

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR.**

**SERVICE APPEAL NO. 1759/2022**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. **7258**  
**29/8/22**


Fazal Mawjood, PET (BPS-15), GPS Alpurai No.2 District Shangla,  
.....Appellant

**VERSUS**

Government of, Khyber Pakhtunkhwa through the Secretary E&SE  
Department & others.....Respondents

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Assistant Director (Lit: II)  
E&SE Khyber Pakhtunkhwa,  
Peshawar

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**JOINT PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS No: 1-4.**

**Respectfully Sheweth :-**

The Respondents Submit as under: -

**PRELIMINARY OBJECTIONS.**

- 1 ***That*** the Appellant has got no cause of action & locus standi to file the instant appeal before this Honorable Tribunal.
- 2 ***That*** the appellant has concealed material facts from this Honorable Tribunal in the titled appeal.
- 3 ***That*** the Appellant has not come to this Honorable Court with clean hands.
- 4 ***That*** the appeal is bad for mis-joinder and non-joinder of the necessary Parties.
- 5 ***That*** the appellant is not an aggrieved person within the meaning of Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.
- 6 ***That*** the appeal in hand is barred by the law of limitation.
- 7 ***That*** the appellant could not made out his case for promotion as SST in the Department.
- 8 ***That*** the cadre of the appellant has a separate Service Rules Notified on 26-04-2018 for promotion in the upper scales in the Respondent Department.

**ON FACTS.**

- 1 ***That*** Para-1 is correct that vide Notification dated 24-06-1997, the appellant was appointed against the PST in BPS-07 post on purely contract/temporary bases for the initial period of one year in the

Respondent Department & was further promoted to the post of PET in BPS-15 vide order dated 31-10-2015. (*Copies of the appointment & promotion orders dated 24-06-1997 & 31-10-2011 are attached as Annexure A & B.*)

- 2 *That* Para-3 is incorrect as there is a separate service rules notified vide Notification dated 26-04-2018 whereby, the appellant along with his colleagues has been provided fair chances of promotion in the upper scales against the IPE in BS-17, SIPE BS-18 and even again the post of Additional Director (DE&S) in BS-19 in the Respondent Department subject to the condition of Seniority cum fitness of the appellant. (*Copy of the Notification dated 26-04-2018 is attached as Annexure C.*)
- 3 *That* Para-3 is incorrect as the Service Rules dated 13-11-2012 has been super ceded by the Current Service Rules dated 26-04-2018 for the cadre of the appellant by the Department.
- 4 *That* Para-4 is also incorrect the appellant could not made out his case for promotion as SST under the rules in vogue dated 26-04-2018 in the Department nor qualify the criteria for promotion in the Department.
- 5 *That* Para-5 is incorrect as no Departmental appeal against the Service Rules dated 24-07-2014 has been filed by the appellant till date.
- 6 *That* Para-6 is incorrect as the appellant has got no cause of action to filed the instant appeal before this Honorable Tribunal therefore, the appeal in hand is liable to be dismissed on the following grounds inter alia:

#### ON GROUNDS.

- A. Incorrect & not admitted, the Service Rules dated 24-07-2014 is within legal sphere and liable to maintained in favor of the Department.
- B. Incorrect & not admitted. The plea of the appellant is against the factual position of the case on the grounds that he has a separate service rules notified on dated 26-04-2018 by the Respondent Department.
- C. Incorrect & not admitted. The act of the Department is legal and liable to be maintained.
- D. Incorrect & not admitted, the appellant has been treated as per law, rules & policy by the department in the instant case. However, the plea of the appellant is illegal.
- E. Incorrect & not admitted, the act of the Department with regard to the Notification dated 24-07-2014 is legal.
- F. Incorrect & not admitted. The appellant has been treated as per law rules & policy by the department having not violated the provision of Section-9 of the civil servant Act 1973 read with Rule-7 of APT Rules 1989 in the titled case

G. Incorrect & not admitted, the act of the Department is not only legal but is also in accordance with the provision of Article 38 (e) of the constitution of 1973.

