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Khyber Pakhtunkhwa  
Service Tribunal  
7322  
119/2023

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR**

**APPEAL NO 2005/2022**

**MUHAMMAD UZAIR ALI**

**VS**

**GOVT OF KPK & OTHERS**

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**APPELLANT**

**THROUGH:**

**NOOR MOHAMMAD KHATTAK,  
ADVOCATE SUPREME COURT**

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

**APPEAL NO 2005/2022**

**MUHAMMAD UZAIR ALI**

**VS**

**GOVT OF KPK & OTHERS**

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO THE  
COMMENTS SUBMITTED BY THE RESPONDENTS**

Respectfully Sheweth:

**Counter Replies to Preliminary Objections of the Respondents: -**

1. The appellant, time and again, submitted his appeal for inclusion of his name and enlistment at his due merit in the inter-se-seniority but all his appeals have fallen on to the deaf ears of the respondents; hence, he was forced to knock at the doors of this Honourable Tribunal.
2. The appellant is very much an aggrieved person as the respondent department has shown gross inaction regarding inclusion of his name in the seniority list as per his inter-se-merit position while directors' positions at the Directorate of E&SE and DPD are lying vacant for quite some time waiting for promotees to fill in and occupy. The respondents have indulged in delaying tactics so that the process for PSB remains uninitiated to allow as much time as possible for the look after Director to keep sticking with the top slot at the Directorate.
3. Incorrect. The instant appeal is not "**badly time-barred**" in that:
  - i. The seniority of the DEOs/Additional Directors notified for the first and last time in 2012 and since then it has never been updated in accordance with Civil Servant act 1973 which stipulates in vivid words/terms that seniority has to be updated each year preferably in the month of January but the respondents have never endeavored to update the DEOs seniority in line with this Act for reasons best known to them.
  - ii. The name of the appellant does not exist in the final 2012 seniority whereas it has not been updated since then to accommodate his name in the DEOs inter-se-seniority despite his various appeals/requests. The appellant has been serving the E&SE Department since 2011 as District Education Officer after being selected through Public Service Commission in BPS-19 Management Cadre but his name is still to be included in seniority and notified by the respondents whereas the same is the fundamental right of the appellant like any other civil servant.
  - iii. The Appeal is not time-barred as the name of the appellant is still to be included and notified in inter-se-seniority. As for the health of the 2012 notified seniority, it was premature for the appellant to question it on basis of inter-se-merit of KP Public Service Commission as his name and order of seniority was yet to be determined, included and notified by the respondents.

- iv. By judicial precedent/s the law of limitation does not bar seniority suits/appeals before competent legal forum/s. Kalim Arshad Khan Vs Peshawar High Court, Peshawar through Registrar and others in Service Appeal No.06-P of 2021. copy attached as **Annex-A**. Moreover, this Honourable Tribunal has already granted condonation to hear this appeal.
- v. Directions of the respondent Admn. Department to the Director E&SE are already available directing him/Director to submit draft inter-se-seniority of DEOs/Additional Directors as per law and rules by including all officers not yet enlisted. **Annex-B**

- 4. Incorrect. The appellant has not concealed any material facts from this Honourable Tribunal and in fact submitted his appeal with all the facts of the case, instead, it is the Department which has been unable to finalize and decide the issue.
- 5. Incorrect. The appeal is also not premature in that following the directions of the Admn. Department, the Director Education has forwarded the impugned final updated seniority against the dictate of the Rule-17 (1)(a) of APT Rule, 1989 for approval of the competent authority which has neither been returned nor has been decided yet. In fact, the same has been lying a victim to bureaucratic procrastination, red tapism and delaying tactics for reasons best known to them.

**Para-3 & Para 5** are, therefore, clearly self-contradictory as the respondents are seemingly indecisive, unsure and uncertain whether to treat the appeal as time-barred or premature. In fact, the respondents are desperately confused to find solid grounds that may legally hold to defend their stance against the instant appeal which, on the contrary, is based on facts of constitution, law and rules and is, hence, **neither time-barred nor premature**.

- 6. **As to Para-6 of the Preliminary Objections** alleging the instant appeal as mala fide as the referred High Court adjudications in W.P. No.362/of 2013 & 2049-P/2014 were rendered in petitions. These Petitions were, in fact, not contested on merits of the issue before the Honourable High Court as the Honourable (Court D.I.Khan Bench) itself adjudged/observed in writ Petition No.362/of 2013 as follows:

- The merit list relied on by the petitioner was in fact interview result of EDO (B-19) (**Para-5 of the Judgment**). In other words and as implied in the Judgment, the petitioner did not assail the legal health of the 22.2.2012 notified final seniority on basis of inter-se-merit/seniority of Public Service Commission but on interview result which is not supported by law.
- **Para-5 of the Judgment** noted that the petitioner had challenged the final seniority before the high ups i.e. Chief Secretary which was still then sub-judice.
- **Para-6 of the Judgment** observes that under Article 199 of the 1973 Constitution the jurisdiction of High Court can be invoked only when no other adequate remedy is available. It further goes on to observe that in the instant case the petitioner had already filed appeal before the competent authority (Chief Secretary) therefore the petition was not competent/fit for

adjudication of the High Court. Moreover, it further observed that the petitioner did not come under the ambit of aggrieved person as no order then adverse to his right had been passed nor recommendations had been made then.

- Lastly but more importantly, the Judgment makes it plain that "petitioner and respondents are civil servants and the instant matter relates to the terms and conditions of service and Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973 bars the jurisdiction of this Court to be invoked under Article 199". In other words, the Honourable Peshawar High Court (D.I.Khan Bench) implied/suggested that the case was not fit which should have been contested before the Service Tribunal rather than before the High Court. **Copy of the Judgment attached as Annex-C.**

As to W.P No.2049-P/2014:

- the Peshawar High Court took a very serious view of the matter as to why the petitioner did not disclose the fact in his petition about the dismissal of his earlier petition by D.I.K. Bench vide W.P. No.362/of 2013 which instantly forced the petitioner to beg for unconditional apology. The Court ultimately dismissed the case "being not pressed for". **Copy of the Judgment attached as Annex-D.**

**Counter Replies to "On Facts" of the Respondents: -**

- 1.No counter comment.
- 2.No counter comment.
3. No counter comment.
4. No counter comment.
5. **Para-5** has advertently or inadvertently casted doubt over the lien granted by the Government in favour of the appellant for rejoining the Management Cadre in the E&SE, Department. It seems very naive on part of the respondents that they are unaware of their own record well saved with them. The Government accepted and granted lien to the appellant to rejoin the E&SE Department thereafter which he was posted as DEO Nowshera as the same is clear from the **Annex-E.**
6. No counter comment.
7. No counter comment.
8. The appellant did wait for the response of the competent authority after appealing against the wrongly drafted final updated seniority for approval and ultimately out of compulsion filed the instant appeal after the lapse of stipulated period of time in accordance the KP Appeal Rules, 1986. It is to be noted that inter-se-seniority of the DEOs/Additional Directors has not been updated since 2012 while the appellant is still to be enlisted in the seniority at his due position; hence the same is not premature.

9. The appellant did submit his request for retention of lien which is on record with the respondents and it was on that basis he was allowed to rejoin the E&SE Department as DEOs Management Cadre. **Copy of the application is attached as Annex-F.**

10. No counter comment.

11. No counter comment.

13. The appellant seeks to obtain his seniority in accordance with the APT Rules 1989 which provides for determination of inter-se-seniority as per the inter-se-seniority/merit as communicated by Public Service Commission (Rule-17 (1)(a)). He, therefore, needs not to indulge in self-made analysis/scrutiny of his seniority position.

14. Correct to the extent that competent authority is yet to approve and notify, however, the Directorate has finalized and approved the final updated seniority and has forwarded the same to the Administration Department for further submission to the competent authority for approval. The appellant submitted his appeal against the impugned final updated draft seniority being finalized in blatant violation of the seniority rules but the same was not responded/answered within the stipulated period of 90 days, hence, the instant appeal before this Honourable Tribunal. Neither a final inter-se-seniority has yet been notified nor has the appellant been assured of his due right. Hence, the appellant is rightly/legally an aggrieved person to seek intervention of this Honourable Tribunal.

15. Incorrect. The impugned seniority, in fact, is finalized in clear violation of the seniority rules, inter-se-merit/seniority of Public Service Commission and the letters issued vide dated 05-07-2018 & 13-07-2018 (as referred to above in Para V). As for as the Honourable Peshawar High Court Judgments in Ghulam Qasim Khan Vs Govt; of KPK & Others, the same has been well elucidated above in counter-reply to **Para-6 of the Preliminary Objections** raised by the respondents. It is further to be noted that the mentioned adjudications have never directed for issuance of inter-se-seniority against the relevant rules in the field and against the inter-se-merit/seniority determined by the Public Service Commission.

16. No comments.

17. Amazingly, the respondents Departments themselves admit/confess that the SDEOs (BS-17) and DDEOs (BS-18), who were also recruited vide the same advertisement and on the same condition of 60:40% ratio of teaching and open Quotas respectively, were issued inter-se-seniority on the basis of inter-se-seniority issued by KPK Public Service Commission. Only the DEOs/Additional Directors were meted out the discrimination of 60:40 % ratio for selectees of teaching and open market candidates while notifying their inter-se-seniority which is grossly contrary to Constitution and law. There cannot be two different standards/treatments of civil servants recruited on same terms & conditions, same advertisement and same quota reserved for teaching and open market candidates. Notifying the Inter-se-seniority of the DEOs on basis of the impugned final updated seniority would, therefore, be absolutely discriminatory and against the Constitution and law. It is very unfortunate/intriguing that despite conceding inter-se-seniority based on law

& inter-se-merit of the Public Service Commission to the inter-se-seniority of SDEOs & DDEOs, the respondents are still displaying strange hesitance to apply the same law/rules the inter-se-seniority issue of the DEOs/Additional Directors and notify the same in accordance with the same law, rules and inter-se-seniority issued by the Public Service Commission. Civil Servants selected and initially appointed on the same terms and conditions cannot be discriminated as per the diktat of the Constitution of the Islamic Republic of Pakistan, 1973. Judgments are already available. **Annex-G.**

18. Incorrect. The appellant submitted his appeal against the impugned seniority to the respondents well within the time but his appeal was not answered within the legally stipulate period of time; hence, the appellant does have the legal right to appeal before this Honourable Tribunal while the law does not bar the intervention of this Honourable Tribunal to entertain such appeals.

