

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

**SERVICE APPEAL NO. 1760/2022**

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 7257  
29/8/22


Ajmal Shahid, PET (BPS-15) GMS Saidra District Battagram,  
.....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

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE  
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**SERVICE APPEAL NO. 1760/2022**

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.....Appellant

**VERSUS**

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Department & others.....Respondents

**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 31-03-2017, the appellant was appointed against the PET in BPS-15 post on purely contract/temporary bases for the initial period of one year in the Respondent Department. ***(Copy of the appointment order 31-03-2017 is attached as (Annexure-A).***

2. ***That*** Para-2 is correct. that vide Notification dated 23-02-2018 the appellant was regularized against the PET in BPS-15 post. (***Copy of the Notification dated 23-02-2018 is Annexure-B***).
3. ***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***).
4. ***That*** Para-4 is incorrect as the Service Rules dated 13-11-2012 Super ceded by the Current Service Rules dated 26-04-2018 for the cadre of the appellant by the Department.
5. ***That*** Para-5 is also incorrect the appellant could not made out his case for promotion as SST under the rules in the Department nor qualify the criteria for promotion in the Department.
6. ***That*** Para-6 is incorrect as no Departmental appeal against the Service Rules dated 24-07-2014 has been filed by the appellant till date.
7. ***That*** Para-7 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

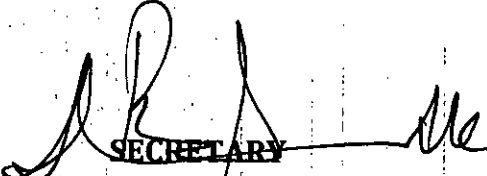
G. Incorrect & not admitted, the act of the Department is not only legal but is also in accordance with the provision of Article 38 (e) of the constitution of 1973.


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.

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

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

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

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

**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: 1760/2022**

**Ajmal Shahid, PET, (BPS-15) GMS Saidra District  
Battagram.....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.**

**Deponent**

**ATTESTED**  
**Notary**  
**Complex Peshawar**  
**24/8-223**



# OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE)

## BATTAGRAMI

Phone # 0997311439 & 0997310670

### APPOINTMENT ORDER

Consequent upon recommendation of the Departmental Selection Committee, appointment of the following candidates are hereby ordered against the post of PET (Male), in Schools for one year mentioned against each (School based), in BPS-15 (Rs.13510-1120-47110) @ Rs. 13510/- fixed plus usual allowances as admissible under the rules on adhoc basis on Contract under the existing policy of the Provincial Government, in Teaching Cadre on the terms and condition given below with effect from the date of their taking over charge:-

S.NO.	Roll No	NAME	FATHER'S NAME	DOB	CNIC	MERIT SCORE	SCHOOL NAME
1	0115000058	SYED NABI SHAH	SAMANDAR SHAH	04/03/1989	13201-2577308-9	126.42	GHS GANTAR
2	0115000071	SAJID ALI	SHER ALI KHAN	01/01/1988	13201-6741479-3	121.25	GHS PASHTO
3	4515000567	SYED ABDUL SAMAD	SYED FERAZ SHAH	16/11/1992	16101-4679712-3	117.64	GMS PAZANG
4	0115000050	RIFAYATULLAH	MUHAMMAD TAWAN	05/05/1980	13201-3845750-7	114.31	GMS GANGWAL
5	0115000023	AJMAL SHAHID	SHAHIDEEN	10/04/1995	13202-8859334-7	108.37	GMS SAIDRA
6	0115000071	FIDA HUSSAIN	MUHAMMAD HUSSAIN KHAN	15/07/1989	13201-0407007-7	105.34	GHS NEHAR
7	0115000053	MUHAMMAD HAZAR	SAKHAWAT	03/01/1981	13201-1835511-7	105.09	GMS DHONDARA
8	0115000016	ZAKIR ALI KHAN	SARDAR ALI KHAN	01/03/1987	13202-1594970-7	99.16	GMS JHANGRI PASHTO
9	0115000020	FAKHRUL ISLAM	SAIF UR REHMAN	27/10/1991	13201-7011366-1	97.03	GMS BARACHAR

