

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 186 /2018

Fazlullah Appellant

Versus

The Govt. of KPK and others.....Respondents

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Through

Appellant

Khaled Rahman
 Advocate,
 Supreme Court of Pakistan
 3-D, Haroon Mansion
 Khyber Bazar, Peshawar
 Off: Tel: 091-2592458

Dated: 29 /01/2018

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 186 /2018**Fazlullah**

Assistant Director

LG&RDD, Malakand Agency **Appellant**

Versus

**Khyber Pakhtunkhwa
Service Tribunal**Diary No. 71Dated 22-1-20181. **The Govt. of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar.2. **The Secretary**
to Govt. of Khyber Pakhtunkhwa
Establishment Department,
Civil Secretariat, Peshawar.3. **The Secretary**
to Govt. of Khyber Pakhtunkhwa
Local Govt. & Rural Development Department,
Civil Secretariat, Peshawar**Respondents**4. Adhtar Munir AD, LG & RDP, Charsadda.

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 22.08.2017 WHEREBY ALTHOUGH APPELLANT WAS GIVEN SENIORITY FROM A RETROSPECTIVE DATE BUT THE ANTEDATION OF PROMOTION W.E.F. 22.11.1991 WITH BACK BENEFITS WAS NOT ALLOWED AGAINST WHICH APPELLANT FILED DEPARTMENTAL REPRESENTATION BEFORE THE COMPETENT AUTHORITY ON 25.09.2017 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD.

PRAYER:

On acceptance of the instant appeal, the decision of the Respondents to the extent of grant of seniority vide impugned Notification dated 22.08.2017 may graciously be modified by antedating the promotion of the appellant as Assistant Director (BPS-17) w.e.f. 22.11.1991 with all consequential back benefits.

Filed to-day

Registrar

22/1/18

Registered to-day

Registrar 9/2/18

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

1. **That** appellant and others were initially appointed as Progress Officers (BPS-16) in the then Local Government & Rural Development Department way back in the year 1988 on contract basis. Subsequently, they approached the Hon'ble Peshawar High Court Peshawar for regularization of their services but could not succeed and meanwhile their services were terminated. Their request before the Hon'ble Apex Court also failed and they were directed to approach the Provincial Service Tribunal. On their approach to the Service Tribunal their appeals were dismissed and consequently they again approached the Apex Court and finally their appeals allowed vide Judgment dated 25.08.2005 and appellant and others were reinstated into service *with all back benefits*.
2. **That** the judgment of the Hon'ble Apex Court was implemented by the Department by reinstating the appellant and others in service with all back benefits and *regularized them with effect from the date of their initial appointment* vide notification dated 10.11.2005 and 16.12.2005 (*Annex:-A & B*).
3. **That** since the appellant was also entitled for promotion to the higher grade as a consequence of the Judgment of the Hon'ble Apex Court which was denied to him, therefore, appellant and others filed writ Petition No.793/2007 in the Hon'ble Peshawar High Court Peshawar which was disposed of with certain observation vide order dated 18.10.2011 (*Annex:-C*) with direction to the Department to decide the matter in accordance with law as per the observation of the Hon'ble Court given in the order viz:

"It is not clear from the available record that when the petitioners became eligible for being promoted to the next higher scale and what were the rules applicable thereto and what was the ratio of vacancies to be filled through the promotion and what was the ratio of the vacancies to be filled by initial recruitment. All these questions are to be decided by the Department in the first instance, we, therefore, would not embark upon

such exercise while hearing the petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. We, therefore, while disposing of this writ petition direct the office to send it to the departmental authority to decide it in accordance with law as hinted to above within two months. This writ petition, thus, stands disposed of.”

Thus the Hon'ble Court directed for determining as to:-

- i. *When the petitioners became eligible to the next higher grade?*
- ii. *What were the Rules applicable thereto (service rules)?*
- iii. *What was the ratio of vacancies to be filled by initial recruitment/promotion?*

4. **That** the Department, in the light of the Judgment *ibid*, took up the case of the appellant and others and asked for the advise of the Establishment Department and Finance Department as would be evident from the letter dated 26.11.2011 (*Annex:-D*) wherein in Para-5 it has been admitted that *“According to service rules notified on 01.12.1991, the length of service for promotion of Progress Officer (BPS-16) to the post of Assistant Director (BPS-17) LG&RDD was 03 years. The initial date of appointment of the petitioner was 22.11.1988 and thus they have completed the required length of service on 22.11.1991 and became eligible for promotion to the post of AD (BPS-17) LG&RDD at that time but they could not be promoted as their status was contract.*
5. **That** the Establishment Department vide letter dated 20.12.2011 (*Annex:-E*) advised that *in terms of the employees on contract basis (Regulation of services) Act, 1989 read with the Judgment of the Apex Court announced on 25.08.2005, the services of the appellant stood regularized with effect from the date of their contractual appointments. The Department is therefore, required to determine their seniority viz-a-viz those appointed on regular basis in the defunct Directorate and consider their promotion in the light of the service rules of their posts subject to the availability of vacant positions in the cadre/service group.*

6. **That** as per Seniority List as stood on 31.12.1992 circulated vide letter dated 13.02.1993 (**Annex:-F**) the total sanctioned posts of Assistant Directors (BPS-17) as stood on 31.12.1992 were 34 and as per the Service Rules notified on 01.12.1991 (**Annex:-G**), the ratio of promotion and direct induction was 30%:70% out of which 24 posts fell in the quota of initial recruitment while 10 posts fell in the promotion quota. At the total 05 Progress Officers (BPS-16) were promoted vide order dated 03.08.1992 (**Annex:-H**) against the available share of 10 posts and thus promotion quota was short of 05 posts against which the appellant could have been promoted had he been in regular service on the basis of their entitlement as declared by the Hon'ble Court subsequently alongwith consequential back benefits.
7. That inspite of the clear position as explained above still the desired promotion was not granted to the petitioners, therefore, COC No.87-P/2012 was filed before this Hon'ble Court, which was disposed of vide order dated 16.08.2012 (**Annex:-I**) in view of the statement of the learned Additional Advocate General that the promotion case of the petitioners could not be processed as they had not provided ACRs for consideration of the Departmental Promotion Committee, however, it was also observed that the petitioners and others might invoke their remedy before an appropriate legal forum if so advised.
8. **That** later on, appellant and others were promoted to the post of Assistant Director (BPS-17) but with immediate effect instead of due date vide order dated 16.05.2013 (**Annex:-J**). The appellant and his other colleagues challenged the order *ibid*, to the extent of its immediate operation vide Departmental Representations dated 10.06.2013 which were duly processed and culminated in approval by the competent authority vide Statement (**Annex:-K**) wherein the appellant and others were shown to have been appointed w.e.f. 22.11.1988. The decision was yet to be implemented.
9. **That** in the light of the approval mentioned above for further clarification of the seniority of the appellant and others the Department called for the advise of the Establishment Department vide letter dated 07.11.2013

(*Annex:-L*) upon which the Establishment Department gave its opinion vide letter dated 10.01.2014 (*Annex:-M*) whereafter a Tentative Seniority List was circulated vide letter dated 14.03.2014 (*Annex:-N*) showing the seniority position of the appellant as approved by the competent authority upon which appellant and others submitted the observations but meanwhile the those employees who became juniors as a result of regaining seniority of the appellant and others also submitted objections upon the seniority of appellant and others which was allowed vide order dated 22.05.2014 (*Annex:-O*) thereby again the appellant and others were wrongly held to be juniors and thus the earlier promotion with immediate effect of the appellant was restored by setting aside the approval of the Chief Secretary and immediately the final Seniority List was issued vide letter dated 28.05.2014 (*Annex:-P*).

10. **That** the Seniority List *ibid*, was called in question by the appellant and others through departmental Representations (*Annex:-Q*) in the first instance and then through Service Appeals (*Annex:-R*) before the Khyber Pakhtunkhwa Service Tribunal. During pendency of the appeals, again vide letter dated 27.10.2015 (*Annex:-S*) the seniority positions of the appellant and others were restored however the date of Promotion was again shown as 16.05.2013 and 27.08.2012 instead of 22.11.1991, accordingly observations dated 27.11.2015 (*Annex:-T*) were raised on the Tentative Seniority List.
11. **That** the appellant and others withdrew their Service Appeals as their grievances had been fully redressed and that they would be allowed due seniority with all back benefits, however vide the impugned Notification dated 22.08.2017 (*Annex:-U*) the grievances of the appellant and others have been redressed by granting them seniority w.e.f. 22.11.1991 but other back benefits including antedation of promotion were not allowed for which they preferred Departmental Representations on 25.09.2017 (*Annex:-V*) but the same were not disposed of as per the law, hence the instant appeal *inter-alia* on the following grounds:-



Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully refused the grant of antedation of promotion w.e.f. 22.11.1991 with back benefits, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That it is admitted position that appellant was reinstated into service by the Hon'ble Apex Court with all back benefits including promotion, up-gradation etc. falling due during the course of service and in the same spirit the matter was earlier interpreted by the Establishment Department and subsequently agreed to by the competent authority, therefore, the appellant was not only entitled for promotion to the next higher grade but seniority alongwith back benefits with effect from the due date i.e. 22.11.1991.
- C. That similarly in the light of the judgment of the Hon'ble Peshawar High Court, Peshawar dated 18.10.2011 the Department vide letter dated 26.11.2011 conceded to the position that the promotion of the appellant had become due w.e.f. 22.11.1991 alongwith back benefits and the advice on the same subject matter was also called from the Establishment Department which was given in affirmative thereby leaving no room for any suspicion into the matter but inspite of the same the appellant was denied the back benefits which has deprived the appellant of his due rights.
- D. **That** the appellant and his other colleagues are not only entitled for seniority from the due date i.e. 22.11.1991 but also entitled to other benefits including antedation of promotion in the light of the Judgment of the Hon'ble Supreme Court of Pakistan as well as the order of the Hon'ble Peshawar High Court, Peshawar.

GOVERNMENT OF NW.F.P.,
LOCAL GOVT. ELECTION AND RURAL
DEVELOPMENT DEPARTMENT

NOTIFICATION

Dated Peshawar, the 10th November, 2005

No.SO(LG-I)3-323/03.- Consequent upon acceptance of Civil Appeals No.44, 45, 47 of this Department to-79 of 2005, 1409 of 2004 and 319 of 2005 and setting aside of this Department Notification No.SO(LG-I)2-113/96, dated 30-5-2003 by the Supreme Court of Pakistan vide Judgement dated 25-08-2005, the Competent Authority is pleased to re-instate in service the following officers/officials of the Local Government and Rural Development Department, NWFP with effect from the date of their termination from service viz 30-5-2003 with all back benefits and their services regularized from the date of their initial appointment:-

Sl.No.	Name of officer/official	Designation	with BPS
1.	Mr.Zafrullah Khan	Planning Officer	Officer (BPS-17)
2.	Mr.Muhammad Zahoor		do-
3.	Mr.Muhammad Faheem		do-
4.	Mr.Muhammad Iqbal		do-
5.	Mr.Pervez Khan		do-
6.	Mr.Attiq-Ur-Rehman		do-
7.	Mr.Fakhr-Uz-Zaman		do-
8.	Mr.Sarfraz Khan		do-
9.	Mr.Arshad Zia		do-
10.	Mr.Shad Muhammad	Progress Officer	Officer (BPS-16)
11.	Mr.Raza Ullah Khan		do-
12.	Mr.Sheraz Ahmed		do-
13.	Mr.Abdur Rashid		do-
14.	Mr.Fazlullah		do-
15.	Mr.Muhammad Raees Khan	Sub-Engineer	Officer (BPS-11)
16.	Mr.Muhammad Ilyas		do-
17.	Mr.Aziz-Ur-Rehman		do-
18.	Mr.Muhammad Siddiq		do-
19.	Mr.Asghar Hussain		do-
20.	Mr.Salim Javed		do-
21.	Mr.Amin Gul		do-
22.	Mr.Dilawar Khan		do-

ANNEX "A"

B

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GOVERNMENT OF N.W.F.P
LOCAL GOVT. ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

NOTIFICATION

Dated Peshawar, the 10th November, 2005

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Sr.No.	Name of officer/Official	Designation with BPS
1.	Mr. Zafrullah Khan	Planning Officer (BPS-17)
2.	Mr. Muhammad Zahoor	-do-
3.	Mr. Muhammad Faheem	-do-
4.	Mr. Muhammad Iqbal	-do-
5.	Mr. Pervez Khan	-do-
6.	Mr. Attiq-ur-Rehman	-do-
7.	Mr. Fakhr-uz-Zaman	-do-
8.	Mr. Sarfaraz Khan	-do-
9.	Mr. Arshad Zia	-do-
10.	Mr. Shad Muhammad	Progress Officer (BPS-16)
11.	Mr. Razaullah Khan	-do-
12.	Mr. Sheraz Ahmad	-do-
13.	Mr. Abdur Rashid	-do-
14.	Mr. Fazlullah	-do-
15.	Mr. Muhammad Raees Khan	Sub-Engineer (BPS-11)
16.	Mr. Muhammad Ilyas	-do-
17.	Mr. Aziz-ur-Rehman	-do-
18.	Mr. Muhammad Siddiq	-do-
19.	Mr. Asghar Hussain	-do-
20.	Mr. Salim Javed	-do-
21.	Mr. Amin Gul	-do-
22.	Mr. Dilawar Khan	-do-

Annex B

GOVERNMENT OF N.W.F.P.,
LOCAL GOVT. ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

NOTIFICATION

Dated Peshawar, the 16th December, 2005

No.SO(LG-1)3-323/03.- In continuation of this Department Notification of even number dated 10-11-2005, the Competent Authority is pleased to re-instate in service the following officers/officials of the Local Government and Rural Development Department, NWFP with effect from the date of their termination from service viz 30-5-2003 with all back benefits and their services regularized from the date of their initial appointment:-

Sl.No.	Name of officer/official	Designation with BPS
1.	Mr. Muhammad Yahya Tanoli	Planning Officer (BPS-17)
2. ✓	Mr. Shibli Khan	Progress Officer (BPS-16)
3. ✓	Mr. Ziaullah Khan	Stenographer (BPS-12)
4. ✓	Mr. Mislah-Ud-Din.	Sub-Engineer (BPS 11)
5.	Mr. Tariq Khan	-do-
6.	Mr. Hayat Khan	-do-
7.	Mr. Abdur Rehman	-do-

2. On re-instatement these officers/officials are placed in the Surplus Pool of Local Government and Rural Development Department for which Finance Department shall create posts, till they are adjusted as per policy of the Provincial Government.

SECRETARY TO GOVT. OF NWFP,
LOCAL GOVT. ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

Endst. No.SO(LG-1)3-323/03 Dated Peshawar, the 16th December, 2005

Copy is forwarded to:-

1. All the Administrative Secretaries, Government of NWFP.
2. The Accountant General, NWFP, Peshawar.
3. The Registrar, NWFP Service Tribunal, Peshawar.
4. The Director General (D&M), LG & RDD.
5. All District Coordination Officers in NWFP.
6. The PS to Chief Secretary, NWFP, Peshawar.
7. The PS to Minister for LG & RD, NWFP, Peshawar.
8. The PS to Secretary, LG & RDD.
9. The Director, FATA, LG & RDD, Peshawar.
10. The Section Officer (Surplus Pool), E&A Department.
11. The Section Officer (General), LG & RDD.
12. All Officers/officials concerned.
13. Personal file of the officer/official concerned.

(DIL. MUHAMMAD)
SECTION OFFICER (ETAB.)

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9

GOVERNMENT OF N.W.F.P
LOCAL GOVT. ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

NOTIFICATION

Dated Peshawar, the 16th December, 2005

No.SO(LG-I)3-323/03.- In continuation of this Department Notification of even number dated 10-11-2005, the Competent authority is pleased to re-instate in service the following officers/officials of the Local Government and Rural Development Department, NWFP with effect from the date of their termination from service viz 30-5-2003 with all back benefits and their services regularized from the date of their initial appointment:-

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3.	Mr. Ziaullah Khan	Stenographer (BPS-12)
4.	Mr. Mislah-ud-Din	Sub-Engineer (BPS-1)
5.	Mr. Tariq Khan	-do-
6.	Mr. Hayat Khan	-do-
7.	Mr. Abdur Rehman	-do-

2. On re-instatement these officers/officials are placed in the Surplus Pool of Local Government and Rural Development Department for which Finance Department shall create posts, till they are adjusted as per policy of the Provincial Government.

Sd/-

SECRETARY TO THE GOVT. OF NWFP
LOCAL GOVT: ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

Endst: No.SO(LG-I)3-323/03

Dated Peshawar, the 16th December, 2005

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3. The Registrar, NWFP Service Tribunal, Peshawar
4. The Director General (D&M), LG & RDD.
5. All District Coordination Officer in NWFP.
6. The PS to Chief Secretary, NWFP, Peshawar
7. The PS to Minister for LG & RD, NWFP, Peshawar
8. The PS to Secretary, Local Govt. & RDD.
9. The Director, FATA, LG & RDD, Peshawar.
10. The Section Officer (Surplus Pool), E&A Department.
11. The Section Officer (General), LG & RDD.
12. All Officers/officials concerned.
13. Personal file of the officer/official concerned.

Sd/-

(DIL MUHAMMAD)
SECTION OFFICER FR (ETAB:)

Writ Petition No: 293 /2007



-19

1. Raza Ullah Khan.
2. Shad Muhammad
3. Sheraz Ahmad.
4. Abdur Rashid
5. Fazl Ullah.
6. Shibli Khan.

Progress Officers C/o Local Government and
 Rural Development Department, Govt. of
 N.W.F.P, Peshawar.....Petitioners

V E R S U S

1. Chief Secretary, Government of N.W.F.P, Peshawar.
2. Secretary to Government of N.W.F.P, Establishment
 Department, Peshawar.
3. Secretary to Government of N.W.F.P,
 Finance Department, Peshawar.
4. Secretary to Government of N.W.F.P,
 Local Government and Rural Development
 Department, Peshawar.....Respondents.

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[Signature]
 Registrar

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Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

REST-11

Writ-Petition No. 783 of 11.11.2007

JUDGMENT

Date of hearing: 18.10.2010

Applicant/Petitioner (s): (Raza ul Ullah) Adv. M. M. Adil
Yousafzai, ADJ

Respondent (s): (Govt of NWFP) Adv. M. M. Adil
Alshahid
HAG

EJAZ AFZAL KHAN, C. J.- Petitioners
through the instant writ petition have asked for
the issuance of an appropriate writ directing the
respondents to give them the back benefits in
accordance with the posts, they were to be
promoted to, if they had not been placed in the
surplus pool.

2. We heard this case on many
occasions. On 16.11.2010 we while hearing this
petition, directed the AAG to assist us by giving
the formulation as under:-

" We heard this case even before.
The only dispute emerging for the
consideration of this Court is that
though the petitioners were reinstated
with back benefits but they were
denied the benefits of higher grade to
which they were to be promoted
mechanically and as a matter of
course. The learned AAG wants some

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time to see whether prayer of 'the petitioners can be countenanced especially when they were in the surplus pool at the relevant time. Adjourn to 15.12.2010".

3. The learned AAG after going through the record contended that rules providing for ratio of the vacancies to be filled by initial recruitment and by promotion did not remain the same throughout as they were amended from time to time, therefore, none of the questions urged by the petitioners could be examined without seeing what were the dates, the petitioners became eligible to be promoted to the next higher grade, and what were the rules applicable thereto, therefore, it would be proper that this exercise be carried out by the Department itself.

4. We have gone through the record carefully and considered the submissions of the learned counsel for the parties.

5. It is not clear from the available record that when the petitioners became eligible for being promoted to the next higher scale and what were the rules applicable thereto and what

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However Not Cont.

Att

POST IMMEDIATE

COURT MATTER

GOVERNMENT OF KHYBER PAKHTUNKHWA
LOCAL GOVERNMENT, ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

No. SO(LG-1)3-567/PHC/2007

Dated Peshawar, the 26th November, 2011

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment Department

2. The Secretary to Govt. of Khyber Pakhtunkhwa,
Finance Department

Subject:- REQUEST OF PROMOTION IN LIGHT OF JUDGEMENT OF
THE PESHAWAR HIGH COURT PESHAWAR IN WRIT
PETITION NO.793/2007

Dear Sir,

I am directed to refer to the subject cited above and to say that following surplus Progress Officers (BS-16) of this Department have requested for grant of promotion to the post of Assistant Directors (BS-17) in LG&RDD with effect from 01/12/1991 as per service rules in vogue in 1991 in accordance with seniority list in light of decision/order dated 18-10-2011 of the Peshawar High Court Peshawar (copy attached):-

1. Mr. Sheraz Ahmad
2. Mr. Abdur Rashid
3. Mr. Shibli Khan
4. Mr. Shad Muhammad
5. Mr. Fazlullah

2. Brief facts of that case are stated that above Progress Officers (BS-16) were appointed under the scheme "Strengthening of LG&RDD" during 1988 alongwith others. The posts against which the incumbents were working created on revenue side with effect from 01-01-1993 but status of the incumbents remained the same. They filed writ petition in the Peshawar High Court for regularization of their services, which was dismissed. Aggrieved of the decision of the learned court, they filed Civil Appeals in the Supreme Court of Pakistan. The Apex Court also dismissed their appeals with the direction to file appeals in Khyber Pakhtunkhwa Service Tribunal. They filed appeals in learned Service Tribunal which were also dismissed. Ultimately, the incumbents filed Civil Appeals in the Supreme Court of Pakistan. The Apex Court accepted their appeals and ordered for their re-instatement in service with all back benefits and regularized them from the date of their initial appointment vide Judgement dated 25-08-2005 (copy attached).

3. In implementation of the Judgement of the Apex Court, all contract employees were regularized with all back benefits including seniority after obtaining advice from the Establishment Department. The above Progress Officer were placed in the Surplus Pool of LG&RDD as offices of Director General, LG&RDD and its allied offices in the settled districts alongwith posts were allocated during 2001 in devolution process.

