BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 585/2023

Miss. Durdana Ayub.....Appellant

Versus

Chief Secretary Khyber Pakhtunkhwa & Others .....Respondents

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Section Officer (Litigition)
Government of KP
Establishment Department

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/2023

Miss. Durdana Ayub, Computer Operator, Finance Department, Government of the Khyber Pakhtunkhwa.....**Appellant.**

VERSUS

1. The Chief Secretary to Government of Khyber Pakhtunkhwa; Peshawar.
2. The Secretary to Government of the Khyber Pakhtunkhwa Establishment Department.
3. The Standing Service Rules Committee (SSRC) through its Chairman/Secretary, Establishment Department, Civil Secretariat, Peshawar.....**Respondents.**

PARAWISE COMMENTS/REPLY ON BEHALF OF RESPONDENTS

Respectfully Sheweth,

Preliminary Objections:

1. That the appellant has got no cause of action to institute the instant appeal.
2. That the appellant has not come to this Hon'ble Court with clean hands.
3. That the appellant is not entertainable in the present form.
4. That the appellant is stopped by their own conduct to file the instant appeal.
5. That the appeal has been filed with malafide intention.

FACTS:

Para-01. Correct, the appellant was appointed as Computer Operator (BPS-12) on 27.03.2013, under the Khyber Pakhtunkhwa Information Technology Service Rules, 2006, which is a technical cadre of the provincial government.

Para-02. Incorrect. As stated vide para-01 above, the appellant was initially appointed as Computer Operator (BPS-12) on 27.03.2013. Since, for growth, development and advancement of Information Technology in the province, the Khyber Pakhtunkhwa Information Technology Service Rules, 2006 **(Annexure-"I")** were framed by Government, which provided a complete service structure to the scattered/ individual IT personnel, i.e. Key Punch Operators, Data Entry Operators, appointed in different Administrative Departments/offices and upgraded them from BPS-08, 10 & 11 to BPS-12 and their seniority was clubbed as Computer Operators (BPS-12) **(Annexure-"II")**. Subsequently, on 29.07.2016 **(Annexure-"III")**, the post of Computer Operator was further upgraded from BPS-12 to BPS-16, which was a major relief given to the Computer Operators without any condition of length of service, experience, qualification etc., therefore, the allegation of having no promotion opportunities to the applicant since long is completely incorrect/false. Besides, the above upgradations and other reliefs, for a total of 193 IT cadre posts of Computer Operators, there are promotion opportunities for the IT staff having the following higher positions, numbers and ratios:

Position/Post	Number of posts.	Promotion ratio
Assistant Director-IT (BPS-17)	42	50%
Deputy Director-IT (BPS-18)	16	100%
Director-IT (BPS-19)	08	100%

Following is the detail of IT staff promoted to the higher post since the framing of rules ibid:

Position/Post	Number of promotions	Remarks.
Data Processing Supervisor (BPS-14)	07	Seven Computer Operators (BPS-12) had been promoted to the posts of Data Processing Supervisor (BPS-14) in the years, 2012 &2013.
Assistant Director-IT (BPS-17)	23	As on 29.05.2016, the post of Computer Operators (BPS-12) was upgraded to BPS-16, therefore, the posts of Data Processing Supervisors were also upgraded to BPS16 and their seniority was again clubbed with Computer Operators. Consequently, since 2016, twenty-three (23) Computer Operators (BPS-16) have been promoted to the posts of Assistant Director-IT (BPS-17). Similarly, more promotions are in pipeline and would be considered in the coming Departmental Promotion Committee meeting shortly.
Deputy Director-IT (BPS-18)	14	Since promulgation of IT Service Rules, fourteen (14) Assistant Directors (BPS-17) have been promoted to the post of Deputy Director-IT (BPS-18). Moreover, besides these 14, 02 Assistant Directors (BPS-17) are working as Deputy Director-IT (BPs-18) on OPS.
Director-IT (BPS-19)	08	Since promulgation of IT Service Rules, eight (08) Deputy Directors (BPS-18) have been promoted to the post of Director-IT (BPS-19). Moreover, besides these 08, 01 Deputy Director (BPS-18) are working as Director-IT (BPS-19) on OPS.

Apart from this, since the promulgation of Khyber Pakhtunkhwa Provincial Management Service Rules, 2007, **10% quota of PMS (BPS-17) by selection on merit had been reserved for Secretariat employees up to BPS-16, which included Computer Operators and since then ten (10) Computer Operators have already been selected to the PMS by selection on merit through a competitive process by the Khyber Pakhtunkhwa Public Service Commission.** Considering all the above, it is crystal clear that stance of the appellant that he doesn't have any chance of promotion and has no career progression in the existing service rules is completely false, wrong and baseless.

Para-03. Correct. The Hon'ble Chief Minister, Khyber Pakhtunkhwa, being Competent Authority in terms of section 26 of Civil Servant Act, 1973, merged two Provincial Civil Service Groups/Cadres i.e. (Executive Group & Secretariat group), regulated under NWFP Civil Service (EG Rules) 1997 and NWFP Civil Service (SG Rules) 1997, to form a single/unified cadre of PMS officers of the province and for carrying out proper administration of this prestigious Administrative cadre/service, Provincial Management Service (PMS) Rules, 2007 were framed and promulgated. However, it is irrelevant to the appellant, being member of a Provincial IT Service, a technical cadre which has a specific purpose and complete service structure. However, it is also pointed out that the options of 50% by initial recruitment and 10% by selection on merit are also available to all those candidates, who meet the criteria of PMS rules.