### TERMS & CONDITIONS

1. NO TA/DA etc is allowed.
2. Charge reports should be submitted to all concerned in duplicate.
3. Appointment is purely on temporary & contract basis initially for one year from the date of issuance.
4. He should not be handed over charge if his age exceeds 35 years or below 18 years except Serial No Mr: Muhammad Hazar to whom upper age automatically relaxed vide Government of Khyb Pakhtunkhwa Establishment and Administration Department (Establishment Wing Notification No SOE-III/E&AD)/2-1-2007 Dated Peshawar the: 01-March-2008, wherein 03 years automatically a relaxation is given to candidate belong to Backward Area.
5. Appointment is subject to the condition that the certificate/documents must be verified from the concerned authorities, by the DEO, anyone found producing bogus Certificate will be reported to the law enforcing agencies for further action. Expenditure on verification will be borne by the appointees.
6. Their services are liable to termination on one month's notice from either side. In case of resignation without notice her one-month pay/allowances shall be forfeited to the Government.
7. Pay will not be drawn until and unless a certificate regarding verification of his documents and P release Order is issued by this office.
8. They should join their post within 10 days of the issuance of this notification. In case of failure to join the post within stipulated period, her appointment will stands expired automatically and no subsequent appeal etc shall be entertained.
9. Health and Age Certificate should be produced from the Medical Superintendent concerned before taking over charge.
10. Before handing over charge, they will have to sign an agreement with the Department as per terms & condition of this appointment Order otherwise this order will not be valid.
11. They will be governed by such rules and regulations as may be issued from time to time by the Govt.

Assistant District Education Officer  
Battagram

AFB/2008  
FEB 2008

-5-

12. Their services shall be terminated at any time, in case their performance is found unsatisfactory during her contract period. In case of misconduct, they shall be proceeded under the rules framed from time to time.
13. Their appointment is made on School based, they will have to serve at the place of posting, and the service is not transferable to any other station.
14. Before handing over charge, once again their documents may be checked by the DDO concerned, if they have not the required relevant qualifications as per rules or in case of any degree/certificate issued after September 30/09/2016, against which they claimed score for merit they may not be handed over charge of the post.

Sd-  
Muhammad Riaz Swat  
District Education Officer  
(Male) Battagram

Endst No. 3235-45 /EB-II/PET/NTS 2017. Dated Battagram the 31/03/2017

Copy forwarded to:

1. The Director E&SE Khyber Pakhtunkhwa, Peshawar
2. The Deputy Commissioner Battagram.
3. The PS to the Secretary to Govt. Khyber Pakhtunkhwa E&SE Department.
4. The District Accounts Officer, Battagram.
5. The Principal/Head Master concerned.
6. The Accountant Local Office.
7. The candidates concerned.
8. DMO IMU Battagram.
9. DEMIS Local Office.
10. Master File.

APPROVED  
[Signature]

[Signature]  
Assistant Sub Divisional  
Education Officer (M)  
Battagram

Dy: District Education Officer  
(Male) Battagram

**BATTAGRAM**

EMAIL: emlsbattagram@gmail.com PHONE NO: 0997543640 & 539



-6- "B"

**Notification.**

In pursuance of The Khyber Pakhtunkhwa Employees of the Elementary & Secondary Education (Appointment & Regularization of Services) Act, 2017 (Khyber Pakhtunkhwa Act No.1 of 2018) & Elementary & Secondary Education Department Govt of Khyber Pakhtunkhwa Notification No. SO(S/F)E&SED/3-2/2018/SIT/Contract dated: 16-02-2018, services of the following (10) PET Teachers appointed through NTS on adhoc basis on contract, are hereby regularized in BPS-15, on the same post in teaching cadre on terms and condition given below with effect from the date of their 1st appointment as per detail given against each, in the interest of public service.