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MOST IMMEDIATE

COURT MATTER
GOVERNMENT OF KHYBER PAKHTUNKHWA
LOCAL GOVERNMENT, ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

No. SO(LG-1)3-367/PUC/2007

Dated Peshawar, the 26th November, 2011

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

Subject:- REQUEST OF PROMOTION IN LIGHT OF JUDGMENT OF THE PESHAWAR HIGH COURT PESHAWAR IN WRIT PETITION NO. 793/2007

Dear Sir,

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1. Mr. Sheraz Ahmad
2. Mr. Abdur Rashid
3. Mr. Shibli Khan
4. Mr. Shad Muhammad
5. Mr. Fazlullah

2. Brief fact of the case are stated that above Progress Officers (BPS-16) were appointed under the scheme "Strengthening of LG&RDD" during 1988 alongwith others. The posts against which the incumbents were working created on revenue side with effect from 01.01.1993 but status of the incumbents remained the same. They filed writ petition in the Peshawar High Court for regularization of their services, which was dismissed. Aggrieved of the decision of the learned court, they filed Civil Appeals in the Supreme Court of Pakistan. The Apex Court also dismissed their appeals with the direction to file appeals in Khyber Pakhtunkhwa Service Tribunal. They filed appeals in learned Service Tribunal which were also dismissed. Ultimately, the incumbents filed Civil Appeals in the Supreme Court of Pakistan. The Apex Court accepted their appeals and ordered for their re-instatement in service with all back benefits and regularized them from the date of their initial appointment vide judgment dated 25.08.2005 (copy attached).

3. In implementation of the Judgment of the Apex Court, all contract employees were regularized with all back benefits including Seniority after obtaining advice from the Establishment Department. The above Progress Officers were placed in the Surplus Pool of LG&RDD as Offices of Director General LG&RDD and its allied offices in the settled districts alongwith posts were abolished during 2001 in devolution Process.

11 - 15

4. The above incumbents filed writ petition No. 293/2007 in the Peshawar High Court, Peshawar for implementation of decision of the Apex Court and prayed for promotion to the post of Assistant Directors (BPS-17) in I.G.&RIDD (copy attached). This Department deposited comments in the learned court accordingly (copy attached). The Peshawar High Court, Peshawar has disposed of the writ petition of the petition vide judgement dated 18-10-2011 in the following manner (copy attached):-

"It is not clear from the available record that when the petitioners became eligible for being promoted to the next higher scale and what were the rules applicable thereto and what was the ratio of the vacancies to be filled through promotion and what was the ratio of the vacancies to be filled by initial recruitment. All these questions are to be decided by the Department in the first instance, we, therefore, would not embark upon such exercise while hearing a petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. We, therefore, while disposing of this writ petition direct the office to send it to the Departmental Authority to decide it in accordance with law as hinted to above within two months. This writ petition, thus, stands disposed of."

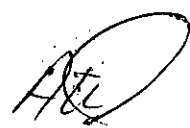
5. According to Service Rules notified on 31-12-1991, the length of service for promotion of Progress Officer (BS-16) to the post of Assistant Director (BS-17) I.G.&RIDD was 3 years. The initial date of appointments of the petitioners was 22/11/1988 and thus they have completed the required length of service on 22-11-1991 and become eligible for promotion to the post of Assistant Director (BS-17) I.G.&RIDD at that time but they could not be promoted as their status was contract/project employees. When they were re-instated in service with all back benefits in implementation of judgement of the Supreme Court of Pakistan, the Directorate General, I.G.&RIDD and its allied offices in the settled districts alongwith posts were abolished in 2001 in devolution process. At present this Department has no post of Assistant Director lying vacant under promotion quota against which the promotion case of the petitioners could be considered.

6. In view of above position, I am, directed to request you to kindly advise this Department regarding admissibility of promotion to the post of Assistant Director (BS-17) in I.G.&RIDD so as to facilitate this Department to take decision in the subject case keeping in view above order of the Peshawar High Court, Peshawar.

Incl: As Above.

Yours faithfully,


(SHAHID KHAN)
SECTION OFFICER (ESTAB)



4. The above incumbents filed writ petition No.793/2007 in the Peshawar High Court, Peshawar for implementation of decision of the Apex Court and prayed for promotion to the post of Assistant Directors (BSP-17) in LG&RDD (copy attached). This Department deposited comments in the learned Court accordingly (copy attached). The Peshawar High Court, Peshawar has disposed of the writ petition of the petition vide Judgment dated 18.10.2011 in the following manner (copy attached):-

“It is not clear from the available record that when the petitioners became eligible for being promoted to the next higher scale and what were the rules applicable thereto and what was the ratio of the vacancies to be filled through promotion and what was the ratio of the vacancies to be filled by initial recruitment. All these questions are to be decided by the Department in the first instance, we, therefore, would not embark upon such exercise while hearing a petitioner under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. We, therefore, while deposing of this writ petition direct the office to send it to the Departmental Authority to decide it in accordance with law as hinted to above within two months. This writ petition, thus, stands disposed of.”

5. Accordance to Service Rules notified on 01.12.1991, the length of service for Promotion of Progress Officer (BS-16) to the post of Assistant Director (BS-17) LG&RDD was 3 years. The initial date appointments of the petitioners was 22/11/1988 and thus they have completed the required length of service on 22.11.1991 and become eligible for promotion to the post of Assistant Director (BS-17) LG&RDD at that time but they could not be promoted as their status was contract/project employees. When they were re-instated in service with all back benefits in implementation of Judgment of the Supreme Court of Pakistan, the Directorate General, LG&RDD and its allied offices in the settled districts alongwith posts were abolished in 2001 in devolution process. At present this Department has no post of Assistant Director lying vacant under promotion quota against which the promotion case of the petitioners could be considered.

6. In view of above position, I am, directed to request you to kindly advise this Department regarding admissibility of promotion to the post of Assistant Director (BS-17) in LG&RDD so as to facilitate this Department to take decision in the subject case keeping in view above order of the Peshawar High Court, Peshawar.

Encl: As above

Yours faithfully,
Sd/-
(SHAHID KHAN)
SECTION OFFICER (ESTAB)

ANNEX "E" 16-

2011-12-20 11:42:01 AM 4588612143
FROM: Chief Secy. PWD GOVT. Pesh.

2011-12-20 11:42:01 AM



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No.SOR.IV(ED)/6-1/2011/
Dated, Peshawar, the 20th Decr, 2011

To

The Secretary to Govt of Khyber Pakhtunkhwa,
Local Govt & R.D. Department.

SUBJECT: REQUEST OF PROMOTION IN LIGHT OF JUDGMENT OF THE
PESHAWAR HIGH COURT IN WRIT PETITION NO. 793/2007

Dear Sir,

I am directed to refer to your letter No.EO(LG-I)3-367/PHC/2007 dated 26/11/2011 on the subject noted above and to state that in terms of the Employees on Contract Basis (Regularization of Services) Act, 1989, read with the judgment of the Apex Court announced on 25/8/2005, services of the appellants stood regularized with effect from the date of their contractual appointments.

2. The Department is, therefore, required to determine their seniority vis-à-vis those appointed on regular basis in the defunct Directorate and consider their promotion in light of the service rules of the posts, subject to availability of vacant positions in the Cadre/Service Group.

Yours faithfully,

Sd/-

(MUSHTAQ HUSSAIN)
Section Officer (R-IV)

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[Handwritten signature]

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GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

16

No.SOR-IV(ED)/6-1/2011/
Dated, Peshawar, the 20th Dec: 2011

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Local Govt. & RD Department.

SUBJECT: REQUEST OF PROMOTION IN LIGHT OF JUDGMENT OF THE
PESHAWAR HIGH COURT IN WRIT PETITION NO.793/2007.

Dear Sir,

I am directed to refer to your letter No.SO(LG-I)/3-367/PHC/2007 dated 26/11/2011 on the subject noted above and to state that in terms of the Employees on Contract Basis (Regularization of Services) Act, 1989, read with the Judgment of the Apex Court announced on 25/8/2005, services of the appellants stood regularized with effect from the date of their contractual appointments.

2. The Department is, therefore, required to determine their seniority viz-a-viz those appointed on regular basis in the defunct Directorate and consider their promotion in light of the service rules of the posts, subject to availability of vacant positions in the Cadre/Service Group.

Yours faithfully,
Sd/-
(MUSHTAQ HUSSAIN)
Section Officer (R-IV)

GOVERNMENT OF N.W.F.P.,
LOCAL GOVERNMENT, ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT.

NO. 30 (LG-I) 4-118/B/89/
Dated Pesh: the 13th Feb. 1993

To

Amree F

1. Pir Zahoor Mohammad,
AD, LGRDD, Malakand.
2. Mr. Saadat Khan,
AD, LGRDD, SW-Agency.
3. Mr. Dul Ahmad,
AD, LGRDD, Sunair.
4. Mr. Gulab Khan,
AD, LGRDD, Swat.
5. Mr. Fazli Qadir,
AD, LGRDD, Charsadda.
6. Mr. Lal Mohammad,
AD, LGRDD, Kohat.
7. Mr. Khalid Farooq Khan,
AD, LGRDD, Peshawar.
8. Syed Iqbal Shah,
AD, LGRDD, Mardan.
9. Mr. Ghulam Habib,
AD, LGRDD, Nowshera.
10. Mr. Mohammad Iqbal,
AD, LGRDD, Swabi.
11. Mr. Rasool Khan,
AD, LGRDD, Manjeri.
12. Syed Mubshir Shah,
AD, LGRDD, On deputation
to Peshawar (KWP, Mardan).
13. Mr. Mohammad Aslam,
AD, LGRDD, Abbottabad.
14. Mr. Asmaqullah,
AD, District General, LGRDD,
NWFP, Peshawar.
15. Mr. Mohammad Qasim Orakzai,
AD, LGRDD, Kurram Agency.
16. Mr. Mazar Ali,
AD, LGRDD, Khyber Agency.
17. Mr. Fala Mohammad Khan,
AD, LGRDD, Dir at Timergara.
18. Mr. Tariq Ishaq,
AD, LGRDD, Bajour Agency.
19. Mr. Sakhi Jan,
AD, LGRDD, Mohmand Agency.

Serdy list (BS-17)
total Serdy list

CONTD: ... P/

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17

GOVERNMENT OF N.W.F.P.
LOCAL GOVERNMENT ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

No.SO(LG-I)4-118/8/89
Dated Pesh; the 13th Feb. 1993

To

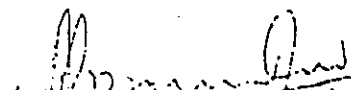
1. Pir Zahoor Muhammad,
AD, LGRDD, Malakand.
2. Mr. Saadat Khan,
AD, LGRDD, SW-Agency.
3. Mr. Dul Ahmad,
AD, LGRDD, Sunair.
4. Mr. Gulab Khan,
AD, LGRDD, Swat.
5. Mr. Fazli Qadir,
AD, LGRDD, Charsadda.
6. Mr. Lal Muhammad,
AD, LGRDD, Kohat.
7. _____
AD, LGRDD, Peshawar.
8. Syed Iqbal Shah,
AD, LGRDD, Mardan.
9. Mr. Ghulam Habib,
AD, LGRDD, Nowshera.
10. Mr. Muhammad Iqbal,
AD, LGRDD, Swabi.
11. Mr. Rasool Khan,
AD, LGRDD, Bannu.
12. Syed Mutahir Shah,
AD, LGRDD, On Deputation
to Pak- _____ Scarp, Mardan.
13. Mr. Muhammad Aslam,
AD, LGRDD, Abbottabad.
14. Mr. Asmatullah,
AD, Dtr: General, LGRDD,
NWFP, Peshawar.
15. Mr. Muhammad Qasim Orakzai,
AD, LGRDD,, Kurram Agency.
16. Mr. Nisar Ali,
AD, LGRDD, Khyber Agency.
17. Mr. Faiz Muhammad Khan,
AD, LGRDD, Dir at Timergara
18. Mr. Israrullah,
AD, LGRDD, Bajuar Agency.
19. Mr. Sakhi Jan,
AD, LGRDD, Mohmand Agency.
20. Mr. Abdul Majeed Zakoori,
AD, LGRDD, D.I.Khan.

20. Mr. Abdul Majeed Zakoord,
AD, LGRDD, D.I. Khan.
21. Mr. Khadim Mohammad Hussain,
AD, LGRDD, Haripur.
22. Mr. Mashallah Khan,
AD, LGRDD, NW-Agency.
23. Mr. Abdul Ghaffar,
AD, LGRDD, Kohistan.
24. Mr. Mohammad Latif,
AD, LGRDD, Tank.

SUBJECT:- FINAL SENIORITY LIST OF ASSISTANT DIRECTORS (BPS-17) IN LGRDD AS STOOD ON 31ST DEC, 1992.

A number of objections were received from the Assistant Directors (BPS-17) of Rural Development Department on the tentative seniority list circulated vide this Deptt. letter of even number dated 1st November, 1992, and after examining the objections, the Provincial Government in Local Government, Elections and Rural Development Department is pleased to circulate a final seniority list (copy enclosed) of Assistant Directors of Rural Development Department for information and record.

Encl: AS: 1/2/93


(MAZHAR REHMAN)
SECTION OFFICER-I

Encl: NO. 30 (LJ-I) 4-116/B/89/ Dated Pesh: the 9th Feb. 1993

Copy is forwarded to:-

1. The Director General, LGRDD, M.V.F.P., Peshawar for information pl.
2. All the Divisional Directors, LGRDD in NWFP.
3. The Manager, Government Printing Press, Peshawar for publication in the next Government gazettee.

H.M/-


SECTION OFFICER-I



Better Copy

C/8

21. Khadim Muhammad Hussain,
AD, LGRDD, Haripur.
22. Mr. Mashallah Khan,
AD, LGRDD, NW-Agency.
23. Mr. Abdul Ghaffar,
AD, LGRDD, Kohistan.
24. Mr. Muhammad Latif,
AD, LGRDD, Tank.

Subject: FINAL SENIORITY LIST OF ASSISTANT DIRECTORS (BPS-17) IN
LGRDD AS STOOD ON 31ST DEC, 1992.

A number of objections were received from the Assistant Directors (BPS-17) of Rural Development Department on the Tentative Seniority List circulated vide this Deptt. letter of even number dated 1st November, 1992, and after examining the objections, the Provincial Government in Local Government, Elections and Rural Development Department is pleased to circulate a final Seniority List (copy enclosed) of Assistant Directors of Rural Development Department for information and record.

Sd/-
(FAZAL-UR-REHMAN)
SECTION OFFICER-I

Encl: As Above

Endst: No.SO(LG-I)4-118/8/89 Dated Pesh: the 9th Feb. 1993

Copy is forwarded to :-

1. The Director General, LG&RDD, NWFP, Peshawar
2. All The Divisional Directors, LG&RDD, in NWFP.
3. The Manager, Government Printing Press, Peshawar for publication in the next Government gazette.

Sd/-
SECTION OFFICER-I

LOCAL GOVERNMENT, ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

ANNEX-I

Sanctioned posts ... 34

FINAL SENIORITY LIST OF ASSISTANT DIRECTORS
BPS-17 IN LG&RD AS STOOD ON 31ST DEC. 1991.

S.NO.	Name of Officer	Education Qualification.	Date of birth with domicile.	Date of first entry into Govt. Service.	First Regular appointment to the Service/Cadre.			Promotion to present BPS		Date of move-over to next higher grade.	REMARKS IF ANY
					Date	BPS	Method of recruitment.	BPS	Date		
1	2	3	4	5	6	7	8	9	10	12	13
1.	Pir Zahoor Mohammad	B.A.	8-9-36 Mardan	8-12-65 BPS-5	8-12-66	16	Promotee	17	13-12-74	1-12-84	-
2.	Mr. Saadat Khan	Matric	10-12-33 S.W.A.	16-4-55 BPS-5	16-4-56	6	-do-	17	15-5-75	1-12-88	-
3.	Mr. Dul Ahmad	M.A (Eco.)	1-5-50 S.W.A.	4-7-74 BPS-16	4-7-74	16	Direct	17	18-7-78	--	--
4.	Mr. Gulab Khan	M.A (P.S)	1-8-46 S.W.A.	15-4-74 Adhoc	19-3-87	11	-do-	17	1-12-88	1-12-88	--
5.	Mr. Fazli Qadir	M.A (Eco.)	9-6-48 Mardan.	16-7-74 Adhoc	19-3-87	17	-do-	17	--	1-12-88	--
6.	Mr. Lal Mohammad	M.A (Eco.)	15-5-39 Mkd.	1-4-75 Adhoc	19-3-87	17	-do-	17	-	1-12-93	--
7.	Capt. (Retd) Sarfaraz	M.A (Eco)	15-1-44 Kohat	1-4-75 Adhoc.	19-3-87	17	-do-	17	-	1-2-88	--
8.	Syed Iqbal Shah	B.A., LLB.	3-3-44 Mansehra.	1-7-75 Adhoc.	19-3-87	17	-do-	17	--	1-12-88	--

1	2	3	4	5	6	7	8	9	10	11	12
9.	Mr. Ghulam Habib	M.Sc. (Hon. Agr.)	14.11.47 Mardan.	1.4.75 (Adhoc)	19.3.87	17	-do-	---	---	1.12.88	---
10.	Mr. Mohammad Iqbal	M.Sc(Agri)	9.7.50 LIK	1.7.75 Adhoc.	19.3.87	17	Direct	---	---	1.12.88	---
11.	Mr. Rasool Khan	M.A(P.S)	4.5.51 SWA	12.7.75 Adhoc.	19.3.87	17	-do-	---	---	---	---
12.	Mr. Mutahir Shah	M.Sc(Agri)	26.7.48 Mardan.	15.11.75 Adhoc.	19.3.87	17	-do-	---	---	---	---
13.	Mr. Mohammad Aslam	M.A.LLB.	3.5.46 A.Abad.	27.12.75 Adhoc.	19.3.87	17	-do-	---	---	1.12.88	---
14.	Mr. Asmatullah	M.Sc(Agri)	8.7.51 LIK.	29.12.75 Adhoc.	19.3.87	17	-do-	---	---	1.12.88	---
15.	Mr. Mohd Qasim Orakzai.	M.A(P.S)	1.1.51 Orakzai Agency.	12.2.75 Adhoc.	19.3.87	17	-do-	---	---	---	---
16.	Mr. Misar Ali	M.A(P.S)	16.2.51 Pesh.	12.2.75	19.3.87	17	-do-	---	---	1.12.88	---
17.	Mr. Faiz Mohammad Khan.	M.A(P.S & Journalism)	12.4.82 N.W.A.	8.3.92	8.3.92	17	-do-	---	---	---	---
18.	Mr. Israrullah	M.A(Eco)	19.4.84 Swabi.	8.3.92	8.3.92	17	-do-	---	---	---	---
19.	Mr. Sakhi Jan	M.A(P.S)	9.5.58 Bannu.	8.3.92	8.3.92	17	-do-	---	---	---	---
20.	Mr. Abdus Majeed Zakoori.	Matric	1.5.37 DIK	16.4.58 (B-6 as Worker)	16.4.56	B-6	Promotee	17	3-8-92	---	---
21.	Mr. Khadim Mohd Hussain.	M.A.	15.3.39 DIK	5.7.63 (B-9 as Supervisor)	5.7.63	B-9	-do-	17	3.8.92	---	---
22.	Mr. Mashallah Khan	B.A.	1.1.37 Kohat.	1.7.61 (B-9 Supervisor)	1.7.61	B-9	-do-	17	3.8.92	---	---

AD

1	2	3	4	5	6	7	8	9	10
23.	Mr. Abdul Ghaffar	B.A.	25.6.40 Latif Marwat.	15.2.65 (3-9 Supervisor)	15.2.65	E-9	Promotee	17	3.2.92
24.	Mr. Mohammad Latif	M.A.	2.2.44 DIK	15.4.74 (3-16 Adhoc as Cooperative Officer IRDP).	15.4.74	B-16	Direct by abstraction.	17	3.2.92

.....

At

10/11-91

Handwritten notes and stamps on the right margin.

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE
 LOCAL GOVERNMENT, ELECTIONS AND RURAL
 DEVELOPMENT DEPARTMENT

NOTIFICATION

92
 Annex "G"
 [Handwritten signatures and stamps]

Peshawar, dated the 1st December, 1991.

NO.SO(LG-I)2-183/89. In exercise of the powers conferred by sub-rule (2) of rule 3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Local Government and Rural Development Department, in consultation with the Services and General Administration Department and the Finance Department is pleased to direct that in this department notification No.DG(RWP)7(2)/73, dated 26-1-1978, the following further amendments shall be made namely:

AMENDMENTS

In the Appendix,-

(a) for the existing entries in column 6 against Serial No.2 the following entries shall be substituted, namely:

- AD ✓
- "(i) Seventy per cent by initial recruitment; and
 - (ii) thirty per cent by promotion, on the basis of seniority-cum-fitness; from amongst the holders of the posts of Divisional Progress Officers with atleast 3 years' service as such.";

(b) for the existing entries in columns 2 to 6 against serial No.9 the following entries shall respectively be substituted, namely;

2	3	4	5	6
"Sub-Engineer.	(a) Secondary school certificate or equivalent qualification from a recognised Board; and	Secondary school certificate or equivalent qualification from a recognised Board.	Not less than 21 years and not more than 25 years!	(i) Seventy per cent by initial recruitment; (ii) Twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Work Munshis with atleast ten years' service as such, who have passed departmental Grade B examination; and

AD

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2

3

4

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6

(b) three years' course Diploma in Civil Engineering from a recognised Institute.

(iii) ten per cent by promotion, on the basis of seniority cum-fitness, from amongst the holders of the posts of Draftsman with atleast five years' service as such."

(c) after Serial No.9 the following new entries shall be inserted in the respective columns, namely:

1

2

3

4

5

6

"9A. Draftsman.

(a) Secondary school certificate or equivalent qualification from a recognised Board; and

Secondary school certificate or equivalent qualification from a recognised Board.

Not less than 18 years' and not more than 25 years.

(i) By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Tracers who have atleast five years' service as such; or

(ii) if no suitable person is available for promotion, by initial recruitment";

(b) two years' course certificate or Diploma in Civil Draftsmanship from a recognised Institute.

