

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 351/2023

Muhammad Rafiq..... Appellant

Versus

Government of Khyber Pakhtunkhwa, Peshawar & others..... Respondents

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Assistant Director (Admin)
For Director General

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 351/2023

Muhammad Rafiq..... Appellant

Versus

1. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary Mines and Minerals Department Civil Secretariat Khyber Pakhtunkhwa, Peshawar.
3. Director General Mines and Minerals, Khyber Pakhtunkhwa, Peshawar.
4. Secretary Finance Civil Secretariat Khyber Pakhtunkhwa, Peshawar.... Respondents

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7338

Dated 4/9/2023

PARA WISE COMMENTS ON BEHALF OF RESPONDENTS NO .01 TO 04.

RESPECTFULLY SHEWETH,

That the respondents submits as under: -

PRELIMINARY OBJECTIONS.

- i. That the appellant has got no cause of action against the respondents.
- ii. That the instant appeal is not maintainable in its present form.
- iii. That no vested right of the appellant has been infringed as such the appeal is liable to be dismissed on merit.
- iv. That the appellant has got no locus standi to file this appeal.
- v. That the appellant has not come to this Hon'ble Tribunal with clean hands.
- vi. That the appeal is not tenable and is liable to be dismissed.
- vii. That the appellant is estopped from filing the instant appeal. That the appeal in its present form is bad, defective hence liable to be dismissed.
- viii. That the appeal and limitation is barred by law.
- ix. That the appellant is liable for compensatory cost for the false and frivolous appeal before this honorable Tribunal.
- x. That the appeal is bad for misjoinder and non-joinder of necessary parties.

ON FACTS: -

1. Pertains to record.
2. Pertains to record.
3. Pertains to record. However, it is quite clear that the petitioner was promoted from BPS-16 to BPS-17 as Assistant Director Survey & Drawing vide Notification SO(E)/MDD/2-4/2022/8554-62 dated 18.05.2022 (**Annex-A**), whereas respondent No. 05 was promoted to the post of Chief Draftsman (BPS-17) vide Notification No. SO-Admin/MD/1-6/91/Vol-XV/1263-68 dated 30.10.2013 (**Annex-B**).
4. Incorrect, the petitioner concealed the facts from Tribunal. According to Section 8(5) of the Civil Servant Act 1973, the seniority lists prepared under such section (1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January (**Annex-C**). Accordingly, after fulfillment of all codal formalities and approval of the Competent Authority (Secretary Establishment) final seniority list of Chief Draftsman (BPS-17) & Assistant Director (Survey & Drawing) (BPS-17) stood on 30.11.2021 in Mines and Minerals, Directorate have been issued and circulated amongst the officers concerned (**Annex-D**). However, at that time the petitioner was posted/served as Survey and Drawing Officer (BPS-16) and he was promoted to the post of Assistant Director Survey & Drawing vide Notification dated 18.05.2022 (**Annex-A**). Moreover, as per existing Service Rules required length of service for promotion to the post of Deputy Director (S&D) BS-18 is 05-years, which was completed by respondent no. 5.
5. Incorrect. As already explained in Para-4 above. The promotion case of respondent no. 05 was processed on notified/final seniority list. After recommendations of Provincial Selection Board (PSB) and approval of the Competent Authority (Chief Minister) the notification dated 13.12.2022 regarding promotion of respondent no. 5 to the post of Deputy Director (Survey & Drawing) BPS-18 was issued. At that time the petitioner was on 01-year probation period and **according to Para IV(f) of the Promotion policy 2009 Promotion of officer still on probation after their promotion in their existing Basic Scales shall not be considered.** (**Annex-E**)

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Moreover, required length of service for promotion to the said post is five years and according to Para III (a)(i) of the promotion policy ibid, aggregate marks of efficiency index for promotion to BS-18 is 50% Marks as the petitioner having no PERs in BS-17. (Annex-E)

