustment against a lower post than his original scale, he shall be placed at the top of seniority list of that cadre so as to save him from being render surplus again and becoming junior to his juniors (As Annex-"D").
3. That the appellant appeal was not honoured by the Service Tribunal Khyber Pakhtunkhwa that the amendment policy was made on 15-02-2006 which has not retrospective application (As Annex-"E").
4. That the appellant claimed seniority on the yard stick just for giving seniority to Muhammad Naveed FGI vide appeal No. 831/2015 which was allowed on 15-08-2016 with the directions to place him at the top of seniority list where he was availed antedated promotion (As Annex-"F,G").
5. That the plea of the appellant also proved with solid proof in light of legal terms where the Khyber Pakhtunkhwa service Tribunal large Bench announced a detail Judgment on 15-07-2021 vide appeal No. 349/2017 "titled" Noor Khan AFC V/S Director Food & Others. In this detail judgment the Honourable Large Bench clearly quoted that it was/is being the duty of the Department to extend the benefits of judgment of Muhammad Naveed case to all similarly placed employees vide lying at page No. 03 column 04 &

page 06 column 10 of the detail judgment (As Annex-“H”). The subsequent circular of the Surplus Pool Policy was issued on 15-02-2006 in which clearly depicted that the Department may be considered the appellant at the top of seniority list pertaining to the year where he was adjusted through Surplus Pool.

6. That the appellant stands entitled to avail antedated promotion with Back-Benefits after announcing the detail Judgment of the large Bench Service Tribunal Khyber Pakhtunkhwa on 15-07-2021 with quotation that Article 25 of the constitution of Islamic Republic of Pakistan 1973 that all citizens are equal in light of Law and entitled to avail equal protection of rights.
7. That the appellant also ensured to avail this opportunity where the Law Department clarified the interpretation of the amendment policy 2006, please peruse Column i and ii to remove anomaly

“Minutes of the Scrutiny Committee meeting held on 15-09-2021 Govt of Khyber Pakhtunkhwa, Parliamentary Affairs and Human Rights Department”. The Scrutiny Committee noticed that the Basic purpose behind the addition of sub-Para-D to Para-6 of the original Policy was to remove anomaly (As Annex-“I”).

8. That the Food Administrative Department complied with according to the directions of the Khyber Pakhtunkhwa Service Tribunal as well as Law Department vide Notification No. SOG/Food1-2/2019/ Vol-VII/1060 dated 18-01-2022 (As Annex-“J”).

It is, therefore, humbly prayed that antedating promotion may kindly be allowed to avail with back-benefits.

11/05/2022
 Muhammad Zafrullah Khan
 Assistant Director Food,
 Food Directorate,
 Khyber Pakhtunkhwa,
 Peshawar

ATTES
 X

BETTER COPY (Page-25)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(PSB)ED/1-19/2023/PO9
Dated Peshawar, the 06.02.2023

To

The Secretary to the Govt. of Khyber Pakhtunkhwa
Food Department

Subject: PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF
DEPUTY DIRECTOR BS-18 IN FOOD DEPARTMENT

Dear Sir,

I am directed to refer to Food Department letter No. SOG/Food/1-3/PSB/2023/12053 dated 25.01.2023 on the subject and to say that the case has been examined in Regulation Wing and observed that:-

- i. Nomenclature of one post reflected in the budget book i.e. Deputy Director Food-cum-Deputy Secretary BS-18 does not match with nomenclature of the post reflected in the Service Rules i.e. Deputy Director Food. Moreover, budget copies are not attested by the officer concerned of administrative department.
 - ii. In PSB-II proforma, the remarks column has been left blank. The same is required to be filled.
 - iii. In PSB-II proforma, quantified score of the officers at S.No. 5,6,7 & 8 has been shown as "NQ" whereas in PSB-II proforma, 77 score has been shown for them.
 - iv. Occupancy list attached with working paper is unsigned.
 - v. Certificate stating that the seniority list is final and undisputed is not available in the notified seniority list.
 - vi. As per minutes of the meeting (Annex-E), the committee unanimously agreed to approve antedated promotion as DFC and ADF to the officer at S.No. 1 of the panel i.e. Muhammad Zafarullah Khan from the relevant time. However, no documentary proof/notification is attached with the working paper.
2. The working paper and other documents received with the letter quoted above are, therefore, returned herewith in original for doing the needful.

Yours faithfully,

SECTION OFFICER (PSB)

Encl: As above.

ENDST. OF EVEN NO. & DATE

A copy is forwarded to the Section Officer (R-III), Establishment Department.

