BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 1752/2022

Akbar Ali, Mardan	PET,	(BPS-15)	GHHS	Baghicha	Deri,	District
						Service Tribunal
		V]	ERSUS			Dated LS /

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2	Copy of the appointment order dated 27-03-2015.	A	4,5
3,	Copy of the Notification dated 10-03-2018	В	6-8
4	Copy of the Notification dated 26-04-2018.	\mathbf{C}	9,10
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Assistant Director (Lit: II) E&SE Khyber Pakhtunkhwa, Peshawar

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 1752/2022

Akbar Ali, PET, (BPS-15) GHHS Baghicha Deri, District Mardan......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 27-03-2015, 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 27-3-2015 is attached as (Annexure-A).

- 2 That Para-2 is correct. that vide Notification dated 10-03-2018 the appellant was regularized against the PET in BPS-15 post. (Copy of the Notification dated 10-03-2018 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. <u>Incorrect & not admitted</u>, the Service Rules dated 24-07-2014 is within legal sphere and liable to maintained in favor of the Department.
- B. <u>Incorrect & not admitted</u>. 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. <u>Incorrect & not admitted.</u> The act of the Department is legal and liable to be maintained.
- D. <u>Incorrect & not admitted</u>, 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. <u>Incorrect & not admitted</u>, 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.

Depenent

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1752/2022

VERSUS

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



WAN 4 Initial order 15 PE



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN Phone No.09379230151

APPOINTMENT

Consequent upon the recommendation of the Departmental Selection Committee, appointment of the following candidates are hereby ordered against the post of P.E.T. on school based in BPS-15 (Rs.8500-700-29500) Rs.8500/- Fixed plus usual allowances as admissible under the rules on adhoc basis on Contract under the existing policy of the Provincial Govt. in Teaching Cadre on the terms and conditions given below with effect from the date of their taking over charge in the schools as noted against each:

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	6	451500303	ABDUR RAHIM	MUKAMIL KHAN	12.04.1984	GHS ANAR BAIG	SHERO SHEGO KILLI MARDAN	112.32

TERMS & CONDITION

- 1 NO TA/DA etc is allowed
- 2 Charge reports should be submitted to all concerned in duplicate.
- 3 Appointment is purely on temporary and contract basis initially for one year w.e.f. the date of issue this order.
- 4 They should not be handed over charge if they exceeds 35 years or below 18 years.
- 5 Appointment is subject to the condition that the certificate/documents must be verified form the concerned authorities by Drawing Disbursing Officer (concerned) and after verification their verified Degrees/Certificates should be sent to DEO Male Mardan Officer for pay release order in case of
 - fake/bogus certificate/ degrees detected later on their appointment order would be automatically cancelled from the date of appointment order would be automatically canceled from the date of appointment and will be reported, to the law enforcing agencies for legal action.
- 6 Their services are liable to termination on one month's notice from either side. In case of resignation without notice his on-month pay/allowances shall be forfeited to the Government.
- 7 They should join their post within 15 days of the issuance of this notification. In case of failure to Join the post within 15 days of the issuance of this notification, their appointment will expire automatically and no subsequent appeal erc shall be entertained.
- 8 Health and Age Certificate should be produced from the Medical SuperIntendent concerned before taking over charge.
- 9 They will be governed by such rules and regulations as may be issued form time to time by the govt.

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Portocration

Guide Mardan

- 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 proceded under the rules
 - 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 doucment may be checked if they have not the required relevant qualifications they may not be handed over charge.

HANIFULLAH DISTRICT EDUCATION OFFICER (MALE) MARDAN

Copy forwarded for information and necessary action to the:-

1 Director Elementary and Secondary Education Knyber Pakhtunkhwa Peshawar.

- 2 PS to Monister for Elementary/Secondary Education Khyber Pakhtunkhwa Peshawar.
- 3. PS TO Secretary to Govt/Khyher Pulditunkhwa F&SF Department
- 4 District Account Officer Mardan
- 5 All Principal Head Master Concerned.
- 6 PA to the Director E&SE Department Khyber Pakhtunkhwa Peshawar
- 7 Official Concerned.
- 8 Master File

DISTRICT ED LICATION OFFICER (MALE) MARDAN

Regularization order.



OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) MARDAN PH No#0937-9230151

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GOVERNMENT OF THE KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT.

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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.		Method of recruitment.
1	2	3	4	5
The second secon	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 (PETs 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 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."

Page-1 Continued.



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.
- 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.

(MURTAZA KHAN)
SECTION OFFICER (BUDGET)