


14th July, 2023

1. Junior to counsel for the appellant and Mr. Muhammad Jan, District Attorney for the respondents present.
2. The Worthy Chairman is on leave, therefore, case is adjourned to 15.11.2023 for arguments before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

Mutazem Shah


(Fareeha Paul)
Member (E)

21.03.2023

Junior to counsel for the appellant present.

Fazal Shah Mohmand, learned Additional Advocate General alongwith Mr. Riaz Superintendent for the respondents present.

Former made a request for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 05.06.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
PESHAWAR



(Muhammad Akbar Khan)
Member (E)



(Rozina Rehman)
Member (J)

05.06.2023

Appellant alongwith his counsel present. Mr. Muhammad Riaz, Superintendent alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 14.07.2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
PESHAWAR



(Fareeha Paul)
Member (E)



(Salah-ud-Din)
Member (J)

Naeem Amin

22.11.2022

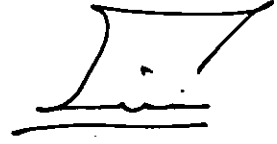
Appellant alongwith his counsel present. Mr. Naheed Gul, Assistant alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Arguments could not be heard due to paucity of time. Adjourned. To come up for arguments on 09.01.2023 before the D.B.

SCANNED
KPST
Peshawar



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

09.01.2023

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. Advocate General alongwith Riaz Khan, Superintendent for the respondents present.

SCANNED
KPST
Peshawar

Learned Member Executive (Miss Fareeha Paul) left the court at 12.00 Noon in order to attend a meeting in the Law Department, Government of Khyber Pakhtunkhwa, therefore, this case is adjourned to 21.03.2023 for arguments before the D.B.



(ROZINA REHMAN)
Member (J)

21.02.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 31.05.2022 for the same as before.

Reader

31.05.2022

Counsel for the appellant present.

Naseer Ud Din Shah learned Assistant Advocate General for respondents present.

Former submitted rejoinder with a request for adjournment. Adjourned. To come up for arguments on 08.08.2022 before D.B.

(Fareeha Paul)
Member(E)

(Rozina Rehman)
Member (J)

8-8-2022 Due to the Public holiday the case is adjourned to 22-11-22

Reader

12.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.


Chairman

Stipulated period passed reply not submitted.

26.10.2021

Appellant in person present. Mr. Naheed Gul, Assistant alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Reply/comments on behalf of respondents submitted, which is placed on file and copy of the same is handed over to appellant, who sought adjournment on the ground that his counsel is not available today. Adjourned. To come up for rejoinder, if any, as well as arguments on 14.01.2022 before the D.B.

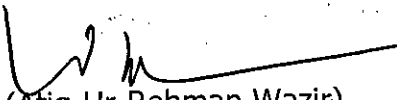

(MIAN MUHAMMAD)
MEMBER (E)


(SALAH-UD-DIN)
MEMBER (J)

14.01.2022

Nemo for the appellant. Mr. Muhammad Rasheed, DDA alongwith Nahid Khan, Assistant for the respondents present.

Due to Non-availability of learned counsel for th appellant arguments could not be heard. To come up for arguments on 21.02.2022 before the D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


Chairman

24.02.2021

The learned Member Judicial Mr. Muhammad Jamal Khan is under transfer, therefore, the case is adjourned. To come up for the same before S.B on 10.06.2021.



Reader

10.06.2021

Counsel for the appellant present: Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing. Let the respondent file the reply/comments the question of bar of limitation will be taken up during course of regular hearing keeping in view the grounds of appeal and reply of respondents. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 26.10.2021 before the D.B.

Appellant Deposited
Security & Process Fee


15/6/21

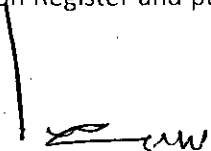

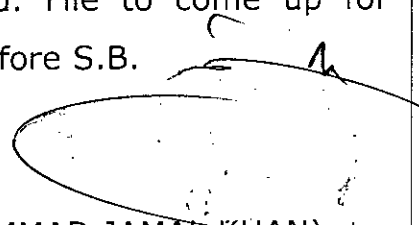

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 12441 /2020


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/10/2020	<p>The appeal of Mr. Said Rasool resubmitted today by Mr. Babar Khan Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30/11/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
2-	30.11.2020	<p>Learned counsel for appellant is present. He requests for adjournment that he has not prepared the brief of the instant appeal. Adjournment granted. File to come up for preliminary hearing on 24.02.2021 before S.B.</p> <p style="text-align: right;"> (MUHAMMAD JAMAL KHAN) MEMBER (JUDICIAL)</p> <p><i>WB</i></p>

The present appeal was returned to the counsel for the appellant for completion and resubmission within 15 days. Today i.e. on 06.10.2020 he has resubmitted the same without removing the objection which is returned again to the counsel for the appellant for removing the following deficiencies and resubmit the same within 15 days.

- 1- Copy of promotion order in respect of appellant mentioned in the memo of appeal (Annexure-B) is not attached with the appeal.
- 2- Copy of departmental appeal mentioned in para-3 of the memo of appeal in respect of appellant is not attached with the appeal which may be placed on it.
- 3- Page no. 14 and 15 of the appeal are illegible which may be replaced by legible/better one.
- 4- Affidavit may be got attested by the Oath Commissioner.

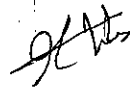
No. 2857 /S.T,

DT. 07/10/2020


Registrar
Service Tribunal
Khyber Pakhtunkhwa
Peshawar.

Mr. Babar Khn Yousafzai Adv.

Sir, Objections removed hence, Re-submitted.
20-10-2020



Babar Khan Yousafzai
Adv

The joint appeal of M/S Said Rasool, Muhammad Jehan and Muhammad Ayaz received today i.e. on 20.08.2020 is in complete on the following score which is returned to the counsel for the appellants for completion and resubmission within 15 days.

- 1- Annexures of the appeal may be flagged.
- 2- Annexure-A, page 21 & 22 of the appeal are illegible which may be replaced by legible/better one.
- 3- Sub-rule- 2 of rule-3 of the appeal rules 1986 requires that every affected civil servant shall prefer the appeal separately. Therefore, the appeal of the above named appellants may be filed separately/individually.
- 4- Three copies/sets of the appeal along with annexures i.e. complete in all respect for Tribunal and one for each respondent in each appeal may also be submitted.