6. According to proviso of Rule 1 (2) of the Appeal Rules 1986 provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade (**Annex-F**). However, the departmental appeal of the petitioner examined/processed and rejected by the Competent Authority being devoid rules and hence no merit/force (**Annex-G**).
7. Incorrect, all the requisite documents provided to the petitioner.
8. Incorrect, the petitioner not deprived from both the orders as issued according to existing Service Rules for the said post and promotion policy 2009 of the provincial government therefore, the instant service appeal may kindly be dismissed on the following grounds: -

Grounds:


- A. Incorrect, both the orders dated: 13.12.2022 and 20.01.2023 have been issued according to Law/ Rules/Policy on facts and record.
- B. Incorrect. According to Rule 17(2) of the APT Rules 1989 Seniority in various cadres of civil servants appointed by initial recruitments vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre read with of sub section (4) of Section 8 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to the post. (**Annex- H&I**) thus the petitioner was promoted from BPS-16 to BPS-17 as Assistant Director Survey & Drawing vide Notification dated 18.05.2022 (**Annex-A**), whereas respondent no. 05 was promoted to the post of Chief Draftsman (BPS-17) vide Notification No. SO-Admin/MD)/1-6/91/Vol-XV/1263-68 dated 30.10.2013 (**Annex-B**).

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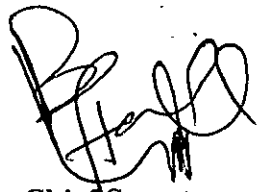
Method of recruitment to the post of Deputy Director Survey & Drawing (BPS-18) is by promotion on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Survey & Drawing)/Chief Draftsman with at least five-year service a such or If no suitable officer is available for promotion then by initial recruitment. (Annex-J)

Applying the said rules the respondent no. 5 (Muhammad Farooq) was considered by the competent forum for promotion to the post of Deputy Director (Survey & Drawing) BS-18 on regular basis and the petitioner not considered due to recently promoted to the post of Assistant Director (Survey and Drawing) on 18.05.2022 and remained on probation for a period 1 year in term of Section 06(2) of the Khyber Pakhtunkhwa, Civil Servants Act, 1973 read with Rule -15 (1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 (Annex-A).

- C. Incorrect, no fundamental right of the petitioner Is violated under the constitution of Islamic Republic of Pakistan 1973.
- D. Incorrect, as already explained. in Para-3,4,5, 6 & 7 of the facts and "Para-B" of the grounds.
- E. Incorrect, as already explained in Para-3,4,5, 6 & 7 of the facts and "Para-B" of the grounds.
- F. Incorrect, as already explained in Para-3,4,5, 6 & 7 of the facts and "Para-B" of the grounds.
- G. Incorrect, as already explained in Para-3, 4, 5, 6 & 7 of the facts and "Para-B" of the grounds.
- H. That the respondents seek permission to advance others grounds and proofs at the time of hearing.



In view of the above, it is humbly prayed that, the service appeal filed by the appellant be dismissed with cost being baseless frivolous and misconceived and against the facts on the grounds please.

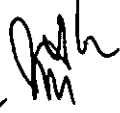


Chief Secretary
Khyber Pakhtunkhwa, Peshawar,
(Respondent No. 1)



Secretary
Minerals Development Department
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)

SECRETARY
to Govt of Khyber Pakhtunkhwa
Minerals Dev. Dept.



Secretary Finance Department, Khyber
Pakhtunkhwa
✓ (Respondent No. 4)



Director General, Mines & Minerals
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 3)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 351/2023

Muhammad Rafiq..... Appellant

Versus

Government of Khyber Pakhtunkhwa, Peshawar & others..... Respondents

AFFIDAVIT

I Said Muhammad Superintendent (Litigation) BS-17 of Directorate General Mines and Minerals do hereby solemnly affirm and declare that the contents of the accompanying affidavit reply are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal.