SECTION OFFICER (PSB)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(PSB)ED/1-19/2023/P09
Dated Peshawar, the 06.02.2023

To
The Secretary to the Govt. of Khyber Pakhtunkhwa,
Food Department.

SUBJECT: PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF
DEPUTY DIRECTOR BS-17 IN FOOD DEPARTMENT.

Dear Sir,

I am directed to refer to Food Department, letter No. SOG/Food/1-
3/PSB/2023/12053 dated 25.01.2023 on the subject and to say that the case has been examined
in Regulation Wing and observed that:-

- i. Nomenclature of one post reflected in the budget book i.e. Deputy Director Food-cum-Deputy Secretary BS-18 does not match with nomenclature of the post reflected in the Service Rules i.e. Deputy Director Food. Moreover, budget copies are not attested by the officer concerned of administrative department.
- ii. In PSB-II proforma, the remarks column has been left blank. The same is required to be filled.
- iii. In PSB-II proforma, quantified score of the officers at S.No. 5, 6, 7 & 8 has been shown as "NQ" whereas in PSB-III proforma, 77 score has been shown for them.
- iv. Occupancy list attached with working paper is unsigned.
- v. Certificate stating that the seniority list is final and undisputed is not available in the notified seniority list.
- vi. As per minutes of the meeting (Annex-B), the committee unanimously agreed to approve antedated promotion as DEC and ADF to the officer at S.No. 1 of the panel i.e. Muhammad Zafarullah Khan from the relevant time. However, no documentary proof/notification is attached with the working paper.

2. The working paper and other documents received with the letter quoted above are, therefore, returned herewith in original for doing the needful.

[Handwritten signatures and initials]

Yours faithfully,
[Signature]
SECTION OFFICER (PSB)

Encl: As above.

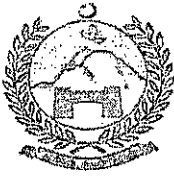
INDST. OF EVEN NO. & DATE.

A copy is forwarded to the Section Officer (R-III), Establishment Department.

[Handwritten signatures and initials]

SECTION OFFICER (PSB)

ATTESIED
[Signature]



GOVERNMENT OF KHYBER PAKHTUNKHWA
FOOD DEPARTMENT

NO.SOG/Food/1-3/PSB/2023/154
Dated Peshawar, the 04.05.2023

091-9225376

fooddepartmentkpk@gmail.com

@FoodKPGovt

@foodkpgovt

To,

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department, Peshawar.

Subject:- PROMOTION OF ASSISTANT DIRECTOR BS-17 TO THE POST OF DEPUTY DIRECTOR BS-18 IN FOOD DEPARTMENT

Dear Sir,

I am directed to refer to Section Officer (PSB), Establishment Department Khyber Pakhtunkhwa letter No. SO(PSB)ED/1-19/2023/P09 dated 06-02-2023 on the subject noted above and to state that the following reply is submitted for further necessary action, as desired, please.

Observation by Establishment Department	Reply of the Food Department
i. Nomenclature of one post reflected in the budget book i.e. Deputy Director Food-cum-Deputy Secretary BS-18 does not match with nomenclature of the post reflected in the Service Rules i.e. Deputy Director. Moreover, budget copies are not attested by the officer concerned of administrative department.	There are total 10 posts of Deputy Directors (BS-18) in Directorate of Food and its Divisional formation. Out of these 10 posts, only one post is mentioned as Deputy Director Food-cum- Deputy Secretary (BS-18). Present available posts for promotion are 7, while eligible candidates for promotion are 3. If the post with nomenclature of Deputy Director Food-cum-Deputy Secretary is excluded from the available vacancy positions, even then 6 posts are available for promotion. PSB-I proforma is updated accordingly.
ii. In PSB-II proforma, the remarks column has been left blank. The same is required to be filled.	Remarks column has been filled.
iii. In PSB-II proforma, quantified score of the officer at S.No 5,6,7 & 8 has been shown as "NQ" whereas in PSB-III proforma, 77 score has been shown for them.	Correction has been made in PSB-II and PSB-III proforma.
iv. Occupancy list attached with working paper is unsigned.	Occupancy list has been signed.
v. Certificate stating that the seniority list is final and undisputed is not available in the notified seniority list.	The seniority list submitted by this department is the tentative seniority, but the word "final" has been written on the seniority list mistakenly. Furthermore, a note has been sent to the Chief Secretary Khyber Pakhtunkhwa for approval of issuance of final seniority which is in the process of approval.
vi. As per minutes of the meeting (Annex-E), the committee unanimously agreed to approve antedated promotion as DFC and ADF to the officer at S.No. 1 of the panel i.e Muhammad Zafarullah khan from the relevant time. However, no documentary proof/notification is attached with the working paper.	The requisite document/Notification has been attached (Annex-F).