H. Incorrect & not admitted. As the appellant is not an aggrieved person within the meaning of Article 212 of the constitution 1973, however, the Respondent also seek leave of this Honorable Tribunal to submit additional ground, record of case Law at the time of arguments on the date of hearing.

**PRAYER:**

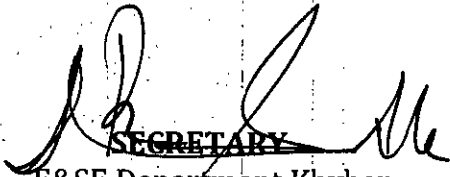
Therefore, in view of the above made submissions, the appeal in hand may kindly be rejected in favor of the Department in the interest of justice.

Dated. \_\_\_/\_\_\_/2023.



**DIRECTOR**

E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondents No: 4)



**SECRETARY**

E&SE Department Khyber  
Pakhtunkhwa, Peshawar.  
(Respondent No: 1)



**SECRETARY**

Govt; to Khyber Pakhtunkhwa  
Establishment Department  
(Respondent No: 2)



**SECRETARY**

Govt; to Khyber Pakhtunkhwa  
Finance Department.  
✓ (Respondent No: 3)

**AFFIDAVIT**

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief.



Deponent

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL PESHAWAR.**

**Service Appeal No: 1759/2022**

**Fazal Mawjood, PET, (BPS-15) GPS Alpurai No.2 District  
Shangla.....Appellant**

**VERSUS**

**Government of, Khyber Pakhtunkhwa through the Secretary E&SE  
Department & others.....Respondents**

**AFFIDAVIT**

**I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE**  
Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on  
oath that the contents of the instant para wise Comments are true & correct  
to the best of my knowledge & belief. It is further stated on oath that in this  
appeal the answering Respondents have neither been placed Ex-Parte nor  
their defense has been struck off/cost.

*[Signature]*  
**Deponent**



1/11/81 Order of P.S.T Appointment.

Consequent upon the selection by the Departmental Selection Committee the D.H.L. Officer (I) Primary Staff has been pleased to appoint the following trained P.T.O candidates at the schools noted against their names in BPS-7-C/Ra/1450-81-2595 plus usual allowances as admissible under the rules with immediate effect subject to the terms and conditions given below:-

S. No.	Name/Name & Home Address	D/O Birth	NO. of School	Remarks
1.	Anwar Zeb S/O Sherin Zeb R/O Kotkay	1.4.78	18/75	GPS Chir Dandai - Against V. Post
2.	Saeedullah S/O Mohd Sarejan R/O Damarai	18.4.78	11/55	GPS Hawalai - do-
3.	Barht War Khan S/O	9.2.75	15/41	GPS Mirai - do-
4.	Shamim Rahman S/O	15.5.74	17/53	GPS Bahora - do-
5.	Abbas Khan R/O W. Kotkay	1.5.73	15/46	GPS Molcar - do-
6.	Sanullah S/O Hazer Band R/O Lilowmai	10.3.75	16/48	GPS Bahora - do-
7.	Jamshaid Ali S/O Bekhti Rawan R/O W.K. Kotkay	27.7.75	17/46	GPS Maba Dandai - do-
8.	Ihsanullah S/O Sarfaraz R/O W.K. Kotkay	1.10.69	18/45	GPS Shage Banda - do-
9.	Abdul Sattar S/O Mohd Afarin R/O Besham	2.1.72	19/45	-do- -10-
10.	Najmul Haq S/O Amir Rahman R/O Korzang	3.3.72	20/45	GPS Jaca Dandai -do-
11.	Khairur Rahman S/O Abdul Wajood R/O W.K. Kotkay	7.4.74	21/45	GPS Bar Lashkar -10-
12.	Misbahul Islam S/O Mohd. P. Jan R/O Hirkichikay Shahpur	1.4.73	28/45	GPS Dara Manai -do-
13.	Amir Saad Khan S/O Hassan Shah R/O Chagam	3.5.75	22/45	GPS Muddai Masra -do-
14.	Gul Amin S/O Mohd Zamin S/O Lilowmai	1.6.71	23/44	GPS Maul Dandai -do-
15.	Abdul Wahab S/O Abdur Rahmat R/O Lilowmai	5. .93	24/44	GPS Kardow Kana -do-

Next Page NO.2.