No. 2564 /S.T

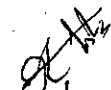
Dt. 02/09 /2020


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.


Mr. Babar Khan Yousafzai Adv. Pesh.

Dear Sir,

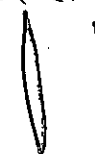
That the instant file is re-submitted with submission to give lil bit time more for removal of aforementioned objections.


Babar Khan Yousafzai
Advocate


⑦ days time further extended.


15/9/2020

⑩ days time further extended.


22/9/2020

Sir
6/10/2020
objections removed hence,
Re-submitted.


Babar Yousafzai Adv

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In Re:

Service Appeal No 12441 2020


Said Rasool.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa and others.....Respondents

I N D E X

S NO	DESCRIPTION OF DOCUMENTS	ANNEX	PAGES
1.	Grounds of Appeal alongwith Affidavit	-	1-5
2.	Copy of notification dated 21.12.2011	A	6-7
3.	Copy of appeal	B	8-9
4.	Copies of judgment dated 22.11.2012.	C	10-13
5.	Copy of order dated 29.01.2013	D	14
6.	Copy of order dated 11.01.2018	E	15-21
7.	Copy of seniority list	F	22-26
8.	Copy of order dated 12.06.2019	G	27-29
9.	Copies of representation and order dated 28.07.2020	H & I	30-33
10.	Copies of relevant portions of Rules	J & K	34-37
11.	Vakalatnama.		38


Appellant

Through:


(BABAR KHAN YOUSAFZAI)
Advocate, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

In Re: Service Appeal No 12441 2020

Said Rasool Deputy Secretary, Home and Tribal Affairs Department,
Peshawar.....Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa, Administration Department, Civil Secretariat, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar..... Respondents

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974 READ WITH KHYBER PAKHTUNKHWA GOVERNMENT SERVANTS (EFFICIENCY & DISCIPLINE) RULES, 1973 AND KHYBER PAKHTUNKHWA CIVIL SERVANT (APPOINTMENT, PROMOTION AND TRANSFER) RULES 1989 AND PROVINCIAL MANAGEMENT SERVICE RULES 2007 AGAINST THE ORDER DATED 28.07.2020 WHEREBY THE REPRESENTATION FOR GRANT OF REGULAR PROMOTION SENIORITY W.E.F 25 JAN 2010 FILED BY THE APPELLANT WAS REJECTED BY THE RESPONDENTS.

Respectfully Sheweth:

1. That the appellant is civil servant (PMS) promoted to different scales, currently working in BPS-17 Regular basis. (Copy of the notification dated 21.12.2011 are attached as annexure "A").

2

2. That the appellant had rendered Services more than five years as private Secretaries (BPS-16) before his promotion to BPS-17 this fact can be further narrated from promotion order dated 11.01.2005 via notification No.SOE-IV (E & AD) 1-7/2004.
3. That against the illegality carried out by the respondents, the other same like officers filed a joint appeal on 13.06.2011 where seeking regular promotion w.e.f 25/01/2010 but no action what so ever has been taken in this regard. (Copy of appeal dated 13.06.2011 is attached as annexure "B").
4. That the appellant with others colleagues had approached the honourable Peshawar High Court, Peshawar vide W.P No.2727-P/2012 which was disposed off with certain direction vide judgment dated 22.11.2012. (Copy of the judgment dated 22.11.2012 is attached as annexure "C").
5. That the respondents had turned down the then representation via order dated 29.01.2013 against the rules.(Copy of the order is attached as annexure "D").
6. That other colleagues had also approach to this honourable Tribunal service appeals which were accepted and regular promotion was granted to them w.e.f 25.03.2010. (Copy of the order dated 11.01.2018 is attached as annexure "E").
7. That the colleagues of the appellant who approached to this honourable Tribunal were junior to him as per seniority list dated 31.12.2015. (Copy of seniority list is attached as annexure F).
8. That on the ground of discrimination the appellant and his colleagues approach to the honourable Peshawar High Court, Peshawar through W.P No.1374-P/2019 but the same was turn down with directions to approach the proper forum.(Copy of the order dated 12.06.2019 is attached as annexure "G").

9. That the observation held by the august Peshawar High Court, Peshawar the appellant and his colleagues submitted a joint representation before the competent authority but the same was also turned down via impugned order dated 28.07.2020. (Copies of the representation and impugned order dated 28.07.2020 are attached as annexure 1 & 2 respectively).
10. That the appellants have no other adequate remedy available to them but to approach this honourable Tribunal in the instant service appeal on the following grounds inter alia:

GROUND.

- A. That the impugned order dated 28.07.2020 is illegal, without jurisdiction, without lawful authority and liable to be struck down.
- B. That all the proceedings conducted by the competent authority against the appellant are unlawful and against the express provision of Khyber Pakhtunkhwa Govt. Servant (E&D) Rules, 1973, hence, are liable to be set aside.
- C. That the respondents have violated the Khyber Pakhtunkhwa Civil Servants (Appointment, promotion and transfer) Rules 1989 and Provincial Management Service Rules 2007 by appointing them on Acting Charge basis instead of regular promotion. (Copies of relevant portions of the Rules are attached as annexure 3 & 4, respectively).
- D. That for the acting charge based promotion the appellants had also undergone the mandatory training but despite that regular promotion was not granted from the relevant date.
- E. That it is settled by the honourable Apex Court dicta that once the Superior Courts enunciate a principle of law, the benefits of the same may be extended to all those similarly placed, albeit they had not come to the conclusion granting such relief. All the other colleagues being junior to the appellants were held promoted but the benefits were not extended to them.
- F. That the officers namely Fazal Hussain, Syed Masood Shah, Habibullah Afrif, Naeem Akhtar and Niaz Muhammad are appearing at Serial No.221, 233, 306 and 307 while the

(4)

appellants are at Serial No.212, 218 and 228 of the seniority list already attached as annexure I.

- G. That it is the fundamental right of the appellants that they should be granted regular promotion with effect from 25.01.2010 if they have no adverse remarks in their service records but the same has been denied to the petitioners by violating the same rights.
- H. That the appellants for the redressal of their grievances have gone from pillar to post but the respondents are reluctant to provide them any relief in respect of their regular promotion w.e.f 25.01.2010.
- I. That the appellant seeks permission of this Hon'ble Tribunal to raise/agitate other grounds at the time of hearing not specifically taken in the instant Appeal.