(d) after the existing entries at serial No.17 the following new entries shall be added in the respective columns:

1

2

3

4

5

6

"18. Tracer.

Secondary school certificate or equivalent qualification

Not less than 16 years' and not more than 25 years!

Handwritten signature By initial recruitment.

2 3 4 5 6

from a
recognised
Board
with
drawing
as one
of the
subjects.

24

19. Work Munshi

Sec-
ondary
school
certi-
ficate
or equi-
valent
qualifi-
cation
from a
recog-
nised
Board.

Not less
than
18 years'
and not
more than
25 years'.

By initial
recruitment.

SECRETARY TO GOVERNMENT OF NWFP,
LOCAL GOVERNMENT, ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

Endst.NO.50(LG-I)2-188/89/

Dated Peshawar the 1st December, 1991

Copy of the above is forwarded to:-

1. All Administrative Secretaries to Government of NWFP.
2. All Divisional Commissioners in NWFP.
3. Secretary to Governor, NWFP, Peshawar.
4. Secretary, NWFP, Public Service Commission, Peshawar.
5. Director General, LG&RDD, NWFP, Peshawar.
6. All Heads of Attached Departments in NWFP.
7. Secretary, Local Council Board, N.W.F.P., Peshawar.
8. Secretary, Provincial Election Authority, Peshawar.
9. All Divisional Directors, LGRDD in NWFP.
10. All Deputy Commissioners in NWFP.
11. All District and Session Judges in NWFP.
12. Registrar, Peshawar High Court, Peshawar.
13. All Assistant Directors, LGRDD in NWFP.
14. Section Officer (Legis.), Govt. of NWFP, Law Department.
15. Section Officer (Urdu Cell), Govt. of NWFP, S&GAD with reference to his letter No.SOUC(S&GAD)6-22/90, dated 1-12-1991.
16. Manager Government Printing Press, Peshawar for publication in the next Government Gazettee Notification, 40 copies of the Notification may be sent to this Department.

P-354

H.M/-

Atte

(FAZAL UR REHMAN)
SECTION OFFICER-I

DATED PESHAWAR THE 3RD AUGUST, 1922

NOTIFICATION

NO. 50(14-I)2-5/22-- The Governor North-West Frontier Province in consultation with the Departmental Promotion/Selection Committee is pleased to order the promotion of the following Divisional Progress Officers (BPS-16) to the posts of Assistant Directors (BPS-17) in Rural Development Department with immediate effect:-

1. Mr. Abdul Hafeed Zakori
2. Mr. Khadim Mohamad Main
3. Mr. Mas'ud Khan
4. Mr. Abdul Shaffar
5. Mr. Mohamad Latif

SECRETARY TO GOVERNMENT OF NWFP
LOCAL GOVERNMENT, ELECTRICITY & RURAL
DEVELOPMENT DEPARTMENT

NO. 50(14-I)2-5/22 Dated Pesh: the 3rd August, 1922

A copy is forwarded to:-

1. The Accountant General, W.A.P.F., Peshawar.
 2. The Director General, LERDD, NWFP, Peshawar.
 3. All the Divisional Directors, LERDD in NWFP.
 4. All the Assistant Directors, LERDD in NWFP.
 5. The District Accounts Officer, Haripur.
 6. The District Accounts Officer, Tank.
 7. The District Accounts Officer, Karak.
 8. The Agency Accounts Officer, NW-Agency.
 9. The District Accounts Officer, Abbottabad.
 10. Mr. Abdul Hafeed Zakori, Acting AD, Directorate General, LERDD, NWFP, Peshawar.
 11. Mr. Khadim Mohamad Main, acting AD, LERDD, Haripur.
 12. Mr. Mas'ud Khan, acting AD, LERDD, NW-Agency.
 13. Mr. Abdul Shaffar, acting AD, LERDD, Tank.
 14. Mr. Mohamad Latif, acting AD, LERDD, Karak.
 15. The Manager, Government Printing Press Peshawar for publication in the next Government gazettee.
 16. Personal files of the officers concerned.
- Atc

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25

GOVERNMENT OF N.W.F.P
LOCAL GOVERNMENT ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

DATED PESHAWAR THE 3RD AUGUST, 1992

NOTIFICATION

NO.SO(LG-I)2-5/5,-- The Governor North-West Frontier Province in consultation with the Departmental Promotion/Selection Committee is pleased to order the promotion of the following Divisional Progress Officers (BPS-16) to the posts of Assistant Directors (BPS-17) in Rural Development Department with immediate effect:-

1. Mr. Abdul Majeed Zakoori
2. Mr. Khadim Muhammad Hussain
3. Mr. Mashallah Khan
4. Mr. Abdul Ghaffar
5. Mr. Muhammad Latif

SECRETARY TO GOVERNMENT OF NWFP
LOCAL GOVERNMENT & RURAL
DEVELOPMENT DEPARTMENT

Endst: No.SO(LG-I)2-5/5 Dated Pesh: the 3rd August, 1992

A copy is forwarded to:-

1. The Accountant General, N.W.F.P Peshawar
2. The Director General , LGRDD, NWFP, Peshawar
3. All the Divisional Directors, LGRDD in NWFP
4. All the Assistant Directors LGRDD in NWFP.
5. The District Accounts Officer, Haripur.
6. The District Accounts Officer, Tank.
7. The District Accounts Officer, Karak.
8. The Agency Accounts Officer, NW-Agency.
9. The District Accounts Officer, Abbottabad.
10. Mr. Abdul Majeed Zakoori, Acting AD, Directorate General, LGRDD, NWFP, Peshawar
11. Mr. Khadim Muhammad Hussain, acting AD, LGRDD, Haripur.
12. Mr. Mashallah Khan, acting AD, LGRDD, NW-Agency.
13. Mr. Abdul Ghaffar acting AD, LGRDD, Tank.
14. Mr. Muhammad Latif, acting AD, LRGDD, Karak.
15. The Manager, Government Printing Press, Peshawar for publication in the next Government gazette.
16. Perosnal files of the officers concerned.

Sd/-
SECTION OFFICER

Date of Order	Order or other proceedings with signature of the Judge
1	2
16.8.2012	<p>C.M. (EH) No.729-P/2012 in COC No.87-P/2012 in: <u>W.P.No.793/2007.</u></p> <p><u>Present:</u> Mr.Fazal Rabi Dard, Advocate, for the petitioner.</p> <p>Mr.Lal Jan Khattak, AAG, for the respondents.</p> <p>----</p> <p><u>YAHYA AFREEDI, J.</u> - Shad Muhammad and three others have sought COC proceedings against named respondents for non-compliance of the orders of this Court in W.P. No.793 of 2007 decided on 18.10.2011.</p> <p>Respondents were put to notice and they have asserted in writing that similarly placed, as the present petitioners, have been granted the relief so directed by this Court, while the case of the petitioner could not be processed, as they had not provided their ACRs for the consideration of their relief relating to promotion. As far as the official benefits were concerned, the same have been paid to the petitioners.</p> <p>On the other hand, the learned counsel for the petitioners vehemently argued that as the petitioners were contract employees and by operation of law or their re-instatement, they</p>

16/8/2012
16/8/2012

Att Q

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are to be granted "proforma promotion" and there is no requirements for submission of their ACRs.

Learned AAG present in Court disputes the said legal proposition and states that the department is still willing to consider the case of the petitioner, if they provide the requisite ACRs, as was rendered by others, similarly placed.

For the reasons stated herein above, this Court finds that though there may be a legal case made out in favour of the petitioners for seeking appropriate remedy before the lawful legal forum, no Contempt of Court is made out by the actions rendered by the respondents.

In view of the above, the notices were issued, are hereby recalled. The petitioners may invoke their remedy before an appropriate legal forum, if so advised.

This petition is disposed of in the above terms.

Edy Yahya Afridi - J

Announced
16.8.2012.

Edy Goshad Raiser - J

(CERTIFIED TO BE TRUE COPY)

Raman

May 23/8/12

Examiner
Peshawar High Court, Peshawar
Authorized Under Article
the Qanun-e-Shahadat Order, 1984

Att

1788

1788

Date of Presentation of Application	<i>16/8/12</i>
No. of Pages	<i>20</i>
Copying fee	<i>18</i>
Urgent Fee	<i>18</i>
Total	<i>18</i>

Date of Preparation of Copy *23/8/12*
 Date Given For Delivery *23/8/12*
 Date of Delivery of Copy *25/8/12*
 Received By *[Signature]*

Annex 'J' 28

GOVERNMENT OF KHYBER PAKHTUNKHWA,
LOCAL GOVERNMENT, ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

ORDER

Dated Peshawar the 27th August, 2012

No.SO(LG-DE-336/Promotion/2012.- The Competent Authority in consultation with the Departmental Promotion Committee has been pleased to promote the following Progress Officers (BPS-16) LG&RDD to the posts of Assistant Director (BPS-17) in the Local Government and Rural Development Department with immediate effect:-

1. Mr. Shad Muhammad
2. Mr. Abdul Rashid
3. Mr. Salim Raza
4. Mr. Asadullah

2. On their promotion, the terms and conditions of their service on which they were initially appointed will remain the same.

SECRETARY GOVT. OF KHYBER
PAKHTUNKHWA, LOCAL GOVT:
ELECTIONS & RURAL DEV: DEPTT:

Enclt. Even No. and Date.

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The AGPR Sub-Office, Peshawar.
3. The Director General, LG&RDD, Khyber Pakhtunkhwa, Peshawar.
4. The Director FATA, LG&RDD, Warsak Road, Peshawar.
5. All Assistant Directors, LG&RDD in FATA.
6. All District/Agency Accounts Officers in Khyber Pakhtunkhwa.
7. The Officers concerned.
8. The Manager Government Printing Press, Peshawar.
9. The PS to Secretary, LGE&RDD.
10. Personal Files of the officers concerned.
12. Office order file.

(SHAHID KHAN)
SECTION OFFICER (ESTAB)

promotion but with immediate effect.

Better Copy

28

GOVERNMENT OF KHYBER PAKHTUNKHWA
LOCAL GOVERNMENT ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

ORDER

Dated Peshawar the 27th August, 2012

NO.SO(LG-I)2-336/Promotion/2012,-- The Competent Authority in consultation with the Departmental Promotion Committee has been pleased to promote the following Progress Officers (BPS-160 LG&Rural Development Department to the posts of Assistant Directors (BPS-17) in the Local Govt. and Rural Development Department with immediate effect:-

1. Mr. Shad Muhammad
3. Mr. Abdul Rashid
4. Mr. Salim Raza
5. Mr. Asadullah

2. On their promotion, the terms and conditions of their service on which they were initially appointed will remain the same.

Sd/-

SECRETARY TO GOVERNMENT OF KHYBER
PAKHTUNKHWA, LOCAL GOVT.
ELECTIONS & RURAL DEV: DEPTT:

Endst: Even No. and Date

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar
2. The AGPR, Sub-Office, Peshawar
3. The Director General, LGRDD, Khyber Pakhtunkhwa, Peshawar
4. The Director FATA, LG&RDD, Warsak Road, Peshawar
5. All the Assistant Directors LGRDD in FATA
6. All District/Agency Accounts Office in Khyber Pakhtunkhwa.
7. The Officers concerned.
8. The Manager, Government Printing Press, Peshawar
9. The PS to Secretary LG&RDD.
10. Personal files of the officers concerned.
11. Office Order file.

Sd/-

(SHAHID KHAN)
SECTION OFFICER (ESTAB:)



Government of Khyber Pakhtunkhwa
Local Government, Elections and Rural Development Department

ORDER

Dated Peshawar, the 16th May, 2013

No.SO(LG-I)2-336/Promotion/2012.- The Competent Authority in consultation with the Departmental Promotion Committee has been pleased to promote the following Progress Officers (BS-16), Local Government, Elections and Rural Development Department to the post of Assistant Directors (BS-17) in the Local Government, Elections and Rural Development Department with immediate effect:-

- i) Mr.Sheraz Ahmad
- ii) Mr.Fazlullah
- iii) Mr.Shibli Khan

2. On their promotion, the terms and conditions of their service on which they were initially appointed will remain the same.
3. On their promotion, the officers will remain on probation, as per rules.
4. Consequent upon their promotion, postings/transfers of the following officers are hereby ordered with immediate effect:-

Sl.No.	Name officer	From	To
1	Mr.Sheraz Ahmad	On promotion	Assistant Director, LG, E&RDD, Buner to relieve Mr.Israrullah Khan of the additional charge.
2	Mr.Fazlullah	On promotion	Assistant Director, LG, E&RDD, Mardan against a vacant post.
3	Mr.Shibli Khan	On promotion	Assistant Director, LG, E&RDD, Dir Lower against a vacant post.

SECRETARY TO GOVT.OF KHYBER
PAKHTUNKHWA, LG&RDD

Endst No.SO(LG-I)2-336/Promotion/2012

Dated Pesh: the 16th May, 2013

Copy is forwarded:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, LG, E&RDD, Khyber Pakhtunkhwa, Peshawar.
3. The Director, FATA, LG&RDD, Warsak Road, Peshawar.
4. The Assistant Directors, LG&RDD, Swabi, Buner, Mardan and Dir Lower at Timergara.
5. The District Accounts Officers, Swabi, Buner, Mardan and Dir Lower at Timergara.
6. The Officers concerned.
7. The Manager Government Printing Press, Peshawar.
8. The PS to Secretary, LG, E&RDD.
9. The office order file.

(ZAZ JELAH)
SECTION OFFICER (ESTAB)

Ate

Statement Showing the date wise Appointment and Promotion of Supervisors, Progress Officers to the Post of Assistant Directors, LG&RDD

SL. No.	Name of Progress Officer	Method of Recruitment whether by promotion or by initial quota	Date of Appt./promotion /induction as Progress Officer (BS-16)	Date of Promotion as Asstt. Director (BS-17)
1	Abdul Majced Zakoori	B-9 (Promotee)	18-12-1985	03-08-1992
2	Khadim Muhammad Hussain	-do-	18-12-1985	03-08-1992
3	Mashallah Khan	-do-	---	03-08-1992
4	Abdul Ghaffar	-do-	---	03-08-1992
5	Muhammad Latif	-do-	---	03-08-1992
6	Shad Muhammad		22-11-1988	27-08-2012
7	Shiraz Ahmad		22-11-1988	16-05-2013
8	Abdul Rashid		22-11-1988	27-08-2012
9	Fazlullah		22-11-1988	16-05-2013
10	Shibli Khan		22-11-1988	16-05-2013
11	Hamid Ullah	B-9 (Promotee)	03-08-1992	01-11-1995
12	Aziz-Ur-Rehman	-do-	03-08-1992	01-11-1995

PK

Director of Public Health & Family Welfare
Director of Health Services
Director of Health Services
Director of Health Services

13	Muhammad Farid	-do-	03-08-1992	01-11-1995
14	Akhtar Munir	-do-	03-08-1992	01-11-1995
15	Muhammad Jehangir	Direct	26-05-1993	26-12-1996
16	Qazir Noorul Wahab	-do-	26-05-1993	26-12-1996
17	Ghulam Qadir	B-9 (Promotee)	08-10-1996	26-06-2000
18	Faramoz Khan	-do-	08-10-1996	26-06-2000
19	Alam Zeb	-do-	08-10-1996	26-06-2000
20	Noor Elahi	-do-	08-10-1996	26-06-2000
21	Abdul Qadir	-do-	08-10-1996	26-06-2000
22	Muhammad Aslam	-do-	08-10-1996	26-06-2000
23	Maqsood-Ur-Rehman	-do-	08-10-1996	26-06-2000
24	Qazi Anwar Gul	-do-	08-10-1996	26-06-2000

Note:- The officers mentioned at Sl.No.6 to 10 were appointed on contract basis on 22-11-1988. their services have been regularized from the date of their initial appointment i.e. 22-11-1988 in implementation of Judgement dated 25-08-2005 of the Supreme Court of Pakistan.

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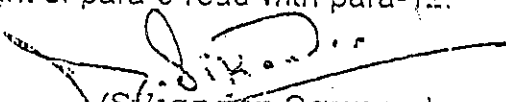
SECTION
LOCAL
TOWN

Confidential 32

12. The appellants were re-instated in service with all back benefits and regularized by the LG&RD Department with effect from 22.11.1988 i.e. the date of their contract appointment in light of Supreme Court Judgment dated 25.08.2005 (F/E). They were placed in the surplus pool as the posts of progress officers alongwith other posts under the office of DG, LGE&RD Department were abolished in 2001 during devolution process till these were revived w.e.f. 01.01.2012. The appellants could also not be promoted as Assistant Directors for the aforesaid reason. According to policy (F/J) promotion is always to be notified with immediate effect. Therefore the request of the appellants for ante-dated promotion is not covered under the rules and is liable to rejection by the appellate authority.

13. It may be added that the appellants have been regularized with effect from 22.11.1988 whereas the posts under DG, LG&RD Department were abolished in 2001. Therefore during the period from 1988 to 2001, there is a possibility that regularly appointed progress officers would have been promoted as Assistant Directors. In such a case the appellants will be entitled to regain inter-se-seniority in the higher post and they shall be deemed to have been cleared for promotion alongwith officers junior to them who were considered in the earlier meeting of DPC as per para-7 of circular letter dated 13.04.1987 (F/K). The intervening period can be counted towards increments under FR-26 (c) without arrears.


14. The appellate authority (Chief Secretary) may like to refer to Administrative Department to clarify on para-13 or may dispose of the appeals / representations in light of para-9 read with para-12.


(Sikandar Qayyum)
Secretary Establishment
August 20, 2013

Chief Secretary, Khuzar Pakhtunkhwa.

15:

H. Saigy


22/8
Chief Secretary
Govt of Khuzar Pakhtunkhwa

Secy LG&RD

AD

Next page

CAIC S Khuzar Pakhtunkhwa
Ho. 316
Date: 13/8/2013

- 33

Subject:-

DEPARTMENTAL REPRESENTATIONS AGAINST THE ORDER DATED 16-05-2013 OF LG,E&RDD WHEREBY THE APPELLANTS HAVE BEEN PROMOTED TO THE POST OF ASSISTANT DIRECTOR (BS-17) IN LG,E&RDD INSTEAD OF THE DUE DATE I.E. 22-11-1991

[Handwritten mark]

PS to Secy, LG & RDD
Establishment & Admin Dept
File No. 3354.5
Date: 13.9.13

16. The requisite information as desired in Para-13/ante is at Flag-AA. However, similar claims of the appellants have already been disposed of by the Peshawar High Court, Peshawar as well as by the Department prior to their promotion to the post of Assistant Directors (BS-17). Probably para-7 of circular letter dated 13-04-1987 (F/K) relates to the cases which are deferred in PSB or DPC due to pending disciplinary actions or whose CR dossiers are incomplete.

PS to Secy, LG & RDD
File No. 3354.5
Date: 13/9/13

[Signature]
(Hifz-Ul-Rahman) 17/9
Secretary, LG,E&RDD

Chief Secretary, Khyber Pakhtunkhwa

60 50-17
E&GAD. Diary No. 1776
Date: 17/9/13

17.

to re-examine.

Sery Estab.

[Signature]
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Next page

1322-5
23/9/13

1433-7
23/9/13

3/13

18. As held by the Apex Court, the appellants had become regular civil servants by virtue of provisions of the Khyber Pakhtunkhwa Employees on Contract Basis (Regularization of Services) Act, 1989. They were reinstated in service with all back benefits (F/E). Accordingly, administrative department issued notification, regularizing contractual services of the appellants with effect from the dates of their initial appointments (F/F). According to relevant law/ rules, their seniority was to be determined in respective cadre/ service with reference to the dates of their regular appointments i.e. 22.11.1988. However, since the Directorate LG&RD was then abolished, they were placed in the surplus pool. Now when the Directorate has been revived and they are adjusted in their erstwhile cadre/ department, they shall regain their original seniority, as given in para-6(a) of the Surplus Pool Policy (F/L).

[Handwritten signature]

19. The appellants have recently been promoted to the post of Assistant Directors (BS-17) in 2012 and 2013. According to provisions of the Promotion Policy of the Provincial Government, the administrative department has prepared a seniority of promotee Assistant Directors, with particular reference to the dates of regular appointment in the lower post (Progress Officer) at Annex-AA. The appellants find their places at S.No.7, 9 and 10.

20. In view of the above, the seniority position at Annex-AA is in order. The Chief Secretary, Khyber Pakhtunkhwa may please accord approval to the seniority list placed at Annex-AA.

[Signature]
(Sikander Qayyum)
Secretary Establishment
October 09, 2013

see p-36

Chief Secretary, Khyber Pakhtunkhwa

para 20 approved

[Signature]
Chief Secretary
Govt. of Khyber Pakhtunkhwa

C.S.S Khyber Pakhtunkhwa
No. 1322-15
Date: 09/10/13

22. *[Signatures]*
AFC (AS) A 30E
11/10/13
11/10/13
ATC

18. As held by the Apex Court, the appellants had become regular civil servants by the virtue of provisions of Khyber Pakhtunkhwa Employees Contract Basis (Regularization of Services) Act, 1989. They were reinstated in service with all back benefits (F/E). Accordingly, Administrative Department issued Notification, regularizing contractual services of the appellants with effect from dates of their initial appointments (F/F). Accordingly to relevant law/rules, their seniority was to determined in respective cadre/ service with reference to the dates of their regular appointments i.e. 22.11.1988. However, since the Directorate LG&RD was then abolished, they were placed in the surplus pool. Now when the Directorate has been revived and they are adjusted in the erstwhile cadre/ Department, they shall regain their original seniority, as given in para-6(a) of the Surplus Pools Policy (F/L).

19. They appellants have recently been promoted to the posts of Assistant Director (BS-17) in 2012 and 2013. According to the provisions of the Promotion Policy of the Provincial Government, the Administrative Department has prepared a seniority of promote Assistant Directors, with particular reference to the dates of regular appointment in the lower post (Progress Officer) at Annexure-AA. The appellants find their places at S. No.7,9 & 10.