Handwritten signature and initials.

Appointment order of P.S.T.

-5-

TERMS AND CONDITIONS

1. They will be governed by such rules or regulations as may be prescribed by the Govt. from time to time for the category of the servant which they belong.
2. Their services will may able to termination on one month notice from which side in case of resignation without notice one month pay will be forfeited in lieu thereof.
3. They should join on post within one month of the issue of this notification.
4. Their entrance seniority will be determined in accordance with the merit of Departmental Selection Committee.
5. Charge report should be submitted to all concerned.
6. They shall be probation a period of two years and will have to pass Departmental examination. In case the candidate failed to qualify the Departmental Exam. He shall be given one more chance. If he fails again, then his services will be terminated on arrival/availability of a trained teacher. The services of untrained teacher occupies the post will be terminated.
7. Their original certificates/Degree should be checked and verified from the concerned University/BISE/IDE and Islamic Madrasas concerned before handing over charge.
8. Service books of the teacher must be prepared complete in all respect before handing over charge.
9. Medical examination of assets should be obtained from them immediately & placed on record.
10. They are required to produce health & age certificate from the medical authorities concerned before hand taking over charge.
11. Charge should not be given to the over candidate. Has case for compensation is sent to the concerned quarters.
12. For the transfer before the completion of tenure will discontinue from the service.
13. No Pw/DA is allowed.
14. An undertaking shall be obtained from teacher that he/she will not to what they will serve in dept. for at least 5 years unless he/she are selected by public service Commission for any post.
15. In case of person appointed as an untrained teacher he will have to pass requisite training examination within a period of 4 years failing which his services will be terminated.

NOTE

Complete information of each category (separately) in consolidated form in the prescribed proforma (Attached) along with charge report be submitted by the lower offices to the Director of Primary Education/DPO (P) Swat within a week positively.

(Sd/-)   
 DISTRICT EDUCATION OFFICER (P)   
 PRIMARY S.W.A.T. DISTRICT SWAT

3168-3218

Dated, 24/8/75

- Copy forwarded for information to the:
- 1- Director of Primary Education, Peshawar.
  - 2- P.A. to Secretary to Govt. of NW.F. Peshawar.
  - 3- P.A. to Director of Primary Education, N.I., Peshawar.
  - 4- District Accounts Officer Swat.
  - 5- Sub-Div. Education Officer (P) - Saidu Chaman & Shangla, Peshawar Swat.
  - 6- Originals retained.
  - 7- 1/11/75

DISTRICT EDUCATION OFFICER (P)   
 PRIMARY S.W.A.T. DISTRICT SWAT

ATTACHED   
 24/8/75



Promoted from PST to PET



**OFFICE OF THE  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY & SECONDARY EDUCATION SHANGLA.**  
CONTACT NO. (0996) 850639, 851108- Fax # 851108

6-

**OFFICER ORDER/APPOINTMENT:**

Consequent upon the recommendation / approval by the District Committee (Elementary & Secondary Education) Shingla in its meeting held on 11/10/2011 the undersigned has been pleased to appoint the following PETs on 80% fresh recruitment and 20% by promotion amongst PSTs in BPS-09 (Rs.6200-380-17600) against the vacant posts of PET (Male) mentioned against their names (as per amended regular / contract policy and permanent in case of in service) with immediate effect in the interest of the service