It is therefore, humbly prayed that on acceptance of this Service Appeal, the impugned order dated 28.07.2020 may kindly be set aside and the appellant be granted regular promotion with effect from 25.01.2010 with all back benefits.

Any other relief which this Hon'ble Tribunal deems fit under the circumstance of the case may also graciously be passed in favour of the appellant.


Appellant

Through:


(BABAR KHAN YOUSAFZAI)
Advocate, Peshawar.

Dated: - 20.08.2020

Certificate:

That earlier the appellant has filed joint Service appeal before this honourable Tribunal with other colleagues on 20.08.2020 which was returned with directions to file separately.


ADVOCATE

(S)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In Re:

Service Appeal No _____ 2020

Said Rasool.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa and others.....Respondents

AFFIDAVIT

I, Said Rasool Deputy Secretary, Home and Tribal Affairs
Department, Peshawar, do hereby solemnly affirm and declare on Oath
that all the contents of the accompanied **Appeal** are true and correct to
the best of my knowledge and nothing has been concealed or withheld
from this Honourable Court.


DEPONENT



(6) *Amir-A*
GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the December, 21.2011

NOTIFICATION

NO.SOE.II(ED)3(45)2011- Consequent upon the recommendations of the Provincial Selection Board, the competent authority is pleased to order the promotion of the following Private Secretaries/Superintendents/Section Officer(OPS)/PMS BS-17 (acting charge), to Provincial Management Service. (BS-17), on regular basis with immediate effect:-

S.#	Name of Officer
1.	Mr. Said Rasool
2.	Mr. Muhammad Afzal
3.	Mr. Aurangzeb Awan
4.	Mr. Noor Muhammad Awan
5.	Mr. Amir Muhammad
6.	Mr. Ghulam Hussain
7.	Mr. Wazir Muhammad
8.	Mr. Mohammad Ishaq
9.	Mr. Shabbir Ahmad
10.	Mr. Wazir Gul
11.	Mr. Khurshid Ali
12.	Mr. Ghulam Muhammad
13.	Mr. Akbar Khan
14.	Mr. Fazal Nabi
15.	Mr. Muhammad Saeed
16.	Mr. Muhammad Ayaz
17.	Mr. Zarimullah
18.	Mr. Waheed Khan
19.	Mr. Jehanzeb Khan

AS CA

2. On promotion the above officers will be on probation 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. Resultantly the following postings/transfers are ordered with immediate effect:-

S.#	Name of Officer	From	To
1.	Mr. Said Rasool	Section Officer, Home Deptt.	Retained on the same post
2.	Mr. Muhammad Afzal	Section Officer, E&AD	Retained on the same post
3.	Mr. Aurangzeb Awan	Section Officer, Health Deptt.	Retained on the same post
4.	Mr. Noor Muhammad	Section Officer, Housing	Retained on the same post

Supak
Sal 26/12
So (57)
21/12/11

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	Awan	Deptt:	
5.	Mr. Amir Muhammad	Section Officer, CM Sectt:	Retained on the same post
6.	Mr. Ghulam Hussain	PS to Minister Agriculture	Retained on the same post
7.	Mr. Wazir Muhammad	Section Officer, Finance Deptt:	Retained on the same post
8.	Mr. Mohammad Ishaq	Section Officer, ST&IT Deptt:	Retained on the same post
9.	Mr. Shabbir Ahmad	Section Officer, Higher Education Deptt:	Retained on the same post
10.	Mr. Wazir Gul	Section Officer, Industries Deptt:	Retained on the same post
11.	Mr. Khurshid Ali	Section Officer, E&S Edu Deptt	Retained on the same post
12.	Mr. Ghulam Muhammad	Section Officer, Finance Deptt:	Retained on the same post
13.	Mr. Akbar Khan	Section Officer, Information Deptt:	Retained on the same post
14.	Mr. Fazal Nabi	Section Officer, IPC Deptt	Retained on the same post
15.	Mr. Muhammad Saeed	Section Officer, Social Welfare Deptt:	Retained on the same post
16.	Mr. Muhammad Ayaz	Section Officer, Finance Deptt:	Retained on the same post
17.	Mr. Zarimullah	Section Officer, IPC Deptt:	Retained on the same post
18.	Mr. Waheed Khan	Section Officer, Higher Educ. Deptt:	Retained on the same post
19.	Mr. Jehanzeb Khan	Section Officer, Industries Deptt	Section Officer, Population Welfare Deptt: against the vacant post.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN

A copy is forwarded to:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. Secretary (Admn. & Coord), FATA Secretariat.
5. Accountant General, Khyber Pakhtunkhwa.
6. Accountant General (PR), Sub- Office, Peshawar.
8. SO(Secret)/SO(E-IV)/SO(Admn)/ EO/Librarian, E&A Department.
9. PS to Minister for Agriculture, Khyber Pakhtunkhwa.
10. PS to Chief Secretary, Khyber Pakhtunkhwa.
11. PS to Secretary Establishment.
12. PS to Special Secretary(Regulation), E&AD
13. PAs to AS(E)/DS(E) Estab: Deptt:
14. Officers concerned.
15. Office order file.
16. Personal file of the officers concerned.

(FARYAL KAZIM)
SECTION OFFICER(E-II)

HUMAN AFFAIRS

So(47)

Khyber
13/6

PS/C.S Khyber Pakhtunkhwa
Diary No. 5876
Date. 13-6-11

1
2
A. M. C.
CHIEF MINISTER
KHYBER PAKHTUNKHWA

To

The Hon'ble Chief Minister,
Khyber Pakhtunkhwa. Peshawar.

(9)

Subject: APPOINTMENT ON ACTING CHARGE BASIS/ANTEDATION OF PROMOTION.

(8)

Anner B

Dear Sir,

With due regard, it is brought to your kind notice that we the 28 Nos. Section Officers were promoted as PMS (BPS-17) Officers and posted as Section Officers on Acting Charge basis vide Notification No. SOE-II(ED)3(45)2010 dated January 25, 2010 (**Annexure-I**). The Provincial Selection Board in its meeting held on May 20, 2011 consider Ten (10) Nos. Section Officer on regular basis out of 28 against the available vacancies vide Notification No. SOE-II(ED)3(45)2011 dated May 30, 2011. (**Annexure-II**).