Yours faithfully,

(AFTAB AHMED AWAN)
SECTION OFFICER (GENERAL)
KHYBER PAKHTUNKHWA FOOD DEPARTMENT

Copy forwarded to the:-

1. Director Food Khyber Pakhtunkhwa, Peshawar.
2. PS to Secretary Food, Khyber Pakhtunkhwa, Peshawar.

(AFTAB AHMED AWAN)
SECTION OFFICER (GENERAL)
KHYBER PAKHTUNKHWA FOOD DEPARTMENT



GOVERNMENT OF KHYBER PAKHTUNKHWA

ESTABLISHMENT DEPARTMENT

No. SO (PSB) ED/1-25/2022/PSB
Dated Peshawar, the August 11, 2022

All Administrative Secretaries
to the Govt. of Khyber Pakhtunkhwa.
Subject: - STREAMLINING OF PROVINCIAL SELECTION BOARD (PSB)
MEETINGS.

Dear Sir,

I am directed to refer to this Department letter of even No. dated 23.12.2021 on the subject and to say that the PSB meeting has been scheduled to be held in 1st week of September 2022. The working papers (complete in all respects) for promotion to be placed before the PSB meeting may be furnished well before the cut off date which is fixed as 20.08.2022. Most importantly, working papers of the officers who are at the verge of retirement and falling in the promotion zone must be forwarded on priority basis.

2. I am further directed to say that no working paper will be received after the mentioned cut off date and that the Administrative Department will be responsible for any delay in submission of working papers and the resultant deprivation of any officer from promotion/consideration.

3069
Please prepare working paper
if no issues found after
DPC

Yours faithfully,

11 08 2022
SECTION OFFICER (PSB)

ENDST. EVEN NO. & DATE.

copy is forwarded to

1. All Section Officers in Regulation Wing of Establishment Department.
2. PS to Secretary Establishment, Govt. Khyber Pakhtunkhwa
3. PS to Special Secretary Regulation Establishment Department.
4. PAs to Additional Secretaries (Reg-I, & II), Establishment Department.
5. PAs to Deputy Secretaries (Reg-I, II & III), Establishment Department.

ACCEPTED

11 08 2022
SECTION OFFICER (PSB)



GOVERNMENT OF KHYBER PAKHTUNKHWA
FOOD DEPARTMENT

28

NO.SOG/Food/1-3/PSB/2023/12053
Dated: Peshawar, the 18-01-2023

091-9225376

fooddepartmentkpk@gmail.com

@FoodKPGovt

@foodkpgovt

To,

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department, Peshawar.

Subject:- WORKING PAPER FOR PROVINCIAL SELECTION BOARD (PSB)

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith working paper for the Provincial Selection Board (PSB) alongwith Panel Proformas and requisite documents for the promotion of the Assistant Director (BS-17) to the post of Deputy Director (BS-18) in Directorate of this Department for information and further necessary action, please.

Encl: as above.

Yours faithfully,

(AFTAB AHMED AWAN)
SECTION OFFICER (GENERAL)
KHYBER PAKHTUNKHWA FOOD DEPARTMENT

Copy forwarded to the:-

1. Director Food Khyber Pakhtunkhwa, Peshawar.
2. PS to Secretary Food, Khyber Pakhtunkhwa, Peshawar.

(AFTAB AHMED AWAN)
SECTION OFFICER (GENERAL)
KHYBER PAKHTUNKHWA FOOD DEPARTMENT

ATTESTED

RECEIPT CERTIFICATE

Annual confidential reports in r/o Muhammad Zafrullah Khan
Assistant Director Food complete in all respect pessriod mentioned as infra:-

S.No.	Year /Period	Name of reporting Officer	Name of countersigning Officer	Director Food Khyber Pakhtunkhwa
1	01-01-2019 to 29-08-2019	Abdul Jalil DDF	Saadat Hassan	-do-
2	02-02-2019 to 27-01-2020	Abdul Jalil DDF	Mian Abdul Qadir Shah	-do-
3	02-02-2020 to 31-12-2020	Muhammad Shakeel DDF	Zubair Ahmad	-do-
4	01-01-2021 to 04-08-2021	Abdul Jalil DDF	Zubair Ahmad	-do-
5	04-08-2021 to 02-11-2021	Abdul Jalil DDF	Capt: Abdur Rehman	-do-

Receipt Signature: _____

Date. 24-05-2022

[Handwritten Signature]
[Handwritten Initials]