20. In view of the above, the seniority position at Annexure-AA is in order. The Chief Secretary, Khyber Pakhtunkhwa may please accord approval to the Seniority List placed at Annexure-AA.

Sd/-
(Sikandar Qayyun)
Secretary Establishment
October, 09, 2013

Chief Secretary, Khyber Pakhtunkhwa

Para 20 approved

Sd/-
Chief Secretary
Govt. of Khyber Pakhtunkhwa



Annex 35

INDEX

GOVERNMENT OF KHYBER PAKHTUNKHWA
LOCAL GOVERNMENT, ELECTIONS & RURAL DEVELOPMENT DEPARTMENT

No.SOU.G-1)3-367/2013
Dated Peshawar, the 7th November, 2013

To

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

Subject:-

DEPARTMENTAL REPRESENTATIONS AGAINST THE ORDER
DATED 16-05-2013 OF LG,E&RDD WHEREBY THE
APPELLANTS HAVE BEEN PROMOTED TO THE POST OF
ASSISTANT DIRECTOR (BS-17) IN LG,E&RDD INSTEAD OF
THE DUE DATE I.E. 22-11-1991

Dear Sir,

I am directed to refer to the subject cited above and to say that M/S Sheraz Ahmad, Fazlullah and Shibli Khan, Progress Officers (BS-16) were promoted to the posts of Assistant Directors (BS-17) in Local Government, Elections and Rural Development Department against the posts lying vacant under promotion quota with immediate effect i.e. 16-05-2013 with the approval of Competent Authority (copy attached). Aggrieved of their promotion order, they submitted representations/appeals to the Chief Secretary, Khyber Pakhtunkhwa and prayed for promotion to the post of Assistant Director (BS-17) with effect from 22-11-1991 instead of 16-05-2013. Representations/appeals of the appellants are attached.

2. Details of the case are illustrated as under:-

- (i) The appellants were initially appointed under the scheme "Strengthening of LG&RDD" during 1988 along with others. The posts against which the incumbents were working were created on revenue side with effect from 01-01-1993, by the Finance Department. However, status of the incumbents remained the same. They filed writ petition in the Peshawar High Court, Peshawar for regularization of their services, which was dismissed. Aggrieved of the decision of the learned High court, they filed Civil appeals in the Supreme Court of Pakistan, The Apex Court also dismissed their appeals with the direction to file appeals in Khyber Pakhtunkhwa Service Tribunal. They filed appeals in learned Service Tribunal which were also dismissed (copy attached).
- (ii) Ultimately, the incumbents filed Civil Appeals in the Supreme Court of Pakistan. The Apex court accepted their appeals and ordered for their reinstatement in service with all back benefits and regularized them from the date of their initial appointment by extending the benefit of Khyber Pakhtunkhwa Employees on Contract Basis (Regularization of Service) Act, 1989 vide judgement dated 25-08-2005 (copy attached).

(vi) The Directorate General, LG,E&RDD and the offices of Assistant Directors in the settled districts were revived with effect from 01-01-2012 where the post of Assistant Directors (BS-17) became vacant under promotion quota. Keeping in view the orders of the learned High Court as mentioned in para 5 above, the appellants were also heard by the Secretary, LG,E&RDD on 15/02/2012 and their appeals were disposed with the direction to Section concerned to place case of the appellants before the proper forum for decision after establishment of the offices and posting and adjustment of staff (copy enclosed).

(vii) Accordingly, case for promotion of the appellants to the post of Assistant Directors (BS-17) in LG,E&RDD was prepared and placed before the Departmental Promotion Committee for consideration. The Departmental Promotion Committee determined their promotion with immediate effect i.e. 16-05-2013 against which the appellants are aggrieved and filed departmental representation/appeals to the Chief Secretary, Khyber Pakhtunkhwa for grant of retrospective promotion i.e. with effect from 22-11-1991.

(viii) The LG,E&RDD submitted representations/appeals of the appellants to the Chief Secretary, Khyber Pakhtunkhwa. The Chief Secretary, Khyber Pakhtunkhwa has approved the seniority position of the incumbents vide para-21 of the note (copy attached).

3. In order to avoid any legal complication, I am further directed to seek advice/clarification of the Establishment Department on the following points so that the case could be processed further:-

- (i) There are five Progress Officers i.e. M/S Sheraz Ahmad, Abdul Rashid, Shibli Khan, Shad Muhammad and Fazlullah but M/S Abdul Rashid and Shad Muhammad have not submitted representations/appeals against their promotion order while the remaining three have submitted representations/appeals against their promotion with immediate effect. Whether the case of these two incumbents who have not filed appeals against their promotion order could also be considered at par with the case of three appellants whose appeals have been accepted or otherwise;
- (ii) The Competent Authority has already upgraded the posts of Assistant Directors from BS-17 to BS-18 personal to the 17 incumbents vide Notification No.SOB(LG)1-4/2003/Vol:II. dated 25-07-2013 (copy attached). When the appellants are given seniority and promotion from retrospective effect, they will also claim up-gradation from BS-17 to BS-18 then what would be the legal status;

AR

Amir M³⁷

Government of Khyber Pakhtunkhwa
ESTABLISHMENT DEPARTMENT
(Regulation Wing)

No.SOR.IV(ED)/6-1/2013/
Dated, Peshawar, the January 10, 2014

To

The Secretary to Government of Khyber Pakhtunkhwa,
Local Government & RD Department.

SUBJECT: REPRESENTATION AGAINST THE ORDER DATED 16/5/2013 OF LG&RDD WHEREBY APPELLANTS HAVE BEEN PROMOTED TO THE POST OF ASSISTANT DIRECTOR


Dear Sir,

I am directed to refer to Local Government Department letter No.SO(LG-I)3-367/2013 dated 7/11/2013 on the subject noted above and to reply the queries, as under:

- i) The appeals were submitted by LG&RDD in a note for orders of Chief Secretary, being the competent authority. The case was also examined in Establishment Department, in paras 18-20 of the note, where the appellants were found entitled to regain their original seniority. Para 20 was approved. The examination of this Department in the note was based on law/rules/policy on the subject, which applies to all civil servants, hence, the appellants alone may not be singled out for the purpose. Any person of the service if found to make identical case with the appellants is required to be dealt with in the same manner.
- ii) Promotion involves assignment of higher responsibilities, therefore, is always made with immediate effect. As regards personal up-gradation, this issue lies before relevant forum in Finance Department for consideration.
- iii) DPC has already considered and promoted the officers. The issue of regaining of seniority needs not to be placed before the DPC.

Yours faithfully,


(ISHTIAQ AHMAD)
Section Officer (R-IV)

or before 15th April, 2014 for consideration.  Department before final declaration thereof.

N



IMMEDIATE

REGISTERED

Government of Khyber Pakhtunkhwa
Local Government, Elections and Rural Development Department

No.SO(LG-1)3-367/PHC/2014

Dated Peshawar, the 14th March, 2014

To

1. Mr.Tahira Yasmeen,
Acting Director, LG&RDD
2. Mr.Muhammad Zahoor,
Asstt:Director /PO, Dte:FATA,
LG&RD, Warsak Road, Peshawar
3. Mr.Muhammad Fahim,
Asstt: Director/P.O. Dte:FATA,
LG&RD, Warsak Road, Peshawar
4. Mr.Faiz Muhammad Khan,
Project Director, DIKhan
5. Mr.Israrullah,
AD, LG&RDD, Swabi.
6. Mr.Shad Muhammad,
AD, LG&RDD, Khyber Agency
7. Mr.Sheraz Ahmad, AD, LG&RDD, Mansehra.
8. M.Abdul Rasheed, AD, LG&RDD, Haripur
9. Mr.Fazlullah, AD, LG&RDD, Mardan
10. Mr.Shibli Khan, AD, Dte:General, LG&RDD
11. Mr.Sardar Mulk, AD, LG&RDD, Malakand
12. Mr.Akhtar Munir, AD, LG&RDD, Hangu
13. Mr.Riaz Ahmad, PD, MSDP,
University Town, Peshawar
14. Mr.Khali Israr Shah, AD, LG&RDD,
North-Waziristan Agency
15. Mr.Sajid Gul, Secretary, Provl:Delimitation
Authority, Peshawar
16. Mr.Said Rahman, AD, LG&RDD (Now on leave)
17. Syed Hasnain Kazmi, AD, LG&RDD
(Now on Ex-Pakistan leave)
18. Mr.Muhammad Jehangir, AD,
Dte:FATA, LG&RDD, Warsak Road,
Peshawar.
19. Qazi Noorul Wahab,
AD, LG&RDD, Mohmand Agency
20. Mr.Alam Zeb, AD, Dte:General,
LG&RDD FATA, Warsak Road,
Peshawar
21. Mr.Salim Raza, AD, LG&RDD, Charsadda.
22. Mr.Asadullah, AD, LG&RDD, Swat

Subject:- TENTATIVE SENIORITY LIST OF ASSISTANT DIRECTORS,
lg&rdd AS STOOD ON 30-01-2014.

Memo:

I am directed to refer to the subject cited above and to enclose herewith copy of Tentative Seniority List of Assistant Directors/Planning Officers with the remarks that reservations on the said list, if nay, may be conveyed to this Department on or before 15th April, 2014 for consideration / settlement before final declaration thereof.

Ali

TENTATIVE SENIORITY LIST OF ASSISTANT DIRECTORS/PLANNING OFFICERS (BPS-17)
AS STOOD ON LG&RDD ON 30.01.2014

Total Sanctioned Posts of Assistant Directors (BPS-17):- 36

S #	Name of Officer	Educational Qualification	Date of Birth of Domicile	Date of 1 st Entry into Service	1 st regular appointment to service/cadre			Promotion to present BPS		Remarks if any
					Date	BPS	Method of recruitment	BPS	Date	
1	2	3	4	5	6	7	8	9	10	12
1	Mrs. Tahira Yasmin.	M.P.A	1-1-1957 D.I.K	25.5.1984	25.5.1984	17	Direct	18	17.12.2007	She has been re-instated in service in implantation of the Judgement of the Khyber Pakhtunkhwa Service Tribunal, Peshawar and services regularized from the date of her initial appointment i.e. 25.5.1984
2	Mr. M. Zahoor (PO)	M.A Eco:	9.5.1961 MKD	6.11.1988	6.11.1988	17	-do-	18	25-7-2013	
3	Mr. M. Fahim (PO)	M.B.A	14.2.1963 Swat	6.11.1988	6.11.1988	17	-do-	18	-do-	
4	Mr. Faiz Muhammad	M.A (PS) & Journalism	12.4.1962 N.W.A	8.3.1992	8.3.1992	17	-do-	18	-do-	
5	Mr. Israrullah Khan	M.A Eco:	19.4.1964 Swabi	3.3.1992	3.3.1992	17	Direct	18	-do-	

SECTION OFFICER
LOCAL GOVT. ENGINEERING
LOCAL DEVELOPMENT

dependent upon their
ance of their
nal representations
Secretary
awa

14	Mr.Khalid Israr Shah	M.A(P.S)	13.10.1966 Bannu	1.9.1993	5.9.1993	17	-do-	18	25-7-2013	
15	Mr.Sajid Gul	M.Sc(Agri)	9.9.1965 Dir Lower	5.9.1993	5.9.1993	17	-do-	18	25-7-2013	
16	Mr.Said Rehman	M.A (PS)	25.6.1965 Mohmand	13.9.1993	13.9.1993	17	-do-	18	25-7-2013	
17	Syed Hussain Kazmi	M.Sc (AGRI)	10.4.1966 Mansehra	7.9.1993	9.9.1993	17	-do-	18	25-7-2013	
18	Mr.Muhammad Jehangir	M.Sc	17.9.1965 Peshawar	25.5.1993	25/5/1993 Progress Officer	16	Promotee	18	26/12/1996	
19	Qazi Noor ul Wahab	M.Sc	16.3.1966 Nowshera	26.5.1993	26.5.1993 Progress Officer	16	Promotee	18	26.12.1996	
20	Mr.Alam Zeb	M.A	15.9.1958 Swabi	23.12.1980	23.12.1980	16	Promotee	18	26.12.1996	
21	Mr.Salim Raza	M.A	15-12-1964 Charsadda	28-02-1990 (Supervisor BS-9)	28-02- 1990	B-9	Promotee	17	27-8-2012	
22	Mr.Asadullah	B.A	28-09-1966 Charsadda	-do-	-do-	B-9	Promotee	-do-	27-8-2012	

Attested
MUK

NSI - 118-1

...in terms of employees on contract basis
...of Services Act 1989 read with the
...of the Apex Court announced on 27.08.2005.
...of the appellants stood regularized with
...from the contractual appointments. The
...is therefore required to determine their
...-à-vis those appointed on regular basis in
...Directorate and consider their promotion in
...of the service rules of the posts subject to
...availability of vacant positions in the cadre/service
...group.

4. In view of the above stated facts based on law/rules/
...of the Honourable Peshwar High Court/
...Apex Court and advice of the Establishment
...it is hereby prayed that I may please be
...in the final seniority list
...on the date 22.11.1991 which the Department itself
...had worked out as evident from para 2 of the LG
...dated 26.11.2011 as Annexure (A) and also request to correct
...the date of my retaining original seniority as
...22.11.1991 instead of 16.05.2013 as mentioned at
...column NO.10 of the perform of tentative seniority list
...please

Yours Faithfully
(Shereh Ahmad)
Asst. Dir.
IC&RD Cyber Agency

Date 17/04/2014

File



Government of Khyber Pakhtunkhwa
Local Government, Elections and Rural Development Department

BEFORE THE SECRETARY, LOCAL GOVERNMENT, ELECTIONS AND
RURAL DEVELOPMENT DEPARTMENT, KYBER PAKHTUNKHWA

APPLICATIONS/OBJECTIONS OF ASSISTANT DIRECTORS, LG&RDD
AGAINST THE TENTATIVE SENIORITY LIST OF ASSISTANT
DIRECTORS ISSUED ON 14-03-2014

ORDER
Dated 22/05/2014

This order shall dispose off applications/objections submitted by the following applicants/respondents against the tentative seniority list of Assistant Directors, Local Government and Rural Development Department issued on 14-03-2014:-

1. Mr. Akhtar Munir
2. Mr. Sardar Mulk
3. Mr. Riaz Ahmad
4. Mr. Sajid Gul
5. Mr. Said Rehman
6. Mr. Alam Zeb
7. Mr. Muhammad Jehangir Khan
8. Qazi Noorul Wahab
9. Mr. Abdur Rashid
10. Mr. Shad Muhammad
11. Mr. Sheraz Ahmad
12. Mr. Fazlullah
13. Mr. Shibli Khan
14. Mr. Salim Raza
15. Mr. Asadullah

*Reservation for others allowed
our seniority matches*

22/5

2. Parties were summoned and heard and record perused.
3. After hearing the applicants as well as respondents it was observed that M/S Shad Muhammad Khan, Abdur Rashid, Sheraz Ahmad, Fazalullah and Shibli Khan were Progress Officers in BPS-16. As a result of revival of Directorate General, LG&RDD, the posts of Assistant Directors (BS-17) were created in the settled districts. The respondents were promoted to the posts of Assistant Directors (BS-17) in LG&RDD against the quota reserved for promotion. When they were promoted to the posts of Assistant Directors they went in appeal to the Chief Secretary, Khyber Pakhtunkhwa for promotion with retrospective effect. The Appellate Authority (Chief Secretary) disagreed to allow promotion to these incumbents with retrospective effect. However, as a result of their promotion they were placed at Sl.No.6 to 10 of the tentative seniority list while 12 Assistant Directors recruited/promoted and upgraded to BS-18 prior to these five incumbents were placed junior to them.

AD

B

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IMMEDIATE



REGISTERED

Government of Khyber Pakhtunkhwa
Local Government, Elections and Rural Development Department

No. SO(LG-I)4-118/B/2014/Vol:II
Dated Peshawar, the 28th May, 2014.

To

1. Mr. Tahira Yasmeen,
Acting Director, LG&RDD
2. Mr. Muhammad Zahoor,
Asstt: Director /PO, Dte: FATA,
LG&RD, Warsak Road, Peshawar
3. Mr. Muhammad Fahim,
Asstt: Director/P.O, Dte: FATA,
LG&RD, Warsak Road, Peshawar
4. Mr. Faiz Muhammad Khan,
Project Director, DIKhan
5. Mr. Israrullah,
AD, LG&RDD, Swabi.
6. Mr. Sardarul Mulk, AD, LG&RDD, Malakand
7. Mr. Akhtar Munir, AD, LG&RDD, Hangu
8. Mr. Riaz Ahmad, PD, MSDP,
University Town, Peshawar
9. Mr. Khalid Israr Shah, AD, LG&RDD,
North-Waziristan Agency
10. Mr. Sajid Gul, Secretary, Provl: Delimitation
Authority, Peshawar
11. Mr. Said Rahman, AD, LG&RDD (Now on leave)
12. Syed Hasnain Kazmi, AD, LG&RDD
(Now on Ex-Pakistan leave)
13. Mr. Muhammad Jehangir, AD,
Dte: FATA, LG&RDD, Warsak Road, Peshawar.
14. Qazi Noorul Wahab,
AD, LG&RDD, Mohmand Agency
15. Mr. Alam Zeb, AD, Dte: General,
LG&RDD FATA, Warsak Road, Peshawar
16. Mr. Shad Muhammad, AD, LG&RDD, Manshra
17. Mr. Sheraz Ahmad, AD, LG&RDD, Khyber Agency
18. M. Abdul Rasheed, AD, LG&RDD, Haripur
19. Mr. Fazlullah, AD, LG&RDD, Mardan
20. Mr. Shibli Khan, AD, Dte: General, LG&RDD
21. Mr. Salim Raza, AD, LG&RDD, Charsadda.
22. Mr. Asadullah, AD, LG&RDD, Swat

Final name

Subject:- FINAL SENIORITY LIST OF ASSISTANT DIRECTORS
/PLANNING OFFICERS, LG&RDD AS IT STOOD ON 22-05-2014.

Memo:

I am directed to refer to the subject cited above and to circulate final seniority list of Assistant Directors/Planning Officers, Local Government, Elections and Rural Development Department as it stood on 22-05-2014 for your information and record.

Encl: As Above.

(IZAZ MULLAI)
SECTION OFFICER (ESTAB)

**GOVERNMENT OF KHYBER PAKHTUNKHWA,
LOCAL GOVERNMENT, ELECTIONS AND RURAL DEVELOPMENT DEPARTMENT**

NOTIFICATION

Dated Peshawar, the 23rd May, 2014

No.SO(LG-D)4-118/B/2014/Vol:II- In pursuance of Section-8 of the Khyber Pakhtunkhwa, Civil Servants Act, 1973. final seniority list of Assistant Directors/Planning Officers, Local Government, Elections and Rural Development Department, Khyber Pakhtunkhwa as it stood on 22-05-2014 is notified as under:-

**FINAL SENIORITY LIST OF ASSISTANT DIRECTORS/PLANNING OFFICERS
LG&RDD AS STOOD ON 22-05-2014**

Total Sanctioned Posts of Assistant Directors (BPS-17):- 36

S #	To	Educational Qualification	Date of Birth of Domicile	Date of 1 st Entry into Service	1 st regular appointment to service/cadre			Promotion to present BPS		Remarks if any
					Date	BPS	Method of recruitment	BPS	Date	
1	2	3	4	5	6	7	8	9	10	11
1	Mrs. Tahira Yasmin	M.P.A	01-01-1957 DIKhan	25.5.1984	25.5.1984	17	Direct	18	17.12.2007	12: She has been re-instated in service in implantation of the Judgement of the Khyber Pakhtunkhwa Service Tribunal, Peshawar and services regularized from the date of her initial appointment i.e. 25.5.1984

Handwritten signature
LOCAL GOVERNMENT, ELECTIONS AND RURAL DEVELOPMENT DEPARTMENT

47

16	Mr. Shad Muhammad	M.Sc	<u>03-04-1958</u> <u>Mansehra</u>	22-11-1988	22-11-1988	16	Direct	17	27-08-2012	
17	Mr. Sheraz Ahmad	M.A (P. Science)	<u>15-09-1960</u> <u>Swabi</u>	22-11-1988	22-11-1988	16	Direct	17	16-05-2013	Seniority position of Mr. Sheraz Ahmad maintained intact in light of Para-7 of the S&GA Department Circular letter NO.SOR-I(S&GAD)1-29/75, dated 13-04-1987 (copy attached)
18	Mr. Abdul Rashid	M.A	<u>01-01-1961</u> <u>Haripur</u>	22-11-1988	22-11-1988	16	Direct	17	27-08-2012	
19	Mr. Fazlullah	M.A (Sociology)	<u>08-10-1962</u> <u>Swabi</u>	22-11-1988	22-11-1988	16	Direct	17	16-05-2013	Seniority position of Mr. Sheraz Ahmad maintained intact in light of Para-7 of the S&GA Department Circular letter NO.SOR-I(S&GAD)1-29/75, dated 13-04-1987 (copy attached)
20	Mr. Shibli Khan	M.Sc (Hons: Agri)	<u>01-05-1965</u> <u>Swabi</u>	22-11-1988	22-11-1988	16	Direct	17	16-05-2013	-do-
21	Mr. Salim Raza	M.A	<u>15-12-1964</u> <u>Charsadda</u>	28-02-2990 (Supervisor BS-9)	28-02-1990	B-9	Promotee	17	27-8-2012	
22	Mr. Asadullah	M.B.A	<u>28-09-1966</u> <u>Charsadda</u>	-do-	-do-	B-9	Promotee	-do-	27-8-2012	

Attended
 GENERAL OFFICER Contd. P/43
 LOCAL OFFICE
 PUNJAB ELECTRICITY BOARD

-48-

To
The Worthy Chief Secretary
Govt. of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.

ANNEX Q 1-48
Recd

25/6/14



Subject: Departmental Representation against the impugned order dated 22.05.2011 issued by the Secretary LG&RDD and the impugned Final Seniority List circulated vide letter dated 28.05.2014 whereby appellant was shown as junior in violation of the law and rules.