Sir, it is stated that 174 PMS Officers BS-17 have been appointed through Public Service Commission against the quota of initial recruitment vide Notification No. SOE-II(ED)3(81)/2010 dated May 05, 2010 (**Annexure-III**) and posted in the province against the vacant posts. The Officers so appointed through Public Service Commission will be ranked/senior to those promoted on regular basis vide Notification No. SOE-II(ED)3(45)2011 dated May 30, 2011, despite the fact that they were appointed in BS-17 earlier to them on acting charge basis vide Notification No. SOE-II(ED)3(45)2010 dated January 25, 2010.

It may further be submitted that the Supreme Court of Pakistan in a Civil petition No. 820-P of 2004 dated March 10, 2011 (**Annexure-IV**) while accepting the view points of the Petitioner has ordered this restoring his seniority over those who were appointed against the initial recruitment quota. Mr. Abdul Wahab Petitioner V/S Government of Khyber Pakhtunkhwa through Chief Secretary for antedation of his promotion from August-09, 1993 the date from which he was promoted as Section Officer on stop-gap arrangement instead of the date in which he has promoted on regular basis.

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In light of the Judgment referred to above, it is requested that our case may kindly be considered sympathetically and consider our promotion from the date we were appointed on acting charge basis vide Notification No. SOE-II(ED)3(45)2010 dated January 25, 2010

With profound regard.

Yours faithfully.

S/No.	Name	Designation	Signature
1.	Mr. Dilawar Shah	Section Officer	
2.	Mr. Rahim Badshah	Section Officer	
3.	Mr. Jamroz Khan	Section Officer	
4.	Muhammad Jehan	Section Officer	
5.	Mr. Sher Akbar	Section Officer	
6.	Mr. wamiq	Section Officer	
7.	Mr. Said Wali Khan	Section Officer	
8.	Mr. Munir Jan	Section Officer	
9.	Mr. Bashir Khan	Section Officer	
10	Mr. Zar Gul Khan	Section Officer	

01/06/2011

RECEIVED
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Annex D
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Annex C

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P.No. 2707/2012

1. Muhammad Ayaz Toru Section Officer,
Finance Department, Govt. of K.P.K.,
Civil Secretariat, Peshawar.
2. Jamroz Khan Section Officer,
Finance Department, Govt. of K.P.K.,
Civil Secretariat, Peshawar.
3. Muhammad Jehan Section Officer,
Governor Secretariat, Govt. of K.P.K.,
Governor Secretariat, Peshawar.
4. Sher Akbar Section Officer,
Home & Tribal Affairs Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
5. Wamiq Section Officer,
Science & Technology & Information Technology
Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
6. Munir Jan Section Officer,
E&AD Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
7. Bashir Khan Section Officer,
P&D Department, Govt. of K.P.K.,
Civil Secretariat, Peshawar.
8. Zar Gul Khan Section Officer,
Finance Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.

ATTEN

Attested

EXA'S
Peshawar III

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102
10

9. Syed Rasool Section Officer,
Home & Tribal Affairs Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
10. Aurangzeb Awan Section Officer,
Health Department Gov. of K.P.K.,
Civil Secretariat, Peshawar.
11. Wazir Muhammad Afghar
Section Officer,
Finance Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
12. Shabir Ahmad
Section Officer Higher Education Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
13. Khurshid Ali Khan Section Officer,
Elementary & Secondary Education Department, Govt.
of K.P.K., Civil Secretariat, Peshawar.
14. Fazal Nabi Section Officer,
Inter Provincial Coordination Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
15. Muhammad Saeed Section Officer,
Social Welfare Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
16. Rahim Badshah Section Officer,
C& W Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
17. Zarimullah Section Officer,
Inter Provincial Coordination Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.

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18. Akbar Khan Section Officer, Information & Public Relations Department, Govt. of K.P.K., Civil Secretariat, Peshawar Petitioners

Versus

1. Govt. of K.P.K., through Chief Secretary, Civil Secretariat, Peshawar
2. Secretary to Govt. of K.P.K., Finance Department, Civil Secretariat, Peshawar.
3. Secretary Establishment/Regulation Govt. of K.P.K., Civil Secretariat, Peshawar:

..... Respondents

W.P. under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973

Respectfully Sheweth:

1. That the petitioners are serving as Section Officer (BPS-17) Govt. of K.P.K., in Civil Secretariat, Peshawar whom are serving at the posts as mentioned against their names in the heading of the petition.
2. That all the above said petitioners have got at the credit a long tenure of service extending more than 25/30 years.
3. That the petitioners were previously serving Superintendent/Private Secretaries (BPS-16) in various departments, whereby through a notifica

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Annex-VI

PESHAWAR HIGH COURT, PESHAWAR.

**FORM 'A'
FORM OF ORDER SHEET**

Date of order.	Order or other proceedings with the order of Judge
22.11.2012.	<p><u>W.P. 2707-P of 2012.</u></p> <p>Present: Ghulam Nabi, advocate for petitioners.</p> <p><u>DOST MUHAMMAD KHAN, C.J.</u>- Contends that similarly placed persons were granted relief by the Services Tribunal and the decision of the same was upheld by the apex court granting certain benefits to those employees placed similar to the petitioners. therefore, on the strength of dicta laid down by the apex court in the case of <u>Hamced Akhtar Niazi Vs. The Government (1996 SCMR 1185)</u> where it was held that once the Supreme Court or the High Court enunciated a principle of law, then benefit of the same must be extended to all those similarly placed albeit they had not come to the court for seeking such relief.</p> <p>2. Accordingly, this petition is sent to the Departmental Appellate Authority to be treated as Departmental Appeal and decision be made keeping in view the dicta laid down by the apex court. It needful be done within two months.</p> <p>Petition disposed of.</p> <p>sd/ DOST Mubz</p> <p>sd/ waqar Ali</p> <p>SR</p>