19. Two of the three posts of Directors (BS-20) are awaiting to be filled in through promotion of suitable BS-19 Officers of the schools Management Cadre on Seniority-cum-fitness basis while the respondents do not seem in mood to notify correct & updated inter-se-seniority of DEOs to initiate the process for promotion. Instead, the respondents are indulging in procrastinations & delaying tactics to run the attached departments on ad hoc stop gape mechanisms without bothering for rightful incumbents. As the inclusion in and enlistment at the right place in the inter-se-seniority is yet to be notified by the Govt; in favour of the appellant and to enable him fit for consideration in the promotion process, the appellant is therefore, rightly an aggrieved person within the meaning of the Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973. **Annex-H**

**Counter Replies to "On Grounds" of the Respondents: -**

- A. Incorrect. The appellant has not been treated as per law and rules as his right of seniority as per law is still to be established/granted.
- B. The impugned seniority (submitted for approval and notification) is not in line with the provisions of the Section-8 of the Civil Servants Act 1973 read with Rule-17 of the APT Rules, 1989 and is not in compliance with Articles 4 & 25 of the Constitution of 1973. Law, rule or policy cannot be made against Fundamental Rights (Articles 8-28) which "takes away or abridges the rights so conferred and any law made in contravention of this clause, to the extent of such contravention be void" as provided in **Article-8** of the Constitution of the Islamic Republic of Pakistan, 1973. Seniority of the civil servant appointed on initial recruitment basis is to be regulated explicitly and strictly in accordance with Civil Servants APT Act 1973 and Rule-17 (1) (a) of the KP Civil Servants (Appointment, Promotion & Transfer) Rules, 1989. No other self-made or extra-legal formula can override the aforementioned Act and Rules regulating seniority of civil servants.
- C. Incorrect. As explained above.
- D. Incorrect. The appellant has been placed in the impugned seniority at wrong position in blatant violation of the Constitution, Civil Servants Act of 1973 and APT Rules, 1989.

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- E. Incorrect. The impugned seniority if notified will surely deprive the appellant of his due right under the Constitution and law.
  - F. Incorrect. The impugned seniority is discriminatory and against the fundamental rights guaranteed in the Constitution.
  - G. The appellant also further seeks the leave of Honourable Tribunal to submit additional grounds, record and case law during the course of argument on the date fixed.

**Prayers**

In view of the above and as the respondents themselves confess in Para-17 this appeal may please be allowed in favour of the appellant and the respondents may be directed to notify the inter-se-seniority to the extent of the appellant strictly in accordance with the inter-se-seniority issued by the Khyber Pakhtunkhwa Public Service Commission without wasting further time.



**APPELLANT**

**THROUGH**



**NOOR MOHAMMAD KHATTAK  
ADVOCATE SUPREME COURT**

**AFFIDAVIT**

I, Muhammad Uzair Ali DEO (M) District Khyber, do hereby solemnly affirm and declare on Oath that the contents of this **Rejoinder** are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.



**DEPONENT**

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**(SUBORDINATE JUDICIARY SERVICE TRIBUNAL)**  
**JUDICIAL DEPARTMENT**

**Service Appeal No.06-P of 2021**

**Kalim Arshad Khan**

**Vs.**

**Peshawar High Court, Peshawar through  
Registrar and others**

**Date of hearing** 18.12.2021  
**Appellant(s) by:** M/s. Hamid Ali Shah, Advocate  
and Barrister Syed Mudassir  
Ameer.  
**Respondent(s) by:** Mr. Khalid Rehman, AAG  
alongwith Syed Shakir Hussain  
Shah, Litigation Assistant,  
Peshawar High Court, Peshawar.  
**Respondents by:** In person.  
(No.4, 9 and 10)

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**JUDGMENT**

\*\*\*\*\*

**IJAZ ANWAR, J.** This appeal has been filed under Section 5 of the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991 against the letter bearing No.3784/Admn dated 13.03.2021 issued by the Registrar, Peshawar High Court, Peshawar, whereby, appellant was conveyed the decision of the Hon'ble Administration Committee regretting his application/departmental appeal for fixation of seniority amongst his batch-mates.

2. In essence, initially appellant was appointed against the post of Additional District & Sessions Judge vide Notification dated 22.02.2005, pursuant to the judgment of



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the Hon'ble Peshawar High Court and now serving as District & Sessions Judge, however, is claiming seniority with effect from the date of Notification dated 19.09.2001 when his other colleagues/batch-mates were appointed in the same selection process, with all back benefits.

3. In view of the averments made in the instant appeal, comments were called from the respondents who furnished the same accordingly.

4. Learned counsel for the appellant argued that appellant was deprived of his appointment as Additional District & Sessions Judge with his batch-mates who were appointed vide Notification No.92-J dated 19.09.2001 and as such, on his appointment dated 22.02.2005 issued pursuant to the judgment of the Division Bench of the Hon'ble Peshawar High Court in W.P. No.1412-P/2001 dated 09.04.2004, he is entitled to be allowed seniority with his colleagues. He further contended that in terms of Section 8(3) of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (hereinafter to be referred as "the Act") read with Rule 10(a) of the Khyber Pakhtunkhwa Judicial Service Rules, 2001 (hereinafter to be referred as "the Rules"), the appellant having been appointed in a same selection process; as such, his seniority is to be determined in accordance with the order of merit, assigned by the Selection Committee. He further contended that though, his Service Appeal bearing No.14 of 2010 was dismissed by

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this Tribunal vide judgment dated 08.12.2012 on the ground of limitation, however, in view of the judgment dated 19.12.2015, the matter of his seniority was reopened, because, this Tribunal has already struck down the seniority list dated 14.11.2009 in Service Appeal No.02 of 2009 etc which was maintained by the apex Court in Civil Appeals No.1171 to 1192 of 2013 dated 11.05.2015. It would be pertinent to note that the present appellant was also aggrieved of the said seniority list. He further argued that the recent rejection of his departmental appeal by the Hon'ble Administration Committee is a result of certain misconception and wrong opinion and as such, the order is liable to be set-aside. He next contended that since the issue of seniority of the appellant remained undecided throughout; as such, the principle of *res-judicata* is inapplicable to his case. He placed reliance on the cases titled "National Institutional Facilitation Technologies (Pvt) Limited Vs. The Federal Board of Revenue through Chairman and others (PLD 2020 Islamabad 378), Ibrar Hussain Vs. Collector Customs and others (1997 PLC(CS) 885), Adalat Khan Vs. Mst. Begum Bibi through Legal Heirs and another (1991 SCMR 1381), Shah Behram Vs. Akbar Khan and another (PLD 1992 Peshawar 18), Quetta Development Authority Vs. Abdul Basit (2021 SCMR 1313), Jamal Ali Vs. Engineer-in-Chief, GHQ, Rawalpindi (1998 SCMR 2472), Hameed Akhtar Niazi Vs. Secretary, Establishment Division, Government of Pakistan (1996 SCMR 1185), Government of Punjab through

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Secretary Education, Civil Secretariat, Lahore and others Vs. Sameena Parveen (2009 SCMR 1), Rasool Khan Vs. Federation of Pakistan through Secretary, Ministry of Information and Technology (2021 PLC (CS) 14) and unreported judgment dated 16.10.2017 passed by the Division Bench of the Hon'ble Peshawar High Court in Writ Petition No.227-M/2014".

5. On the other hand, the learned AAG, representing the respondent-PHC, assisted by the added respondents in person, contended that appellant has not questioned the seniority list circulated in the year, 2004 and 2007; as such, his objection to the seniority list 'as it stood on 14.11.2009' was hopelessly time barred and was rightly dismissed by this Tribunal on 08.12.2012 and as such, this appeal is not maintainable. It was further contended that neither in the earlier writ petition questioning his non-appointment nor in the order of the Division Bench of the Hon'ble Peshawar High Court, any order pertaining to his seniority was passed, because, merely an order for his adjustment was issued; as such, his present prayer is not legally tenable. It was further argued that reference of the appellant to the order of the apex Court dated 11.05.2015 is of no help to him, because the appeal was conditionally withdrawn and as such, the matter has become past and closed matter. It was further contended that initial representation of the appellant to the seniority list was hopelessly barred by time, besides, under the law, seniority

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cannot be conferred from a retrospective date to the appointment. It was contended that seniority is to take effect from the date of regular appointment while all the added respondents were appointed/promoted much before the appointment of the appellant and as such, appeal in hand is liable to be dismissed. In support of such contentions, reliance is placed on the cases titled "Sarosh Haider Vs. Muhammad Javed Chundrigar and others (PLD 2014 SC 338), Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar and others (2002 SCMR 889), Fida Muhammad Sanai Vs. Chairman, Federal Service Tribunal, Islamabad and others (PLD 1996 SC 845) and Muhammad Tufail Mir and others Vs. Secretary Electricity Department, Azad Government of the State of Jammu and Kashmir and others (2017 PLC(CS) 1457)".

6. Arguments heard and record perused.

7. During the course of hearing on 16.10.2021, the learned AAG has pointed out that the Judicial Officers, against whom the appellant is claiming seniority, have not been arrayed as respondents in the instant case and as such, on the directions of this Tribunal, appellant submitted amended memo of addresses of the parties and as well impleadment application containing the names of about 38 District & Sessions Judges, they were accordingly impleaded. The added respondents were served and out of which respondents No.5, 12, 15, 20, 21, 23, 26, 31, 32, 37 and 40 have submitted their cognovit, whereas, respondents No.4, 6

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to 10, 22 and 28 intended to contest the appeal in hand; while, respondents No.11, 13, 14, 16 to 19, 24, 25, 27, 29, 30, 33 to 36, 38 and 39, despite service, were not in attendance; as such, were placed ex-parte; while respondent No.3 has retired from service; similarly, respondents No.6 to 8 as well as their counsel, despite service, failed to enter appearance.