Para-04. Correct, but is irrelevant to the appellant, being member of a Provincial IT Service, which has a specific purpose, number of different positions/nomenclature of employees within their relevant cadre, like other provincial cadres.

Para-05. Correct to the extent of the distribution of the promotion quota posts in PMS (BS-17) which is according to the Khyber Pakhtunkhwa PMS Rules, 2007. However, it is irrelevant to appellant being borne on the cadre strength of Provincial IT Cadre which is a technical cadre and is administered under KP IT Service Group Rules, 2006. Nevertheless, under the 10% quota reserved for in-service employees of Secretariat through exam, the Computer Operators are also eligible to compete for their selection on merit to the PMS post in BPS-17, and the doors are open for all Secretariat employees from BPS-07 to BPS-16, including Computer Operators, having five (05) years' service.

Para-06. Incorrect and misleading as responded vide paras-02 to 05 above.

Para-07. As admitted by the appellant, the Hon'ble Peshawar High Court, Peshawar, while addressing a similar question of law, had dismissed the Writ Petition No.4233-P/2017, on merit as well as on maintainability. The Hon'ble High Court held in the said judgment: **"petitioners have been provided the opportunity for which they have come to the Court of law. Petitioners are seeking the option as given to Tehsildar & other cadre employees, whose work, function and status are totally different from the petitioners, which in no way can be given keeping in view the criteria on the subject".**

Para-08. Correct to the extent that Civil Petition No.2700/2019 was filed by the appellant against the afore-mentioned judgment of Peshawar High Court, Peshawar in the august Supreme Court of Pakistan, Islamabad which was dismissed as not pressed. However, the permission sought by the appellant's counsel to approach competent forum for redressal was allowed. **Nonetheless, a matter which has already been adjudicated upon by the competent courts (the Hon'ble Peshawar High Court, Peshawar and the august Supreme Court of Pakistan), cannot be pursued by**

the appellant by filing an appeal on the same question of law being hit by section 23 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974.

Para-09. Incorrect, as the representation of the appellant was placed before the Competent Authority and was filed, being irrelevant, baseless, based on personal desires and devoid of merit.

GROUNDS:

A. **Incorrect, misperceived as misinterpreted.** As envisaged in Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, all citizens are equal before law and entitled to equal protection of law. Government, however, is empowered to treat its employees on the basis of a reasonable classification based on intelligible differentia. Likewise, it is true that Article 25 & 38(e) of the Constitutions, ensures equality amongst equal, but it does not mean that all are entitled to equal treatment. The ibid Articles forbid discrimination but do not forbid reasonable classification founded on intelligible differentia. Thus, it is a settled principle that among equals the Constitution does not allow any discrimination, however, the appellant being borne on the cadre strength of a technical cadre is, in no way, equal to or similarly placed person to Tehsildar, Superintendent and Private Secretary being administrative cadres and therefore, reference made to Articles 2A, 4, 25 & 38(e) of the Constitution of the Islamic Republic of Pakistan is totally irrelevant. Hence, submission of the appellant to declare the service rules of the most prestigious service of the province, as the statement of declaring the service rules of the most prestigious service of the province as irrational, illogical, improper, discriminatory, and not based on intelligible differentia in violation of the Constitution of Pakistan, is not fair, non-ethical, against law, biased, and totally unacceptable. Every service of government has its own purposes, aims, goals, responsibilities, service structure, relevant qualified staff and working mechanism, which basically includes functions/duties in the public interest, therefore, such biased, illogical, non-ethical, and beyond-understanding statement/remarks of the appellant, just for the sake of his personal gains/desires is not acceptable and totally against the law and unjustifiable. Moreover, references of Articles 2A, 4, 25, 38(e) of the Constitution of the Islamic Republic of Pakistan are totally irrelevant to the instant case and totally against the law and unjustifiable.

B. Incorrect, misperceived and misinterpreted. A similar question of law/proposition has already been settled by the august Supreme Court of Pakistan in the case of **Government of KP through Chief Secretary vs Hayat Hussain** (in Civil Appeal No.1213/2014) vide judgment dated 25.02.2016 **(Annex-IV)** wherein the Apex Court held: **"As per the settled principle the determination of eligibility of the respondent through amendment fully falls within the domain and policy decision of the Government which does not warrant interference by the court."** Moreover, at the provincial/federal level, as at the provincial/federal level, there are specialized cadres of employees, having different qualifications, service structures, working mechanisms, powers, functions/duties, etc. Similarly, like other cadres of provincial government i.e. PMS (Provincial Management

Service), PPS (Provincial Planning Service), Provincial Excise Service, etc., for the advancement and development of Information Technology services at the provincial level there is a full-fledged cadre working under the Khyber Pakhtunkhwa Information Technology Service Rules, 2007, therefore, demanding a share in other irrelevant provincial cadres is not justified and would result into destruction/failure of both cadres, which would directly affect the government and the general public as well. Moreover, the IT cadre is a technical cadre, having technical qualifications and experiences, appointed for a special purpose/requirement, therefore, the demand for allocating separate quota in PMS is totally unjustifiable. Furthermore, the strength of the appellant cadre is not having the highest number of sanctioned strengths, as claimed, though it can never be the criteria for inclusion into another cadre.