23/11

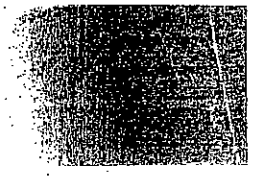
PESHAWAR HIGH COURT, PESHAWARFORM 'A'
FORM OF ORDER SHEET

Date of order	Order or other proceeding with the order of Judge
22.11.2012	<p data-bbox="435 549 798 587"><u>W.P.No.2707-P of 2012</u></p> <p data-bbox="435 624 1197 662">Present: Ghulam Nabi, advocate for petitioners.</p> <p data-bbox="435 700 1362 1317"><u>DOST MUHAMMAD KHAN, C.J.-</u> Contends that similarly placed persons were granted relief by the Services Tribunal and the decision of the same was upheld by the apex court granting certain benefits to those employees placed similar to the petitioners, therefore, on the strength of dicta laid down by the apex court in the case of Hameed Akhtar Niazi Vs. The Government (1996 SCMR 1185) where it was held that once the Supreme Court or the High Court enunciated a principle of law, then benefit of the same must be extended to all those similarly placed albeit they had not come to the court for seeking such relief.</p> <p data-bbox="435 1343 1362 1557">2. Accordingly, this petition is sent to the Departmental Appellate Authority to be treated a Departmental Appeal and decision be made keeping in view the dicta laid down by the apex court. The needful be done within two months.</p> <p data-bbox="539 1582 829 1620">Petition disposed of.</p> <p data-bbox="914 1733 1324 1771">Sd/- Dost Muhammad Khan</p> <p data-bbox="914 1809 1212 1847">Sd/- Waqar Ahmad</p>

ATTES

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Civil Secretariat, Peshawar



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SECTION OFFICER (P-II)
(1) (ASSUNT)

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I am directed to refer to Additional Registrar (II), Peshawar, High Court, letter No. 18892/JudI dated 09.11.2012 on the subject noted above and to inform that after thorough examination of your appeal/representation in this Department, the competent authority has rejected the same being not covered under the rules.

WRIIT PETITION NO. 2707-V/2012 - MUHAMMAD AYAZ AND OTHERS VS GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS

Subject:-

1. Mr. Muhammad Ayaz, Section Officer, Finance Deptt.
2. Mr. Jamroz Khan, Section Officer, Finance Deptt.
3. Mr. Muhammad Jehan, Section Officer, I&TAS Deptt.
4. Mr. Sher Akbar, Section Officer, I&TAS Deptt.
5. Mr. Wamiq, Section Officer, S&SI Deptt.
6. Mr. Munir Jan, Assistant Manager (Procurement & Inventory) FATA Dev. Authority,
7. Mr. Muhammad Basim Khan, Section Officer, P&ID Deptt.
8. Mr. Zafar Ali Khan, Section Officer, Finance Deptt.
9. Syed Kasim, Section Officer, I&TAS Deptt.
10. Mr. Aurangzeb Awan, Section Officer, Local Govt. Deptt.
11. Mr. Wazir Muhammad, Section Officer, Finance Department
12. Mr. Shahid Ahmad, Section Officer, Health Deptt.
13. Mr. Khurshid Ali Khan, Section Officer, E&S Edu Deptt.
14. Mr. Fazal Nadeem, Section Officer, ITC, Deptt.
15. Mr. Muhammad Saad, Section Officer, Social Welfare, Deptt.
16. Mr. Kohim Badshah, Section Officer, C&W Deptt.
17. Mr. Zarnullah, Section Officer, ITC, Deptt.
18. Mr. Akbar Khan, Section Officer, Information Deptt.

To

NO. SCOR-III(ED) 3(855)/2013
Dated Peshawar the January, 29 2013

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Annex D

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

NO.SOF-II(ED)3(855)/2008

Dated Peshawar the January, 29 2013

To

1. Mr. Muhammad Ayaz Toru, Section Officer, Finance Deptt.
2. Mr. Jamroz Khan, Section Officer, Finance Deptt.
3. Mr. Muhammad Jehan, Section Officer H&TAs Deptt.
4. Mr. Sher Akbar, Section Officer, H&TAs Deptt.
5. Mr. Wamiq, Section Officer, ST&H Deptt.
6. Mr. Munir Jan, Assistant Manager (Procurement & Inventory) FATA Dev. Authority.
7. Mr. Muhammad Bashir Khan, Section Officer, P&D Deptt.
8. Mr. Zar Gul Khan, Section Officer, Finance Deptt.
9. Syed Rasool, Section Officer, H&TAS Deptt.
10. Mr. Aurangzeb Awan, Section Officer, Local Govt. Deptt.
11. Mr. Wazir Muhammad Section Officer, Finance Department.
12. Mr. Shabir Ahmad, Section Officer, Health Deptt.
13. Mr. Khurshid Ali Khan, Section Officer, E&S Edu Deptt.
14. Mr. Fazal Nabi, Section Officer, IPC, Deptt.
15. Mr. Muhammad Saeed, Section Officer, Social Welfare, Deptt.
16. Mr. Rahim Badshah, Section Officer, C&W Deptt.
17. Mr. Zarimullah, Section Officer, PIC, Deptt.
18. Mr. Akbar Khan, Section Officer, Information Deptt.

Subject:- **WRIT PETITION NO.2707-P/2012 – MUHAMMAD AYAZ AND OTHERS VS GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS**

I am directed to refer to Additional Registrar (J), Peshawar High Court letter No.18892/Judl dated 09.11.2012 on the subject noted above and to inform that after thorough examination of your appeal/representation in this Department, the competent authority has regretted the same being not covered under the rules.

Sd/-
(TABASSUM)
SECTION OFFICER (F-II)

(16)

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Amr. E²²

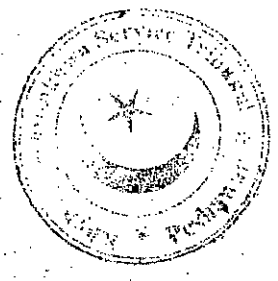
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 394/2013

Date of Institution... 18.01.2013

Date of decision... 11.01.2018



Naem Akhtar, PMS BS-17, Office of the Commissioner Malakand at Saidu Sharif
District Swat. (Appellant)

Versus

1. The Chief Secretary Government of Khyber Pakhtunkhwa Peshawar.
(Respondent)

Mr. Muhammad Asif Yousafzai,
Advocate

For appellant.

Mr. Muhammad Jan,
Deputy District Attorney

For respondents.

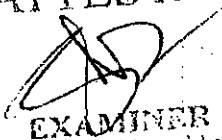
MR. NIAZ MUHAMMAD KHAN,
MR. MUHAMMAD AMIN KHAN KUNDI,

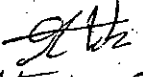
CHAIRMAN
MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - This judgment shall also
dispose of connected Service Appeal No. 395/2013 Naiz Muhammad as in both the
appeals common questions of law and facts are involved.