It is further stated on that in this appeal, the answering respondents have neither been placed on oath nor their defense have is struck off. / cost

[Signature]
DEPONENT

Identified by



01 SEP 2023



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**Government of
Khyber Pakhtunkhwa
Minerals Development Department**

Dated Peshawar, 18th May, 2022

NOTIFICATION

No.SO(E)/MDD/2-4/2022: The Competent Authority on the recommendations of the Departmental Promotion Committee is pleased to promote Muhammad Rafique, Survey & Drawing Officer (BS-16) to the post of Assistant Director (Survey & Drawing) BS-17 in the Directorate General, Mines & Minerals, Khyber Pakhtunkhwa, on regular basis, with immediate effect.

2. On his promotion, the above named Assistant Director (Survey & Drawing) BS-17 will remain on probation for a period of one year extendable for another one year in terms of Section 6 (2) of Khyber Pakhtunkhwa, Civil Servants, Act, 1973 read with Rule-15 (1) of Khyber Pakhtunkhwa Civil servant (Appointment, Promotion and Transfer) Rules, 1989.

3. Consequent upon the above promoted officer is allowed to actualize his promotion against the post of Assistant Director (Survey & Drawing) BS-17 in the Directorate General of Mines & Minerals, Khyber Pakhtunkhwa, being single cadre post.

-Sd-

Secretary to Govt: of Khyber Pakhtunkhwa,
Minerals Dev: Department

No.SO(E)/MDD/2-4/2022 8554-62 **Dated Peshawar, 18th May, 2022**

Copy forwarded to:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. The Directorate General of Mines, Khyber Pakhtunkhwa, Peshawar.
3. PS to Advisor to Chief Minister for Mines & Minerals, Khyber Pakhtunkhwa.
4. PS to Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar.
5. PS to Secretary Minerals Dev: Department Khyber Pakhtunkhwa, Peshawar
6. Officer Concerned
7. Personal File.
8. Office order file.
9. Master File

Attested
[Signature]

[Signature]
(Hafiz Abdul Jalil)
Section Officer (Estt.)
Ph# 091-9223559



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GOVERNMENT OF
KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT DEPARTMENT

Dated Peshawar, the 30th October, 2013

NOTIFICATION

No.SO-Admn(MD)1-6/91/Vol-XV.- The Competent Authority, on the recommendation of Departmental Promotion Committee, is pleased to promote Mr. Muhammad Farooq, Draftsman (BPS-11) to the post of Chief Draftsman (BPS-17) in the Directorate General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar on regular basis with immediate effect.

2. The officer, on promotion will remain for a period of one year in terms of section-6 (2) of Khyber Pakhtunkhwa, Civil Servants Act, 1973 read with rule-15 (1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989.

3. Consequent upon the above, Mr. Muhammad Farooq, on promotion to BPS-17 as Chief Draftsman is hereby transferred from the office of Assistant Director Mineral Development, Abbottabad and posted as Chief Draftsman (BPS-17) in Headquarter's Office, Directorate General, Mines & Minerals, Khyber Pakhtunkhwa Peshawar against the vacant post with immediate effect.

Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department

Ends: No.SO-Admn(MD)1-6/91/Vol-XV

1263-68
Dated Peshawar the, 30th October, 20

Copy is forwarded to: -

1. ✓ The Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officer, Abbottabad.
4. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department.
5. The officer concerned.
6. The Manager, Govt. Printing Press, Peshawar.

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11-10-13

31-10-13

(SYED WALI KHAN)

Section Officer (Establishmen

ADA

Attested

before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete course or the training shall, except as may be prescribed otherwise-

- (a) if he was appointed to such service or post by initial recruitment, be discharged; or
- (b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged:

Provided that in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

7. Confirmation :- (1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed.

(2) A civil servant promoted to a post ²[] on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation therein.