C. Incorrect. As already explained in the preceding paras.

D. Incorrect, the question of discrimination in their income and earnings is totally wrong, baseless and beyond facts. Moreover, Article 38(e) of the Constitution never barred the government to establish various cadres of employees based on their capacities and qualifications and set their allowances in line with their roles, responsibilities and job descriptions and IT professionals are also drawing special allowances allowed to the IT cadre. Hence, the question of any discrimination of income and earnings of IT staff with other employees/cadres does not arise.

E. Incorrect, misleading and subject to proof. Paras-02 to 05 and Paras-A, B and D of the grounds provide sufficient details.

F. **Incorrect, misperceived and misinterpreted.** As already explained in the preceding Para-A, B & D of the "Grounds".

G. **Incorrect and misleading.** As responded vide Para-B of the of the "Grounds".

H. A detailed explanation has already been given vide para-02 of the Facts. It is also highlighted that besides promotions to higher posts, over the years the post of Computer Operator was upgraded twice, first from BPS-08 & 10 to 12 and then to BPS-16, thus the statement of appellant regarding retirement in the same grade/payscale after 20 years of service is not true.

I. Incorrect and misleading. Paras-02 to 05 and Paras-A, B and D of the grounds provide sufficient details.

J. Incorrect and misleading. As responded vide Paras-02 to 05 and Paras-A, B and D of the Grounds.

K. Incorrect. As explained in the preceding paras.

L. Incorrect as laid.

M. The appellant is not aggrieved person in true sense, has got no valid locus standi and therefore, is not entitled for any relief. The appeal, being devoid of merit, is liable to be dismissed in limine.

PRAYER:

In view of the above submissions, it is, therefore, most humbly prayed that the instant appeal has no substance and bereft of any legal merit may very graciously be dismissed with cost.

Secretary Establishment,
Khyber Pakhtunkhwa,
(Respondent No. 2)

Chief Secretary,
Khyber Pakhtunkhwa
(Respondent No. 1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 585/2023

Miss. Durdana Ayub.....Appellant

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AFFIDAVIT

I, Khaliq Ur Rehman, Superintendent (BPS-17) Judicial Wing, Establishment Department, Govt. of Khyber Pakhtunkhwa do hereby solemnly declare that contents of the Para-wise Comments are correct to the best of my knowledge and record and nothing has been concealed from this Hon'ble Tribunal. It is further stated on oath that in this Petition the answering Respondents have neither been placed ex-parte nor their defense/struck up.

DEPONENT

ATTESTED
Syed Muhammad Raza Shah Advocate
Oath Commissioner
High Court Peshawar
11 AUG 2023

CNIC No. 14203-2443654-7

Contact No. 0333-9274187

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

AUTHORITY LETTER

Mr. Khaliq Ur Rehman, Superintendent (BPS-17), Litigation-II Section Establishment Department, is hereby authorized to submit Para-wise comments, in the Hon'able Services Tribunal, in Service Appeal No. 584/2023 to 589/2023 titled Muhammad Akram & Others (six connected) VS Govt. of Khyber Pakhtunkhwa" on behalf of the undersigned.

Chief secretary,
Khyber Pakhtunkhwa,
(Respondent No. 01)

Secretary,
Establishment Department,
(Respondent No. 02)

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GOVERNMENT OFKHYBER PAKHTUNKHWA
ESTABLISHMENT AND ADMINISTRATION DEPARTMENT

NOTIFICATION

2nd February, 2007.

No. SOR-IV(ED)/3-2/2007.--- In exercise of the powers conferred by 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 Khyber Pakhtunkhwa (Act No. XVIII of 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to make the following rules, namely:

THE KHYBER PAKHTUNKHWA (PROVINCIAL INFORMATION TECHNOLOGYGROUP) SERVICE RULES, 2006.

PART-I
GENERAL

1. Short title and commencement. --- (1) These rules may be called Khyber Pakhtunkhwa (Provincial Information Technology Group) Service Rules,

2006. (2) These rules shall come into force at once.

2. Definition.— In these rules, unless the context otherwise requires, the following expressions shall have he meanings here by respectively assigned to them, that is to say—

(a) "Appendix "means the Appendix to these rules;

(b) "Appointing Authority" meanstheconcernedauthorityspecifiedinrule4ofthe Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989;

(c) "Commission" means the Khyber Pakhtunkhwa Public Service Commission;

(d) "Government" means the Government of the Khyber Pakhtunkhwa;

(e) "Initial recruitment" means appointment made otherwise than by promotion or transfer;

(f) "Post" means a post specified in column 2 of the Appendix and such other post as may be added to it from time to time.