Respected Sir,

With due respect I have the honour to submit this departmental representation for your kind consideration and favourable action on the following facts and grounds:

1. That appellant and others were initially appointed as Progress Officers (BPS-16) in the then Local Government & Rural Development Department (LG&RDD) way back in the year 1988 on contract basis. Subsequently, they approached the Hon'ble Peshawar High Court Peshawar for regularization of their services but could not succeed and meanwhile their services were terminated. Their request before the hon'ble Apex Court also failed and they were directed to approach the Provincial Service Tribunal. On their approach to the Service Tribunal their appeals were dismissed and consequently they again approached the Apex Court and finally their appeals allowed vide Judgment dated 25.08.2005 (Annex:-A) and appellant and others were reinstated into service *with all back benefits.*
2. That the judgment of the Hon'ble Apex Court was implemented by the Department by reinstating the appellant and others in service with all back benefits and *regularized them with effect from the date of their initial appointment* vide notification dated 10.11.2005 and 16.12.2005 (Annex:-B & C).
3. That since the appellant was also entitled for promotion to the higher grade as a consequence of the Judgment of the Hon'ble Apex Court which was denied to him, therefore, appellant and others filed writ Petition No.793/2007 in the Hon'ble Peshawar High Court Peshawar which was disposed of vide order dated 18.10.2011 (Annex:-D) with direction to the Department to decide the matter in accordance with law as per the observation of the Hon'ble Court given in the order viz:

"It is not clear from the available record that when the petitioners became eligible for being promoted to the next higher scale and what were the rules applicable thereto and what was the ratio of vacancies to be filled

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through the promotion and what was the ratio of the vacancies to be filled by initial recruitment. All these questions are to be decided by the Department in the first instance, we, therefore, would not embark upon such exercise while hearing the petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. We, therefore, while disposing of this writ petition direct the office to send it to the departmental authority to decide it in accordance with law as hinted to above within two months. This writ petition, thus, stands disposed of."

4. That the Department, in the light of the Judgment *ibid*, took up the case of the appellant and others and asked for the advise of the Establishment Department and Finance Department as would be evident from the letter dated 26.11.2011 (Annex:-E) by answering the queries hinted to by the hon'ble Peshawar High Court, Peshawar in lucid manner. The Establishment Department vide letter dated 20.12.2011 (Annex:-F) advised that in terms of the employees on contract basis (Regulation of services) Act, 1989 read with the Judgment of the Apex Court announced on 25.08.2005, the services of the appellant stood regularized with effect from the date of their contractual appointments. The Department is therefore, required to determine their seniority viz-a-viz those appointed on regular basis in the defunct Directorate and consider their promotion in the light of the service rules of their posts subject to the availability of vacant positions in the cadre/service group.
5. That inspite of the clear position as explained above still the desired promotion was not granted to the appellant, therefore, COC No.87-P/2012 was filed before the Hon'ble Peshawar High Court, Peshawar which was disposed of vide order dated 16.08.2012 (Annex:-G) in view of the statement of the learned Additional Advocate General that the promotion case of the appellant could not be processed as they had not provided ACRs for consideration of the Departmental Promotion Committee, however, it was also observed that the appellant and others might invoke their remedy before an appropriate legal forum if so advised.
6. That thereafter, appellant and others were promoted to the post of Assistant Director (BPS-17) but with immediate effect instead of due date vide order dated 16.05.2013 (Annex:-H). The appellant and his other colleagues challenged the order *ibid*, to the extent of its immediate operation vide Departmental Appeal dated 10.06.2013 (Annex:-I) which was duly processed and culminated in approval by the competent authority of seniority position vide statement (Annex:-J) wherein the appellant and others were shown to have been appointed w.e.f. 22.11.1988 thus the longstanding grievance of the

appellant and others stood redressed.

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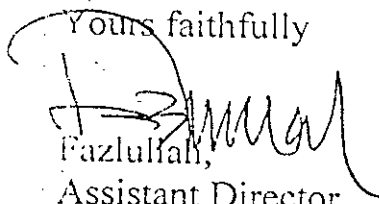
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That in the light of the approval mentioned above for further clarification of the seniority of the appellant and others the Department called for the advise of the Establishment Department vide letter dated ~~10.05.2013~~⁷⁻¹¹⁻²⁻¹³ (Annex:-K) upon which the Establishment Department gave its opinion vide letter dated 10.01.2014 (Annex:-L) whereafter a Tentative Seniority List was circulated vide letter dated 14.03.2014 (Annex:-M) showing the seniority position of the appellant as approved by the competent authority upon which appellant and others submitted the observations (Annex:-N) but meanwhile the those employees who became juniors as a result of regaining seniority of the appellant and others also submitted objections upon the seniority of appellant and others which was allowed vide impugned order dated 22.05.2014 (Annex:-O) thereby again the appellant and others were wrongly held to be juniors and thus the earlier promotion with immediate effect of the appellant was restored by setting aside the order of the appellate authority i.e. the Chief Secretary and immediately the impugned final Seniority List was issued vide letter dated 28.05.2014 (Annex:-P).

8. That as per Seniority List circulated vide letter dated 13.02.1993 (Annex:-Q) the total sanctioned posts of Assistant Directors (BPS-17) as stood on 31.12.1992 were 34 and as per the Service Rules notified on 01.12.1991 (Annex:-R), the ratio of promotion and direct induction was 30%:70% out of which 24 posts fell in the quota of initial recruitment while 10 posts fell in the promotion quota. At the total 5 Progress Officers (BPS-15) were promoted against the available share of 10 post and thus promotion quota was short of 5 posts against which the appellant could have been promoted had they been in regular service on the basis of his entitlement as declared by the Hon'ble Court subsequently along with consequential back benefits.

It is, therefore, humbly requested that on acceptance of this departmental Representation, the impugned order dated 22.05.2014 and the impugned seniority list circulated vide letter dated 28.05.2014 may graciously be set aside and appellant be considered for promotion w.e.f. due date i.e. 22.11.1991 retrospectively with all consequential back benefits.

Yours faithfully


Fazlullah,
Assistant Director
LG&RDD, Mardan

Dated: 25 / 6 / 2014



ANNEX R-52-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____/2014

1279
21-10-2014

Fazlullah,
Assistant Director
LG&RDD, MardanAppellant

Versus

1. **The Govt. of Khyber Pakhtunkhwa through**
Chief Secretary,
Civil Secretariat, Peshawar.
2. **The Secretary to Govt. of Khyber Pakhtunkhwa**
Establishment Department,
Civil Secretariat, Peshawar
3. **The Secretary to Govt. of Khyber Pakhtunkhwa**
Local Government & Rural Development
Department, Civil Secretariat, Peshawar
4. Mr. Faiz Muhammad
5. Mr. Israrullah Khan
6. Mr. Sardar-ul-Mulk
7. Mr. Akhtar Munir Umarzai
8. Riaz Ahmad
9. Khalid Israr Shah
10. Sajid Gul
11. Said Rahman
12. Syed Hussain Kazmi
13. Muhammad Jehangir Khan
14. Qazi Noor-ul-Wahab
15. Alamzeb

Assistant Directors,
LG&RDD through Respondent No.3.....Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNALS ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 22.05.2014 ISSUED BY RESPONDENT NO.3 AND THE IMPUGNED FINAL SENIORITY LIST CIRCULATED VIDE LETTER DATED 28.05.2014 WHEREBY APPELLANT WAS SHOWN AS JUNIOR to RESPONDENT NO.4-15 IN VIOLATION OF THE LAW AND RULES AGAINST WHICH APPELLANT PREFERRED DEPARTMENTAL REPRESENTATION ON 25.06.2014 BUT THE SAME WAS NOT DISPOSED OF WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

On acceptance of the instant appeal, the impugned order dated 22.05.2014 and the impugned seniority list circulated vide letter dated 28.05.2014 may graciously be set aside and a revised Seniority List in light of Establishment Department letter No.SOR-IV(ED)6-1/2013 dated 10.01.2014 (Annex:-N) may be prepared and the appellant be considered for promotion with all back/consequential benefits w.e.f. due date i.e. 22.11.1991 instead of immediate effect i.e. 16.05.2013.

Respectfully Sheweth,

Facts giving rise to the present appeal are as under:-

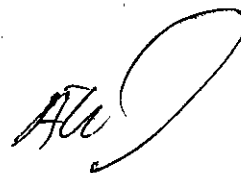
1. That appellant and others were initially appointed as Progress Officers (BPS-16) in the then Local Government & Rural Development Department (LG&RDD) way back in the year 1988 on contract basis. Subsequently, he alongwith others

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approached the Hon'ble Peshawar High Court Peshawar for regularization of their services but could not succeed and meanwhile their services were terminated. Their request before the Hon'ble Apex Court also failed and they were directed to approach the Provincial Service Tribunal. On their approach to the Service Tribunal their appeals were dismissed and consequently they again approached the Apex Court and finally their appeals were allowed vide Judgment dated 25.08.2005 and appellant and others were reinstated into service with all back benefits.

2. That the judgment of the Hon'ble Apex Court was implemented by the Department by reinstating the appellant and others in service with all back benefits and regularized them with effect from the date of their initial appointment vide notification dated 10.11.2005 and 16.12.2005 (Annex:-A & B).
3. That since the appellant was also entitled for promotion to the higher grade as a consequence of the Judgment of the Hon'ble Apex Court which was denied to him, therefore, appellant and others filed Writ Petition No.793/2007 in the Hon'ble Peshawar High Court Peshawar which was disposed of vide order dated 18.10.2011 (Annex:-C) with direction to the Department to decide the matter in accordance with law as per the observation of the Hon'ble Court given in the order viz:



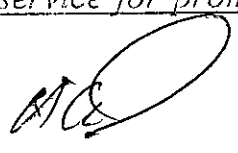
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"It is not clear from the available records that when the petitioners became eligible for being promoted to the next higher scale and what were the rules applicable thereto and what was the ratio of vacancies to be filled through the promotion and what was the ratio of the vacancies to be filled by initial recruitment. All these questions are to be decided by the Department in the first instance, we, therefore, would not embark upon such exercise while hearing the petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. We, therefore, while disposing of this writ petition direct the office to send it to the departmental authority to decide it in accordance with law as hinted to above within two months. This writ petition, thus, stands disposed of."

Thus the Hon'ble Court directed for determining as to:-

- i. When the petitioners became eligible to the next higher grade?*
- ii. What were the Rules applicable thereto (service rules)?*
- iii. What was the ratio of vacancies to be filled by initial recruitment/promotion?*

4. That the Department, in the light of the Judgment *ibid*, took up the case of the appellant and others and asked for the advice of the Establishment Department and Finance Department as would be evident from the letter dated 26.11.2011 (Annex:- D) wherein in Para-5 it has been admitted that "According to service rules notified on 01.12.1991, the length of service for promotion of



Progress Officer (BPS-16) to the post of Assistant Director (BPS-17) LG&RDD was 03 years. The initial date of appointment of the petitioner was 22.11.1988 and thus they have completed the required length of service on 22.11.1991 and became eligible for promotion to the post of AD (BPS-17) LG&RDD at that time but they could not be promoted as their status was contract.

5. That the Establishment Department vide letter dated 20.12.2011 (Annex:-E) advised that in terms of the employees on contract basis (Regulation of services) Act, 1989 read with the Judgment of the Apex Court announced on 25.08.2005, the services of the appellant stood regularized with effect from the date of their contractual appointments. The Department is therefore, required to determine their seniority viz-a-viz those appointed on regular basis in the defunct Directorate and consider their promotion in the light of the service rules of their posts subject to the availability of vacant positions in the cadre /service group.

Thus the advice of the Establishment Department, Govt. of Khyber Pakhtunkhwa ibid was also in line with the decision of the Hon'ble High Court, Peshawar dated 18.10.2011 as explained in para-3 ibid wherein the Department was given direction that since the appellant have been regularized from initial date of appointment i.e. 22.11.1988, they were to be treated at par with others who were similarly placed in the defunct Directorate General

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of LG&RDD and consider their promotion subject to the availability of vacant positions in the cadre/service group.

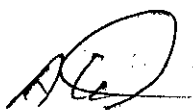
- 57-
6. That as per Seniority List circulated vide letter dated 13.02.1993 (**Annex:-F**) the total sanctioned posts of Assistant Directors (BPS-17) as stood on 31.12.1992 were 34 and as per the Service Rules notified on 01.12.1991 (**Annex:-G**), the ratio of promotion and direct induction was 30%:70% out of which 24 posts fell in the quota of initial recruitment while 10 posts fell in the promotion quota. At the total 5 Progress Officers (BPS-16) were promoted vide order dated 03.08.1992 (**Annex:-H**) against the available share of 10 posts and thus promotion quota was short of 5 posts against which the appellant could have been promoted had they been in regular service on the basis of his entitlement as declared by the Hon'ble Court subsequently along with consequential back benefits.
7. That inspite of the clear position as explained above still the desired promotion was not granted to the appellant, therefore, COC No.87-P/2012 was filed before the Hon'ble Peshawar High Court, Peshawar which was disposed of vide order dated 16.08.2012 (**Annex:-I**) in view of the statement of the learned Additional Advocate General that the promotion case of the appellant could not be processed as they had not provided ACRs for consideration of the Departmental Promotion Committee, however, it was also observed that the

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appellant and others might invoke their remedy before an appropriate legal forum if so advised.

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8. That thereafter, appellant and others were promoted to the post of Assistant Director (BPS-17) but with immediate effect instead of due dates vide orders dated 27.08.2012 & 16.05.2013 (**Annex:-J**). The appellant and his other colleagues challenged the order *ibid*, to the extent of its immediate operation vide Departmental Appeal dated 10.06.2013 (**Annex:-K**) which was duly processed and culminated in approval by the competent authority of seniority position vide Statement (**Annex:-L**) wherein the appellant and others were shown to have been appointed w.e.f. 22.11.1988 thus the longstanding grievance of the appellant and others was required to be redressed accordingly.
9. That in the light of the approval mentioned above for further clarification of the seniority of the appellant and others the Department called for the advice of the Establishment Department vide letter dated 07.11.2013 (**Annex:-M**) upon which the Establishment Department gave its opinion vide letter dated 10.01.2014 (**Annex:-N**) whereafter a Tentative Seniority List was circulated vide letter dated 14.03.2014 (**Annex:-O**) showing the seniority position of the appellant as approved by the competent authority upon which appellant and others submitted the observations (**Annex:-P**) but meanwhile the those employees who became juniors as a result of regaining seniority of the



appellant and others also submitted objections upon the seniority of appellant and others which was allowed vide impugned order dated 22.05.2014 (Annex:-Q) thereby again the appellant and others were wrongly held to be juniors and thus the earlier promotion with immediate effect of the appellant was restored by setting aside the order of the appellate authority i.e. the Chief Secretary and immediately the impugned Final Seniority List was issued vide letter dated 28.05.2014 (Annex:-R).

10. That being aggrieved by the impugned order dated 22.05.2014 and the impugned Seniority List dated 28.05.2014, appellant preferred a Departmental Representation (Annex:-S) thereagainst but the same was not disposed of within the statutory period of 90 days, hence this appeal inter-alia on the following grounds:

Grounds:

- A. That Respondents have not treated appellant in accordance with law, rules and policy on subject and acted in violation of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 and unlawfully issued the impugned order and the impugned order/Seniority List, which are unjust, unfair and hence not sustainable in the eye of law.
- B. That it is admitted position that appellant was reinstated into service by the Hon'ble Apex Court with all back benefits including promotion, up-gradation etc. falling due during the course of



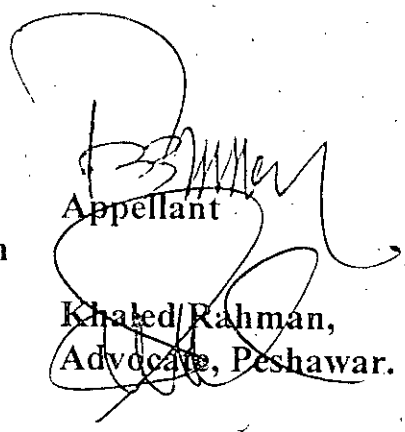
service and in the same spirit the matter was earlier interpreted by the Establishment Department and subsequently agreed to by the competent authority, therefore, the appellant was not only entitled for promotion to the next higher grade but with effect from the date of his entitlement i.e. 22.11.1991 but then by issuing the impugned order and Seniority List the appellant has been deprived of his due right which has resulted in serious miscarriage of justice.

- C. That similarly in the light of the judgment of the Hon'ble Peshawar High Court, Peshawar dated 18.10.2011 the Department vide letter dated 26.09.2011 conceded to the position that the promotion of the appellant had become due w.e.f. 22.11.1991 and the advice on the same subject matter was also called from the Establishment Department which was given in affirmative thereby leaving no room for any suspicion into the matter but inspite of the same when the issue was finalized on the objections of others, the impugned order and the impugned Seniority List was hurriedly issued which has adversely affected the service career of the appellant. Hence the impugned order and the impugned Seniority List are against the law and facts, therefore, are liable to be set aside.
- D. That appellant would like to offer some other grounds during the course of arguments.

It is, therefore, humbly prayed that the instant appeal may graciously be accepted as prayed for above.

ATQ

Any other relief as deemed appropriate in the circumstances of case not specifically asked for, may also be granted to appellant.


Appellant

Through

Khaled/Rahman,
Advocate, Peshawar.

Dated: 24/09/2014



Government Of Khyber Pakhtunkhwa
Local Government Elections & Rural
Development Department.

62
Annex "S"

No. SO(LG-I)/4-118/B/2014/Vol-II
Dated Peshawar, October 27, 2015

To,

1. Mrs. Tahira Yasmeen,
Acting Director, LG&RDD.
2. Mr. Zahoor, Assistant Director / Planning Officer, Directorate FATA,
LG&RDD Warsak Road, Peshawar
3. Mr. Muhammad Fahim, Assistant Director / Planning Officers,
Directorate FATA, LG&RDD Warsak Road, Peshawar
4. Mr. Faiz Muhammad Khan,
Deputy Director, Directorate General, LG&RDD
5. Mr. Israrullah Khan, Assistant Director, LG&RDD Swabi
6. Mr. Shad Muhammad, Assistant Director, LG&RDD Manshara
7. Mr. Sheraz Ahmad, Assistant Director, LG&RDD, Buniar
8. Mr. Abudur Rahsid, Assistant Director, LG&RDD, Haripur
9. Mr. Fazlullah, Assistant Director, LG&RDD, Mardan
10. Mr. Shibli Khan, Assistant Director, Directorate General, LG&RDD
11. Mr. Sardarul Mulk, Assistant Director, LG&RDD, Malakand
12. Mr. Akhtar Munir, Assistant Director, LG&RDD, Hangu
13. Mr. Riaz Ahmad, Deputy Director, (Village Council/Neighbourhood
Council)
14. Mr. Syed Khalid Israr Shah, DD, Local Government Commission
15. Mr. Sajid Gul, Secretary Delimitation Authority.
16. Mr. Said Rahman, Assistant Director, LG&RDD (Now DS (Dev)
17. Mr. Syed Hasnian Kazmi, AD, LG&RDD (Now on Ex-Pakistan Leave)
18. Mr. Muhammad Jehangir, Assistant Director, Directorate FATA,
LG&RDD, Warsak Road Peshawar
19. Mr. Qazi Noorul Wahab, Assistant Director, LG&RDD, (Now TMO,
TMA, Nowshera)
20. Mr. Alam Zeb, Assistant Director, Directorate FATA, LG&RDD
Warsak Road, Peshawar
21. Mr. Salim Raza, Assistant Director, LG&RDD, Charsadda
22. Mr. Asadullah, Assistant Director, LG&RDD, Swat

Subject:

**TENTATIVE SENIORITY LIST OF ASSISTANT DIRECTORS, LG&RDD
AS STOOD ON 30-09-2015.**

I am directed to refer to the subject cited above and to say that as a result of departmental appeals submitted by Abdur Rashid, Shad Muhammad, Sheraz Ahmed, Fazlullah, and Shibli Khan, Assistant Directors against the Final Seniority list of Assistant Directors, LG&RDD circulated vide this department letter of even number dated 14th March, 2014, and advice rendered by the Establishment Department, tentative seniority list of Assistant Directors/Planning Officers, LG&RDD is enclosed herewith with the remarks that reservation on the said list, if any, may be conveyed to this department on or before 30/11/2015 for consideration/settlement before final declaration thereof.

Continue page 2

**TENTATIVE SENIORITY LIST OF ASSISTANT DIRECTORS/PLANNING OFFICERS (BPS-17)
AS STOOD ON LG&RDD ON 30.06.2015**

Total Sanctioned Posts of Assistant Directors: (BPS-17):- 36

S #	Name of Officer	Educational Qualification	Date of Birth of Domicile	Date of 1 st Entry into Service	1 st regular appointment to service/cadre			Promotion to present BFS		Remarks if any
					Date	BPS	Method of recruitment	BPS	Date	
1	Mrs. Tahira Yasmin	M.P.A	1-1-1957 D.I.K	25.5.1984	25.5.1984	17	Direct	18	17.12.2007	She has been re-instated in service in implantation of the Judgement of the Khyber Pakhtunkhwa Service Tribunal, Peshawar and services regularized from the date of her initial appointment i.e. 25.5.1984
2	Mr. M. Zahoor (PO)	M.A Eco:	9.5.1961 MKD	6.11.1988	6.11.1988	17	-do-	18	25-7-2013	
3	Mr. M. Fahim (PO)	M.B.A	14.2.1963 Swat	6.11.1988	6.11.1988	17	-do-	18	-do-	
4	Mr. Faiz Muhammad	M.A (PS) & Journalism	12.4.1962 N.W.A	8.3.1992	8.3.1992	17	-do-	18	-do-	
5	Mr. Israrullah Khan	M.A Eco:	19.4.1964 Swabi	3.3.1992	3.3.1992	17	Direct	18	-do-	

Atty
Muhammad

14	Mr.Khalid Israr Shah	M.A(P.S)	13.10.1966 Bannu	1.9.1993	5.9.1993	17	-do-	18	25-7-2013
15	Mr.Sajid Gul	M.Sc(Agri)	9.9.1965 Dir Lower	5.9.1993	5.9.1993	17	-do-	18	25-7-2013
16	Mr.Said Rehman	M.A (PS)	25.6.1965 Mohmand	13.9.1993	13.9.1993	17	-do-	18	25-7-2013
17	Syed Hussain Kazmi	M.Sc (AGRI)	10.4.1966 Mansehra	7.9.1993	9.9.1993	17	-do-	18	25-7-2013
18	Mr.Muhammad Jehangir	M.Sc	17.9.1965 Peshawar	25.5.1993	25/5/1993 Progress Officer	16	Promotee	18	26/12/1996
19	Qazi Noor ul Wahab	M.Sc	16.3.1966 Nowshera	26.5.1993	26.5.1993 Progress Officer	16	Promotee	18	26.12.1996
20	Mr.Alam Zeb	M.A	15.9.1958 Swabi	23.12.1980	23.12.1980	16	Promotee	18	26.12.1996
21	Mr.Salim Raza	M.A	15-12-1964 Charsadda	28-02-2990 (Supervisor BS-9)	28-02- 1990	B-9	Promotee	17	27-8-2012
22	Mr.Asadullah	B.A	28-09-1966 Charsadda	-do-	-do-	B-9	Promotee	-do-	27-8-2012

Attended
MUK

GOVERNMENT OF KHYBER PAKHTUNKHWA
No. 2982
14-11-14
LG & RDD

To,

The Secretary
Local Government Election and Rural Dev: Department
Government of Khyber Pakhtunkhwa,
Peshawar

Answer T-65-

Subject: TENTATIVE SENIORITY LIST OF ASSISTANT DIRECTORS LG & RDD AS STOOD ON 30.01.2014.