(3) There shall be no confirmation against any temporary post.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing there-from.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

8. Seniority:- (1) For proper administration of a service, cadre or ³[post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or ⁴[post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or ⁵[post] as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or ⁶[cadre] whether serving the same department, or office or not, as may be prescribed.

² The words "or grade" omitted by NWFP Ordinance No. IV of 1985.

³ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

⁴ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

⁵ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

⁶ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

Admitted

(3) Seniority on initial appointment to a service, ⁷[cadre] or post shall be determined as may be prescribed.

⁸(4) 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 the higher post, retain their inter-se-seniority as in the lower post.

⁹(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

9. **Promotion:-**(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a ¹⁰[higher] post for the time being reserved under the rule for departmental promotion in ¹¹[] the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotion shall be made as may be prescribed-

- (a) in the case of a selection post, on the basis of selection on merit; and
- (b) in the case of non-selection post, on the basis of seniority-cum-fitness.

10. **Posting and Transfer:-** Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. **Termination of service:-** (1) The service of a civil servant may be terminated without notice-

- (i) During the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [service], cadre or post to another [service], cadre or post, his service shall not be so terminated so long as he

⁷ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

⁸ Sub section (4) of Sec-8 substituted by NWFP Ordinance No. IV of 1985.

⁹ Sub section (5) of Sec-8 added by NWFP Act No. 1 of 1989

¹⁰ The word "higher" inserted by NWFP Ordinance No. IV of 1985.

¹¹ The words "the higher grade of" omitted by NWFP Ordinance No. IV of 1985.

noted
[Signature]



Government of Pakhtunkhwa Khyber
Mineral Development Department

Dated Peshawar, the 07th February, 2022

NOTIFICATION

No. SO (E)/MDD/2-3/2021/1893-98 In pursuance of section 8(1) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rules-17 Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, the competent Authority is please to notify/circulate final seniority list of Chief Draftsman (BS17) & Assistant Director (Survey & Drawing) BS-17, in Directorate General of Mines & Minerals, Khyber Pakhtunkhwa, (as it stood on 30.11.2021) for general information.

S. No	Name of Officer	Qualification	Date of Birth With Domicile	Date of 1 st entry into Government Service	Regular appointment /promotion to the present post			Present place and date of posting Director Licensing
					Date	BPS	Method of Rec./Appt	
1.	Muhammad Farooq Chief Draftsman	DAE Civil	16.01.1971 Manshera	04.02.1991	01.11.2013	17	By Promotion	Office of ADM Abbottabad
2.	Mr. Shahid Farooq Assistant Director (S&D)	Matric	11.02.1962 Peshawar	05.10.1982	17.01.2019	17	By Promotion	H/Q Office Peshawar 16.10.2016

SECRETARY MINERAL DEVELOPMENT DEPARTMENT
KHYBER PAKHTUNKHWA

Dated Peshawar, 07.02.2022

No. SO (E)/MDD/2-3/2021/

Copy forwarded to:

1. Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
2. Private Secretary to Secretary Minerals Development Department, Khyber Pakhtunkhwa, Peshawar.
3. The Manager, Government Printing & Stationary Department, Khyber Pakhtunkhwa, Peshawar.
4. Officers Concerned.

(Hafiz Abdul Jali)
SECTION OFFICER (ESTT.)
07/02/20

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(f) For promotion & promotion posts, the officer on the panel securing maximum marks will be recommended for promotion. Thirty marks placed at the disposal of the Provincial Selection Board in such cases shall be awarded for technical qualification, experience and accomplishments (research publications relevant to the field of specialism).

(g) Since three of the aspects of performance i.e. moral integrity, intellectual integrity, quality and output of work do not figure in the existing PER forms, the grades secured and marks scored by the officer in overall assessment shall be notionally repeated for the other complementary evaluative aspects and form the basis of quantification.