(g) "Province" means the Khyber Pakhtunkhwa;

(h) "Recognized University" means any University incorporated by law in Pakistan or any other University which may be declared as recognized by Government;

(i) "Secretariat" means the[11] [Khyber Pakhtunkhwa] Civil Secretariat, as defined in rules 2 (r) of the[12] [Khyber Pakhtunkhwa] Government Rules of Business,1985; and

(j) "Service" means the Khyber Pakhtunkhwa (Provincial Information Technology Group) Service.

Section Officer (Litigition)
Government of KP
Establishment Department

PART-II
RECRUITMENT

3. Number and nature of post. --- (1) The service shall comprise the posts specified in column 2 of the Appendix and such other post as maybe added to it from time to time in the Secretariat Departments.[1]

(2) Any person appointed to any post specified in the Appendix by any Department before the commencement of these rules shall, on such commencement, be deemed for all intent and purposes, to have been appointed on the authority of the Establishment Department as assigned to it within the meaning of the Khyber Pakhtunkhwa Government Rule of Business,
1985, and their affairs shall onward be administered by the said Department, in accordance with these rules and any other rules for the time being in force and applicable to him in accordance with the said Rules of Business.

4. Appointing Authority. — Appointment to a post shall be made by the concerned appointing authority as defined in rule2 (b).

5. Method of recruitment. --- (1) Appointment to various posts shall be made,—

(a) In case of post of Director, Deputy Director, System Analyst and Database Administrator by promotion;[5]

(b) in the case of posts of Assistant Director, Programmer, LAN Administrator, Web Administrator, Data Processing Officer and Deputy Database Administrator, fifty percent by initial recruitment and fifty percent by promotion; and [6].

(c) in the case of other posts, by initial recruitment, in the manner specified in column No. 3 to 5 of the Appendix.

(2) Posts in Basic Scale 12 and above falling to the share of initial recruitment shall be filled on there commendation of the Khyber Pakhtunkhwa Public Service Commission and posts falling to the share of promotion quota shall be filled on the recommendation of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

6. Age.—(1) Subject to any relaxation in respect of a person or class of a person, no person shallbeappointedtotheservicebyinitialrecruitmentunlessheiswithinagelimitprescribedfor the post in column 4 of the Appendix.

(2) The age shall be reckoned from the last date notified for submission of application.

7. Qualifications. ---(1) No personal shall be appointed to the service by initial recruitment unless he possesses the qualification specified in column 3 of the Appendix.

(2) No person, not already in Government service, shall be appointed to the service unless

(a) he produces a certificate of character from the Head of Academic Institution last attended, and also the certificate of character from two other responsible persons, not being his relatives, who are well acquainted with his character and antecedents; and

(b) he has appeared before the Standing Medical Board/Civil Surgeon/Medical Superintendent and found fit for Government service.

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[1] Words "in the Secretariat Departments' added vide Notification No. SOR-IV(ED)/3-2/07 dated 22-03-2007.

[5] Clause (a) of Sub-rule (1) of Rule 5 substituted vide Notification No. SOE-V(E&AD)/5-16/2016, dated 21-12-2016.

Section Officer (Litigation)
Government of KP
Establishment Department

PART-III
PROBATION AND CONFIRMATION

8. Probation.—A person appointed to a post on regular basis shall remain on probation for a period of two years, if appointed by initial recruitment, and for a period of one year, if appointed otherwise; provided that if his work or conduct during the period of probation has, in the opinion of the appointing authority, not been found satisfactory, the appointing authority may, notwithstanding that the period of probation has not expired

(a) dispense with his service, if he has been appointed by initial recruitment; or revert him to his parent department if applied through proper channel; or

(b) revert him to his former post, if he has been appointed otherwise, or if there be no such post, dispense with his service; or

(c) extend the period of probation for a period not exceeding one year in all and may, during or on the expiry of such extended period, pass such orders as it could have passed during or on the expiry of the initial probationary period.

9. Confirmation.—After satisfactory completion of the probationary period, the probationer shall be confirmed; provided that he holds a substantive post; provided further that a probationer shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course or has failed to complete successfully a training prescribed within the meaning sub-section (3) of section 6 of the Khyber Pakhtunkhwa Civil Servant Act, 1973.

PART-IV
SENIORITY

10. Seniority.— The seniority inter se of the persons borne on the service shall be determined—

(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission or the Departmental Selection Committee, as the case may be; provided that persons selected for appointment to a post in an earlier selection shall rank senior to the persons selected in a later selection; and

(b) in the case of persons appointed otherwise, with reference to the date of their continuous regular appointment to the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their *inter* se seniority as in the lower post.

PART-V

11. Application of General Rules.—In all other matters not specifically provided for in these rules, the holder of posts under these rules shall be governed by any rules made or deemed to have been made under the[17] [Khyber Pakhtunkhwa] Civil Servants Act, 1973.

CHIEF SECRETARY
GOVERNMENT OF THE
KHYBER PAKHTUNKHWA.