Memo:- Please refer to your letter No.SO(LG-1) 3-367/PHC/2014 dated 14.03.2014 on the subject cited above.

Respected Sir,


With great respect, I Fazlullah hereby submit my objection on the above referred seniority list as under:-

1. That the Honourable Peshawar High Court Peshawar was pleased to render the following order in Writ Petition No.793/2007/PHC on 18.10.2011 for non-implementation of Apex Court judgment dated 25.08.2005.

"It is not clear from the available record when the petitioners become eligible for being promoted to the next higher scale and what were the rules applicable thereto and what was the ratio of vacancies to the filled by initial recruitment, all these questions are to be decided by the Department in the first instance, we, therefore would not embark upon such exercise while hearing a petition under Article 199 of the Constitution

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of Islamic Republic of Pakistan 1973. We therefore, while disposing of this writ petition direct the office to send it to the Department Authority to decide it in accordance with law as hinted to above within two months, this writ petition thus stands disposed”

2. That pursuant to the above stated order, this Department itself worked out the eligibility and exact date of the petitioner promotion as evident from the letter addressed to the Secretary Establishment and Finance while seeking advice vide Letter No.SO(LG-1) 3-367/PHC/2007 dated 26.11.2011 (Annexure A) Para No.5 of the said letter is reproduced as under:-

“According to the service rules notified on 01.12.1991, the length of service for promotion of Progress Officer (BPS-16) to the post of Assistant Director (BPS-17) LG&RDD was 3 years. The initial date of appointment of the petitioners was 22.11.1988 and thus they have completed the required length of service on 22.11.1991 and became eligible for promotion to the post of Assistant Director (BPS-17) LG & RDD at that time but they could not be promoted as their status was contract/ project employees”

3. That in response to this Department letter dated 26.11.2011 as (Annexure A), the Establishment Department sent its reply/advice vide letter No.SOR IV(ED)6-1/2011 dated 20.12.2011 as (Annexure B) which is reproduced below:-

“That in terms of employees on contract basis (Regularization of Services) Act 1989 read with the



-67-

judgment of the Apex Court announced on 25.08.2005, the services of the appellants stood regularized with effect from the contractual appointments. The Department is therefore required to determine their seniority vis-à-vis those appointed on regular basis in the defunct Directorate and consider their promotion in light of the service rules of the posts subject to availability of vacant positions in the cadre/ service group”.

4. In view of the above stated facts based on law/ rules/ judgments of the Honourable Peshawar High Court/ Apex Court and advice of the Establishment Department, it is humbly prayed that I may please be placed on my proper due place in the final seniority list on the date i.e. 22.11.1991 which the Department itself had worked out as evident from para 5 of the LG &RDD letter No. No.SO(LG-1) 3-367/PHC/2007 dated 26.11.2011 as Annexure (A) and also request to correct the date of my regaining original seniority as 22.11.1991 instead of 16.05.213 as mentioned at column NO.10 of the proforma of tentative seniority list please.

Yours Faithfully


Fazlullah.

Assistant Director
LG&RDD Mardan

Date: 16/04/2014





Government Of Khyber Pakhtunkhwa,
Local Government, Elections & Rural Development Department

NOTIFICATION

Dated Peshawar, the 22nd August, 2017

No. SO(LG-D)4-118/ADS/S.LIST/2017/VOL-II In pursuance of Section-8 of the Khyber Pakhtunkhwa, Civil Servants Act, 1973 and approval of the Competent Authority, final seniority list of Assistant Directors, Local Government, Elections & Rural Development Department Khyber Pakhtunkhwa as it stood on 30.12.2016 is notified as under:-

FINAL SENIORITY LIST OF ASSISTANT DIRECTORS (BPS-17) LG&RDD AS STOOD ON 30.12.2016

Total sanctioned posts of Assistant Directors (BPS-17):- 41


S#	Name of officer	Edu Quall	Domicile	Date of Birth	Date of 1 st Entry into Service	1 st regular appointment to service / cadre			Promotion to present BPS		Remarks if any
						Date	BPS	Method of recruitment	BPS	Date	
1	2	3	4	5	6	7	8	9	10	11	12
1	M. Muhammad Zahoor	M.A Eco:	MKD	09.05.1961	06.11.1988	06.11.1988	17	Direct	18 (personally up-graded)	25.07.2013	
2	M. Muhammad Fahim	M.B.A	Swat	14.02.1963	06.11.1988	06.11.1988	17	-do-	18 (personally up-graded)	-do-	
3	Mr. Faiz Muhammad Khan	M.A (PS) & Journalism	N.W.A	12.04.1962	08.03.1992	08.03.1992	17	-do-	18 (personally up-graded)	-do-	

SECTION OFFICER (ESTAB)

4	Mr. Israrullah Khan	M.A Eco:	Swabi	19.04.1964	03.03.1992	03.03.1992	17	-do-	18 (personally up-graded)	-do-	
5	Mr. Shad Muhammad	M.Sc	Mansehra	03.04.1958	22.11.1988	22.11.1988 as Progress Officer	16	Promottee	17	27-08-2012	Consequent upon acceptance of their departmental appeals / representations by the appellate authority, the officers mentioned at Sl. No.6 to 10 have regained their seniority.
<p>SECTION OFFICER (ESTAB) Local Govt. Elections & Rural Development Department KP</p>											
6	Mr. Sheraz Ahmad	M.A (P. Science)	Swabi	15.09.1960	22.11.1988	22.11.1988 as Progress Officer	16	-do-	17	16.05.2013	-do-
7	Mr. Abdul Rashid	M.A	Haripur	01.01.1961	22.11.1988	22.11.1988 as Progress Officer	16	-do-	17	27.08.2012	-do-
8	Mr. Fazlullah	M.A (Sociology)	Swabi	08-10-1962	22.11.1988	22.11.1988 as Progress Officer	16	-do-	17	16-05-2013	-do-
9	Mr. Shibli Khan	M.Sc (Hon: Agri)	Swabi	01.05.1965	22.11.1988	22.11.1988 as Progress Officer	16	-do-	17	16.05.2013	-do-
10	Mr. Sardar-Ul-Mulk	M.Sc (Hons)	MKD	01.01.1966	07.09.1993	07.09.1993	17	Direct	18 (personally up-graded)	25.07.2013	
11	Mr. Akhtar Munir Umerzai	M.Sc (Agri)	Charsadda	01.04.1961	09.09.1993	09.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	

12	Mr. Riaz Ahmad	M.Sc (Hon: Agri)	Swabi	06.05.1966	07.09.1993	07.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
13	Mr. Khalid Israr Shah	M.A (P.Science)	Bannu	13.10.1966	01.09.1993	05.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
14	Mr. Sajid Gul	M.S(Agri)	Dir Lower	09.05.1965	05.09.1993	05.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
15	Mr. Said Rehman	M.A (P.S)	Mohmand Agency	25.06.1965	13.09.1993	13.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
16	Syed Husnain Kazmi	M.Sc (Agri)	Mansehra	10.04.1966	07.09.1993	09.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
17	Mr. Muhammad Jehangir	M.Sc	Peshawar	17.09.1965	25.05.1993	25.05.1993 Progress Officer	16	Promotee	18 (personally up-graded)	26.12.1996	
18	Qazi Noor-Ul-Wahab	M.Sc	Nowshera	16.03.1996	26.05.1993	26.05.1993 Progress Officer	16	-do-	18 (personally up-graded)	26.12.1996	
19	Mr. Alam Zeb	M.A	Swabi	15.09.1958	23.12.1980	23.12.1980	16	-do-	18 (personally up-graded)	26.12.1986	
20	Mr. Salim Raza	M.A	Charsadda	15.12.1964	28.02.1990 (Supervisor B-9)	28.02.1990	BS-9	-do-	17	27.08.2012	
21	Mr. Asadullah	B.A	Charsadda	28.09.1966	-do-	-do-	BS-9	-do-	17	27.08.2012	

SECRETARY TO GOVERNMENT OF KP
LOCAL GOVT. ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

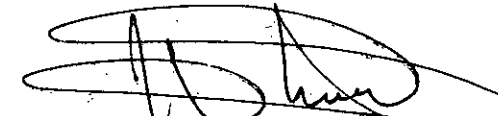

SECTION OFFICER (ES/LS)
Local Govt. Elections & Rural
Development Department KP

No. SO(LG-D)4-118/ADS/S.LIST/2017/VOL-II

Dated Peshawar, the 22nd August, 2017

Copy forwarded to:-

1. The Director General, LG&RDD Khyber Pakhtunkhwa, Peshawar.
2. The Director FATA, LG&RDD Warsak Road Peshawar.
3. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa
4. The Manager Government Printing Press Peshawar. He is requested to provide 100 printed copies of the seniority list.
5. The PS to Secretary LG,E&RD Department Peshawar.
6. The Office order file.


SECTION OFFICER (ESTAB)
Phone # 091-9213224



SHIPPER'S ACCOUNT NO.

ORIGIN

SALES TAX INVOICE

GST NO. 12-00-9808-002-73

REFERENCE / JOB

889702

DESTINATION	PIECES	WEIGHT
		kgs.

FROM (SHIPPER)

TO (CONSIGNEE)

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TELEPHONE / FAX NO.

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<input type="checkbox"/> SAME DAY	<input type="checkbox"/> 2ND DAY	<input type="checkbox"/> SPX

MODE OF PAYMENT		
<input type="checkbox"/> CASH	<input type="checkbox"/> ACCOUNT	
<input type="checkbox"/> COUPON	<input type="checkbox"/> FLYER	<input type="checkbox"/> OTHER

SERVICE	CHARGES
WEIGHT	
HANDLING	
OTHER	
GST	
INSURANCE PREMIUM	
TOTAL	160/-

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Att

70
11/01/01

To

71

The Worthy Chief Secretary
Govt. of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.

Subject: Departmental Representation against the Notification dated 22.08.2017 whereby although appellant was given seniority from a retrospective date but the antedation of promotion w.e.f. 22.11.1991 with back benefits was not allowed.

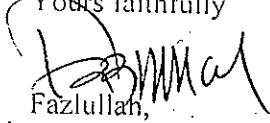
Respected Sir,

1. That appellant and others were initially appointed as Progress Officers (BPS-16) in the then Local Government & Rural Development Department way back in the year 1988 on contract basis. Subsequently, they approached the Hon'ble Peshawar High Court Peshawar for regularization of their services but could not succeed and meanwhile their services were terminated. Their request before the Hon'ble Apex Court also failed and they were directed to approach the Provincial Service Tribunal. On their approach to the Service Tribunal their appeals were dismissed and consequently they again approached the Apex Court and finally their appeals allowed vide Judgment dated 25.08.2005 and appellant and others were reinstated into service *with all back benefits.*
2. That the judgment of the Hon'ble Apex Court was implemented by the Department by reinstating the appellant and others in service with all back benefits and regularized them with effect from the date of their initial appointment vide notification dated 10.11.2005 and 16.12.2005.
3. That since the appellant was also entitled for promotion to the higher grade as a consequence of the Judgment of the Hon'ble Apex Court which was denied to him, therefore, appellant and others filed writ Petition No.793/2007 in the Hon'ble Peshawar High Court Peshawar which was disposed of with certain observation vide order dated 18.10.2011 with direction to the Department to decide the matter in accordance with law.
4. That the Department, in the light of the Judgment *ibid*, took up the case of the appellant and others and asked for the advise of the Establishment Department and Finance Department as would be evident from the letter dated 26.11.2011 by answering the queries hinted to by the hon'ble Peshawar High Court, Peshawar in lucid manner. The Establishment Department vide letter dated 20.12.2011 advised that *in terms of the employees on contract basis (Regulation of services) Act, 1989 read with the Judgment of the Apex Court announced on 25.08.2005, the services of the appellant stood regularized with effect from the date of their contractual appointments. The Department is therefore, required to determine their seniority viz-a-viz those appointed on regular basis in the defunct Directorate and consider their promotion in the light of the service rules of their posts subject to the availability of vacant positions in the cadre/service group.*

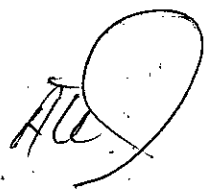
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promotion in the light of the Judgment of the Hon'ble Supreme Court of Pakistan as well as the order of the Hon'ble Peshawar High Court, Peshawar. Moreover, they are also entitled for personal upgradation as mentioned above.

It is, therefore, humbly requested that on acceptance of this departmental Representation, the appellant Promotion as Assistant Director (BPS-17) may be antedated to 22.11.1991 with all consequential back benefits and they may also be allowed personal upgradation to BPS-18 with effect from the date juniors were allowed such upgradation with further consequential back benefits.

Yours faithfully

Fazlullah,
Assistant Director
LG&RDD, Malakand

Dated: 25/09/2017



WAKALAT NAMA

IN THE COURT OF KPK Service Tribunal Peshawar

Fazlullah

Appellant(s)/Petitioner(s)

VERSUS

The Govt and others

Respondent(s)

I/We _____ do hereby appoint **Mr. Khaled Rehman**, Advocate, Supreme Court in the above mentioned case, to do all or any of the following acts, deeds and things.

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to us during the course of proceedings.

AND hereby agree:-


- a. That the Advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Wakalat Nama hereunder, the contents of which have been read/explained to me/us and fully understood by me/us this _____

Attested & Accepted by

Khaled Rehman,
Advocate,
Supreme Court of Pakistan

3-D, Haroon Mansion
Khyber Bazar, Peshawar
Off: Tel: 091-2592458


Signature of Executants

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No.186 /2018

Fazlullah, AD, LG&RDD

..... Appellant

Versus

1 Chief Secretary, Khyber Pakhtunkhwa

2 Secretary, Establishment Department

3 Secretary, LG&RDD

..... Respondents

JOINT PARA-WISE COMMENTS OF RESPONDENTS

Respectfully Sheweth,

Preliminary objections:-

- i. The appellant has got no cause of action to institute the instant appeal;
- ii. The appellant has not come to the Hon'ble Tribunal with clean hands;
- iii. The appellant has not sought departmental remedy before invoking jurisdiction of this Hon'ble Tribunal;
- iv. That appellant has concealed material facts of the case;
- v. The appellant has not impleaded the necessary parties as respondents i.e Secretary Finance and DG, LG&RDD;
- vi. The appeal is not maintainable in its present form;
- vii. The appeal is time barred;
- viii. That the appeal is bad for non-joinder and mis-joinder;
- ix. The appeal is liable to be dismissed.
- x. That this Hon'ble Tribunal has got no jurisdiction.

On Facts

Para No.1

Incorrect. The appellant as well as others were purely contract / project employees appointed under the scheme "Strengthening of LG&RDD" in the Local Government, Elections and Rural Development Department during the year, 1988. Pay etc of the appellant and other such employees was met out of 2% contingencies of the development funds.

Employees on Contract Basis (Regularization of Services) Act, 1989 (Act No.VIII of 1989) was not applicable in the appellant case as posts against which the appellant were appointed not created on revenue side. However, Judgement dated 25-08-2995 of the Supreme Court of Pakistan has already been implemented in letter and spirit by re-instating the petitioners and other such employees in service.

Para No.2

As replied in Para-1 above.

Para No.3

Incorrect. Decision of the Supreme Court of Pakistan in the appellant's case as well as others has been implemented in letter and spirit and all benefits have been given to the re-instated employees including the appellant. It is clarified that the Directorate General, LG&RDD and its allied offices in the settled districts where the re-instated employees were appointed on contract basis were abolished with effect from 01-07-2001 in devolution process. There were no regular posts in the department against which adjustment / posting of the appellant and others was to be considered. Therefore, the Department was left with no other option but to create posts in the surplus pool in LG&RDD to implement judgement of the Supreme Court of Pakistan. This also entitled the incumbents to draw their salaries from the date of their services were terminated.

The surplus staff was either adjusted in the Planning and Development Department, C&W Department as well as in the District Governments. The appellant and his other four colleagues were placed in the Surplus Pool for the purpose of drawl of their salaries as per surplus pool policy of the Provincial Government in vogue. However, one Mr.Razaullah Khan who was senior amongst the incumbents was adjusted against the vacant post of Industrial Development Officer (BPS-16) in Industries

Department on 24-01-2008 in accordance with the policy governing adjustment of surplus staff against vacant posts.

The Directorate General, LG&RDD along with posts was revived during 2012. The appellant and his other colleagues were adjusted against the vacant posts of Progress Officers(BS-16) in LG&RDD. However, on creation of the posts of Assistant Directors (BS-17), the appellant and other were promoted to the posts of Assistant Directors (BS-17), LG&RDD which were lying vacant under promotion quota strictly in accordance with the Promotion Policy of the Provincial Government in vogue with immediate effect.

- Para-4 As replied in Para-3 above.
- Para-5 Incorrect as laid. According to the policy governing promotion of employees, promotion always take effect with immediate effect. A copy of Promotion Policy of the Provincial Government is at Annexure-A.
- Para-6 As replied in Para-3.
- Para-7 Incorrect. On availability of ACRs of the appellants, they were promoted to the post of Assistant Directors (BS-17) in LG&RDD with effect from 16-05-2013 and 27-08-2012 with approval of the Competent Authority.
- Para-8 Incorrect. The appellant and others have been promoted to the post of Assistant Directors(BS-17) in accordance with the Promotion Policy of the Provincial Government in vogue. The appellant and his other colleagues were placed in the seniority list as approved by the Competent Authority (**Annex-B**). However, Mr.Akhtar Munir, Assistant Director, LG&RDD filed Service Appeal No.1182/2017 in this Hon'ble Service Tribunal challenging the seniority position of the appellant and four others. The Service Tribunal accepted the appeal of

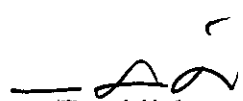
Mr. Akhtar Munir and placed him senior to the private respondents No.5 to 8 i.e. Shad Muhammad, Shehraz Ahmad, Fazlullah, Abdur Rashid and Shibli Khan vide Judgement dated 03-01-2019 (Annex:C).


- Para-9 As replied in para-8 above.
- Para-10 As replied in Para-8 above.
- Para-11 Incorrect. The benefits as per entitlement of the appellant under the rules regulating his services have been availed by him. However, appeal of the appellant is not maintainable on the following grounds.

On Grounds:-

- A. Incorrect. The appellant has been treated strictly in accordance with rules regulating his services. More-over, promotion is always notified with immediate effect.
- B. As replied in Para-8 above.
- C. As replied in Para-8 above.
- D. As replied in Para-A above.
- E. Additional grounds if, produce by the appellant will be replied at the time of arguments.

It is requested that the Hon'ble Service Tribunal may graciously dismiss this service appeal of the appellant with cost.


1 Secretary, Establishment
(Respondent No.2)


2 Secretary, LG, E&RDI
(Respondent No.3)

Promotion Policy

In order to consolidate the existing Promotion Policy, which is embodied in several circular letters issued in piecemeal from time to time, and to facilitate the line departments at every level in prompt processing of promotion cases of Provincial civil servants, it has been decided to issue the "Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009" duly approved by the competent authority, for information and compliance by all concerned. This Policy will apply to promotions of all civil servants holding appointment on regular basis and will come into effect immediately. The Policy consists of the provisions given hereunder:-

I. Length of service.

(a) Minimum length of service for promotion to posts in various basic scales will be as under:

Basic Scale 18 :	5 years' service in BS-17
Basic Scale 19:	12 years' service in BS-17 & above
Basic Scale 20:	17 years' service in BS-17 & above

No proposal for promotion shall be entertained unless the condition of the prescribed length of service is fulfilled.

(b) Service in the lower pay scales for promotion to BP-18 shall be counted as follows:

- (i) Half of the service in BS-16 and one fourth in Basic Scales lower than 16, if any, shall be counted as service in Basic Scale 17.
- (ii) Where initial recruitment takes place in Basic Scale 18 and 19, the length of service prescribed for promotion to higher Basic Scales shall be reduced as indicated below:

Basic Scale 19	7 years' service in BS-18
Basic Scale 20	10 years' service in BS-18 & above, or 3 years' service in BS-19.

II. LINKING OF PROMOTION WITH TRAINING:

(a) Successful completion of the following trainings is mandatory for promotions of officers of the Provincial Civil Service / Provincial Management Service to various Basic Scales:

- Mid-Career Management Course at National Institute of Management (NIM) for promotion to BS-19
- Senior Management Course at National Management College, Lahore for promotion to BS-20
- National Management Course at National Management College, Lahore for promotion to BS-21

(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of specialization as envisaged in the existing Promotion Policy.