(h) The performance of officers shall be evaluated in terms of the following grades and scores:

		<u>Upto 11th June, 2008</u>	<u>From 12th June, 2008</u>
1.	Outstanding	--	10 Marks
2.	Very Good	10 marks	8 marks
3.	Good	7 marks	7 marks
4.	Average	5 marks	5 marks
5.	Below Average	1 mark	1 mark

(i) The outstanding grading shall be awarded to officers showing exceptional performance but in no case should exceed 10% of the officers reported on. The grading is not to be printed in the PER form but the reporting officer while rating an officer as "outstanding" may draw another box in his own hand in the form, initial it and write outstanding on the descriptive side. Convincing justification for the award shall be recorded by the reporting /countersigning officer. The discretion of awarding "outstanding" is to be exercised extremely sparingly and the award must be merited.

(j) The quantification formula and instructions for working out quantified score are annexed.

✓ Annex E IV. **Promotion of officers who are on deputation, long leave, foreign training:**

- a) The civil servants who are on long leave i.e. one year or more, whether within or outside Pakistan, may be considered for promotion on their return from leave after earning one calendar PER. Their seniority shall, however, remain intact.

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[Signature]

- b) The civil servants who are on deputation abroad or working with international agencies within Pakistan or abroad, will be asked to return before their cases come up for consideration. If they fail to return, they will not be considered for promotion. They will be considered for promotion after earning one calendar PER and their seniority shall remain intact.
- c) In case of projects partially or fully funded by the Federal or Provincial Government, where PERs are written by officers of Provincial Government, the condition of earning one calendar PER shall not be applicable to officer on deputation and the officer on return to his/her cadre shall be considered for promotion.
- d) The civil servants on deputation to Federal Government, Provincial Government, autonomous/semi-autonomous organization shall be considered for promotion and informed to actualize their promotion within their cadres. They shall have to stay and not be allowed to go back immediately after promotion. Such stay shall be not less than a minimum of two years. If he/she declines his/her actual promotion will take place only when he/she returns to his/her parent cadre. His/her seniority in the higher post shall, however, stand protected.
- e) The cases of promotion of civil servants who have not successfully completed the prescribed mandatory training (MCMC, SMC & NMC) or have not passed the departmental examination for reasons beyond control, shall be deferred.
- f) Promotion of officers still on probation after their promotion in their existing Basic Scales shall not be considered.
- g) A civil servant initially appointed to a post in a Government Department but retaining lien in a department shall not be considered for promotion in his parent department. However, in case he returns to parent department, he would be considered for promotion only after he earns PER for one calendar year.
- h) A civil servant who has resigned shall not be considered for promotion no matter the resignation has yet to be accepted.

V. **Deferment of Promotion:**

- (a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if
- (i) His inter-se-seniority is disputed/sub-judice.

Abdul

Amir

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- Mid-Career Management Course at Institute of Management (NIM) for promotion to BS-19
- Senior Management Course at National Management College, Lahore for promotion to BS-20
- National Management Course at National Management College, Lahore for promotion to BS-21

(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of specialization as envisaged in the existing Promotion Policy.

(c) The qualifying thresholds of quantification of PERs for nomination to these trainings are as under:

MCMC	60
SMC	70
NMC	75

(d) There will be no exemptions from mandatory trainings. An officer may, however, request for temporary exemption in a particular moment in time but grant of such exemption would be at the discretion of the competent authority. No such request with regard to an officer would be made by the Government Departments concerned.

(e) Three officers shall be nominated for each slot of promotion on the basis of their seniority. Those unwilling to attend will be dropped at their own expense without prejudice to the rights of others and without thwarting or minimizing the chance of improving the quality of service.

(f) Officers failing to undergo mandatory training in spite of two time nominations for a training shall stand superseded if such failure was not for the reasons beyond the control of the officers concerned.