Section Officer (Litigation)
Government of KP
Establishment Department

APPENDIX

See rule 2(a), (f), 3, 5(1), 6(1) and 7(1)

S#	Nomenclature of Posts	Minimum Qualification for Initial Recruitment or by Transfer	Age Limit	Method of Recruitment
1.	2.	3.	4.	5.
1	Director	Ph.D in Computer Science with seven years experience of Programming, System Analysis and Operational Management; or Second Class Master Degree in Computer Science from a recognized University with twelve years experience of Programming, System Analysis and Operational Management.	35-45 Years	By promotion, on basis of seniority-cum-fitness, form amongst Deputy Directors (System Analyst and Database Administrator) working in the Civil Secretariat with at least seven years service as such or twelve years service in BPS-17 and above. If no suitable person is available for promotion, then by initial recruitment.
2	Deputy Director (System Analyst / Database Administrator).		(2)	By promotion, on basis of seniority-cum-fitness, from amongst Assistant Director (Programmer / LAN Administrator / Web Administrator / Data Processing Officer / Deputy Database Administrator) with five years experience.
3	Assistant Director (Programmer / LAN Administrator / Web Administrator / Data Processing Officer / Deputy Database Administrator).	Second Class Master Degree or equivalent qualification in Computer Science from a recognized University.	22-35 Years	(a) Fifty per cent by initial recruitment; and (b) fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the [6] Computer Operators, having qualification prescribed for initial recruitment with five year service as such.[5]
4	Deleted[6]			
5	Deleted[5]			
6	[4]Computer Operator[5]	i. Second Class Bachelor's Degree in Computer Science / Information Technology (BCS/BIT four years), from a recognized university; or ii. Second Class Bachelor's Degree from a recognized University with one year Diploma in Information Technology from a recognized Board of Technical Education.[4]	18-28 Years	By initial recruitment.

Sd/-xxx
(SHARIF HUSSAIN)
SECTION OFFICER (REG: IV)

[4] Nomenclature of Post and qualification substituted vide Notification No. SOE-V(E&AD)/5-16/2008, dated 15-04-2014.
[5] BPS-12 deleted vide Notification No. SOE-V(E&AD)/5-16/2016, dated 21-12-2016.
[6] Assistant Programmer deleted vide Notification No. SOE-V(E&AD)/5-9/2019/Voll-II, dated 07-10-2022.

[2] Age deleted vide Notification No. SOR-IV(E&AD)3-2/2007, dated 08-12-2009.
[3] Qualification substituted vide Notification No. SOE-V(E&AD)/5-16/2008, dated 25-07-2012.
[5] Clause (b) of Method of Recru: substituted & S.No 5 deleted vide Notification No. SOE-V(E&AD)/5-16/2016, dated 21-12-2016.

Section Officer (Litigation)
Government of KP
Establishment Department

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

14

Dated Peshawar, the 13th April, 2009

NOTIFICATION

NO.FD/SO(FR)7-11/2008/Vol-I. The Government of NWFP has been pleased to upgrade and re-designate the following 23 Nos of posts of the Key Punch Operators/ Computer Operators/ Data Entry Operators with immediate effect as per details given below: -

S.No.	Department	Existing Nomenclature of Post	No. of Posts	Present BPS	New Nomenclature of Post	Up-Graded to BPS
1	Irrigation Department	Key Punch Operator	01	10	Computer Operator	12
2	Governor's Secretariat	Key Punch Operator	01	11	Computer Operator	12
3	Sport & Culture Department	Key Punch Operator	01	10	Computer Operator	12
4	Science & Technology and Information Technology Department	Computer Operator	02	11	Computer Operator	12
5	Auqaf, Hajj Department	Key Punch Operator	01	11	Computer Operator	12
6	Social Welfare Department	Key Punch Operator	01	11	Computer Operator	12
7	Chief Minister's Secretariat	Computer Operator	01	10	Computer Operator	12
8	Higher Education Department	Data Entry Operator	03	10	Computer Operator	12
9	Health Department	Computer Operator	02	08	Computer Operator	12
10	Elementary & Secondary Education Department	(a) Computer Operator. (b) Data Entry Operator	02 01	10	Computer Operator	12
11	Finance Department	Computer Operator	02	11	Computer Operator	12

Section Officer (Litigation)
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12	Local Government & Rural Development Department	(a) Computer Operator (b) Key Punch Operator	01 01	10 11	Computer Operator	12
13	Housing Department	Computer Operator	01	11	Computer Operator	12
14	Economy Commission	Computer Operator	02	11	Computer Operator	12
	Total: -		23			

SECRETARY TO GOVERNMENT OF NWFP
FINANCE DEPARTMENT

Endst No. & Date Even:

Copy for the above is forwarded for information and necessary action to the: -

1. All Administrative Secretaries Government in NWFP.
2. Secretary to Governor, NWFP, Peshawar.
3. Principal Secretary to Chief Minister, NWFP.
4. PS to Chief Secretary, NWFP.
5. Accountant General, NWFP, Peshawar.
6. PS to Additional Chief Secretary, NWFP.
7. PS to Finance Secretary, NWFP.
8. PS to Special Secretary, Finance Department.
9. PAs to all Additional/ Deputy Secretaries in Finance Department.
10. PA to Director FMIU, Finance Department.
11. The Section Officer (E-V), Establishment Department with reference to his letter No. SOE-V(E&AD)/5-16/2008 dated 26-02-2009
12. All Section/ Budget Officer in Finance Department.