2. Arguments of the learned counsel for the parties heard and record perused.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar


Attestal


FACTS

3. The appellants were promoted on acting charge basis alongwith 20 others (Fazal Hussain etc.) on 25.03.2010 in BPS-17. Fazal Hussain etc. were regularly promoted on 21.12.2011 and the present appellants were not promoted on regular basis. The reason for not promoting the present appellants was deferment of some of their seniors (five in number) and reservation of those five seats for their seniors. Fazal Hussain etc. alongwith the present appellants approached this Tribunal for their regularization from 25.03.2010. This Tribunal vide judgment dated 11.01.2012 in service appeal No. 1398/2010 accepted the appeals, which was upheld by the august Supreme Court of Pakistan and according to that judgment a direction was issued to the department to regularize the services of Fazal Hussain etc. from 25.03.2010. However, for the present appellants the directions were issued that as and when the vacancies occurred they would be promoted. Thereafter, the appellants were promoted on 04.10.2012 on regular basis but with immediate effect. Against the order giving effect "immediately", the appellants filed departmental appeals (undated) which were rejected on 20.12.2012. Thereafter, the appellants filed the present service appeals.

ARGUMENTS

4. The learned counsel for the appellants argued that the very order dated 21.12.2011 in which the present appellants were not promoted due to deferment of some seniors was illegal because there were five seats available at that time and according to law when any senior is deferred then junior is to be promoted at this stage and the seats could not be reserved for seniors. In this regard he relied upon a

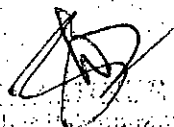
ATTESTED


Khyber Pakhtunkhwa
Service Tribunal

judgment entitled "*Executive District Officer Bahawal Pur and others Vs. Muhammad Hafiz and others*" reported as 2017-SCMR-399. That when the appellants were promoted on 04.10.2012 with immediate effect, the same was not proper because as per judgment of this Tribunal upheld by the august Supreme Court of Pakistan, appellants were to be promoted as and when the vacancies occurred. That the position of vacancies on 25.03.2010 was that 21 vacancies were available and not 11 as the department miscalculated the same at that time. The proof of this is that in the earlier case of *Fazal Hussain etc.* the department pressed into service 11 vacancies the detail of which is given below:-

S.No.	Name of officers	Date of occurrence of vacancy	Description of vacancy
1.	Mr. Muhammad Iqbal Marwat	31.07.2009	Due to retirement.
2.	Mr. Abdul Hadi	05.03.2010	Due to dismissal from service
3.	Mr. Zaarmat Ali	05.03.2010	Due to retirement.
4.	Mr. Shabir Muhammad	31.03.2010	Due to retirement.
5.	Mr. Muhammad Hanif	31.03.2010	Due to death.
6.	Mr. Raj Bahadar	01.04.2010	Due to retirement
7.	Mr. Niamatullah	24.09.2010	Due to retirement
8.	Mr. Momin Khan	14.04.2010	Due to retirement.
9.	Mr. Sultanat Khan	14.10.2010	Due to retirement.
10.	Mr. Fida Muhammad	31.09.2010	Due to retirement
11.	Mr. Loi Khan	31.10.2010	Due to retirement.

ATTESTED


 Khuda Bakhsh
 Member
 Tribunal

That in the present appeals the department again took the stance that at that time 11 vacancies were available but a different detail has been provided which is as follows:-

S.No.	Name of officers	Date of occurrence of vacancy	Description of vacancy
1.	Mr. Muhammad Iqbal Marwat	31.07.2009	Due to retirement.
2.			06 posts due to new creation of SOs in Secretariat as well as DDO(R) and DDO(J) in Malakand Division.
3.			4 posts of Assistant to Commissioner.

That in both these tables name of Muhammad Iqbal Marwat is common whereas the rest details are different and therefore, the total available vacancies would become 21 and not 11.

5. On the other hand the learned Deputy District Attorney argued that the present appeals are time barred because there was no date on departmental appeals which were time barred. He further argued that the appellants have not made many persons as parties to the present appeals who were promoted prior to the promotion of the present appellants against direct quota. In this regard, the learned DDA relied upon a judgment of this Tribunal entitled "*Rehmatullah Khan Vs. Secretary Government of Khyber Pakhtunkhwa and others*" in appeal No. 935/2015 decided on 15.09.2017, relying upon case of *Abid Hussain Sherazi* delivered by the august Supreme Court of Pakistan reported as 2005-SCMR-1742.

6. To this objection, the learned counsel for the appellants pressed into service another judgment of the august Supreme Court of Pakistan entitled "*Liqman*

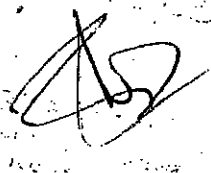
Zareen and others Vs. Secretary Education, Khyber Pakhtunkhwa and others reported as 2006-SCMR-1938 in which it has been held that non-impleadment of any necessary party in itself would not be a ground for dismissal of appeal.

CONCLUSION

7. This Tribunal is first to decide the issue of limitation: The original order wherefrom the appellants are aggrieved was passed on 4.10.2012 against which the appellants filed departmental appeals (undated) but the same were rejected on 20.12.2012 on merits and the present service appeals have been filed within 30 days of the rejection of the said departmental appeals. Therefore, it cannot be said that the departmental appeals were time barred (as no date is proved by the respondents) and now the present service appeals are time barred.

8. Coming to the issue of impleadment of necessary parties, this Tribunal in the judgment of *Rahmatullah Khan* referred to above had discussed all the judgments on the subject including those pressed into service by both the parties in these appeals. The judgment in *Abid Hussain Sherazi's* case delivered in the year, 2005 was decided, inter-alia, on the ground of non-impleadment of necessary party and the appeals were dismissed but the judgment of the year, 2006 of *Luqman Zareen* has held that when the appeals filed by the appellants before the Service Tribunal did not seek seniority over directly recruited persons and what they were asking for was the vindication of their right to regular promotion from the date in question and if the civil servants were found entitled to the same then they could not be deprived of it only because it could have caused some prejudice to some others nor could those others be heard to deny such benefits deserved by the civil servants. The

ATTESTED



former reported case is a different case than the present appeals. The present appeals squarely fell within the circumstances mentioned in later case of *Luqman Zaman* qua the necessary party. In the former case the issue of non-impleadment of direct recruits by promotees was not discussed whereas in the later case this issue was specifically discussed. The case of the appellants qua the non-impleadment of parties is covered by the later case and not by the former case. In the former case the petitioner wanted antedated promotion on the ground that he had become eligible for promotion and he should be given promotion from the date of his eligibility which is not the case of present appellants. Therefore, this Tribunal is of the view that non-impleadment of all those recruited in direct quota is not fatal for the present appeals. One additional reason is that the present appellants are seeking the present remedy on the basis of a right which allegedly accrued in their favour prior to the induction of direct recruits. Therefore, the direct recruits cannot be heard qua right allegedly accrued in favour of the appellants prior to their induction. In *Rahmatullah's* case this Tribunal dismissed the appeal, inter-alia, on the ground of non-impleadment of direct recruits because in *Rahmatullah's* case the appellant was appointed on acting charge basis against a post reserved for direct recruits and waited to be promoted due to this acting charge appointment which would result in his seniority over direct recruits.