III. Development of Comprehensive Efficiency Index (CEI) for promotion:

(a) The Comprehensive Efficiency Index to be maintained for the purpose of promotion is clarified as under:

- (i) The minimum of aggregate marks for promotion to various grades shall be as follows:

Basic Scale	Aggregate marks of Efficiency Index
18	50
19	60
20	70
21	75

adil

Section-3

Government Servants Appeals Rules

THE NORTH WEST FRONTIER
PROVINCE CIVIL SERVANTS
(APPEAL) RULES, 1986.

Statutory provision

S.No.1

Section 22 of the NWFP Civil Servants Act, 1973

Right of Appeal or Representation:-(1) Where a right to prefer an appeal or apply for review in respect of any order relating to the terms and conditions of his service is provided to a civil servant under any rules applicable to him, such appeal or application shall, except as may be otherwise prescribed be made within thirty days of the date of such order.

(2) Where no provision for appeal or review exists under the rules in respect of any order or class of orders, a civil servant aggrieved by any such order may, within thirty days of the communication to him of such order, make a representation against it to the authority next above the authority which made the order:

✓ Provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade.

S.No.2

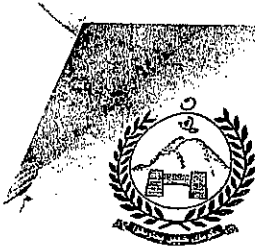
1. **Short title, commencement and application:-** (1) These Rules may be called the North-West Frontier Province Civil Servants (Appeal) Rules, 1986.

(2) They shall come into force at once and shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service in connection with the affairs of the Province.

Published in the NWFP Government Gazette, Extraordinary, dated 2.6.1986 at Pages 1290-93

aborted





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Directorate General of Mines and Minerals
KHYBER PAKHTUNKHWA
Attached Departments Complex Khyber Road Peshawar

No. 1193/2/847/DGMM/Admin

Dated 20/01/2023

To,

✓
Muhammad Rafiq,
Assistant Director (S&D)
H/Q Office, Peshawar.

Subject: DEPARTMENTAL APPEAL AGAINST THE ORDER
NO. SO(E)/MDD/2-4/PSB/DGMM/2022 Dated: 13.11.2022.

I am directed to refer to the subject noted above and to state that your appeal against the Order No. SO(E)/MDD/2-4/PSB/DGMM/2022 dated: 13.11.2022 has been regretted by the Competent Authority/ Secretary Minerals Development Department Khyber Pakhtunkhwa. (Copy enclosed)

Assistant Director (Admin)
H/Q Office Peshawar.
Dated _____/01/2023

Endst: No. _____/2/847/DGMM/Admin

Copy forwarded to: -

1. PA to Director General Mines and Minerals, Khyber Pakhtunkhwa, Peshawar.
2. Master File/DGMM/Admin/2023.

Assistant Director (Admin)
H/Q Office Peshawar.

attested

PROBATION AND CONFIRMATION

⁴⁷15. **Probation.** ----- (1) Persons appointed to posts by initial recruitment, promotion or transfer shall be on probation for a period of one year.

(2) The appointing authority, if considers necessary, may extend the probation period for one year as may be specified at the time of appointment.

⁴⁸(3) On the successful completion of probation period, the appointing authority shall, by specific order terminate the probation of the officer or official concerned within two months after the expiry of probation period prescribed in sub-rule(1):

Provided that if no specific order regarding termination of the probation period of the official or officer concerned is issued within two months, the period of probation shall be deemed to have been extended under sub-rule (2):

Provided further that if no specific order is issued on the expiry of the extended period of probation, the period of probation shall be deemed to have been successfully completed."

16. **Confirmation:-**After satisfactory completion of the probationary period, a civil servant shall be confirmed; provided that he holds a substantive post, provided further that a civil servant shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course or has failed to complete successfully a training prescribed within the meaning of sub-section (3) of Section 6 of the ⁴⁹[Khyber Pakhtunkhwa] Civil Servants Act, 1973.

