

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

Khyber Pakhtunkhwa  
Service Tribunal

**SERVICE APPEAL NO. 1754/2022**

Diary No. **7252**  
**29/11/20**


**Ahmad Ali, PET (BPS-15) GHS Zarin Abad District Charsadda**  
.....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 TRIBUNAL PESHAWAR.**

**SERVICE APPEAL NO. 1754/2022**

Ahmad Ali, PET (BPS-15) GHS Zarin Abad District Charsadda,  
.....Appellant

**VERSUS**

Government of, Khyber Pakhtunkhwa through the Secretary E&SE  
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 28-03-2017, 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 28-03-2017 is attached as (Annexure-A).***

- 2 **That** Para-2 is correct. that vide Notification dated 28-03-2017 the appellant was regularized against the PET in BPS-15 post. *(Copy of the Notification dated 28-03-2017 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

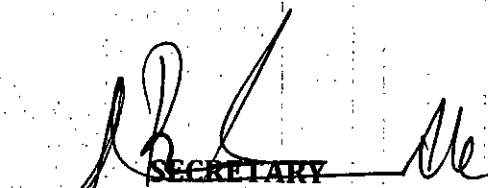
G. Incorrect & not admitted, the act of the Department is not only legal but is also in accordance with the provision of Article 38 (e) of the constitution of 1973.

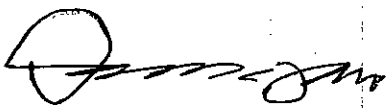
H. Incorrect & not admitted. As the appellant is not an aggrieved person within the meaning of Article 212 of the constitution 1973, however, the Respondent also seek leave of this Honorable Tribunal to submit additional ground, record of case Law at the time of arguments on the date of hearing.


**PRAYER:**

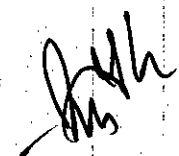
Therefore, in view of the above made submissions, the appeal in hand may kindly be rejected in favor of the Department in the interest of justice.

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  
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: 1754/2022**

**Ahmad Ali, PET, (BPS-15) GHS Zarin Abad, District  
Charsadda.....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**



"A" -4-

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) CHARSADDA

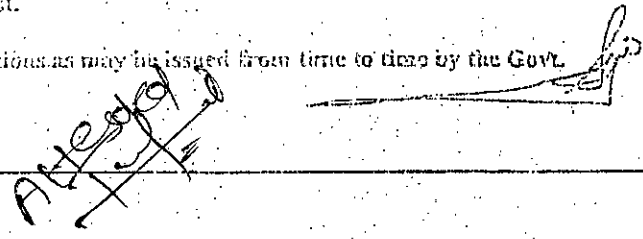
OFFICE ORDER

Consequent upon the recommendation of the District Selection Committee, appointment of the following candidates are hereby ordered against the post of PET (BTS-15), School based Rs. 13,100-11,200-7,110) G.O. 13310/-fixed plus usual allowances as admissible under the rules on contract basis on basis under the existing policy of the Provincial Government. In Teaching Cadre on the terms and conditions given below with effect from 08.04.2017.

Sr	Name	Father Name	QMC	School	Score	Remarks
01	Alimud Ali	Ghulam Hussain	17101-7124397-5	GMS Zarni Abad	132.92	A.V.Post
02	Ghulib Shan	Farooq Shih	17101-2377773-9	GMS Tangi	130.79	A.V.Post
03	Hanson Khan	Wasil Khan	17101-3800476-1	GMS Dagi Gulam Qadir	130.06	A.V.Post
04	Ghulam Mostafa	Gul Rahman	17101-2667528-9	GMS Mazara	127.79	A.V.Post
05	Alimud Jan	Bacha Gul	17101-2411871-1	GMS Ajeon Killi	120.68	A.V.Post
06	Ilkhbar Ali	Waheed	17101-4191086-7	GHS Kangra	120.68	A.V.Post
07	Mubarak Ali	Akhtar Ali	17101-4289676-5	GMS Sheikh Killi	118.43	A.V.Post
08	Zahid Ur Raluman	Khatista Pahnian	17101-0309109-7	GMS Shahera	118.15	A.V.Post
09	Wasim Hassan	Hassan Mohemmed	17101-0286563-1	GHSS Baitegram	116.36	A.V.Post
10	Aamir Jan	Jansheed Khan	17101-7268342-3	GMS Tarkha Faqir Abad	114.49	A.V.Post
11	Zakria Khan	Zamin Khan	17101-7298055-1	GMS Landaki	111.52	A.V.Post