8. The following questions have arisen out of the arguments of learned counsel for the parties; which require resolution:-

1. Whether the instant Service Appeal is barred by limitation/being past and closed matter?
2. Whether the instant appeal is hit by principle of res-judicata?
3. Whether the appellant can claim seniority with his batch mates when there was no direction of the Hon'ble Peshawar High Court for allowing him seniority and that seniority to be given effect from regular appointment?

1. Whether the instant Service Appeal is barred by limitation/being past and closed matter?

9. In order to ascertain the fact about the circulation of seniority list of the Additional District & Sessions Judges 'as it stood on 17.11.2009', we directed the representative namely Syed Shakir Hussain Shah, Litigation Assistant, Peshawar High Court, Peshawar for production of seniority list so circulated, which he produced accordingly. The record, so produced, transpires that the seniority list of the year, 2007 was a provisional seniority list and it remained disputed, because, the record, so produced, contained

numerous objections which remained undecided, while objections regarding circulation of seniority list of the year, 2004 are not applicable to the case in hand, because, by then, appellant was not in service, as he was appointed, pursuant to the judgment of the Hon'ble Peshawar High Court, on 22.02.2005. Thus, merely, because, certain tentative/provisional seniority lists were issued and not questioned before this Tribunal, at the relevant time, are not legally tenable, because, only a final seniority list can be questioned before the Tribunal in terms of Section 5 of the Khyber Pakhtunkhwa Subordinate Judiciary Service Tribunal Act, 1991. Reference can be made to the case titled "S.H.M Rizvi and 05 others Vs. Maqsood Ahmad and 05 others (PLD 1981 SC 612)".

10. The record further transpires that the appellant submitted representation for the first time against the seniority list 'as it stood on 14.11.2009' on 14.01.2010. The reason, so advanced for condonation of delay before the Tribunal regarding delay in submission of the departmental appeal, was that at the time when the said seniority list was circulated, he was already granted study leave on 04.11.2009 and he relinquished his charge on 11.11.2009 and that he was never communicated the final seniority list, albeit, this Tribunal vide its judgment dated 08.12.2012 dismissed his Service Appeal. The reason for delay in filing departmental

appeal was duly reflected in the leave granting order of the apex Court in CPLA No.382 of 2013 dated 15.05.2013.

11. It is pertinent to mention here that on the circulation of the seniority list dated 14.11.2009, the seniority of numerous Judicial Officers was disturbed and about 21 Service Appeals were filed before this Tribunal. This Tribunal vide consolidated judgment dated 26.08.2013 in Service Appeal No.02 of 2009 struck down the orders of the Hon'ble Chief Justice dated 13.08.2009 and the subsequent seniority lists so issued. The order of this Tribunal was assailed before the apex Court and it was duly maintained vide order dated 11.05.2015 in Civil Appeals No.1171 to 1192 of 2013 titled "the Registrar, Peshawar High Court, Peshawar Vs. Shafique Ahmad Tanoli and others". It will not be out of place to mention here that in the above judgments, an order of the Hon'ble Chief Justice dated 13.08.2009 was questioned which was the basis of adversely affecting the seniority of the Judicial Officers and this Tribunal and as well the apex Court held that the decision about the terms and conditions of the service of the Judicial Officers could only be made by the Hon'ble High Court and not the Hon'ble Chief Justice alone. Thus, on the decision of the apex Court maintaining the judgment of this Tribunal, the seniority list, so issued, was struck down and the Judicial Officers who have questioned the orders adversely affecting their seniority,

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their representations were deemed as pending before the Hon'ble Administration Committee of the Hon'ble Peshawar High Court.

12. Thus, when Civil Appeal No.521 of 2013 filed by the appellant against the judgment of this Tribunal dated 08.12.2012 came up for hearing before the apex Court, there was nothing left for adjudication before the apex Court and that's why, it was conveyed to the apex Court in the same manner. For reference, the order of the apex Court is reproduced as under, because, much has been said about this judgment.

*"MIAN SAQIB NISAR, J. Learned counsel for the appellant states that in the light of the judgment passed in Civil Appeals No.1171 to 1192/2013 titled Registrar, Peshawar High Court Versus Shafique Ahmed Tanoli etc dated 11.05.2015, the present appeal is rendered infructuous. However, if any relief has been granted on account of the said judgment, the appellant may apply to the concerned authority for redressal of his grievance. Disposed of accordingly.*

*Mian Saqib Nisar, J  
Sh. Azmat Saeed, J  
Qazi Faez Isa, J"*

13. The order of the apex Court, in no manner, has tied the hands of the appellant from agitating his matter of seniority rather has given new life to the matter of seniority to the appellant. Infact, appellant was allowed to apply the concerned competent authority for the redressal of his grievances, in case, any order regarding seniority is passed in favour of the Judicial Officers, pursuant to the order passed



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by the apex Court vide dated 11.05.2015 in Civil Appeals No.1171 to 1192 of 2013. It being relevant at this stage to bring this fact that before the above judgment of the apex Court in the case of appellant, the question of seniority was discussed in the meeting of the Hon'ble Administration Committee held on 07.05.2014 and the Hon'ble Administration Committee decided that seniority of the appellant will be re-fixed in the light of the judgment of the Hon'ble Supreme Court of Pakistan (underline provided for emphasis). Again, when the issue regarding the seniority of the appellant was not decided, he approached this Tribunal in Service Appeal No.06 of 2016, however, during the pendency of that appeal, the case, pertaining to his promotion, came up for hearing before the apex Court on 16.11.2020 and the apex Court disposed of his appeals with the following observations:-

*"The only grievance of the appellant is that his case for consideration of his seniority is pending before the Administration Committee of the High Court and requests that observation may be made that such case of the seniority of the appellant may be considered at any early date and decide by the Administrative Committee in accordance with law.*

2. *The appeals are disposed of accordingly".*

14. In the light of the order of the apex Court, Service Appeal No.06 of 2016 of the appellant was disposed of in the same manner by this Tribunal vide order dated 23.01.2021 and the Hon'ble Administration Committee of the

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Hon'ble Peshawar High Court was requested to decide the case of seniority of the appellant in the light of the judgment of the apex Court within a period of two months. This is how, the Hon'ble Administration Committee considered the case of appellant for seniority and it was regretted duly conveyed to him vide the impugned letter dated 13.03.2021. Thus, the above facts clearly suggest that the question of seniority of the appellant never decided nor attained finality at any stage nor it can be termed as 'past and closed matter'. The judgment of this Tribunal dated 08.12.2012 cannot be made a hurdle in the case of the appellant, because, it was duly questioned before the apex Court and when the impugned seniority list was held to be issued without lawful authority, the question of seniority of the appellant was, thus, required to be re-determined.

15. In view of the above, this Tribunal is of the firm view that appeal of the appellant before this Tribunal is within time against the final order/letter dated 13.03.2021. The law on the point is clear that he has either to file Service Appeal after completion of ninety days of filing his departmental appeal or to wait till the final outcome of his departmental appeal. Reference can be made to the cases titled "Syed Firdos Ali Vs. Secretary, Establishment Division, Islamabad and 02 others (1997 SCMR 1160), Muhammad Jan Marwat and another Vs. Nazir Muhammad and 17 others (1997 SCMR 287), Mir Ajab Khan and another Vs. Deputy Postmaster

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General, SRP, Dera Ismail Khan and others (2013 SCMR 1053),  
Anwar Muhammad Vs. General Manager, Pakistan Railways,  
Lahore and another (1995 SCMR 950) and Muhammad Aslam  
Javed Vs. Government of Pakistan through Secretary,  
Establishment Division, Islamabad and others (2002 SCMR  
1383)?

**2. Whether the instant appeal is hit by principle of res-judicata?**

16. We have noted that the Division Bench of the Hon'ble Peshawar High Court, while hearing Writ petition of the appellant against the denial of his appointment, has allowed the same as prayed for with directions to the Competent Authority to appoint/adjust and accommodate him as Additional District & Sessions Judge on the available seat vide order dated 09.04.2004. Similar is the order of this Tribunal pertaining to the seniority which was decided and dismissed on 08.12.2012 on the ground of limitation, however, we are of the view that at the time of his appointment, it was specifically held by the Division Bench of the Hon'ble Peshawar High Court that he remained on the top of the merit list alongwith his colleagues. Thus, it has not given any findings denying or restraining the appellant from agitating the matter of his seniority. Similar is the case of this Tribunal dated 08.12.2012, as discussed in the above paras, that judgment has never attained finality as it was duly questioned before the apex Court and when once the seniority

- 19 -

list, so questioned, the judgment of this Tribunal no more remained in the field, because, the apex Court in its judgment has again allowed the appellant to re-agitate his grievances of seniority. Thus, the *lis* between the parties has never been finalized nor taken to the logical end rather throughout remained disputed, as such, the principle of *res-judicata*, as argued, is inapplicable to the case in hand.

2. Whether the appellant can claim seniority with his batch mates when there was no direction of the Hon'ble Peshawar High Court for allowing him seniority and that seniority to be given effect from regular appointment?

17. The unfortunate aspect of the case is that despite the fact that appellant secured first position in the written test and as well in the selection process for appointment against the post of Additional District & Sessions Judge, was deprived of his appointment and instead, four Judicial Officers, presently none of them in service, were appointed vide Notification dated 28.08.2001. It is pertinent to mention here that Writ Petition No.1412 of 2001 filed against the denial of his appointment was decided in his favour with the following directions:-

*"As a sequel to above discussion, we are constrained to allow the writ petition No.1412/2001 filed by Kaleem Arshad Khan petitioner as prayed for with the direction to the competent authority to appoint/adjust and accommodate the petitioner Kaleem Arshad Khan as Additional District & Sessions Judge on the available seat while the connected Writ Petition No.645/2002*

filed by Muhammad Saeed petitioner is hereby dis-allowed".