**80% Fresh Recruitments PET (Male)**

#	Name	Father Name	Union Council	Merit Position	School / Station where posted
1	Luqman Shah	Feroz Shah	Alpurai	49.9880	GMS Dawood
2	Zahidur Rahman	Tajuddin	Lilownai	48.2321	GMS Kuz Balkor
3	Hussain Ahmad	Hidayatullah	Lilownai	47.4158	GMS Maira
4	Khalid Hameed	Abdul Hameed	Shapur	45.2641	GMS Larai Pir Khana
5	Shahinullah	Muhammad Zair	Dherai (A)	45.0351	GMS Gunager
6	Amir Rahman	Faleh Muhammad	Alpurai	44.8827	GHS Kormang

**PET 20% PROMOTED FROM PST (MALE)**

#	Name	Father Name	Qualification	Present School	School / Station where posted
1	Fazal Majid	M. Ismael	MA/JDPE	GPS Alpurai #2	GHS Rariyal
2	Fazal Alam	Panda Mand	MA/JDPE	Marwar Das	GMS Bar Balkor

**TERMS AND CONDITIONS:**

- 1) The appointment is purely on contract basis against BPS-09 plus usual allowances as admissible under the rules
- 2) The probation period of appointment shall be two years.
- 3) The appointment of the above candidates as made as regular civil servants for all intents and purposes except for purpose of pension and gratuity. They shall be entitled to receive such amount contributed by him towards the contributory provident fund, along with contribution made by the government, to their account in the said fund, in the prescribed manner, in lieu of pension and gratuity.
- 4) The service of the above candidates will be liable to termination at any time without assigning any notice / reason. In case of resignation without notice, two month pay and allowances if any shall be forfeited to Govt. treasury.
- 5) The candidates should join their posts within fifteen days of the issue of their orders. The Principal / Head Master / Head Mistress / DDO concerned should furnish a certificate to the effect that the candidates have joined the posts within stipulated period of time failing which their appointment will be automatically treated as cancelled.
- 6) The fresh candidates will not be handed over charge if their age exceeded 35 or below 18 years.
- 7) The appointment is subject to the production of health and age certificate from the medical superintendent concerned.
- 8) The Principal / H/M / DDO concerned should check their original certificates / domicile etc before handing over charge and attested copy of the agreement signed on both side be obtained for further verification of certificates / Degrees from concerned Institution.
- 9) Charge report should be submitted in duplicate to all concerned.
- 10) No TA / DA is allowed.

Attested  
[Signature]

Promoted from PST to PET



- 7-
- 11) The candidate will be governed by the terms and condition of service mentioned in agreement / enforced
  - 12) The Principal / H/M / DDO concerned should obtain Surety Bond as well as agreement as to obey the contract policy and will have no right to challenge the contract policy in court of law.

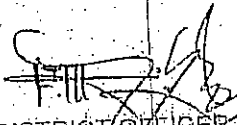
Sd.  
(ABDULLAH)  
EXECUTIVE DISTRICT OFFICER  
ELEMENTARY & SECONDARY EDUCATION /  
CHAIRMAN DSC (E&SE) DISTRICT SHANGLA.

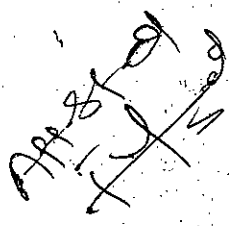
Endost; No. 1663-72

Dated. 31/10/2011

Copy of the above is forwarded to:

- 1) The PS to Secretary Elementary & Secondary Education Department Khyber Pukhtunkhwa, Peshawar.
- 2) The Director Elementary & Secondary Education Khyber Pukhtunkhwa, Peshawar.
- 3) The District Coordination Officer, Shangla.
- 4) The District Account Officer, Shangla.
- 5) All the concerned Principals / Head Masters / Head Mistresses / DDO Concerned.
- 6) The Candidates concerned.

  
DISTRICT OFFICER (M&F)  
ELEMENTARY & SECONDARY EDUCATION  
DISTRICT SHANGLA.