TERMS & CONDITIONS

1. D.O/A/D.A 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.
4. Appointment is subject to the condition that the certificate/documents must be verified from the concerned authorities by the DDO (concerned). Anyone found producing bogus certificate/degrees will be reported to the law enforcing agencies for further action.
5. Their services are liable to termination on one month's Prior notice from concerned candidates. In case of resignation without notice, his one-month pay/allowances shall be forfeited to the Government.
6. Pay will not be drawn before pay release certificate issued by DDO(M) Charsadda.
7. They have to join their duties within 15 days of the issuance of this notification. In case of failure to join their duties within 15 days of the issuance of this notification, their appointment will expire automatically and no subsequent appeal etc. shall be entertained.
8. Health and Age Certificate should be produced from the Medical Superintendent DHO Charsadda before taking over charge of the post.
9. They will be governed by such rules and regulations as may be issued from time to time by the Govt.

Attested  


-5-

10. Their services shall be terminated at any time, in case their performance is found unsatisfactory during their contract period. In case of misconduct, they shall be proceeded under the rules framed from time to time.
11. Their appointment is made on School based. They will have to serve at the place of posting, and their service is not transferable to any other station.
12. Before handing over charge, once again their documents will be checked. If they have not the required qualification, they may not be handed over charge.

(SIRAJ MUELANIMAD)  
DISTRICT EDUCATION OFFICER  
(MALE) CHARSAJDA

Endat No: 2018-45 / Dated: Charsajda the 28 / 03 / 2017

Copy forwarded for information and necessary action to the:-

1. Director E&SE Deptt: Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Charsajda
3. District Nazim Charsajda.
4. District Accounts Officer Charsajda
5. Principal/Headmaster concerned.
6. Official Concerned
7. Office File

Attested  
[Signature]

[Signature]  
28/3/17  
DISTRICT EDUCATION OFFICER  
(MALE) CHARSAJDA



aB 6  
**DISTRICT EDUCATION OFFICER  
 (M.A.D) CHARS ADDA,  
 Office Ph. No. 091 651 2150**

**Notification.**

In pursuance of The Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education (Appointment and Regularization of Services) Act, 2017 (Khyber Pakhtunkhwa Act No. 1 of 2017) Elementary & Secondary Education Department Govt. of Khyber Pakhtunkhwa Notification No. SO(3/6)/SED/3-2/2018/SPT/Contract dated 16/02/2018 services of the following E/ST employees (contractual N/S on Adhoc basis on Contract p. 01, 2014 to 2017) are hereby regularized in DPS-5 on the same terms & conditions of Teaching Cadre on the terms and conditions given below with effect from the date of their appointment mentioned against each in the interests of public service:

Sr.	Name	Father Name	GNID No.	School	Appointing Authority Contract No. & Date	Contractual Period
01	Imad Khan	Subz Ali Khan	17101-4074023-3	GHS Kharkela	No. 593 5248 (VOM) dated 16/02/2018	01/05/2018
02	Nahar Ull Din	Shad Muhammad	17101-0924109-3	GHS Zaidi Abad	do	do
03	Amir Siyab	Muhammad Amin	17101-113069-7	GHS Hassan Zaidi	No. 525-50 516 dated 16/02/2018	01/05/2018
04	Imdad Ullah	Imdad Ullah	17101-197743-3	GMS Daskhela	No. 516/2/18 16/02/2018	01/05/2018
05	Rashid Khan	Zarif Khan	17101-1641072-5	GMS Shikhar Abad, Pooka	do	do
06	Zafar Khan	Wali Khan	17101-9917320-1	GHS Rullma Ullah Khana	do	do
07	Muhammad Asif	Khalid Khan	17101-0648845-7	GHS Sata Kill	do	do
08	Nisar Ullah Jan	Fazli Walid	17102-7226719-5	GMS Mulluod Abad	No. 563/2/18 dated 26/02/2018	01/05/2018
09	Sahib Slob	Hussan Gill	17101-3879888-7	Govt. Shaheed Azam Sarson SS, Uthmanza	do	do
10	Ahmad Ali	Ghulam Hussain	17101-711397-5	GMS Zain Abad	No. 563/2/18 dated 28/02/2018	01/05/2018
11	Haroon Khan	Yasir Khan	17101-7124397-5	GMS Dug Gulam Qandara	do	do
12	Ahmad Iqbal	Bacha Gill	17101-2411871-1	GMS Noori Khal	do	do
13	Imdad Khan	Yahya	17101-1791086-5	GHS Kharkela	do	do
14	Muhammad Asif	Ahmad Ali	17101-1288072-5	GMS Shikhar Khal	do	do
15	Zahid Ullah	Khuda Bakhsh	17101-0899109-7	GMS Shikhar	do	do
16	Muhammad Asif	Muhammad	17101-0256503-1	GHS Daskhela	No. 563/2/18 dated 16/02/2018	01/05/2018
17	Amir Khan	Fahim Khan	17101-7268342-5	GMS Shikhar Khal, Abad	do	do
18	Zafar Khan	Zafar Khan	17101-7298055-1	GMS Shikhar	do	do
19	Muhammad Usman	Muhammad Usman	17101-0101443-1	GHS Shikhar	No. 563/2/18 dated 16/02/2018	01/05/2018

**TERMS & CONDITIONS**

The services shall be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973, the Khyber Pakhtunkhwa Employees of the Elementary and Secondary Education (Appointment and Regularization of Services) Act, 2017 and the rules and regulations made thereunder. The services of the employees regularized shall be issued from the date of the appointment. The employees shall be considered regular and they shall be eligible for pension and gratuity on the same terms and conditions as the regular employees of the Government of Khyber Pakhtunkhwa. The services shall be regularized on the date of the appointment. The employees shall be liable for one month probationary period from the date of their appointment. The employees shall be liable for one month probationary period from the date of their appointment. The employees shall be liable for one month probationary period from the date of their appointment.



- 7
10. Their services shall be terminated at any time, in case they are found to be inefficient during their contract period. In case of misconduct, they shall be proceeded under the law from time to time.
  11. When appointment is made on School basis, they will have to serve at the place appointed and their service is not transferable to any other station.
  12. Before handing over charge, once again their documents will be checked. If they have not the required qualification, they may not be handed over charge.

(SIRAJ MUHAMMAD)  
DISTRICT EDUCATION OFFICER  
(MALE) CHARSADDA

Order No: 20628-451 / Dated: Charsadda, the 28/03/2017

Copy forwarded for information and necessary action to the:-

1. Director, N&SE Deptt. Khyber Pakhtunkhwa, Peshawar.
2. Deputy Commissioner, Charsadda.
3. District Nazim, Charsadda.
4. District Accounts Officer, Charsadda.
5. Principal/Headmaster concerned.
6. Official Concerned.
7. Office file.

(SIRAJ MUHAMMAD)  
DISTRICT EDUCATION OFFICER  
(MALE) CHARSADDA



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  
1/2/18  
Q. Khan

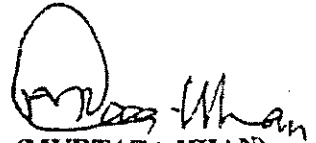
9  
SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA,  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT.

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.

Amended  
16/11/13

  
(MURTAZA KHAN)  
SECTION OFFICER (BUDGET)