18. The memo of Writ Petition, annexed with the reply, depicts that it was one of the prayer of the appellant as "respondents No.1, 2 and 3 be kindly directed to issue appointment order to the petitioner and other candidates in accordance with the merit list duly made and finalized by the Selection Committee". This fact was duly considered by the Division Bench of the Hon'ble Peshawar High Court in para-22 of its judgment which is reproduced as under:-

*"The record reveals that the petitioner secured 119 marks in the written test held on 21.4.2001 while Muhammad Saeed secured 114, Tariq Yousafzai 113, Sardar Muhammad Irshad 111, Jamaluddin 110, Muhammad Zubair 108, Muhammad Muqtada 107, Mah Talaat 107 and Shaiber Khan 105 out of 68 candidates appeared in the written test. Total 20 candidates were qualified including Kaleem Arshad Khan and Muhammad Saeed Khan petitioners for interview. In the comments, respondent No.3 admitted as correct vide Para 8 that the petitioner ranked at top in the test and interview. It is astonishing to note that result of viva/interview is missing and not available on the relevant record".*

19. We have been informed that the judgment of the Hon'ble Peshawar High Court was assailed before the apex Court in CPLA No.1418 of 2004 but was dismissed for non-prosecution on 30.11.2004. Application for its restoration was filed, however, the said application was subsequently withdrawn on 10.02.2005, and thereafter, vide Notification dated 22.02.2005, appellant was appointed against the post of Additional District & Sessions Judge.

. 21-

20. Thus, from the very order of the Hon'ble Peshawar High Court, it is clear that in the selection process, appellant has topped the overall merit; albeit, for the reasons best known to the Appointing Authority, he was denied appointment, however, the Division Bench of the Hon'ble Peshawar High Court found that the appellant has not been treated in accordance with law and that's why direction was issued for his appointment against any of the existing vacancies. Section 8(3) of "the Act" deals with the matter of seniority and its fixation; similarly, Rule 10 of "the Rules" further elaborates fixation of seniority inter-se, the members of the Judicial Service. Both these provisions, being relevant, are reproduced as under:-

"Khyber Pakhtunkhwa Civil Servants Act, 1973

8. Seniority:

(1).....

(2).....

(3) Seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed.

Khyber Pakhtunkhwa Judicial Service Rules, 2001

10. Seniority:-

*The seniority inter-se of the members of the service in the various Pay Scales thereof shall be determined by the High Court, subject to the conditions that:*

*(a) in case of member appointed by initial recruitment, in accordance with the order of merit assigned by the Selection Authority as mentioned in Rule-5;*

*Provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection.*

*(b) in the case of members appointed by promotion, seniority in a post, service or cadre to which a Civil Servant is promoted, shall take effect from the date of regular appointment to that post; Provided that Civil Servants who are selected for promotion to a higher post in one batch shall, on their promotion to*

-22-

*the higher post, retain their enter-se seniority as in the lower post.*

*Explanation-I If a Jr. Officer in a lower grade is promoted temporarily to a higher grade in the public interest, even though continuing later permanently in the higher grade, it would not adversely affect in the interest his/her senior officer in the fixation of his/her seniority in the higher grade.*

*Explanation-II If a Jr. Officer in a lower grade is promoted to higher grade by superseding a senior officer and subsequently that officer is also promoted, the officer promoted first shall rank senior to the officer promoted subsequently”.*

21. Till date, no effort was made for the determination of seniority of the appellant, because, in the first instance, after exhausting the departmental remedies, his service appeal was dismissed on the ground that his departmental appeal was barred by time against which he filed CPLA, in which, leave was granted and during the pendency of appeal, the matter was again taken up by the Hon'ble Administration Committee of the Hon'ble Peshawar High Court but as pointed above, the Hon'ble Administration Committee in its meeting held on 07.05.2014 deferred fixation of his seniority and decided that seniority of the Officer will be re-fixed in the light of the judgment of the apex Court. It is pertinent to mention here that before the said decision, the Hon'ble Administration Committee of the Hon'ble Peshawar High Court in compliance with the judgment of this Tribunal dated 26.08.2013 while deciding the representations of M/s. Jehanzeb and Shoaib Khan and other Judicial Officers, besides, other decisions, also directed that revise seniority list shall be prepared/recast and uploaded

-23-

on the official website of the Peshawar High Court. Similarly, after the decision of the apex Court, the matter of his seniority was referred to the Hon'ble Administration Committee, still the matter of his seniority was not discussed nor decided on merit and again was declined any relief without any plausible and convincing reasons.

22. Section 8 of "the Act" read with Rule 10 of "the Rules" deals with the matter of seniority. Section 8(2) of "the Act" provides that "seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre in the same department or office or not, as may be prescribed". Similarly, sub-section (3) of Section 8 provides that "seniority on initial appointment to a service, cadre or post shall be determined as may be prescribed", while Rule 10(a) of "the Rules" prescribes that "in case of members appointed by initial recruitment, in accordance with the order of merit assigned by the Selection Authority as mentioned in Rule-5; provided that persons selected for the service in an earlier selection shall rank senior to the persons selected in a later selection".

23. Admittedly, the appellant has applied for appointment against the post of Additional District & Sessions Judge and appeared in the same selection process whereby, four Judicial Officers were appointed vide Notification dated 28.08.2001, depriving him of his



-24-

appointment, while this process/selection was held by the Division Bench of the Hon'ble Peshawar High Court as violative of his rights and specific direction for his appointment was issued. Meaning thereby that when he was appointed pursuant to the same selection process, as such, for the determination of his seniority in terms of Rule 10(a) of "the Rules", his seniority shall be determined in accordance with the order of merit assigned by the Selection Committee. The mere fact that the appointment orders were issued belatedly will not deprive the appellant of his seniority particularly when the Division Bench of the Hon'ble Peshawar High Court has raised eyebrow on the selection process. Moreover, the respondents appointed/promoted in the later selection, prior to the appointment of the appellant, have no right whatsoever to claim seniority over the appellant.

24. The Hon'ble Supreme Court of Pakistan in the case titled "Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar and others (2002 SCMR 889)", while dealing with somewhat similar situation, held that "it is well-settled proposition of law that the appointments made as a result of the selection in one combined competitive examination would be deemed to be belonging to the same batch and notwithstanding recommendation made by the Public Service Commission in parts, the seniority intense, the

-25-

appointees of the same batch, would be determined in the light of merit assigned to them by the Public Service Commission". Similar view was earlier given by the Provincial Service Tribunal in the case titled "Musa Waqir Vs. NWFP Public Service Commission (1993 PLC(C.S) 1188)", wherein, it is held that "when the selection is made out of one competitive examination, it cannot be bifurcated into two or more. The competitive examination being one, the selection has to be one and it cannot be said that any number of selections can be made out of the same competitive examination. Such a practice cannot stand scrutiny or the test of law applicable to the case".

25. The above propositions of law propounded by the Hon'ble Supreme Court of Pakistan in the light of Section 8 of "the Act" read with Rule 17 of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules, 1989 (*pari materia* with Rule 10 of "the Rules") clearly demonstrate that seniority of the civil servants appointed pursuant to a same selection process, is to be determined in the light of the merit assigned by the Selection Committee. In the instant case, the appointment of the appellant was though made on 22.02.2005; albeit, his seniority will be determined alongwith his batch-mates appointed on 19.09.2001. Reference can be made to the cases titled "Fazal Muhammad Vs. Government of NWFP and others (2009 SCMR 82) and Nadir Shah, S.D.O., Minor Canal Cell, Irrigation Sub-Division, Dera Murad Jamali

-26-

and 2 others Vs. Secretary, Irrigation and Power Department, Balochistan, Quetta and 7 others (2003 PLC(CS) 961)”.

26. The judgment relied upon by the respondents on the case titled “Muhammad Tufail Mir and others Vs. Secretary Electricity Department, Azad Government of the State of Jammu and Kashmir and others (2017 PLC(CS) 1457)” has its own facts and circumstances and in that case, only determination was seniority to take effect from the date of regular appointment and there was no contest regarding the same selection process. Same is the case titled “Sarosh Haider Vs. Muhammad Javed Chundrigar and others (PLD 2014 SC 338)”.

In that case, the principle of estoppel was applied and the contest was between two civil servants appointed on the same date and one of a civil servant was declared ‘senior’ on the ground of age which was never challenged for continuously ten years, which is completely distinguishable; being not applicable to the facts of the instant case. While the case titled “Wazir Khan Vs. Government of NWFP through Secretary Irrigation, Peshawar and others (2002 SCMR 889)”, relied upon by the respondents, favours the case of the appellant and is also relied upon by this Tribunal in the above paras. Similarly, the case titled “Chairman, FBR through Member Administration Vs. Muhammad Asfandyar Janjua and other (2019 SCMR 349)” is also distinguishable, wherein, the principle of estoppel was applied and the determination of seniority was in respect of the civil servants where there was

-27-

no question of determination of seniority of the same batch in terms of the merit position assigned by the Selection Committee.

27. For the reasons stated above, this Tribunal finds that the appellant has not been assigned his correct seniority alongwith his batch-mates, thus, the mere fact that he was appointed vide order dated 22.02.2005 would not deprive him of his seniority in terms of Rule 5(c)(ii) read with Rule 10 of "the Rules". As such, this Tribunal holds that the appellant be assigned seniority with effect from the date, his batch-mates of the same selection process were appointed.

28. This Service Appeal is allowed in the above terms.

**Announced**  
**Dt:18.12.2021**

**Member**

**Member**

Hon'ble Mr. Justice Ijaz Anwar and Hon'ble Mr. Justice Syed Muhammad Attique Shah

"Muhammad Ali"



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

No. SO(SM)E&SE/D/1-1/2017/Promotion BS-19 to 20 (MC)  
Dated Peshawar the May 14, 2018

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Annex-B

-28-

The Director,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.

Subject: SENIORITY OF MANAGEMENT CADRE OFFICERS BS-19 IN  
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT.