Amend-C

8

1/1/18



# GOVERNMENT OF THE KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT.

## NOTIFICATION

Peshawar, Dated the 26.04.2018

### NOTIFICATION

No.SO(B&A)1-18/2018/DPE Service Rules:- In pursuance of the provision contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notification No. SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

### AMENDMENTS

In the appendix, for Serial No. 1A, the following shall be substituted in respective columns, namely:

S.No.	Nomenclature of the post.	Minimum Qualification for appointment by initial recruitment or by transfer.	Age limit.	Method of recruitment.
1	2	3	4	5
1A.	Instructor Physical Education (BPS-17)	<p>(i). At least Second Class Master's Degree in Physical Education, with Bachelor of Education (B.ED) or equivalent qualification from a recognized university.</p> <p>(ii). If no suitable candidate possessing the above qualification is available a candidate possessing Master's Degree in the Physical Education may be appointed as an Instructor Physical Education subject to the condition that he shall acquire the qualification of Bachelor of Education (B.ED) within three years from the date of his appointment, failing which his service shall be terminated without notice irrespective of any provision of the rules for the time being enforce.</p>	22-35 years	<p>(a) Seventy percent by Promotion, on the basis of seniority-cum-fitness, from among Senior Physical Education Teacher BPS-16 with at least five years' service as Senior Physical Education Teacher (SPETs) and Physical Education Teacher (PET) provided that if no suitable person is available from amongst Senior Physical Education Teacher (SPETs) for promotion then the post shall be filled by promotion on the basis of seniority-cum-fitness from amongst the Physical Education Teacher (PETs) with at least five years' service as such having qualification in column No.3.</p> <p>Note: - if no suitable person is available for promotion then by initial recruitment; and</p> <p>(b) Thirty percent by initial recruitment."</p>

Approved  
Jul 2018

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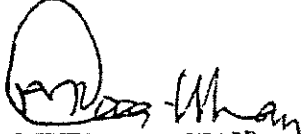
**SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA,  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT.**

**Endst. Of even Number & Date.**

Copy of the above is forwarded to:-

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department.
4. The Secretary to Government of Khyber Pakhtunkhwa Public Service Commission.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Secretary, Social Sector FATA Secretariat, Warsak Road, Peshawar.
7. The Directors E&SE, PITE and DCTE Khyber Pakhtunkhwa.
8. The Director Education, FATA Warsak Road Peshawar.
9. The Director FMIU Finance Department.
10. Manager Government Printing Press, Khyber Pakhtunkhwa Peshawar with the request for publication in the next official Gazette.
11. Deputy Director (EMIS) E&SE Department.
12. All the DEOs (M/F) Khyber Pakhtunkhwa.
13. All the Agency Education Officers/ Agency Accounts Officers, FATA.
14. All District Accounts Officers Khyber Pakhtunkhwa.
15. The Section Officer (FR) Finance Department.
16. The Budget Officer-V and X, Finance Department.
17. Assistant Legal Drafter-IV, Govt: of Khyber Pakhtunkhwa Law Department.
18. Section Officer (R-I) Govt: of Khyber Pakhtunkhwa Establishment Department.
19. The Section Officers (S/M/F) E&SE Department.
20. The Section Officer (Primary) E&SE Department.
21. The Section Officer (Lit-I) E&SE Department.
22. The Section Officer (General) E&SE Department.
23. PS to Governor Khyber Pakhtunkhwa.
24. PS to Chief Minister Khyber Pakhtunkhwa.
25. PS to Chief Secretary Khyber Pakhtunkhwa.
26. PS to Minister Education Khyber Pakhtunkhwa.
27. PS to Secretary E&SE Department.
28. PS to Special Secretary E&SE Department.
29. Master File.

*Attended  
Tul 2/2*

  
(MURTAZA KHAN)  
SECTION OFFICER (BUDGET)