(c) The qualifying thresholds of quantification of PERs for nomination to these trainings are as under:

MCMC	60
SMC	70
NMC	75

(d) There will be no exemptions from mandatory trainings. An officer may, however, request for temporary exemption in a particular moment in time but grant of such exemption would be at the discretion of the competent authority. No such request with regard to an officer would be made by the Government Departments concerned.

(e) Three officers shall be nominated for each slot of promotion on the basis of their seniority. Those unwilling to attend will be dropped at their own expense without prejudice to the rights of others and without thwarting or minimizing the chance of improving the quality of service.

(f) Officers failing to undergo mandatory training in spite of two time nominations for training shall stand superseded if such failure was not for the reasons beyond the control of the officers concerned.

Development of Comprehensive Efficiency Index (CEI) for promotion:

(a) The Comprehensive Efficiency Index to be maintained for the purpose of promotion is clarified as under:

(i) The minimum of aggregate marks for promotion to various grades shall be as follows:

Basic Scale	Aggregate marks of Efficiency Index
18	50
19	60
20	70
21	75

Regular BPS-18 officers for promotion to BS-19

- a) PERs will now have weightage of 70 marks.
 - b) MCMC is assigned 15 marks.
 - c) Evaluation of DSB will have 15 marks. The DSB will, however, continue to determine the fitness of a person for promotion from bs-18 to 19 on non-selection basis.
 - d) Exemptions from mandatory training course of MCMC will be evaluated by DSB against 30 marks (inclusive of 15 marks in lieu of training).
- (ii) A panel of two senior most officers shall be placed before the Provincial Selection Board for each vacancy in respect of promotion to BS-18 & 19. Similarly, a panel of three senior most officers shall be submitted to the Provincial Selection Board for each position in respect of promotion to BS-20 and 21 and the officer with the requisite score on the Efficiency Index shall be recommended for promotion.
- (iii) The senior most officer(s) on the panel securing the requisite threshold of the Efficiency Index shall be recommended by the Provincial Selection Board for promotion unless otherwise

deferred. In case of failure to attain the requisite threshold, he (she)/they shall be superseded and the next officer on the panel shall be considered for promotion.

(b) Marks for quantification of PERs, Training Evaluation Reports and Provincial Selection Board evaluation shall be assigned as under:-

S.#	Factor	Marks for promotion to BS-18 & 19	Marks for promotion to BS-20 & 21
1.	Quantification of PERs relating to present grade and previous grade(s) @ 60% : 40%	100%	70%
2.	Training Evaluation Reports as explained hereafter.	--	15%
3.	Evaluation by PSB	--	15%
	Total	100%	100%

(c) A total of 15 marks shall be allocated to the Training Evaluation Reports (Nine marks @ 60% for the training in the existing BPS and Six marks @ 40% in the preceding BS). Evaluation of the reports from the Training Institutions shall be worked out as under:-

(i) It shall be on the basis of Grade Percentage already awarded by the National School of Public Policy (National Management College and Senior Management Wing) and its allied Training Institutions as provided in their reports.

(ii) Previous reports of old Pakistan Administrative Staff College and old NIPAs where no such percentage has been awarded, points shall be worked out on the basis of weighted average of the percentage range of grades followed by these Institutions as reflected in table-A below:

TABLE-A Old PASC & NIPAs

Category	Range	Weighted Average	Points of PASC @ 60%=9	Points of NIPAs @ 40%=6
A. Outstanding	91-100%	95.5%	8.60	5.73
B. Very Good	80-90%	85%	7.65	5.10
C. Good	66-79%	72.5%	6.52	4.35
D. Average	50-65%	57.5%	5.17	3.45
E. Below Average	35-49%	42%	3.78	2.52

(iii) Grades from National Defence University will be computed according to the weighted average based on the Grading Key for the range provided by the NDU as reflected in Table-B below:

TABLE-B NATIONAL DEFENCE UNIVERSITY

Category	Range	Weighted Average	Points @ 60%=9
A. Outstanding	76-100%	88%	7.92
B-Plus. Very Good	66-75.99%	71%	6.39
B-High. Good	61-65.99%	63.5%	5.71
B-Average. Average	56-60.99%	58.5%	5.26
B-Low. Below Average	51-55.99%	53.5%	4.81
B-Minus. Below Average	46-50.99%	48.5%	4.36
C. Below Average	40-45.99%	43%	3.87
F. Below Average	35-39.99%	37.5%	3.37

(d) The officers who have been granted exemption from mandatory training having attained the age of 56 years or completed mandatory period of serving in a Training Institution upto 27-12-2005, may be awarded marks on notional basis for the training factor (for which he/she was exempted) in proportion to the marks obtained by them in the PERs.

*W.e.f 20-3-2009, Civil officers in BS-19 and BS-20 who attain the age of 58 years or above on the scheduled date for commencement of the following training courses will be exempted from the said training courses fro promotion to BS-20 and BS-21 posts respectively.

- I. Senior Management Course (SMC)
- II. National Management Course (NMC)
- III. National Defence Course (NDC)

*No. SOR-VI/E&A/1-6/2008/Vol-VI Dt: 30-6-2010.

(e) Status quo shall be maintained in respect of officers of special cadres such as teachers, doctors, professors, research scholars and incumbents of technical posts for promotion within their own line of specialty. However, for calculation of their CEI, 70% marks shall be assigned to the quantified score of PER s and 30% marks shall be at the disposal of the PSB.

(f) For promotion against selection posts, the officer on the panel securing maximum marks will be recommended for promotion. Thirty marks placed at the disposal of the Provincial Selection Board in such cases shall be awarded for technical qualification, experience and accomplishments (research publications relevant to the field of specialism).

(g) Since three of the aspects of performance i.e. moral integrity, intellectual integrity, quality and output of work do not figure in the existing PER forms, the grades secured and marks scored by the officer in overall assessment shall be notionally repeated for the other complementary evaluative aspects and form the basis of quantification.

(h) The performance of officers shall be evaluated in terms of the following grades and scores:

		Upto 11 th June, 2008	From 12 th June, 2008
1.	Outstanding	--	10 Marks
2.	Very Good	10 marks	8 marks
3.	Good	7 marks	7 marks
4.	Average	5 marks	5 marks
5.	Below Average	1 mark	1 mark

(i) The outstanding grading shall be awarded to officers showing exceptional performance but in no case should exceed 10% of the officers reported on. The grading is not to be printed in the PER form but the reporting officer while rating an officer as "outstanding" may draw another box in his own hand in the form, initial it and write outstanding on the descriptive side. Convincing justification for the award shall be recorded by the reporting /countersigning officer. The discretion of awarding "outstanding" is to be exercised extremely sparingly and the award must be merited.

(j) The quantification formula and instructions for working out quantified score are annexed.

IV. PROMOTION OF OFFICERS WHO ARE ON DEPUTATION, LONG LEAVE, FOREIGN TRAINING:

- a) The civil servants who are on long leave i.e. one year or more, whether within or outside Pakistan, may be considered for promotion on their return from leave after earning one calendar PER. Their seniority shall, however, remain intact.
- b) The civil servants who are on deputation abroad or working with international agencies within Pakistan or abroad, will be asked to return before their cases come up for consideration. If they fail to return, they will not be considered for promotion. They will be considered for promotion after earning one calendar PER and their seniority shall remain intact.
- c) In case of projects partially or fully funded by the Federal or Provincial Government, where PERs are written by officers of Provincial Government, the condition of earning one calendar PER shall not be applicable. The officers on deputation to projects shall be considered for promotion. However, after promotion they will have to actualize their promotion within their cadre.
- d) The civil servants on deputation to Federal Government, Provincial Government, and autonomous/semi T autonomous organization shall be considered for promotion and informed to actualize their promotion within their cadres. They shall have to stay and not be allowed to go back immediately after promotion. Such stay shall be not less than a minimum of two years. If he/she declines his/her actual promotion will take place only when he/she returns to his/her parent cadre. His/her seniority in the higher post shall, however, stand protected.
- e) The cases of promotion of civil servants who have not successfully completed the prescribed mandatory training (MCMC, SMC & NMC) or have not passed the departmental examination for reasons beyond control, shall be deferred.
- f) Promotion of officers still on probation after their promotion in their existing Basic Scales shall not be considered.
- g) A civil servant initially appointed to a post in a Government Department but retaining lien in a department shall not be considered for promotion in his parent department. However, in case he returns to parent department, he would be considered for promotion only after he earns PER for one calendar year.
- h) A civil servant who has resigned shall not be considered for promotion no matter the resignation has yet to be accepted.

V. DEFERMENT OF PROMOTION:

- (a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if
 - (i) His inter-se-seniority is disputed/subjudice.
 - (ii) Disciplinary or departmental proceedings are pending against him.

(iii) The PER dossier is incomplete or any other document/ information required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control.

(b) The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cease to exist. The cases falling under any of the above three categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.

(c) If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to clerical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake is noticed.

(d) If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/ Departmental Promotion Committee and is declared fit for promotion to the next higher basic scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section (4) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior.

(e) If a civil servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year.

(f) If a civil servant is recommended for promotion to the higher basic scale/post by the PSB/DPC and the recommendations are not approved by the competent authority within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

DATE OF PROMOTION:

Promotion will always be notified with immediate effect.

NOTIONAL PROMOTION:

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

PENALTIES.VIII. PROMOTION OF CIVIL SERVANTS WHO ARE AWARDED MINOR

- (a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.
- (b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

IX. PROMOTION IN CASE OF PENDING INVESTIGATIONS BY NAB:

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion fora which may take a considered decision on merits of the case.

2. All the existing instructions on the subject shall stand superseded to the above extent, with immediate effect.

Annex-B

Government Of Khyber Pakhtunkhwa,
Local Government, Elections & Rural Development Department

NOTIFICATION

Dated Peshawar, the 22nd August, 2017

No. SO(LG-114-118/ADS/S.LIST/2017/VOL-II/11965-65) In pursuance of Section-8 of the Khyber Pakhtunkhwa, Civil Servants Act, 1973 and approval of the Competent Authority, final seniority list of Assistant Directors, Local Government, Elections & Rural Development Department Khyber Pakhtunkhwa as it stood on 30.12.2016 is notified as under:-

FINAL SENIORITY LIST OF ASSISTANT DIRECTORS (BPS-17) LG&RDD AS STOOD ON 30.12.2016

Total sanctioned posts of Assistant Directors (BPS-17):- 41

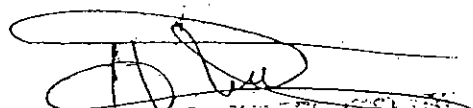
S#	Name of officer	Edu Quall	Domicile	Date of Birth	Date of 1 st Entry into Service	1 st regular appointment to service / cadre			Promotion to present BPS		Remarks if any
						Date	BPS	Method of recruitment	BPS	Date	
1	2	3	4	5	6	7	8	9	10	11	12
1	M. Muhammad Zahoor	M.A Eco:	MKD	09.05.1961	06.11.1988	06.11.1988	17	Direct	18 (personally up-graded)	25.07.2013	
2	M. Muhammad Fahim	M.B.A	Swat	14.02.1963	06.11.1988	06.11.1988	17	-do-	18 (personally up-graded)	-do-	
3	Mr. Faiz Muhammad Khan	M.A (PS) & Journalism	N.W.A	12.04.1962	08.03.1992	08.03.1992	17	-do-	18 (personally up-graded)	-do-	

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4	Mr. Israrullah Khan	M.A Eco:	Swabi	19.04.1964	03.03.1992	03.03.1992	17	-do-	18 (personally up-graded)	-do-	
5	Mr. Shad Muhammad	M.Sc	Mansehra	03.04.1958	22.11.1988	22.11.1988 as Progress Officer	16	Promotee	17	27-08-2012	Consequent upon acceptance of their departmental appeals / representations by the appellate authority, the officers mentioned at Sl. No.6 to 10 have regained their seniority.
6	Mr. Sheraz Ahmad	M.A (P. Science)	Swabi	15.09.1960	22.11.1988	22.11.1988 as Progress Officer	16	-do-	17	16.05.2013	-do-
7	Mr. Abdul Rashid	M.A	Haripur	01.01.1961	22.11.1988	22.11.1988 as Progress Officer	16	-do-	17	27.08.2012	-do-
8	Mr. Fazlullah	M.A (Sociology)	Swabi	08-10-1962	22.11.1988	22.11.1988 as Progress Officer	16	-do-	17	16-05-2013	-do-
9	Mr. Shibli Khan	M.Sc (Hon: Agri)	Swabi	01.05.1965	22.11.1988	22.11.1988 as Progress Officer	16	-do-	17	16.05.2013	-do-
10	Mr. Sardar-Ul-Mulk	M.Sc (Hons)	MKD	01.01.1966	07.09.1993	07.09.1993	17	Direct	18 (personally up-graded)	25.07.2013	
11	Mr. Akhtar	M.Sc	Charsadda	01.04.1961	09.09.1993	09.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	

SECTION OFFICER (ESTAB)
Local Govt. Elections & Rural
Development Department KP

12	Mr. Riaz Ahmad	M.Sc (Hon: Agri)	Swabi	06.05.1966	07.09.1993	07.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
13	Mr. Khalid Israr Shah	M.A (P.Science)	Bannu	13.10.1966	01.09.1993	05.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
14	Mr. Sajid Gul	M.S(Agri)	Dir Lower	09.05.1965	05.09.1993	05.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
15	Mr. Said Rehman	M.A (P.S)	Mohmand Agency	25.06.1965	13.09.1993	13.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
16	Syed Husnain Kazmi	M.Sc (Agri)	Manshera	10.04.1966	07.09.1993	09.09.1993	17	-do-	18 (personally up-graded)	25.07.2013	
17	Mr. Muhammad Jehangir	M.Sc	Peshawar	17.09.1965	25.05.1993	25.05.1993	16	Promotee	18 (personally up-graded)	26.12.1996	
18	Qazi Noor-Ul-Wahab	M.Sc	Nowshera	16.03.1996	26.05.1993	26.05.1993	16	-do-	18 (personally up-graded)	26.12.1996	
19	Mr. Alam Zeb	M.A	Swabi	15.09.1958	23.12.1980	23.12.1980	16	-do-	18 (personally up-graded)	26.12.1986	
20	Mr. Salim Raza	M.A	Charsadda	15.12.1964	28.02.1990 (Supervisor B-9)	28.02.1990	BS-9	-do-	17	27.08.2012	
21	Mr. Asadullah	B.A	Charsadda	28.09.1966	-do-	-do-	BS-9	-do-	17	27.08.2012	


 ELECTION OFFICER (ES-10)
 Local Govt. Elections & Rural
 Development Department KP


SECRETARY TO GOVERNMENT OF KP.
 LOCAL GOVT. ELECTIONS & RURAL
 DEVELOPMENT DEPARTMENT

Dated Peshawar, the 22nd August, 2017

No. SO(LG-I)4-118/ADS/S.LIST/2017/VOL-II

Copy forwarded to:-

1. The Director General, LG&RDD Khyber Pakhtunkhwa, Peshawar.
2. The Director FATA, LG&RDD Warsak Road Peshawar.
3. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa
4. The Manager Government Printing Press Peshawar. He is requested to provide 100 printed copies of the seniority list.
5. The PS to Secretary LG,E&RD Department Peshawar.
6. The Office order file.


SECTION OFFICER (ESTAB)
Phone # 091-9213224

Sr. No.	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3



Amir - C

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
 Appeal No. 1182/2017

Date of Institution ... 24.10.2017
 Date of Decision ... 03.01.2019

Akhtar Munir Assistant Director BPS-18, LG&RDD, Charsada. -
 -----Appellant

1. The Chief Secretary of Govt. Khyber Pakhtunkhwa Peshawar.
2. Secretary Local Government, Election & Rural Development Department Government of Khyber Pakhtunkhwa Peshawar.
3. Director Local Government & Rural Development Department, Govt. of Khyber Pakhtunkhwa.
4. Mr. Shad Muhammad, Assistant Director, LG&RDD, Torghar.
5. Mr. Sheraz Ahmad Assistant Director LG&RDD, Orakzai Agency.
6. Mr. Abdul Rashid Assistant Director LG&RDD, Haripur.
7. Mr. Fazlullah, Assistant Director LG&RDD, Mardan.
8. Mr. Shibli Khan, Assistant Director LG&RDD, Swabi.

-----Respondents
 Mr. Hamid Farooq Durrani.....Chairman
 Mr. Hussain Shah.....Member

ST/EM

03.01.2019

JUDGMENT

HUSSAIN SHAH, MEMBER: - Appellant, learned counsel

for the appellant and Mr. Zia Ullah learned Deputy District Attorney on behalf of the official respondents and counsel for the Private respondents also present.

2. The appellant was appointed as Assistant Director in the Local Government Election & Rural Development Department on 09.09.1993. The respondent No.2 issued a tentative seniority list of the Assistant Directors on 27.10.2015 for information of all concerned with remarks that the objection/reservations, if any of

ATTACHED

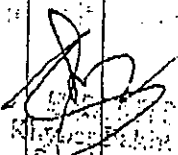
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 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

members of the cadre of Assistant Directors, may be conveyed before 30.11.2015. The appellant conveyed his objection/reservation against the aforementioned seniority list within the stipulated time period on the ground that respondents No.4 to 8 had been shown senior to the appellant. The Competent Authority notified the final seniority list of the Assistant Director of the department On 22.08.2017 without considering the objections/reservations raised by the appellant. The appellant preferred a departmental appeal against the final seniority list on 06.09.2017 which was not accepted and the appellant was directed to seek remedy from the court of law. Feeling aggrieved the appellant preferred the instant service appeal on 24.10.2017 with the prayer that on acceptance of the instant appeal, the seniority position of the appellant be rectified as per basic pay scale and the appellant be declared senior to the respondents No. 4 to 8 with such other relief as may deem fit in the circumstances of the case also be granted.

3. The learned counsel for the appellant argued that the appellant was appointed as Assistant Director on 09.09.1993 in BPS-17 while at that time the respondents No. 4 to 8 were working in BPS-16 as contract employees in a project. The appellant was granted personal up-gradation in BPS-18 on 27.05.2013 while the respondents' No. 4 to 8 were promoted to BPS-17 on different dates in the year 2012 & 2013. The learned counsel for the appellant referred to rules 17 (03)

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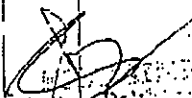
ATTESTED


 Assistant Secretary
 Government of Khyber Pakhtunkhwa
 Peshawar

Promotion and Transfer) Rules, 1989 wherein it has been provided that *"Seniority in various cadres of Civil servants appointed by initial recruitment vis-a-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment"*. As the appellant was appointed as Assistant Director on 09.09.1993 while the respondents No. 4 to 8 were appointed on promotion as Assistant Director in year 2012 & 2013 hence the appellant stands senior to the private respondents therefore the appeal may be accepted as prayed.

4... Contesting the facts, grounds and prayer of the appellant the private respondents' No. 5 to 8 submitted detailed Para-wise comments and Mr. Khalid Rehman, the learned counsel for the replying private respondents, argued the case on their behalf. In reply to the facts the learned counsel for replying respondents argued that they were initially appointed as progress officer (BPS-16) on contract basis. They were regularized, sequel to the judgment of Hon'ble Apex Court, dated 25.08.2005 read with the Employees on contract Basis (Regularization of Services), Act 1989 from the date of their initial appointment vide notification dated 10.11.2005 and 16.12.2005. They were promoted to BPS-17 as Assistant Director in the year 2012 and 2013 with immediate effect. The learned council for respondents no 5 to 8 further argued that the Impugned Seniority list had been issued in response to the claim of

ATTESTED


 KHALID REHMAN
 Senior Counsel,
 Peshawar

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the private respondents on the ground that their services as planning officers in the project be considered as the date of their entry in to the cadre of Assistant director. He further argued that at the stage of departmental representation the Appellant and his colleague challenged the impugned seniority list vide a joint representation which is against the law.

5. The joint reply of the official respondents was argued by the learned DDA and relied mainly on the arguments of the learned counsel of the private respondents 5 to 8. It was contented that private respondents were initially appointed as progress officer (BPS-16) in a project on contract bases and they were regularized as progress officer in the light of the Judgment of the Supreme Court and their seniority was determined as Progress Officers. Latter on the Private Respondents were promoted to the post of Assistant Directors in the years 2012 and 2013. The learned DDA further argued that the impugned seniority was issued after consultation with the Establishment Department.

6. Arguments heard. File perused.

7. The Tribunal examined the record on file and the arguments of the learned counsels of the parties. It is an admitted fact that the appellant was appointed as Assistant Director in the department on 09-09-1993 on the recommendation of the Khyber Pakhtunkhwa Public Service Commission. It is also an admitted fact that the private respondents were initially appointed on contract as progress officers in a project and they were regularized in the light of the

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judgment of the Honorable Supreme Court of Pakistan. It is also admitted fact that the private respondents were promoted to the post of Assistant Director in the years 2012 and 2013. According to the relevant provision of the Section 8 (4) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of the KPK Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 the seniority in a cadre, post or service is reckoned from the date of regular appointments of a civil servant. Moreover Sub-rule 2 of Rule-17 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 provides the touch stone to resolve the instant dispute which is reproduced herein again, *"Seniority in various cadres of Civil servants appointed by initial recruitment vis-a-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment"*.

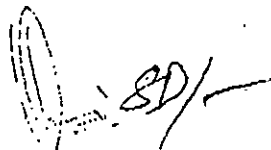
According to the facts as on file appellant was appointed on regular basis as Assistant Director in LGRRD Department on 09-09-1993 while the private respondents were appointed as Assistant Director in the year 2012 and 2013. As such on the basis of the date of regular appointment as Assistant Director the appellant is senior to the private respondents. As regarding the regularization of the

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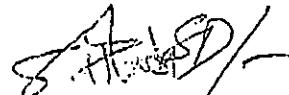
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 Khyber Pakhtunkhwa
 Government
 Peshawar

from their initial appointment is concerned this tribunal is of the view that it cannot be counted for determining their seniority in the cadre or post of Assistant Directors. Their seniority as Assistant Directors in the department shall be determined from the date of their regularly appointed on promotion as Assistant Director and not from the date of their regularization of service as progress officer in BPS-16. In the presence of the explicit provisions of law no interpretation against the spirit of law through advices or consultation among the government department stands grounds.