(SHAUKAT ULLAH)
Section Officer (FR)

Section Officer (Litigation)
Government of KP
Establishment Department

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

16

Dated Peshawar, the 29-07-2016

NOTIFICATION

NO.KC/FD/SO(FR)/7-3/2015-16, The Competent Authority has been pleased to upgrade and re-designate all the existing posts of Computer Operator and Data Processing Supervisor as Computer Operator (BPS-16) in all the Departments / Offices of the Government of Khyber Pakhtunkhwa with immediate effect as per details given below:-

S.No	Existing Nomenclature	Present BPS	Up-graded to BPS
1	Computer Operator	12	16
2	Data Processing Supervisor	14	16

i) The pay of the existing incumbents of the posts shall be fixed in higher pay scales at a stage next above the pay in the lower pay scale.

ii) All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst No. & Date even.

Copy of the above is forwarded for information and necessary action to the:-

1. PS to Additional Chief Secretary, FATA.
2. All Administrative Secretaries Government of Khyber Pakhtunkhwa.
3. Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
4. Accountant General, Khyber Pakhtunkhwa, Peshawar.
5. Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. Registrar, Peshawar High Court, Peshawar.
10. All Deputy Commissioners, Political Agents, District & Sessions Judges/Executive District Officers in Khyber Pakhtunkhwa.
11. Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
12. Registrar, Service Tribunal Khyber Pakhtunkhwa.
13. All the Autonomous and Semi Autonomous Bodies in Khyber Pakhtunkhwa.
14. Secretary to Govt; of Punjab, Sindh and Baluchistan, Finance Deptt:-Lahore, Karachi and Quetta.
15. The District Comptroller of Accts, Pesh, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
16. The Senior Distt Accts Officer Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir Lower.
17. The Treasury Officer, Peshawar.
18. All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
19. PS to Minister for Finance, Khyber Pakhtunkhwa.
20. PSO to Chief Secretary, Khyber Pakhtunkhwa.
21. Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
22. PS to Finance Secretary.
23. PAs to All Additional Secretaries/ Deputy Secretaries in Finance Department.
24. All Section Officers/Budget Officers in Finance Department.
25. Director FMIU/All Budget Officer Finance Department to take effect in the budget books.
26. Syed Habibullah, President of Information Technology Staff Association (ITSA), Civil Secretariat Khyber Pakhtunkhwa.

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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PRESENT: Mr. Justice Mian Saqib Nisar
Mr. Justice Amir Hani Muslim
Mr. Justice Iqbal Hameedur Rahman

Civil Appeals No. 1213 & 1214/2015.
(On appeal against the judgment dated 28.05.2014 passed by the Peshawar High Court, Peshawar, in W. Ps. No. 3857 & 4423/2010)

Govt. of KPK through Chief Secretary, Peshawar, etc. (in both cases)
Appellant(s)

Versus

Hayat Hussain, etc. (in C. A. 1213/2015)

Abdul Basir, etc. (in C. A. 1214/2015)
Respondent(s)

For the Appellant(s) (in both cases): Mr. Waqar Ahmed Khan, Addl. AG.

For the Respondent(s): In-person.

Date of Hearing: 25.02.2016.

JUDGMENT

Iqbal Hameedur Rahman, J: - Through this single judgment, we intend to decide the listed appeals. The instant appeals are directed against the judgment dated 28.05.2014 passed by the Peshawar High Court, Peshawar, in W. Ps. No. 3857 & 4423/2010 whereby the said petitions filed by the respondents have been accepted.

2. Through the above mentioned writ petitions, the respondents had sought a declaration that orders dated 18.08.2010, 09.09.2010 & 04.10.2010 be declared as illegal, unconstitutional, without lawful authority, ultra vires to their rights and based on malafides and also sought that a direction be given to the appellants to proceed with the process as per the advertisement dated 20.07.2010. The precise facts are that the appellants requisitioned 53 posts in BPS-17 in the Provincial Management

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Service (PMS). The said requisition was forwarded to the Khyber Pakhtunkhwa Public Service Commission (hereinafter to be referred as "the Commission"), who thereafter advertised the said posts on 20.07.2010. Pursuant to the advertisement, the respondents, Hayat Hussain, Superintendent, KPK Public Service Commission, Peshawar, and Abdul Basir, Office Assistant, Board of Revenue, KPK Peshawar, applied under 10% reserved quota for ministerial staff as per the Provincial Management Service Rules. Later on vide order dated 18.08.2010 it was conveyed by the KPK Establishment Department to the Secretary of the Commission that the matter with regard to 10% reserved quota in PMS (BPS-17) had been examined by the KPK Establishment Department and it is clarified that the same is meant only for ministerial staff serving in the Administrative Departments of KPK Civil Secretariat excluding the employees of attached departments/subordinate offices. The said letter was followed by another letter dated 09.09.2010 wherein it was intimated to the Commission that requisition of 53 posts of PMS officers (under 10th in-service quota) is withdrawn by issuing notification dated 04.10.2010 through which Khyber Pakhtunkhwa Provincial Management Service Rules, 2007 (hereinafter to be referred as "the Rules") have been amended and 10% reserved quota had been restricted to persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks borne on the cadres strength of Secretariat who possess post graduate qualification from a recognized University with at-least five years service as such. The said orders and notification gave rise to a grievance to the respondents, who being employees of attached departments and who have been excluded from 10% reserved quota as previsouly provided in the Rules as such they had challenged the said