PART-VI

SENIORITY

✓ 17. **Seniority :-**(1) the seniority inter se of civil servants ⁵⁰(appointed to a service, cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission ⁵¹[or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post,

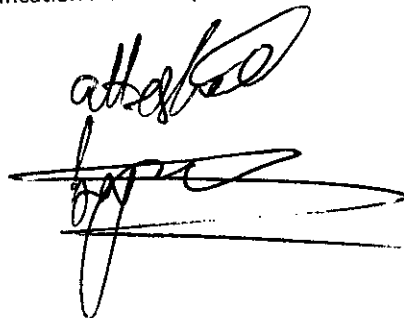
⁴⁷ Rule-15 substituted vide Notification No. SOR-VI/E&AD/1-3/2009/Vol-VIII dated 16-2-2010.

⁴⁸ Sub rule (3) substituted vide Notification No. SOR-VI (E&AD)1-3/2012 dated 28-12-2012.

⁴⁹ Subs.by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁵⁰ Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80; dated 17-05-1989.

⁵¹ The words inserted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 04-02-1996.



retain their inter se seniority as in the lower post.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

⁵²(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

⁵³(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the lower post is the same, the civil servant older in age, shall be treated senior.

18. General Rules:- In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

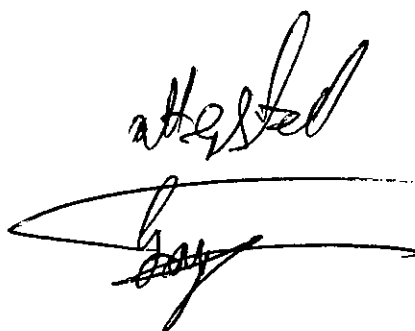
19. Repeal:- The ⁵⁴[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

(Authority; No. SORI(S&GAD)4-1/80, dated 13th May, 1989)

⁵² Sub-rule (3) of Rule 17 added vide Notification No. SOR-I(E&AD)4-1/80/IV, dated 28-5-2002.

⁵³ Sub-rule (4) of Rule 17 added vide Notification No. SOR-VI (E&AD) 1-3/2008 dated 19-11-2009.

⁵⁴ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

attested


19
1*Civil Servants Act, 1973
(Act No. LXXI of 1973)

An Act to regulate the appointment of persons to, and the terms and conditions of Service of persons in, the service of Pakistan.

WHEREAS it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons, in the service of Pakistan, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

1. **Short title, application and commencement.**-(1) This Act may be called the Civil Servants Act, 1973. *subject*

(2) it applies to all civil servants wherever they may be.

(3) It shall come into force at once.

2. **Definitions.**-(1) In this act, unless there is anything repugnant in the subject or context,-

(a) "ad hoc appointment" means appointment of a duly qualified person *made* otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method;

(b) "civil servant" means a person who is a member of an All-Pakistan Service or of a civil service of the Federation or who holds a civil post in connection with the affairs of the Federation, including any such post connected with defence, but does not include-

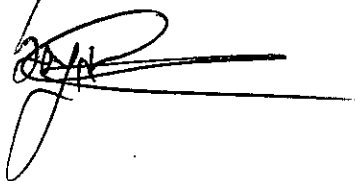
(i) a person who is on deputation to the Federation from any Province or other authority;

(ii) a person who is employed on contract, or on work-charged basis or who is paid from contingencies; or

(iii) a person who is "worker" or "workman" as defined in the Factories Act, 1934 (XXV of 1934), or the Workman's Compensation Act, 1923 (VIII of 1923);

(c) "initial appointment" means appointment made otherwise than by promotion or transfer.

*The Act received assent of the President on the 26th September, 1973 and was published in the Gazette of Pakistan, Extra, Part I, September 29, 1973.

attached


- (b) if he was appointed to such service or, post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a or, if there be no such service or post, be discharged.

Provided that, in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

7. **Confirmation.**- (1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed.