Sr	Roll No	Name	Address	Total Marks (out of 200)	School	Appointm ent order No and dated	Extension order No and dated if any
1		JAMIL RAHMAN	Village PO Rohat Tehsil Allai	112.07	GMS TANIKH	2676-82 Dated 28/02/2015	3068-53 Dated 28/02/2017
2	8115000058	SYED NAJI SHAH	Village Cheeran Tehsil Allai	126.42	GHS GANTAR	3235-45 Dated 31/03/2017	NILL
3	8115000074	SAMDALI	Village PO Tullows Tehsil Allai	121.25	GHS PASITO	3235-45 Dated 31/03/2017	NILL
4	451600050*	SYED ABDUL SAMAD	Village Chillar Sakar	117.64	GMS PAZANG	3235-45 Dated 31/03/2017	NILL
5	8115000050	KHAYAT ULLAH	Village PO Rashum Tehsil Allai	114.20	GMS GANGWAL	3235-45 Dated 31/03/2017	NILL
6	8115000023	AMMAL SHAHID	Village Saugh Papeen PO Peshawar Tehsil Battagram	108.37	GMS SAIDRA	3235-45 Dated 31/03/2017	NILL
7	8115000071	FUDA HUSSAIN	Village Kasun PO Baamu Tehsil Allai	105.34	GHS NEHAR	3235-45 Dated 31/03/2017	NILL
8	8115000053	MUHAMMAD LAZAR	Village Cheeran PO Kandoo Tehsil Allai	105.09	GMS DHONDARA	3235-45 Dated 31/03/2017	NILL
9	8115000016	ZAKIR AM KILAN	Village Guli Daq Tehsil & Dist Battagram	99.16	GMS JIANGRI PASHTO	3235-45 Dated 31/03/2017	NILL
10	8115000020	FAHRIUL ISLAM	Village PO Tullows Tehsil Allai	97.03	GMS BARACHAR	3235-45 Dated 31/03/2017	NILL

**TERMS & CONDITIONS.**

1. Their Services shall be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973, the Khyber Pakhtunkhwa (Appointment, Deputation, Posting & Transfer of Teachers, Lecturers, and Instructor Doctors) Regulatory Act, 2011, and such rules & regulations as may be issued from time to time by Government.

*Handwritten signature/initials*



## Notification.

-7-

In pursuance of The Khyber Pakhtunkhwa Civil Servant Act, 1973 as amended in 2013.

2. Their services shall be considered regular and they shall be eligible for pension / deduction of GP Fund in terms of the Khyber Pakhtunkhwa Civil Servant Act, 1973 as amended in 2013.
3. They shall possess the same qualification and experience required for a regular post.
4. Their services are liable to termination on one month notice from either side, in case of resignation without notice, their one month pay / allowances shall be forfeited to the Government.
5. Their regularization shall not affect the promotion quota of existing holders of posts in respective service cadres.
6. The regularization will not be in favor of those, who have not taken over charge or have remained absent from duty or resigned from service and also not for those who are under disciplinary proceedings.
7. The employees whose services are regularized under The Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education (Appointment and Regularization of Services) Act, 2018 (Khyber Pakhtunkhwa Act No.1 of 2018) or in the process of attaining service at the commencement of The Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education (Appointment and regularization of Services) Act, 2017 (Khyber Pakhtunkhwa Act No.1 of 2018) shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of The Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education (Appointment and Regularization of Services) Act, 2017 (Khyber Pakhtunkhwa Act No.1 of 2018), and shall also rank junior to such other persons, if any, who, were appointed on regular basis to the respective service or cadre before the commencement of this Act, irrespective of their actual date of appointment.
8. The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their merit position in such service or cadre.
9. Their seniority shall be determined on the basis of their continuous service in cadre, provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

Endstt: NO 1598-1614 / EB-II/ Regularization (PET)

Copy for information to the:-

1. Director E&SE Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Battagram.
3. District Accounts Officer Battagram.
4. DMO IMU District Battagram.
5. B&AO Local Office.
6. Principals/Head Masters GHSSs/GHSs/GMSs concerned.
7. Teachers concerned.
8. Office copy.

Page: 01/02

JEHAN MUHAMMAD  
DISTRICT EDUCATION OFFICER  
(MALE) BATTAGRAM  
Dated: 23 /02/2018

Attested  
*[Signature]*

*[Signature]*  
DISTRICT EDUCATION OFFICER  
(MALE) BATTAGRAM



**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)	(i). At least Second Class Master's Degree in Physical Education, with Bachelor of Education (B.ED) or equivalent qualification from a recognized university.  (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.	22-35 years	(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.  Note: - if no suitable person is available for promotion then by initial recruitment; and  (b) Thirty percent by initial recruitment."

*Amended*  
*[Signature]*

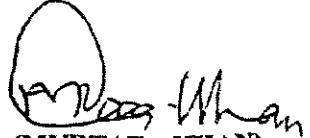
**SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA,  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT.**

**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.

*Attested  
12/12*

  
(MURTAZA KHAN)  
SECTION OFFICER (BUDGET)