I am directed to refer to the subject cited above and to state that the Competent Authority has expressed grave concern over non-revision of subject seniority list since 2012. I am, therefore, directed to state that draft seniority of Management Cadre Officers (BS-19) of E&SE Department may be prepared and furnished to this office at the most earliest.

Moreover, a certificate regarding below mentioned particulars may also be furnished along with the draft seniority list;

- i. authenticity of date of appointment and length of service of the MC officers.
- ii. non-involvement of any litigation with respect to seniority of the officers.
- iii. preparation of the draft seniority list in accordance with the rules/policy in field.

FA/D/SB/NS  
Dy. No. ...  
Dated ...

*Anneela Fatimi*  
(ANNEELA FATIMI)  
SECTION OFFICER (SCHOOLS MALE)

Encls: Even No. & Date:

Copy forwarded to the:-

- 1. PS to Secretary, E&SE Department Khyber Pakhtunkhwa Peshawar.

Received Today

DD(M)

*sd -*  
SECTION OFFICER (SCHOOLS MALE)

*(11)  
ABD  
[Signature]*

*Estt:*

*hp  
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GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

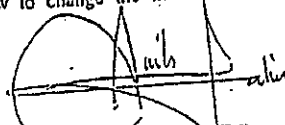
No. SO(S/F)E&SED/A-24/2018/Seniority List/BS-18/FMC  
Dated Peshawar the July 5<sup>th</sup>, 2018

To

The Director,  
E&SE Khyber Pakhtunkhwa,  
Peshawar.

**SUBJECT: APPEAL FOR CORRECTION IN SENIORITY LIST OF DDEO**

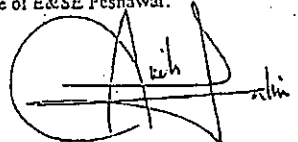
I am directed to refer to appeal of Mst. Naheed Anjum, Deputy Director (BS-18), Directorate of E&SE dated 27-06-2018 on the subject noted above and to intimate that administrative department or any other authority has no powers under any law to change the inter-se-merit as communicated by Khyber Pakhtunkhwa Public Service Commission.

  
(ANZELA FAROOQ)  
SECTION OFFICER (S/F)

Enlist: of even No. & Date:

Copy forwarded to the:

1. Mst. Naheed Anjum, Deputy Director (BS-18) Directorate of E&SE Peshawar.
2. PS to Secretary, E&SE Department.
3. PS to Special Secretary, E&SE Department.

  
SECTION OFFICER (S/F)

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- 30 -

(13)


**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT**

No. SO(S/F)E&SED/4-24/2018/Seniority Lis/BS-18/FMC  
Dated Peshawar Uj: July 18<sup>th</sup>, 2018

To ✓  
The Director,  
E&SE Khyber Pakhtunkhwa,  
Peshawar.

**SUBJECT: APPEAL FOR CORRECTION IN SENIORITY LIST OF SDEOs**

I am directed to refer to appeal of Mst. Nadia Begum (BS-17) SDEO (Female) working as Assistant Director, Directorate of E&SE dated 13-07-2018 regarding the subject matter and to intimate that administrative department or any other authority has no powers under any law to change the inter-  
merit as communicated by Khyber Pakhtunkhwa Public Service Commission.

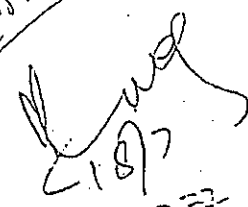
  
(ANEELA FAHIM)  
SECTION OFFICER (S/F)

Enlist: of even No. & Date:

Copy forwarded to the:

1. Mst. Nadia Begum (BS-17) SDEO (Female) working as Assistant Director, Directorate of E&SE Peshawar.
2. PS to Secretary, E&SE Department.
3. PS to Special Secretary, E&SE Department.

  
SECTION OFFICER (S/F)

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18/07/18  


*Handwritten note:* Dd(P)



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**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT**

Reminder

No.SO(SM)E&SED/4-25/2018/Seniority of MC Officers BS-19  
Dated Peshawar the July 27, 2018.

To

The Director,  
Elementary & Secondary Education,  
Khyber Pakhtunkhwa, Peshawar.

Subject:-

**SENIORITY OF MANAGEMENT CADRE OFFICERS BS-19 IN  
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.**

I am directed to refer to this department letter of even No dated 02.07.2018 and to state that the requisite information is still awaited from your side. Whereas, there is stressing demand for finalization of the requisite case.

It is once again requested that the draft seniority list of the officers of Management Cadre BS-19 on the lines mentioned in the said letter may be furnished without any further loss of time.

*Mian Hussain Din*  
(MIAN HUSSAIN DIN)  
SECTION OFFICER (SCHOOLS MALE)

Encls: Even No. & Date:

Copy of the above is forwarded to the:

1. PS to Secretary, E&SE Department.
2. PS to Special Secretary, E&SE Department.
3. PA to Additional Secretary (Estab), E&SE Department.

SECTION OFFICER (SCHOOLS MALE)

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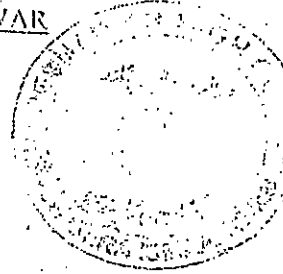
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Annex-C =

-32-

BEFORE THE PESHAWAR HIGH COURT PESHAWAR



Writ Petition No. 362 / of 2013

Qasim Khan, Executive District Officer  
(E&S) D.I. Khan

Petitioner

VERSUS

1. Chief Secretary to Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Education (E&S) Department, Peshawar.
3. Public Service Commission, Khyber Pakhtunkhwa, through its Chairman Fort Road, Peshawar.
4. Muhammad Rafiq Khattak  
Director of Education (E&S) Dabgari Road,  
Peshawar...

Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 FOR DIRECTING THE RESPONDENTS NO.1 & 2 TO PLACE THE PROMOTION CASE OF THE PETITIONER BEFORE THE PROVINCIAL SELECTION BOARD STRICTLY ON INTER-SE MERIT ASSIGNED BY THE PUBLIC SERVICE COMMISSION.

Respectfully Sheweth:

FACTS OF THE CASE

1. That consequent upon separation of new Education Policy of the Elementary and Secondary Education Department into two independent

ATTESTE:

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-33-

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JUDGMENT SHEET  
IN THE PESHAWAR HIGH COURT, D.I.KHAN  
(Judicial Department)



No. W.P. 333 of \_\_\_\_\_

JUDGMENT

Date of hearing \_\_\_\_\_

Appellant-petitioner Ghulam Rasool Khan

Mr. Shehzada Shahpur Jan

Respondent Chief Secretary, Government of Ferozepore

Mr. Akhmal Khan

ABDUL LATIF KHAN, J. - Through the instant petition, the petitioner seeks directions to respondents No. 1 and 2 to place his promotion case before the Provincial Selection Board in accordance with the seniority list prepared by the Public Service Commission.

*Jan*

2. Shehzada Shahpur Jan, learned counsel for the petitioner contended that after the separation of management cadre from teaching cadre, the petitioner, in response to the advertisement made by the Public Service Commission, applied and after test and interview, he was recommended to the Government for appointment in the management cadre and accordingly, the Government issued Notification to this effect. He added that the Commission prepared an inter-se merit list of the

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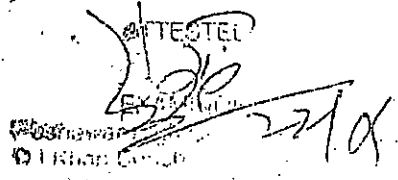
ATTESTED  
96  
EXAMINED  
w/...  
Bench

selectees on 02.8.2012 in BPS-19 where the name of the petitioner was shown at serial No.1 whereas the name of respondent No.4 was at serial No.4. He added that respondent No.4 was junior to the petitioner right from BPS-16 to BPS-19 in teaching cadre previously. He contended that after the separation of management cadre, two posts of BPS-20 have become available which are likely to be filled amongst the senior most officers on the basis of merit list prepared by the Public Service Commission. He contended that the petitioner is senior most, therefore, his name in working papers for placing before the Provincial Selection Board in BPS-20 in management cadre shall be added. He added that previously twice the working papers were prepared for the purpose, but the name of the petitioner was not included, despite of his seniority and excellent service, by ignoring the inter-se seniority, in order to adjust respondent No.4 through back door. He referred to the merit list wherein the petitioner was shown at serial No.1 and respondent No.4 figured at serial No.12.

5m

3. As against that the learned A.A.G for respondents No.1-to 3 assisted by Mr. Ahmad Farooq Khan, learned counsel representing respondent No.4 raised the objection that the writ petition is not

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ATTESTED  
  
 District Council

maintainable, for the reason that the petitioner and respondent No.4 are civil servants and under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, the matter relates to the jurisdiction of Service Tribunal and the provisions of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, cannot be invoked. It was argued that the merit lists relied upon by the petitioner are not relevant and placed reliance on the latest merit list prepared on 22.02.2012 and pointed out that respondent No.4 has been shown at serial No.2 whereas the name of the petitioner finds mention at serial No.16. It was vehemently argued that the petitioner has got no locus standi to file the instant petition, as no cause of action accrues to him, for the reason that nobody has been recommended and even if recommendations are proposed, the same would be made from the top of the merit list whereas the petitioner being at serial No.16 is not entitled in any eventuality to be recommended for the post in BPS-20

*DM*

4. We have considered the arguments of learned counsel for the parties and perused the record with their valuable assistance.