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orders and notification before the High Court by filing writ petitions contending therein that discriminatory treatment is being given to the them in violation of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973, as they were performing the same functions as that of Secretariat employees as such they cannot be excluded because they fulfilled the qualification and experience. The High Court took their contentions into consideration and vide impugned judgment held that they being similarly placed persons have been treated differently as such it constituted a sheer discrimination and further held that it was not a case where rules have been challenged by a person in service rather it was a case where blessings have been given to a class of employees by depriving others through special amendment introduced in the Rules in the garb of interpretation and misinterpretation of rules, which smacks of malafide on the part of the appellants and accordingly struck down the notification dated 04.10.2010 and restored earlier rules framed in the original form as per rule-3 of Schedule-I of the Rules, which entitled the respondent to compete on 10% reserved quota on the basis of competitive examination to be conducted by the Commission from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government. Being aggrieved, the appellants approached this Court by filing Civil Petitions No. 442-P & 443-P/2014 wherein leave was granted vide order dated 20.11.2015, the relevant portion therefrom is reproduced herein below: -

> " The learned Additional Advocate General appearing on behalf of the petitioners contended that it is well beyond the domain of jurisdiction given

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of the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan to sit in judgment over the vires of the rules or notifications in view of the judgment rendered in the case titled *I. A. Sharwani v. Government of Pakistan* (1991 SCMR 1041) and that the High Court could not impute mala fides to the legislature when there was absolutely nothing on the record as could even remotely suggest that the rules were amended to benefit one and impair the rights of the other."

3. It would be pertinent to reproduce here the relevant portions of the Rules prior to amendmnet as provided in Schedule-I: -

S. No.	Nomenclature of posts	Minimum qualification for appointment by initial recruitment	Age limit for initial recruitment	Method of recruitment
1	2	3	4	5
1	PMS (BS-17) as per detail at Schedule -II	2nd Division Bachelor Degree from a recognized University.	21-30 year	1) Fifty per cent by initial recruitment on the recommendations of the Commission based on the result of competitive examination to be conducted by it in accordance with the provisions contained in Schecule-VII. 2) Subject to rule3, by promotion in the following manner (a) twenty percent from amongst Tehsildars, who are graduates, on the basis of seniority-cum-fitness, having five years service as Tehsildar and have passed the prescribed Departmental Examination; and (b) twenty percent from amongst the Superintendents/Private Secretaries on seniority-cum-fitness basis, who are graduate and have undergone a training course of 9-weeks at the Provincial Management Academy/Provincial Staff Training Institute. A joint seniority list of the Superintendents and Private Secretaries shall be maintained for the purpose of promotion on the basis of their continuous regular appointment to the respective posts. 3) Ten percent by selection on merit, on the basis of competitive examination, to be conducted by the Commission in accordance with the provisions contained in "Schedule-VII, from amongst persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government

That according to the original Rules, 10% of selection on merit on the basis of competitive examination was to be made from amongst the persons

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certified

holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at least five years service under the Government. From the perusal of the same it is apparent that the same had not been restricted only to Secretariat employees. The Rules have been amended through notification dated 04.10.2010, which reads as under: -

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Date Peshawar, the 04.10.2010

NOTIFICATION

No. SOE-II(ED) 2(14)/2009: In exercise of the powers conferred by Section 25 of the North-West Frontier Province Civil Servants Act, 1973, (NWFP Act No. XVIII OF 1973), the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules 2007, the following further amendments shall be made, namely:

AMENDMENT

In Schedule I, against Serial No. 1 in Column No. 5 for Clause (3) the following shall be submitted, namely:

(3) Ten per cent by Selection on merit, on the basis of competitive examination to be conducted by the Commission in accordance with the provisions contained in Schedule VII, from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistant Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operator, Senior and Junior Clerks who possess post graduate qualification from a recognized University with at-least five years service as such.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA"

By virtue of the above mentioned amendment, the respondents being employees of attached departments have been excluded to be eligible for 10% quota selection on the basis of competitive examination.

5. The learned Additional Advocate General for the appellants argued that the said amendment had been made in order to clarify that appointments to the posts of PMS (BPS-17) in 10% quota was meant only for the ministerial staff of the Secretariat so as to encourage talented lower

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staff. Moreover, the respondents could still compete in open merit as such there was no discrimination. He further argued that the appellants were duly competent to amend the Rules and the Rules were amended strictly in accordance with law.

6. On the other hand, the respondents appearing in-person submitted that through the amendment they were deprived of their right. They further submitted that the Secretariat employees are already covered under Schedule-I subsection 2)(b) for promotion as such the 10% quota actually meant for other attached departments.