(2) A civil servant promoted to a post on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation therein.

(3) There shall be no confirmation against any temporary post.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing therefrom.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

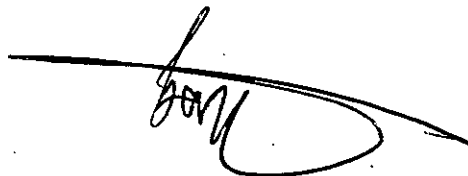
8. **Seniority.**- (1) For proper administration of a service, cadre, or post the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or post to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or post as the case may be.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or cadre whether serving in the same department or office or not, as may be prescribed.

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

(4) 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.

attested



EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII
GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, THURSDAY, 4TH JANUARY, 2018.

GOVERNMENT OF KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT DEPARTMENT

NOTIFICATION

Peshawar dated the 28.12.2017.

No.SOE/MDD/2-1/2017.-In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Minerals Development Department in consultation with the Establishment and the Finance Departments, hereby directs that in this Department's Notification No. SO-Admn (MD) 1-6/88 Vol-V, dated 17/10/2010, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix,-

- (a) against serial No. 1, in column No. 5, for the existing entries, the following shall be substituted, namely:

"(a) By promotion on the basis of seniority-cum-fitness from amongst the Additional Director General, Director Licensing and Director Exploration, having at least seventeen years service in BPS-17 and above, and in case of persons initially appointed in BPS-18 the length of service for promotion to the post shall be twelve years with successful completion of Senior Management Course; or

"(b) If no eligible officer is available for promotion then by transfer of an officer from the Provincial Government.";

- (b) after serial No. 1, the following new serial No. alongwith the entries in the respective columns shall be inserted, namely:

"1(A)	Additional Director General (BPS-19)	---	---	By transfer from amongst the Director Licensing and Director Exploration.";
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- (c) after serial No. 3, the following new serials No's. alongwith the entries in the respective columns shall be inserted, namely:

"3(A)	Deputy Director Surveillance (BPS-18)	At least Second Class Bachelor's Degree In Mining Engineering from a recognized University with minimum seven (7) years experience in the relevant field.	25 to 40 Years.	(a) By promotion on the basis of seniority-cum-fitness, from amongst the Assistant Director Surveillance having second class Bachelor's Degree In Mining Engineering with at least five years service as such; or
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attached

[Signature]

			25 to 40 Years.	(b) if no suitable officer is available, then by initial recruitment.
3(B)	Deputy Director (Survey and Drawing) (BPS-18)	At least Second Class Bachelor's of Sciences (Four years in Civil Engineering) or its equivalent qualification from a recognized University with at least seven years experience in the relevant field as such.	25 to 40 Years.	(a) By promotion on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Survey and Drawing)/ Chief Draftsmen with at least five years service as such; or (b) if no suitable officer is available for promotion then by initial recruitment.
3(C)	Deputy Director (Planning) (BPS-18)	At least Second Class Master's Degree in Business Administration, Commerce, Economics, Statistics, Public Administration or at least second class Bachelor's Degree in Mining Engineering or Bachelor's of Sciences In Geology (Four years) or equivalent qualification from a recognized University with at least seven years experience in the relevant field as such.	25 to 40 Years.	(a) By promotion on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Planning and Development) with at least five years service as such; or (b) if no suitable officer is available for promotion then by initial recruitment.";

(d) against serial No. 5, in columns No. 3, 4 and 5, the following shall respectively be substituted, namely:

At least Second Class Master's Degree in Geology or Second Class Bachelor's of Science in Geology (four years) or equivalent qualification from a recognized University.	21 to 32 Years.	By initial recruitment: Provided that if no suitable candidate is available for initial recruitment, then by transfer of a suitable officer from other Departments having qualification prescribed for initial recruitment.";
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(e) after serial No. 6, the following new serial No's. alongwith the entries in the respective columns shall be inserted, namely:

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