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5. The merit list relied upon by the petitioner was in fact interview results of EDO (B-19) in

TESTED

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Elementary & Secondary Education Department: This interview for the posts was held from 01.02.2010 to 30.4.2010 and as a result, recommendations were made to the Government for appointment and on the basis of which, appointments were made. No doubt this result card shows the name of petitioner at serial No.1 whereas name of respondent No.4 at serial No.12. Another list referred by the petitioner, prepared as on 05.01.2009 for the officers of BPS-19 in Elementary & Secondary Education Department as final list, wherein the petitioner was shown at serial No.68 and respondent No.4 was at serial No.85. however, the final seniority list of the officers BPS-19 (Executive District Officers/Additional Directors), Elementary & Secondary Education Department Management cadre, as on 22.02.2012 was prepared and announced, wherein respondent No.4 was shown at serial No.2 and petitioner was shown at serial No.16. The respondent No.4 was out of the direct selectees against 60% departmental quota whereas petitioner was amongst the direct selectees against 40% open market quota. The final list reveals that respondent No.4 is meritorious than the petitioner. The petitioner has challenged this list before the high-ups (Chief Secretary and Secretary Education, KPK) on 28.02.2013 as reveals from the record available prior to

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 2016  
 2019

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filing of instant petition before the Court and has not availed the remedy of appeal which is still subjudice. The claim of the petitioner that he may be recommended for the post of BPS-20 to the Provincial Selection Board does not hold water, for the reason that he is at a lower pedestal than respondent No.4 as per the final list published on 22.02.2012, which is well in the knowledge of the petitioner and has been challenged by him before the competent forum.

6. Under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the jurisdiction of this Court can be invoked only when no other adequate remedy is available. In the instant case, the petitioner has already filed the appeal before the competent Court, therefore, the instant petition is not competent. The petitioner does not come within the ambit of 'aggrieved person', as no order, adverse to his right has been passed nor recommendations have been made so far and even if the recommendations are made, those would be regarding senior most out of the final seniority list for which the petitioner is not eligible. Needless to mention that petitioner and respondents are civil servants and the instant matter relates to the terms and conditions of service and Article 212 of the Constitution of Islamic Republic of

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 ATTESTED  
 22/2

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Pakistan, 1973 bars the jurisdiction of this Court to be invoked under Article 199.

7. For the foregoing reasons, the instant petition being devoid of merit is hereby dismissed alongwith C.M.No.379-D/2013.

Announced.  
Dt:12.9.2013.

*[Signature]*  
JUDGE

*[Signature]*  
JUDGE

*[Signature]*  
379  
12/9/13

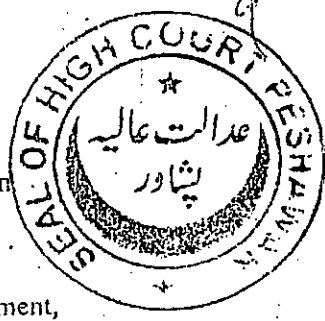
Date 01/11/13



BEFORE THE PESHAWAR HIGH COURT PESHAWAR

Annex-D-5

Writ-petition No. 1680/15/2014



39

Ghulam Qasim Khan S/O Abdul Majeed Khan  
District Education Officer,  
Elementary and Secondary Education Department,  
Kohat.....Petitioner

Versus

B  
1680/15

1. Government of Khyber Pakhtunkhwa  
Through Chief Secretary, Peshawar.
2. Secretary to the Govt: of Khyber Pakhtunkhwa,  
Elementary and Secondary Education Department,  
Peshawar.
3. Secretary to the Govt: of Khyber Pakhtunkhwa,  
Establishment Department, Peshawar.
4. Khyber Pakhtunkhwa Public Service Commission,  
Peshawar.
5. Muhammad Rafiq Khattak,  
Presently Director, Elementary  
and Secondary Education Peshawar..... Respondents

FILED 1004  
1680/15/2014

ATTESTED  
EXAMINER  
Peshawar High Court  
09 MAY 2015

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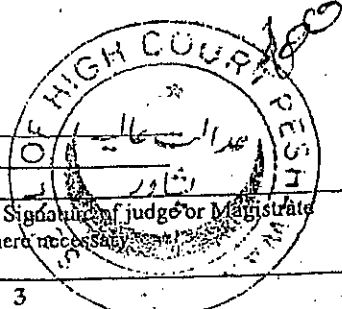
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171

APESHA WAR HIGH COURT, PESHAWAR  
FORM "A"  
FORM OF ORDER SHEET.

Court of \_\_\_\_\_  
Case No \_\_\_\_\_



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of judge or Magistrate and that of parties or counsel where necessary
1	2	3
	23.04.2015	<p style="text-align: center;"><b><u>WP No. 2049-P/2014</u></b></p> <p><u>Present:-</u> Mr. <i>Shakeel Ahmad</i> Advocate for petitioner.</p> <p>Mr. Muhammad Riaz Paindakhel, AAG alongwith Majeed Ullah, Legal representative of respondent No.2.</p> <p style="text-align: center;">*****</p> <p><b><u>ROOH-UL-AMIN KHAN.J.</u></b> The moment the case was taken up for hearing, the learned counsel for petitioner stated at the bar that under the instruction of his client, he is no more interested to pursue the matter and requested for dismissal of the instant writ petition as not pressed.</p> <p style="text-align: right;">43</p> <p>Before adhering to the request, the learned counsel for petitioner was confronted with the previous order sheet of this court dated 2.4.2015 which reads as under:-</p>

*Rooh Amin Khan*

ATTESTED  
EXAMINER  
Peshawar High Court  
09 MAY 2015

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"At the very outset, the learned AAG pointed out that for the same very relief the petitioner had earlier approached D.I.Khan Bench of this court through W.P No. 362-D/2013 which was dismissed on 12.09.2013 and without disclosing the same fact, the petitioner has again approached this court through the present petition. We have taken a very serious view of this matter as to why the petitioner did not disclose the same fact in his petition. Adjourned to 15.04.2015 with direction to the learned counsel for the petitioner to come alongwith the latter on the date fixed".

The learned counsel for petitioner while trying to wriggle out of the situation stated at the bar that at the time of filing of instant petition, the petitioner has not informed him about filing of another writ petition No.362-D/2013 or its dismissal by the Divisional Bench of this court at

~~ATTESTED~~  
 EXAMINER  
 Washawar High Court  
 09 MAY 2015

*[Handwritten signature]*

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~~102~~

D.I.Khan. The learned counsel, without contest, beg unconditional apology on the part of petitioner and also showed remorse on the lackadaisical attitude of the petitioner.

We have noted with great concern and are surprised that high official, possessing the slot of District Education Officer, in Elementary and Secondary Education, Department is litigating the case before this court after dismissal of his earlier writ petition for the same relief and that too, without disclosing the fact to his counsel or the court. Above all, the petitioner Ghulam Qasim Khan, District Education Officer has filed a duly sworn affidavit to the effect that the contents of writ petition filed by him are true to the best of his knowledge and nothing substantial has been concealed from this court. It is manifest from the record that the petitioner has not exhibited clean conduct in seeking equitable relief from court and inspite of adjudication of his right by this court, filed the instant petition, without disclosing the factum of decision of previous writ petition at Circuit Bench, D.I.Khan, which act is reckless and contemptuous, as the petitioner has tried to

~~TESTED~~  
 EXAMINER  
 Peshawar High Court  
 09 MAY 2015

*Qasim*

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43-

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circumvent and frustrate the law, to gain illegal advantage. He has tried to undermine confidence of public in judiciary. The indolent, fraudulent and deceiving attitude and conduct of the petitioner has exposed him for initiating contempt of court proceedings against him, but in view of the unconditional apology of his counsel and showing remorse on the act of petitioner we, treating it mitigating circumstance, reducing the magnitude of action, taking lenient view at this end and warned the petitioner to remain careful in future.

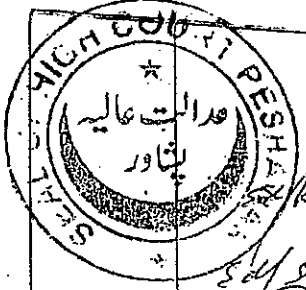
Before dismissing the petition being not pressed, we deem it necessary to inform the Secretary, Elementary and Secondary Education and Chief Secretary to initiate proceedings against the petitioner under E&D Rules 2011, for frivolous and unjust litigation against the government in callous and highhanded manner.

With the above observation, this writ petition is dismissed being not pressed. The Registrar shall send a copy of this order to the Chief Secretary and Secretary, Elementary and Secondary Education, Department, Khyber Pakhtunkhwa, Peshawar for necessary action and

ATTORNEY  
 EXAMINER  
 Peshawar High Court  
 09 MAY 2015

100/2/5

44



compliance report within two months.

Announced.  
Dated.24.04.2015.

Roh-ul-Amin Khan

Syed Syed Afsar Shah

176

CERTIFIED TO BE TRUE  
in Court  
under Article  
109 of the Constitution  
of Pakistan  
MAY 2015

25/04/15

21737

Date of Presentation of Application 29/04/15

No of Pages 06-9

Copying fee /

Urgent Fee

Total 12.00

Date of Preparation of Copy 29/04/15

Date Given For Delivery 29/04/15

Date of Delivery of Copy 29/04/15

Received By: Gulzar Osman

97

date 25/04/15



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

SUBJECT: - THROUGH PROPER CHANNEL REVERSION/ LIEN.  
Para-8 of the Summary refers:-

9. Mr. Muhammad Uzair Ali, Ex- Executive District Officer (BS-19) E&SE Management Cadre (OSD) was appointed as Associate Professor (ES-19) in Higher Education, Archives & Libraries Department on the recommendations of the Khyber Pakhtunkhwa Public Service Commission and posted at Government Degree College Yaru Hussain District Swabi vide notification dated 21-06-2011(F/G). He was properly relieved of his services w.e.f. 19-07-2011 to join his new assignment vide notification dated 31-10-2011 (F/J).
10. Now Mr. Muhammad Uzair Ali, Associate Professor Higher Education Archives & Libraries Department has requested to rejoin the E&SE Department as DEO (BS-19) in the Management Cadre (F/K).
11. The Elementary & Secondary Education Department requests the Chief Minister Khyber Pakhtunkhwa to allow Mr. Muhammad Uzair Ali, Associate Professor (BS-19) Higher Education Department to rejoin Elementary & Secondary Education Department as DEO (Male) (BS-19) in the Management Cadre.
12. Proposal contained in Para-11 above is submitted for orders/ approval of Chief Minister Khyber Pakhtunkhwa.