9. Now the only question for determination is whether the promotion of the appellants was made in accordance with the directions given by this Tribunal in the judgment in *Fazal Hussain's* case. In this regard the Tribunal had directed in *Fazal Hussain's* case that the appellants would be promoted from the date when vacancies would occur. The defence of the respondents in *Fazal Hussain's* case was that there

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were 11 seats available at that time for which they submitted detail as mentioned by the learned counsel for the appellant in arguments part. Another detail which has been provided by the respondents in the present appeals gave support to the arguments of the learned counsel for the appellant that at the relevant time there were 21 seats and not 11. The department in the light of directions given in the earlier judgment should have also promoted the appellants alongwith that Fazal Hussain etc. Secondly in the light of the judgment referred to by the learned counsel for the appellant (2017-SCMR-399) mentioned above, five available vacancies were reserved for their seniors which was not legal and the appellants should have also been promoted being next in seniority.

10. As a sequel to the above discussion, the present appeals are accepted and the appellants shall be deemed to have been regularly promoted from the date when Fazal Hussain etc. were regularized. Parties are left to bear their own costs. File be consigned to the record room.

SD/
(Niaz Muhammad Khan)
Chairman

SD/
(Muhammad Amin Khan Kundi)
Member

ANNOUNCED
11.01.2018

Certificate to be made copy
Signature of the Officer
Secretary, Tribunal,
Peshawar

Date of Presentation	17-7-18
Number of Words	2800
Copying Fee	16.00
Urgent	2.00
Total	18.00
Name of Copyist	<i>[Signature]</i>
Date of Copying	17-7-18
Date of Delivery of Copy	17-7-18

TENTATIVE SENIORITY LIST OF PMS BS-17 OFFICERS AS STOOD ON 31.12.2015

S.No.	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT PROMOTION ON NBS	REGULAR APPOINTMENT/PROMOTION TO PRESENT POSTS			PRESENT APPOINTMENT	REMARKS
					DATE	BPSE	METHOD OF RECRUITMENT		
1.	Mr. Jehanzeb Khan, BSc, Engineering	12.4.1967, Nowshera	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Land Acquisition Collector, SNGPL, Peshawar on deputation basis (20.03.2015)	
2.	Mr. Mansoor Qaiser, MA	30.3.1966, DIKhan	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Secretary to Commissioner, D.I.Khan 18.07.2013	
3.	Mr. Maqsood Hassan, MSc (Maths)	10.3.1967, Kohat	1.1.1992	6.9.2008	27.5.2008	17	By promotion	Section Officer Officer (L/R) (under suspension) 28.08.2014	Regained seniority w.e.f. 27.05.2008
4.	Mr. Sajid Ahmad, MA	30.4.1965, Kohat	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Section Officer, Health Deptt: (13.12.2013)	
5.	Mr. Abdul Ghafoor Shah, M.Sc.	6.8.1967, Lakki Marwat	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Assistant Commissioner, Hangu 30.10.2013	
6.	Mr. Muhammad Asghar Khan, MA (Eng)	15.3.1966, Lakki Marwat	1.1.1992	20.3.2008	27.5.2008	17	By promotion	Assistant to Commissioner (Rev), Bannu Div. 07.11.2013	
7.	Mr. Fazl-e-Qadir, MSC	1.1.1969, Karak	1.7.1995	20.3.2008	27.5.2008	17	By promotion	Asstt. to Commissioner (Pol), Kohat 17.11.2015	
8.	Mr. Abdul Hadi, B.A	2.2.1966/ Dir Upper	1.7.1990	20.03.2008	27.05.2008	17	By promotion	Section Officer, Zakat, Social Welfare, Special Education & Women Empower (23.10.2014)	
9.	Syed Muhammad Suhail, BA	29.10.1967, Peshawar	19.11.1990	20.3.2008	27.5.2008	17	By promotion	S.O. Health Department (13.08.2015)	
10.	Mr. Khalid Mehmood, MA	15.3.1967, DIKhan	1.7.1995	20.3.2008	27.5.2008	17	By promotion	District Officer (F&P), Karak (20.10.2015)	
11.	Mr. Hafizullah, M.Sc.	31.12.1970, DIKhan	1.7.1995	20.3.2008	27.5.2008	17	By promotion	LAC, NHA D.I.Khan 27.12.2011	
12.	Mr. Abdul Malik, BA/LLB	3.1.1959, Peshawar	4.7.1977	29.5.2006	7.11.2008	17	By promotion	Pro-Cum-Protocol Officer, FATA Development Authority on deputation basis, 12.09.2013	