7. In the facts and circumstances of the case and in the light of the arguments advanced by the learned Additional Advocate General as well as the respondents in-person, it is to be considered whether amendment in the Rules could be effected by the Government regarding restricting the reservation of 10% quota only for ministerial staff of Civil Secretariat KPK and whether it is justifiable, secondly, whether amendment was malafidely made in order to exclude and deprive the respondents from future prospects of their promotion moreso when they are performing the same functions and duties as such whether it is a discrimination and do the respondents have a vested right to challenge the same. In the above perspective, whether the High Court has the jurisdiction in the matter to strike down rules relating to Civil Servants regarding their appointment and promotions and amendments made therein. The stance of the appellants is that amendment in the relevant provisions of the Rules was quite justified as the employees of attached departments get sufficient chances of promotion in their cadres against the quota reserved specifically for them under their respective service rules, whereas the employees of Civil Secretariat cannot appear in those examinations, for instance the Sub Accountants in the District Accounts Offices accorded promotion after qualifying SAS examination.

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Similarly, the Junior Instructors (BS-14) of Technical Education Department with diploma of Engineering i.e., equal to FA/F.Sc are promoted to BS-17 within 5 to 10 years period. Likewise, Sub-Engineers (BS-11) of C&W, PHE and Irrigation Department having B.A. degree are considered or accelerated promotion to the post of Assistant Engineer (BS-17) after qualifying the departmental exam prescribed under their respective service rules, as such the respondents are entitled to get further promotion in the to the post of PMS BS-17 in their own service cadre. Further justification given by the appellants was that the ministerial staff of Civil Secretariat is transferable in different departments of Civil Secretariat which make them well acquainted with the nature of job of PMS Officers. Whereas, the employees of other departments/cadre are experts in their own field and their job profile is quite different from that of PMS Officers. Thus reserving 10% quota for ministerial staff of Civil Secretariat is justified as these posts cannot be used as learning place for others.

8. It is a settled proposition of law that the Government is entitled to make rules in the interest of expediency of service and to remove anomalies in Service Rules. It is the Service Rules Committee which has to determine the eligibility criteria of promotion and it is essentially an administrative matter falling within the exclusive domain and policy decision making of the Government and the interference with such matters by the Courts is not warranted and that no vested right of a Government employee is involved in the matter of promotion or the rules determining their eligibility or fitness, and the High Court has no jurisdiction by means of writ to strike it down as held by this Court in the case of *The Central Board of Revenue, their Government of Pakistan vs. Asad Ahmad Khan* (PLD 1960 SC 81), the relevant portion therefrom is reproduced herein below: -

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"In our opinion the High Court made the above order without taking into consideration all the factors relevant to the case, namely, in the first place the taking out of the post of Deputy Superintendent of the category of class III, to which the petitioners belong amounted to abolition of the post and its upgrading on a higher scale of pay to a creation of the new post; appointment to which required a stricter test of efficiency by a competitive examination. Besides, all the inspectors were given the right to sit in the examination for any number of times to qualify themselves for promotion. At the same time the pay scale of those, who could not succeed, was raised to the limit of Rs. 350, namely, the same pay as that of a Deputy Superintendent when it was a class III post. In the circumstances it cannot be said that any rights of the petitioners were infringed, which they could enforce by a writ petition. The Government has every right to make rules to raise the efficiency of the services, and if no vested right is denied to a party, the High Court had no jurisdiction to interfere by means of a writ." (emphasis supplied)

As far as the contention of the respondents that the rules could not be changed to affect them adversely is concerned, the said proposition has also been settled by this Court in the case of *Muhammad Umar Malik and others vs. Federal Service Tribunal and others* (PLD 1987 SC 172), wherein the proposition that the rules of promotion could not have been changed so as to affect adversely those already on the eligibility list i.e., combined list of U.D.Cs and S.G.Cs, was repelled by observing that, "*No such vested right in promotion or rules determining eligibility for promotion exists*", and held as under: -

"Mr. Abid Hasan Minto, Advocate, when called upon to address arguments on merits, urged that the rules of promotion should not have been changed so as to affect adversely those already on the eligibilities in the combined list of the U.D.Cs. and S.G.Cs. In other words he was claiming a vested right in promotion for all the U.D.Cs. borne on the list before on the date of its separation. The position of law on the subject is clear in view of numerous decisions of this Court, *e.g. Government of West Pakistan v. Fida Muhammad Khan (1) Central Board of Revenue, Government of Pakistan v. Asad Ahmad Khan (2), College of West Pakistan v. Muhammad Akhtar* (3), *Manzur Ahmad v. Mohammad Ishaq (4). No* such vested right in promotion or rules determining eligibility for promotion exists."

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9. In the facts and circumstances of the case and in the light of the case law cited above, it is quite apparent that the advertisement earlier made had subsequently been withdrawn and thereafter an amendment was made in the Rules and as yet the respondents have not appeared either in the examination or in any interview or selection, therefore, there appears to be no vested right created in their favour, and accordingly any change made in the Rules cannot furnish a cause to the respondents. Moreover, the amendment was made in the Rules in order to clarify certain anomalies, which had duly been taken care of, as such no malafide can be attributed to the Government and as per the settled principle the determination of eligibility of the respondents through amendment fully falls within the domain and policy decision of the Government which does not warrant interference by the Courts. Resultantly, these appeals are allowed and the impugned judgment of the High Court is set aside.

Judge

Judge

Judge

ISLAMABAD
25.02.2016
(Farrukh)

Approved for Reporting.

Result

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