Minister for E&SE  
Khyber Pakhtunkhwa.

Chief Secretary,  
Khyber Pakhtunkhwa.

Chief Minister,  
Khyber Pakhtunkhwa.

13-  
Servy lefted.

*Janday aygo*  
SECRETARY  
Elementary & Secondary Education Department  
Khyber Pakhtunkhwa  
29<sup>th</sup> Aug, 2013

*29-8*  
Minister for Elementary &  
Secondary Education  
Khyber Pakhtunkhwa

*3/8*  
Chief Secretary  
Govt. of Khyber Pakhtunkhwa

*Pl. examine.*

*P.T.O*

14. Summary has been examined. It needs to be clarified as to whether the officer had requested for retention of lien in Elementary & Secondary Education Department while joining Higher Education Department or otherwise.

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*(Signature)*  
(Sikander Qayyum)  
Secretary Establishment  
September 10, 2013.

Chief Secretary,  
Khyber Pakhtunkhwa.

15.

*ll. clarify*

*Sery ETSE*

*(Signature)*  
Chief Secretary  
Govt of Khyber Pakhtunkhwa

ASE

*(Signature)*  
30/9





GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT

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SUMMARY FOR CHIEF MINISTER KHYBER PAKHTUNKHWA

SUBJECT: - THROUGH PROPER CHANNEL REVERSION/ LIEN.

Para-15 of the Summary refers:-

- 16. Mr. Muhammad Uzair Ali, Ex- Executive District Officer (BS-19) (E&SE) Management Cadre had requested for grant of lien for two years while joining Higher Education, Archives & Libraries Department (F/M).
- 17. Proposal contained in Para-11 above is re-submitted for orders/ approval of Chief Minister Khyber Pakhtunkhwa.

*Junday ay 7*  
SECRETARY 18<sup>th</sup> Sep, 2013.  
Elementary & Secondary Education Department  
Khyber Pakhtunkhwa

Minister for E&SE  
Khyber Pakhtunkhwa.

Chief Secretary,  
Khyber Pakhtunkhwa.

Chief Minister,  
Khyber Pakhtunkhwa.

18.11

*Para 11 approved. His posting in Nowshera as  
DEO is also approved.*

*M. A. Khan*  
22/9  
Chief Secretary  
Govt. of Khyber Pakhtunkhwa

Pervez Memon  
26.09.2013  
CHIEF MINISTER  
KHYBER PAKHTUNKHWA

*C.P.*

*M. A. Khan*  
Chief Secretary  
Govt. of Khyber Pakhtunkhwa

*SECRETARY E&SE*

ASE

*Junday*  
30/9

To

The Secretary E&SE,  
Khyber Pakhtunkhwa Peshawar.

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Subject: Request for Permission to Continuing Service in Higher Education.


Sir,

Respectfully stated that I had been appointed as Associate Professor of Political Science vide order No.SO(AO)HE/XIII-1/11/Political Science (BS-19) dated Peshawar the 21/06/2011 in pursuance of which I took charge at Govt. Degree College Yar Hussain on 20<sup>th</sup> July, 2011 forenoon. However, your goodself did not accept my relinquishing duty as EDO NSR for not taking prior permission. Consequently, I reported back on 29<sup>th</sup> August, 2011 in submission to your order No.SO(S/M)E&SED/4-8/2011/Nowshera dated Peshawar the, August 29, 2011 to E&SE Department KPK.

Sir, I want to continue my service as Associate Professor in Higher Education Department and, therefore, I very humbly request your good-self to allow me join the Higher Education on promotion basis with retrospective effect from 19/7/2011 afternoon and continue my service as Associate Professor. I shall be very grateful and obliged to your good-self for this great favour.

It is also to be noted, Sir, that I have not yet been adjusted against any post since reporting back to the E&SE Deptt. nor I have drawn any salary since then.


Thanking in anticipation.

 24/9/11


Yours' obediently,  
Muhammad Uzair Ali  
Management Cadre  
E&SE Deptt. KPK Peshawar

Copy forwarded to :


1. Secretary Higher Education KPK, Peshawar.
2. Director Higher Education KPK, Peshawar.
3. Personal file.

 24/9/11

Muhammad Uzair Ali  
Management Cadre  
E&SE Deptt. KPK Peshawar

  
 Re. copy  
 7/3/10/11  
 A.S/E.&SE  
 Dt. No.....  
 Entd.....  
 5/1/11

SOS.M

 3/X

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3/10



**GOVERNMENT OF KHYBER PAKHTUNKHWA  
ELEMENTARY & SECONDARY EDUCATION  
DEPARTMENT**

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Dated Peshawar the September 30, 2013

**NOTIFICATION**

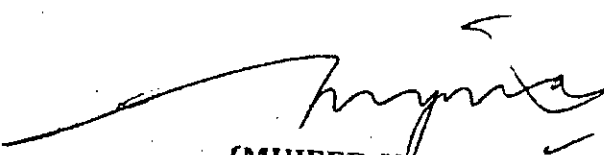
**NO.SO(S/M)E&SED/4-16/2013/Mr. Muhammad Uzair Ali (BS-19):** The Competent Authority is pleased to allow Mr. Muhammad Uzair Ali, Associate Professor (BS-19) Higher Education Archives & Libraries Department to rejoin Elementary & Secondary Education Department as District Education Officer (Male) BS-19 in the Management Cadre with immediate effect.

**SECRETARY**

Endst: of even No. & Date

Copy forwarded to the:

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Secretary, Higher Education, Archives & Libraries Department.
3. PSO to Chief Minister, Khyber Pakhtunkhwa, Peshawar.
4. Director, E&SE Khyber Pakhtunkhwa, Peshawar.
5. Director Higher Education Khyber Pakhtunkhwa Peshawar.
6. District Accounts Officer, Nowshera/ Swabi.
7. District Education Officer (Male), Nowshera/ Swabi.
8. PS to Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
9. PS to Special Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
10. PA to Additional Secretary E&SE Department, Khyber Pakhtunkhwa, Peshawar.
11. Incharge EMISE E&SE Department.
12. Officer concerned. *DBO (M) NISR*
13. Office order file.

  
(MUJEEB-UR-REHMAN)  
SECTION OFFICER (SCHOOLS/MALE)

BEFORE THE HONOURABLE KP SERVICE TRIBUNAL PESHAWAR



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Annex-1

SERVICE APPEAL NO. 337 /2019

Miss Hina (Drawing Master) D/o Muhammad Ibrahim,  
Government Girls Higher Secondary School, Kalanga Akka Khel  
Tehsil Bannu, District Khyber.

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 310  
Dated 06/03/2019

Appellant

Versus

- 1- Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar.
- 2- Director, Elementary & Secondary Education, Khyber Pakhtunkhwa Peshawar.  
District Education Office, Newly merged Districts, Warsak Road Peshawar.
- 3- District Education Officer, (Previously Agency Education Officer) District Khyber at Jamrud.

Respondents

Filed to-day  
Registrar  
4/3/19

APPEAL NO. 337 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT AGAINST THE ORDER NOTIFICATION 12861-23 DATED 11/10/2018 ISSUED BY RESPONDENT NO. 3 ENDORSED BY RESPONDENT NO. 4 VIDE NO. 1343-51 DATED 12/10/2018 AGAINST WHICH THE APPELLANT FILED A DEPARTMENTAL APPEAL DATED 06-11-2018 BUT THE SAME HAS NOT YET BEEN DECIDED.

Respectfully sheweth,

Appellant submits as under:-

- 1- That being fully qualified and after fulfillment of the requisite formalities as well as on the recommendations of the Departmental Selection Committee, the appellant was appointed as Drawing Master (BPS-9) vide order dated 21/5/2007 and was posted at Government Girls High School

ATTESTED

REGISTRAR  
Khyber Pakhtunkhwa  
Service Tribunal

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.337/2019

Date of Institution ..... 06.03.2019  
Date of Decision ..... 15.09.2022

Miss Hilal (Drawing Master) D/O Muhammad Ibrahim, Government Girls  
Higher Secondary School, Kalanga Aka Khel Tehsil Bara, District Khyber.

(Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Elementary &  
Secondary Education Peshawar and three others.

(Respondents)

Ibad Ur Rehman,  
Advocate

For appellant.

Naseer Ud Din Shah,  
Assistant Advocate General

For respondents.

Rozina Rehman  
Farzeela Paul

Member (J)  
Member (E)

JUDGMENT

ROZINA REHMAN, MEMBER (J): The appellant has invoked the  
jurisdiction of this Tribunal through above titled appeal with the prayer as  
copied below:

"On acceptance of the instant appeal the respondents be  
directed to amend the Notification Endst: No.1343-51  
dated 15.10.2018 issued on the basis of Notification  
No.12861-73 dated 11.10.2018, to the extent that the same  
be given effect from 20.02.2013 only to the appellant, when  
other colleagues of the appellant were given promotion/up-  
gradation."

TESTED  
CHIEF JUSTICE  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

2. Brief facts of the case are that appellant was appointed as Drawing Master (BPS-09) on 21.05.2007 after fulfillment of all codal formalities as well as on the recommendation of Departmental Selection Committee and was posted at Government Girls High School Kalanga Aka Khel Bara. She passed her B.A Examination, therefore, she was granted BPS-14 on 10.07.2008 and later on was promoted to BPS-15 vide order dated 20.12.2008. As per Government policy, the post of DM was up-graded from BPS-15 to BPS 16, therefore, the post of appellant alongwith her other colleagues were also upgraded on 15.05.2014. It was on 21.02.2017 when colleagues of the appellant were promoted and granted BPS-16 w.e.f 20.02.2013, whereas, name of the appellant was missing in the notification therefore, she filed an application for insertion of her name and grant of BPS 16 w.e.f 20.02.2013. Her application was kept pending and in the meanwhile, a fresh notification was issued on 15.07.2018 regarding promotion of the appellant but the same was issued with immediate effect. she filed departmental appeal but to no avail, hence, the present service appeal.

