

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

Khyber Pakhtunkhwa  
Service Tribunal

**SERVICE APPEAL NO. 1751/2022**

Diary No. **7249**

Sher Malik, PET, (BPS-15) GMS Akramabad, District  
Malakand.....Appellant


Dated **29/8/23**

**VERSUS**

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

**INDEX**

S/#	Description of document	Annexure	Pages No.
1	Joint Para Wise Comments along with affidavit		1-3
2	Copy of the appointment order dated 22-03-2005.	A	4
3	Copy of the Notification dated 26-04-2018	B	5,6
5	Authority letter		7

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

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

**SERVICE APPEAL NO. 1751/2022**

Sher Malik, PET, (BPS-15) GMS Akramabad, District  
Malakand.....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 22-03-2005, the appellant was appointed against the PET in BPS-9 post on purely contract/temporary bases for the initial period of one year in the Respondent Department. ***(Copy of the appointment order 22-03-2005 is attached as (Annexure-A).***

2. *That* Para-2 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-B).*
3. *That* Para-3 is incorrect as the Service Rules dated 13-11-2012 Superseded 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 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.

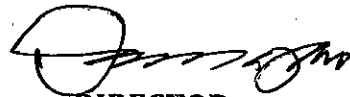
- A. Incorrect & not admitted, the Service Rules dated 24-07-2014 is within legal sphere and liable to maintained in favor of the Department.
- B. Incorrect & not admitted. The plea of the appellant is against the factual position of the case on the grounds that he has a separate service rules notified 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:**

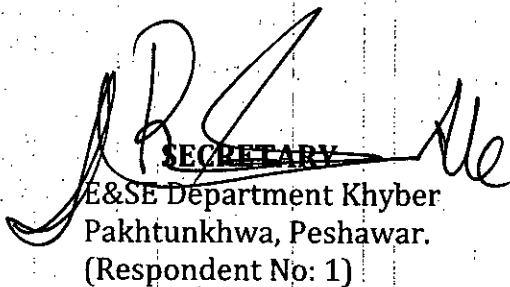
Therefore, in view of the above made submissions, the appeal in hand may kindly be rejected in favor of the Department in the interest of justice.

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)

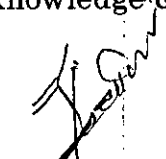


**SECRETARY**

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. 1751/2022**


Sher Malik, PET, (BPS-15) GMS Akramabad, District  
Malakand.....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**





11A11

SHER MALIK case

11A11  
4-

ORDER

In continuation of this office order No. 2043-2003 dated 11-11-2003, consequent upon as recommended by the District Recruitment Committee the following candidates are hereby appointed as PET in SAs-3 (2410-145-6760) plus usual allowances, as per the provisions to under the rules on contract basis subject to the following terms and condition in the interest of public service.

252 OFFICIALS

S.No.	Name and Father Name & Resident	Age	Result Declaration	Qualification	Score	School where Proposed to be appointed	Remarks
1.	Asghar Ali s/o Shaban Bahadur Vill: Daro (M)	7-6-1994	2/2004	BA/BS	48.41	SHS: Konda-Machla (M)	

152 OFFICIALS

1.	Abdul Hadi s/o Muhammad Habib Vill: Baghelat (B)	1-3-2004	2/2004	BA/PST	41.62	SHS: Gumbatal (M)	
2.	Mour Aslam s/o Amir Alam Khan Vill: Sagh Baghelat	1-3-2004	2/2004	BA/PST	37.34	SHS: Zingary	
3.	Sher Malik s/o Abdul Malik Vill: Charanga (Lajko)	22-11-2004	2/2004	BA/PST	47.21	SHS: <i>Muzam Shah</i>	

TERMS AND CONDITIONS

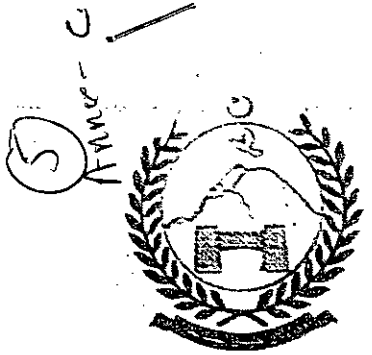
- They will be governed by such rules and regulation as may be prescribed by the Govt from time to time for the category of Govt servant which they belong.
- The initial period of appointment shall be three years after which the contract may be renewed by the competent authority keeping and view the performance of the officer concerned.
- Their appointments are purely on temporary basis liable to termination at any time without notice. In case leaving the service, they will be required to submit one month prior notice to deposit one month pay to Govt treasury in lieu thereof.
- Appointment of the candidate mention above are subject to the condition that they are having domicile in Dir lower.
- They are directed to produce their health and age certificate, from the civil surgeon Dir lower.
- No P.S/D.A will be paid to them on joining the post.
- Their age may not be exceed 35 years and below 18 years.
- Charge report submitted by candidates concerned are directed to check/verify their original documents from the concerned Boards/ Institutions before handing over charge to them.
- The Order is issued as per the provisions accepted as a notice only.
- They are further directed to take over the charge within fifteen days of the issue of this order, failing which their appointment order will be considered as cancelled.
- Approximately 75% appointments has been made purely on batch wise basis and 25% on merit.

(S. IHSAN HAJVID)  
DISTRICT COORDINATING OFFICER,  
DIR LOWER.

Serial No. 9964-77  
Dist: G.D. (Lajko)  
Dist: G.D. (Lajko)  
Secretary S&T DEPT

(S) 2. Dist: G.D. (Lajko)  
Dist: G.D. (Lajko)

*Amissey*  
*Juf*



**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>

*Attested*  
*[Signature]*

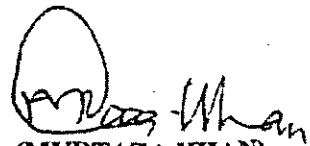
SECRETARY TO  
GOVERNMENT OF KHYBER PAKHTUNKHWA,  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT.

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.

*Approved  
Hafiz*

  
(MURTAZA KHAN)  
SECTION OFFICER (BUDGET)