8. In view of the above discussion the appeal is accepted with direction to the respondents department to place the appellant senior to the private respondents No.5 to 8. Parties are left to bear their own costs. File be consigned to the record room.



(HAMID FAROOQ DURRANI)
CHAIRMAN



(HUSSAIN SHAH)
MEMBER

ANNOUNCED

03.01.2019

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 Date of ... 30-1-19
 Date of delivery of ... 30-1-19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

C.M No _____ 2019

IN
Service Appeal No. 186 /2018

Fazlullah

Appellant

Versus

The Govt. and others..... Respondents

Replication on behalf of appellant in response to application for impleadment.

Respectfully Sheweth,

1&2. Para No.1&2 of application need no reply.

3&4. It is averred that as per the verdict of Apex Court appellant was declared entitled for Seniority and Promotion w.e.f.1992. Moreover, appellant has called in question the Judgment dated 03.01.2019 of this Hon'ble Tribunal before the Apex Court by way of filing CPLA which is yet to be fixed. Hence, the matter is subjudice before the Apex Court.

5. As already explained in the preceding paras.

6. Para No.6 of application is misconceived hence denied. The applicant has got nothing to do with the instant issue and therefore, is not entitled to be arrayed as Respondent in the appeal as no relief has been sought against him.

7&8. Para No.7&8 of application are incorrect.

9&10. Incorrect hence denied. As already explained that applicant has nothing to do with the instant appeal rather appellant was duly awarded Seniority over the applicant in light of the verdict of the Apex Court. Furthermore, the CPLA of the appellant is pending adjudication before the Apex Court and appellant is hopeful for positive decision. therefore, impleadment of the applicant would merely be futile exercised.

11. Needs no reply.

It is, therefore, humbly prayed that the application for impleadment being frivolous may graciously be rejected with costs.

Through

Appellant

Khaled-Rahman
Khaled-Rahman
Advocate, Peshawar

Dated: /04/2016

Verification

As per instructions of my client, verified that the contents of this replication are true and correct to the best of my knowledge and nothing has been concealed from the Hon'ble Tribunal:

Counsel

For appellant

Fazlullah

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No: _____ / 2018

FADLUDDIN Versus Government of KPK etc

WRITTEN STATEMENT / REPLY ON BEHALF OF IMPLEADED
RESPONDENT NO. 4.

Respectfully Sheweth,

Written Statement / Reply, on behalf of Impleaded Respondent No. 3, is as under:

Preliminary Objections:

- A. That, Appellant has got no cause of action to institute the present Appeal before this Honourable Tribunal.
- B. That Appellant has got no locus-standi to institute the present Service Appeal.
- C. That, the Appeal of the Appellant is not maintainable in its present form.
- D. That, the Appellant has been estopped by his own conduct to file the instant Appeal.
- E. That, Appellant has not come to the Tribunal with clean hands and has suppressed material facts from this Honourable Tribunal.
- F. That, Appeal of the Appellant is time barred.

- G. That, Appellant born in the cadre of the Added Respondent in the year 2011 hence could not claim seniority / promotion over and above the Answering Respondent.
- H. That, Promotion is not a vested right and no one could be promoted to a post or cadre without observing the codal formalities.
- I. That, no one can claim promotion from retrospective effect and that too on his own whim and wish.
- J. That, mere completion of minimum tenure does not mean that an incumbent has become entitle to be granted promotion.

REPLY TO THE FACTS:

- 1) Pertains to record and Judgments of different forums hence need no reply from the Answering Respondent.
- 2) Pertain to record.
- 3) Correct to the extent of reproduced Paragraph of the Judgment however the case of the Appellant was simply sent to the Department for decision.
- 4) In response to Para 4 it is submitted that no right could be claimed from inter-departmental communications of Parent Department with other Departments. It is added with respect that the Parent Department has categorically stated in its communications that there are / were no vacant posts of Assistant Directors in the Department, moreover the Department cannot presumptively promote the Appellant from the date of mere completion of 3 years tenure rather for the purpose of promotion there are other number of hurdles which cannot be waived off on whims and wishes of individuals.

- 5) Incorrect as per above Para.
- 6) Incorrect. as per above Para.
- 7) Correct to the extent of COC No. 87-P / 2012 decided on 16.08.2012.
- 8) Incorrect, hence denied. The Order dated 16.05.2013 was just and legal however the Appellant while feeling aggrieved from the same, filed Departmental Representation before the Competent Authority upon which no Final Order was passed. It was mandatory and incumbent upon the Appellant to have filed Service Appeal after lapse of 90 days period. Since the Appellant had not filed any Appeal after 90 days period against the Order dated 16.05.2013, therefore, the chapter of promotion has become past and closed transaction for the Appellant and the same cannot be reagitated in any manner before any forum.
- 9) Para 09 of the Appeal is vague and ambiguous. Actual position is that when Appellant failed to call in question the Order dated 16.05.2013 before any Competent Forum he converted his stance from acquiring retrospective promotion to Seniority. Tentative Seniority List dated 14.03.2014 in which wrong position was allotted to the Appellant was objected by other incumbents in consequence of which Tentative Seniority List dated 14.03.2014 was corrected vide Order dated 22.05.2014 and subsequent Seniority List dated 28.05.2014.
- 10) Correct to the extent of filing of Service Appeal before this Honourable Tribunal. It is added that the Service Appeal was not decided on merits rather the same was withdrawn. Rest of the Para regarding the date of promotion is not correct. The Appellant has himself left the fight of promotion from retrospective effect by not challenging the Order dated 16.05.2013 before any Legal Forum. Instead of

challenging the Promotion Order dated 16.05.2013, the Appellant chose to run and fight for the seniority which cannot be given to him, legally and if for the sake of Arguments, seniority is allotted to him, even then he cannot claim promotion over and above the officers who are higher in scale and grade, copy of the Judgment of Honourable Service Tribunal in Service Appeal No. 1182 / 2017 dated 03.01.2019 is attached as Annexure A.

- 11) Incorrect. Appellant never challenged the Order dated 16.05.2013 before any legal forum hence instant Appeal is time barred. It is important to mention here that the Seniority List dated 22.08.2017 was challenged by the Answering Respondent before this Honourable Court which has been decided in favour of the Appellant thus the very base of acquiring the retrospectivity of Promotion Order dated 16.05.2013 has been set at naught in consequence of which instant Appeal has become infructuous.

REPLY TO THE GROUNDS:


- A. Incorrect: The Seniority List on the basis of which the Appellant was claiming the retrospective promotion has been set aside by this Honourable Tribunal hence instant Appeal cannot give any fruit to the Appellant. Promotion and Seniority are two distinct terms and conditions of service which cannot be claimed by leaving one.
- B. Incorrect, back benefits of the post have already been paid to the Appellant. Promotion and upgradation are consequential benefits which term is not mentioned in the Judgment of Supreme Court of Pakistan. Even otherwise for the purpose of promotion of an incumbent, there are many conditions which are to be fulfilled including ACR, eligibility and fitness etc, moreover no one can claim promotion on his own whims and wishes and on the basis of surmises.

- C. Incorrect and misleading one hence denied. The Department never conceded to give promotion to the Appellant from 1991. Probably, Appellant's conferment of claim of any concession by the Department, is based on inter-departmental communications and covering letters which cannot be treated as any supporting order for the Appellant.
- D. Incorrect. the already granted Seniority has already been taken away in pursuance of Order of this Honourable Tribunal dated 03.01.2019, copy of the same is already attached.
- E. Needs no reply however it is added that the grounds not specifically agitated in the memo of Appeal, cannot be raised later on.

It is, therefore, requested that Appeal be dismissed with cost.


Adduced Respondent

Through:


BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No: _____ / 2018

FAZLULLAH

Versus

Government of KPK etc

AFFIDAVIT

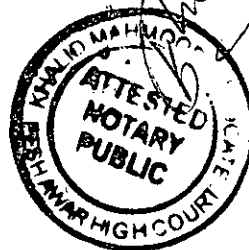
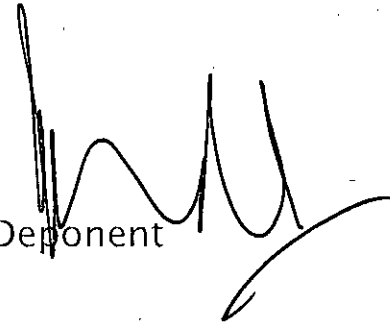
I, AKHTAR MUNIR, Deputy Director, BPS-18, LG&RDD, Mardan, Applicant, do hereby on oath affirm and declare that the contents of the Application are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Identified by:



BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

Deponent



22-7-2020

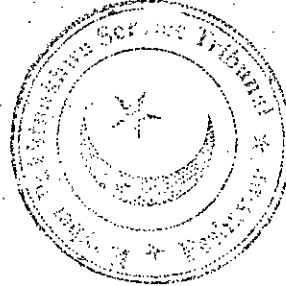
BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Khyber Pakhtunkhwa Service Tribunal

SERVICE APPEAL NO: 1182 / 2017

Diary No. 1214

Dated 24-10-2017



AKHTAR MUNIR,
Assistant Director BPS-18,
LG&RDD, Charsadda.

..... **Appellant**

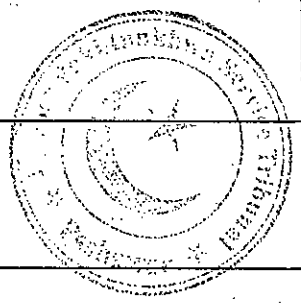
VERSUS

1. **GOVERNMENT OF KHYBER PAKHTUNKHWA,**
Through Chief Secretary,
Government of Khyber Pakhtunkhwa, Peshawar.
2. **SECRETARY,**
Local Government, Elections &
Rural Development Department,
Government of Khyber Pakhtunkhwa, Peshawar.
3. **DIRECTOR,**
Local Government & Rural Development Department,
Government of Khyber Pakhtunkhwa, Peshawar.
4. **MR. SHAD MUHAMMAD,**
Assistant Director, LG&RDD, Torghur.
5. **MR. SHERAZ AHMAD,**
Assistant Director, LG&RDD, Orakzai Agency.
6. **MR. ABDUL RASHID,**
Assistant Director, LG&RDD, Haripur.

Filed today
Sandhu
24/10/17
Registrar

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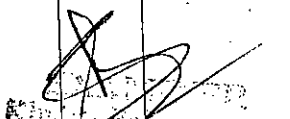
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Registrar
Khyber Pakhtunkhwa Service Tribunal,
Peshawar

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
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	03.01.2019	<div data-bbox="1197 302 1500 604" style="text-align: right;">  </div> <p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u> Appeal No. 1182/2017</p> <p style="text-align: center;">Date of Institution ... 24.10.2017 Date of Decision ... 03.01.2019</p> <p>Akhtar Munir Assistant Director BPS-18, LG&RDD, Charsada. -----Appellant</p> <ol style="list-style-type: none"> 1. The Chief Secretary of Govt. Khyber Pakhtunkhwa Peshawar. 2. Secretary Local Government, Election & Rural Development Department Government of Khyber Pakhtunkhwa Peshawar. 3. Director Local Government & Rural Development Department, Govt. of Khyber Pakhtunkhwa. 4. Mr. Shad Muhammad, Assistant Director, LG&RDD, Torghar. 5. Mr. Sheraz Ahmad Assistant Director LG&RDD, Orakzai Agency. 6. Mr. Abdul Rashid Assistant Director LG&RDD, Haripur. 7. Mr. Fazlullah, Assistant Director LG&RDD, Mardan. 8. Mr. Shibli Khan, Assistant Director LG&RDD, Swabi. <p style="text-align: center;">-----Respondents Mr. Hamid Farooq Durrani.....Chairman Mr. Hussain Shah.....Member</p> <p style="text-align: center;"><u>JUDGMENT</u> <u>HUSSAIN SHAH, MEMBER:</u> - Appellant, learned counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney on behalf of the official respondents and counsel for the Private respondents also present.</p> <p>2. The appellant was appointed as Assistant Director in the Local Government Election & Rural Development Department on 09.09.1993. The respondent No.2 issued a tentative seniority list of the Assistant Directors on 27.10.2015 for information of all concerned with remarks that the objection/reservations, if any of</p>

members of the cadre of Assistant Directors, may be conveyed before 30.11.2015. The appellant conveyed his objection/reservation against the aforementioned seniority list within the stipulated time period on the ground that respondents No.4 to 8 had been shown senior to the appellant. The Competent Authority notified the final seniority list of the Assistant Director of the department On 22.08.2017 without considering the objections/reservations raised by the appellant. The appellant preferred a departmental appeal against the final seniority list on 06.09.2017 which was not accepted and the appellant was directed to seek remedy from the court of law. Feeling aggrieved the appellant preferred the instant service appeal on 24.10.2017 with the prayer that on acceptance of the instant appeal, the seniority position of the appellant be rectified as per basic pay scale and the appellant be declared senior to the respondents No. 4 to 8 with such other relief as may deem fit in the circumstances of the case also be granted.

3. The learned counsel for the appellant argued that the appellant was appointed as Assistant Director on 09.09.1993 in BPS-17 while at that time the respondents No. 4 to 8 were working in BPS-16 as contract employees in a project. The appellant was granted personal up-gradation in BPS-18 on 27.05.2013 while the respondents' No. 4 to 8 were promoted to BPS-17 on different dates in the year 2012 & 2013. The learned counsel for the appellant referred to rules 17 (03) of the Khyber Pakhtunkhwa Civil Servants (Appointment,

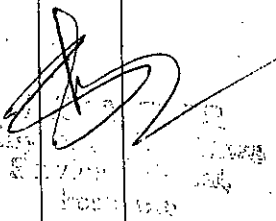
ATTESTED


 Deputy Commissioner
 Service Tribunal,
 Peshawar

Promotion and Transfer) Rules, 1989 wherein it has been provided that *“Seniority in various cadres of Civil servants appointed by initial recruitment vis-a-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment”*. As the appellant was appointed as Assistant Director on 09.09.1993 while the respondents No. 4 to 8 were appointed on promotion as Assistant Director in year 2012 & 2013 hence the appellant stands senior to the private respondents therefore the appeal may be accepted as prayed.

4. Contesting the facts, grounds and prayer of the appellant the private respondents' No. 5 to 8 submitted detailed Para-wise comments and Mr. Khalid Rehman, the learned counsel for the replying private respondents, argued the case on their behalf. In reply to the facts the learned counsel for replying respondents argued that they were initially appointed as progress officer (BPS-16) on contract basis. They were regularized, sequel to the judgment of Hon'ble Apex Court, dated 25.08.2005 read with the Employees on contract Basis (Regularization of Services), Act 1989 from the date of their initial appointment vide notification dated 10.11.2005 and 16.12.2005. They were promoted to BPS-17 as Assistant Director in the year 2012 and 2013 with immediate effect. The learned council for respondents no 5 to 8 further argued that the Impugned Seniority list had been issued in response to the claim of

APPOINTED



the private respondents on the ground that their services as planning officers in the project be considered as the date of their entry in to the cadre of Assistant director. He further argued that at the stage of departmental representation the Appellant and his colleague challenged the impugned seniority list vide a joint representation which is against the law.

5. The joint reply of the official respondents was argued by the learned DDA and relied mainly on the arguments of the learned counsel of the private respondents 5 to 8. It was contented that private respondents were initially appointed as progress officer (BPS-16) in a project on contract bases and they were regularized as Progress officer in the light of the Judgment of the Supreme Court and their seniority was determined as Progress Officers. Latter on the Private Respondents were promoted to the post of Assistant Directors in the years 2012 and 2013. The learned DDA further argued that the impugned seniority was issued after consultation with the Establishment Department.

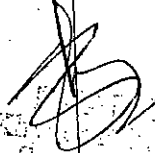
6. Arguments heard. File perused.

7. The Tribunal examined the record on file and the arguments of the learned counsels of the parties. It is an admitted fact that the appellant was appointed as Assistant Director in the department on 09-09-1993 on the recommendation of the Khyber Pakhtunkhwa Public Service Commission. It is also an admitted fact that the private respondents were initially appointed on contract as progress officers in a project and they were regularized in the light of the

judgment of the Honorable Supreme Court of Pakistan. It is also admitted fact that the private respondents were promoted to the post of Assistant Director in the years 2012 and 2013. According to the relevant provision of the Section 8 (4) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of the KPK Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 the seniority in a cadre, post or service is reckoned from the date of regular appointments of a civil servant. Moreover Sub-rule 2 of Rule-17 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 provides the touch stone to resolve the instant dispute which is reproduced herein again, "*Seniority in various cadres of Civil servants appointed by initial recruitment vis-a-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment*".

According to the facts as on file appellant was appointed on regular basis as Assistant Director in LGRRD Department on 09-09-1993 while the private respondents were appointed as Assistant Director in the year 2012 and 2013. As such on the basis of the date of regular appointment as Assistant Director the appellant is senior to the private respondents. As regarding the regularization of the private respondents from the date of their initial appointment as progress officers in BPS-16 and counting their subsequent seniority

ATTESTED


Secretary
Government of Khyber Pakhtunkhwa

from their initial appointment is concerned this tribunal is of the view that it cannot be counted for determining their seniority in the cadre or post of Assistant Directors. Their seniority as Assistant Directors in the department shall be determined from the date of their regularly appointed on promotion as Assistant Director and not from the date of their regularization of service as progress officer in BPS-16. In the presence of the explicit provisions of law no interpretation against the spirit of law through advices or consultation among the government department stands grounds.

8. In view of the above discussion the appeal is accepted with direction to the respondents department to place the appellant senior to the private respondents No.5 to 8. Parties are left to bear their own costs. File be consigned to the record room.



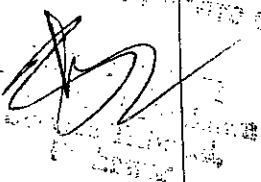
(HAMID FAROOQ DURRANT)
CHAIRMAN



(HUSSAIN SHAH)
MEMBER

ANNOUNCED
03.01.2019

Certified to be true copy



Date of receipt 03-01-19
 No. of copies 2800
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 Date of 30-01-19
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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Fixed for: 14.03.2019

Civil Miscellaneous No: _____ / 2019
In Service Appeal No: 186 / 2018

Fazlollah

VS Govt. of Khyber Pakhtunkhwa etc.

APPLICATION FOR IMPLEADMENT

Respectfully Sheweth,

- 1) That, the titled Service Appeal is pending subjudice before this Honorable Court and is fixed for 14.03.2019.
- 2) That, Appellant was placed senior to the Applicant in Final Seniority List dated 22.08.2017 which was objected and then Challenged before this Honourable Forum through Service Appeal No. 1182 / 2017.
- 3) That, said Service Appeal of the Applicant has now been accepted and the Appellant has been ordered to be placed junior to the Applicant, copy of the Order / Judgment dated 03.01.2019 is attached as **Annexure A**.
- 4) That, it is important to mention here that the Appellant was also arrayed as party in the Service Appeal No. 1182 / 2017 and was heard as well, at length, by this Honourable Tribunal.
- 5) That, instant Appeal has been filed by the Appellant for the purpose of promotion from the year 1991-1992.
- 6) That, if the Appeal of the Appellant is accepted, the valuable service rights / Seniority Position of the Applicant will be infringed.
- 7) That, Appellant has meafidely not impleaded the Applicant as party despite the fact that the case of Seniority was under dispute between the same parties and before the same Tribunal.
- 8) That, any benefit if granted or refused will ultimately affect the Applicant's Seniority.

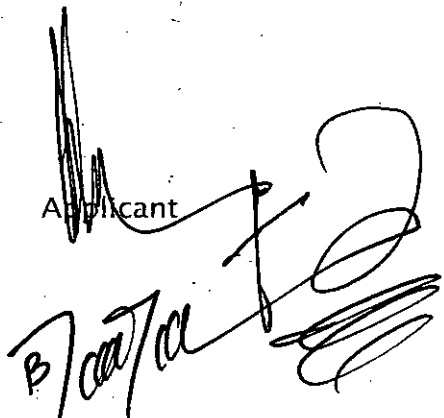
- 9) That, there is no legal lacuna or bar in impleading the Applicant as necessary party.
- 10) That, after Impleadment, the Applicant will help and assist this Honourable Court to arrive at a correct and just decision of the lis, as early as possible.
- 11) That, following are the particulars of the Applicant:

Respondent No. 4 **AKHTAR MUNIR**
Assistant Director,
BPS-18,
LG&RDD, Charsadda.

It is, therefore, requested that Applicant may please be arrayed / added as Respondent No. 4 in the Column of Respondents.

Applicant

Through:


BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Civil Miscellaneous No: _____ / 2019
In Service Appeal No: 186 / 2018

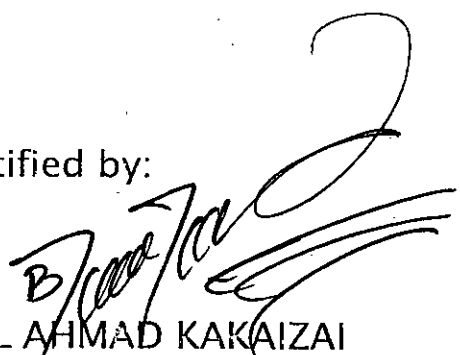
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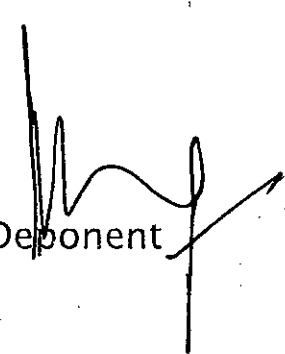
VS Govt. of Khyber Pakhtunkhwa etc.

AFFIDAVIT

I, AKHTAR MUNIR, Assistant Director, BPS-18, LG&RDD, Charsadda, Applicant, do hereby on oath affirm and declare that the contents of the Application are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Identified by:


BILAL AHMAD KAKAIZAI
(Advocate, Peshawar)


Deponent