3. We have heard Ibad Ur Rehman, Advocate learned counsel for the appellant and Naseer Ud Din Shah, learned Assistant Advocate General for respondents and have gone through the record and the proceedings of the case in minute particulars.

4. Ibad Ur Rehman Advocate, learned counsel for appellant argued that the order of respondents was wrong, unjustified and without lawful authority as the post of the appellant had already been upgraded to BPS-16 vide order dated 15.05.2014 and that order was never withdrawn. He contended that her junior most colleagues were promoted to BPS-16 w.e.f 20.02.2013 but the

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appellant was promoted with immediate effect which act of the respondents was unjustified as appellant was penalized for no fault on her part. Lastly, he submitted that the appellant being-eligible to be promoted was promoted and discriminated. therefore, she might be promoted w.e.f the date when her junior colleagues were promoted.

5. Conversely, learned AAG submitted that promotions were made vide Notification dated 21.02.2017, wherein, the name of appellant was missing due to non submission of the relevant record as required for promotion and that she was telephonically informed to produce the relevant record but she failed and that all promotions/upgradations were made with immediate effect as per rules/policy

6. After hearing the learned counsel for the parties and going through the record of the case with their assistance and after perusing the precedent cases cited before us, we are of the opinion that appellant was appointed against newly created DM post in BPS-09 upon the approval of Departmental Selection Committee alongwith two other ladies vide appointment order bearing endorsement No.3552-60 dated 21.05.2007. As per Notification bearing endorsement No.14937-42 dated 15.05.2014 appellant alongwith nine others were upgraded to the post of Senior DM (BPS-16) with immediate effect. Name of the appellant finds mention at Serial No.9 while one Miss Naila Durrani at Serial No.10. Again, vide Notification bearing endorsement No.3055-70 dated 21.02.2017 upon the recommendation of Departmental Promotion Committee, seven DMs (F) BPS-15 were promoted to Senior DMs (F) BPS-16 on regular basis w.e.f 20.02.2013 This notification is totally silent in respect of appellant while her junior Miss Naila

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ADMITTED

10/11/2017

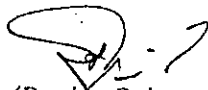
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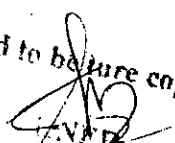
Durrani, whose post was upgraded to the post of Senior DM (BPS-16) alongwith appellant on 15.05.2014, is available at serial No. 7. As name of the appellant was not available in the above mentioned notification, therefore, she filed different applications and as a result, appellant alongwith one Kosar Begum were promoted in view of the notification for promotion from DM (F) to Senior DM (F) issued vide Director Education Merged Areas Warsak Road Peshawar. i.e 11.10.2018 w.e.f the date of issuance of the mentioned Notification dated 11.10.2018. As evident from the record, nothing was brought on file in order to show any departmental proceedings against the appellant. Despite directions, minutes of Departmental Promotion Committee were not produced vide which colleagues of appellant were promoted while appellant was ignored in order to show the reason as to why appellant was not considered. The only reason mentioned by the respondents in their comments is that she failed to produce relevant documents before the Departmental Promotion Committee, which means that she was never superseded because she was later on promoted but with immediate effect.

7. We are unison on acceptance of this appeal in the light of our observation in the preceding paras which immediately calls for the acceptance of the instant service appeal as prayed for. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
15.09.2022

  
(Farqeha Paul)  
Member (E)

  
(Rozina Rehman)  
Member (J)

**Certified to be true copy**  
  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar



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(1)

BEFORE THE HONOURABLE KP SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. \_\_\_\_\_ 2019

M/s. \_\_\_\_\_ (Drawing Master) D/o Muhammad Ibrahim.  
Government Girls Higher Secondary School, Kalanga Aka Khel  
Tara, District Khyber.

Appellant

Versus

Government of Khyber Pakhtunkhwa through Secretary Elementary &  
Secondary Education Peshawar.

Director, Elementary & Secondary Education, Khyber Pakhtunkhwa,  
Peshawar

Director Education, Newly merged Districts, Warsak Road Peshawar

District Education Officer, (Previously Agency Education Officer) District  
Khyber at Jamrud.

Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL ACT AGAINST THE ORDER NOTIFICATION 12861-  
73 DATED 11.10.2018 ISSUED BY RESPONDENT NO.3  
ENDORSED BY RESPONDENT NO.4 VIDE NO. 1343-54 DATED  
15.10.2018 AGAINST WHICH THE APPELLANT FILED A  
DEPARTMENTAL APPEAL DATED 06-11-2018 BUT THE SAME  
HAS NOT YET BEEN DECIDED.

Respectfully sheweth.

Appellant submits as under :-

That being fully qualified and after fulfillment of the requisite formalities  
as well as on the recommendations of the Departmental Selection  
Committee, the appellant was appointed as Drawing Master (BPS-9) vide  
order dated 25/5/2007 and was posted at Government Girls High School

Kalanga Aka Kheh Bara. (Copy of the appointment order is attached as Annexure A.)

2- That as the appellant has passed her BA Examination, therefore, the appellant was granted BPS-14 vide AEO Khyber Endst: No. 6297-6301 dated 10-7-2008 and similarly, the appellant was granted BPS-15 vide order dated 20-12-2008. (copy of service book attached as **annex: B**)

3- That since then the appellant is performing her duties to the best of her abilities and to the entire satisfaction of her superiors.

Service  
Dm

That as per government policy the post of Drawing Master (DM) was upgraded from BPS-15 to BPS-16, therefore, the appellant alongwith her other colleagues were also granted the upgraded BPS-16 vide Endst No. 14937-42 dated 15.5.2014 (Copy enclosed as **Annex: C**).

4- That vide Notification No. 3055-70 dated 21.02.2017, the colleagues of the appellant were promoted and granted BPS-16 with effect from 20-02-2013 whereas the name of the appellant was missing in this notification, therefore, the appellant file an application for addition of the name of the appellant in the said notification and grant of BPS-16 w.e.f 20-02-2013. (Copy attached as **Annex: D & E**).

5- That the said application of the appellant was still pending that in the meanwhile, a fresh notification No. 1343-51 dated 15 10 2018 regarding promotion/upgradation of the appellant was issued but interestingly the same is issued with immediate effect. (Copy enclosed as **Annex: F**).

6- That the appellant duly filed a departmental appeal for the correction corrigendum of the notification dated 15 10 2018 but still no response from their side. (Attached as **Annex: G**).

7- That the appellant being aggrieved and finding no other adequate remedy the appellant has left with no option but to approach this honourable tribunal on the following ground amongst others :-

GROUND:

That the Act of the respondents is harsh, unjustified and without lawful authority.

That the appellant has already been upgraded to BPS-16 vide order dated 15-5-2014 which is still in field as the same has never been withdrawn.

That the junior most colleague of the appellant has been promoted upgraded to BPS-16 w.e.f 20-02-2013 but strange enough

-57-

15.10.2018 and that is too with immediate which is totally unjustified.

That the appellant has been penalized for no fault on the part of the appellant.

That the appellant is duly eligible to be promoted when her other colleagues were promoted but the appellant was totally ignored.

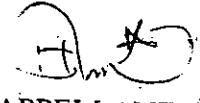
That the appellant has badly been discriminated therefore, the act of the respondents is against the fundamental rights of the appellant enshrined in the Constitution of Pakistan.

- ii. That the act conduct of the respondents towards the appellant is totally unjustified, illegal, void ab initio and without lawful authority.
- iii. That the appellant has been deprived from her legitimate right

That the appellant be allowed to add any other ground at the time of arguments.

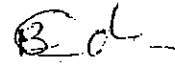
It is therefore humbly prayed on acceptance of instant appeal the respondents be directed to amend the notification Endst: No. 1343-5 dated 15.10.2018 issued on the basis of Notification No. 12861-73 dated 11.10.2018, to the extent that the same be given effect from 20.02-2013 only to the appellant, when other colleagues of appellant were given promotion/up gradation.

Any other remedy deem proper in the matter and not specifically asked for may also please be given with cost.



APPELLANT

Through:

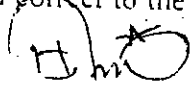


IBADUR RAHMAN  
Advocate High Court  
127-Sarhad Mansion  
Hashtnagri, GT Road  
Peshawar.

Date: 26/3 2019.

Affidavit.

Stated on oath that the above contents are true and correct to the best of my knowledge and belief.



DEPONENT



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Annex-H

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

No. SO (PSB) ED/1-4/2021/P-222  
Dated Peshawar, the June 15, 2022

The Secretary to the Govt. of Khyber Pakhtunkhwa,  
Elementary & Secondary Education Department.

**SUBJECT: WORKING PAPER FOR PROMOTION OF OFFICER FROM  
(BS-19) TO (BS-20) (MALE) ON REGULAR BASIS.**

Dear Sir,

I am directed to refer to Elementary & Secondary Education Department letter No. SO(SM)E&SED/1-1/2022/Promotion BS-19 to BS-20 dated 27.05.2022 on the subject and to say that the case has been examined in Regulation wing and observed that:-

- i. The nomenclature of the post reflected in the Service Rules and PSB-I proforma do not match with each other.
- ii. There are posts of Principals in GHSS in the budget book whereas the nomenclature of the Principal is not mentioned in the Service Rules. Therefore, it needs clarification as to how a post will be filled for which Service Rules has not yet been framed.
- iii. The post of Director BS-20 in PITE is now named as DPD which is to be filled from the officers of Management Cadre Officers whereas the department has shown the post in the working paper as it is to be filled from the Teaching Cadre Officers.
- iv. Six (06) post are lying out of which the retirement notifications of two officers have not been attached alongwith the working paper.

The working paper and other documents received with the reference quoted above are returned herewith in original for information/clarification.

Yours faithfully,

*[Signature]*  
SECTION OFFICER (PSB)

ST. EVEN NO. & DATE.

A copy is forwarded to the  
Establishment Department.

the Section Officer (R-1)

*[Signature]*  
SECTION OFFICER (PSB)

*[Signature]*  
15/6/2022