Amir F

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S.No	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF 1ST ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT / PROMOTION IN BS-16	REGULAR APPOINTMENT / PROMOTION TO PRESENT POSTS.			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
211.	Mr. Jamroz Khan, FA	10.1.1957 Khyber Agency	9.9.1976	1.3.2008	30.05.2011	17	By Promotion	SO, IPC Deptt: 18.12.2015	
212.	Mr. Muhammad Jehan, BA	19.3.1959, Bannu	25.4.1977	1.3.2008	30.05.2011	17	By Promotion	SO, H& TAs Deptt, 08.10.2012	
213.	Mr. Sher Akbar, M.Com	3.10.1957, Mardan	13.4.1978	1.3.2008	30.05.2011	17	By Promotion	Section Officer, Home TAs Deptt. 11.05.2012	
214.	Mr. Wamiq, BA	1.4.1958, Peshawar	12.4.1978	1.3.2008	30.05.2011	17	By Promotion	SO, ST & IT Department (12.10.2010).	
215.	Mr. Syed Wali Khan, BA	1.4.1958, Bannu	1.4.1978	1.3.2008	30.05.2011	17	By Promotion	Private Secretary to Special Assistant to CM for Livestock, Fisheries & Coop (23.10.2014)	
216.	Mr. Munir Jan, MA	10.4.1958 Peshawar	01.04.1978	1.3.2008	30.05.2011	17	By Promotion	Assistant Manager (Procurement & Inventory) FATA Dev. Authority, 24.06.2011	
217.	Mr. Zar Gul Khan, Matric	18.11.1958, Bannu	12.4.1978	1.3.2008	30.05.2011	17	By Promotion	Section Officer, Social Welfare Department. (09.01.2015)	
218.	Mr. Said Rasool, B.A.	13.10.1959, Peshawar	23.4.1978	1.3.2008	21.12.2011	17	By Promotion	SO, Home & TAs Deptt, 19.8.2008	
219.	Mr. Noor Muhammad, Matric	1.4.1956, Peshawar	12.9.1978	1.3.2008	21.12.2011	17	By Promotion	SO, Complaint Cell, CM's Sectt, 02.08.2013	
220.	Mr. Nisar Hussain, BA	15.03.1958 Kurram Agency	23.03.1976	20.03.2008	21.12.2011	17	By Promotion	Addl Asstt Commissioner-II, Kohat, 01.01.2013	
221.	Syed Masood Shah, BA	1.1.1963 Peshawar	10.10.1986	20.03.2008	21.12.2011	17	By Promotion	Section Officer, Agriculture (25.09.2013)	
222.	Mr. Tariq Hassan, BA	12.4.1958 Nowshera	11.02.1982	20.03.2008	21.12.2011	17	By Promotion	Service placed at the disposal of Addl. Chief Secretary, P&D for further posting. 10.06.2015	
223.	Mr. Iqrar Ali Shah, BA	5.1.1959, Karak	1981	20.03.2008	21.12.2011	17	By Promotion	Additional Assistant Commissioner-III, Kohat (13.3.2014)	He regained seniority
224.	Mr. Wazir Muhammad	8.6.1956	16.9.1976	29.5.2008	21.12.2011	17	By Promotion	S.O., Finance Deptt:	

S.No	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF IST ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT / PROMOTION IN BS-16	REGULAR APPOINTMENT/ PROMOTION TO PRESENT POSTS			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
	Afgar FA	Malakand Agency						(22.10.2012)	
225.	Mr. Farooq Ahmad, FA	5.5.1956 Peshawar	21.09.1978	29.05.2008	21.12.2011	17	By Promotion	SO, Social Welfare Special Education & Women Empowerment Deptt (10.02.2015)	
226.	Mr. Khurshid Ali Khan, BA	29.5.1957 Peshawar	18.12.1978	29.5.2008	21.12.2011	17	By Promotion	SO Elementary and Secondary Deptt: 19-08-2008	
227.	Mr. Akbar Khan, BA	8.9.1956 Peshawar	07.10.1979	29.05.2008	21.12.2011	17	By Promotion	SO, Law Deptt: 03.03.2015	
228.	Mr. Muhammad Ayaz, BA	6.2.1964 Mardan	09.10.1984	29.05.2008	21.12.2011	17	By Promotion	SO, Finance Deptt: 25.01.2010	
229.	Mr. Waheed Khan, MA	15.4.1960 Peshawar	01.10.1979	29.05.2008	21.12.2011	17	By Promotion	Asstt. Manager (Admn) FDA (12.04.2013)	
230.	Mr. Jehanzeb Khan-III, FA	14.10.1957 Peshawar	29.09.1979	29.05.2008	21.12.2011	17	By Promotion	Section Officer, IPC Deptt, 22.12.2015	
231.	Mr. Bakhtiar Khan, FA	12.3.1960 Mohmand Agency	20.08.1981	06.09.2008	21.12.2011	17	By Promotion	Services placed at the disposal of NHA, Islamabad for further posting as LAC (Pesh. Northern Bypass) on deputation basis 07.02.2014	
232.	Mr. Muhammad Irshad	25.12.1968 Dir Upper	29.04.1998	06.09.2008	21.12.2011	17	By Promotion	Administrator, Auqaf, KPK Peshawar: (14.03.2013)	
233.	Mr. Habibullah Arif,	1.4.1967 Swat	29.04.1998	06.09.2008	21.12.2011	17	By Promotion	Section Officer, Home Deptt (13.08.2015) On 14 days Ex-Pakistan leave (10.12.2015)	
234.	Dr. Noman Mujahid, MBBS, MPH	19.3.1978 Charsadda	07.09.2007	-	16.02.2012	17	By Absorption	Research Officer, P&D Deptt: FATA Sectt: 16.07.2015	
235.	Mr. Shahab Muhammad Khan S/O Raj Muhammad Khan,	16.6.1986 Nowshera/2			27.05.2012	17	By Initial Recruitment	Assistant Commissioner, Dargai, Malakand w.e.f 20-11-2014	

S.No.	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF 1ST ENTRY INTO GOVT SERVICE	DATE OF APPOINTMENT/PROMOTION IN BS-16	REGULAR APPOINTMENT/PROMOTION TO PRESENT POSTS			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
295.	Miss. Rukhsana Jabeen D/O Rahim Fida, MA(Eng)	21.1.1987 Chitral/3			27.05.2012	17	By Initial Recruitment	Section Officer, Higher Education Department (23.01.2015)	
296.	Miss. Hina Saeed D/O Saeed Ahmad, BCS(Computer Science)	11.12.1981 D.I.Khan/4			27.05.2012	17	By Initial Recruitment	Section Officer, C.M's Sectt: (03.04.2015)	
297.	Mr. Masaud Jan S/O Muhammad Saleem, M.A(IR)	22.12.1985 Dir Lower/3			27.05.2012	17	By Initial Recruitment	Addl. AC (R), Dir Upper (13.10.2015)	
298.	Mr. Umar Arshad Khan S/O Muhammad Arshad, B.A	13.3.1988 Mansehra/5			27.05.2012	17	By Initial Recruitment	Additional Assistant Commissioner (Kandar), Torghar 09.09.2014	
299.	Mr. Shakeel Ahmad Jan S/O Muhammad Jan, LLB	1.10.1985 Lakki Marwat/4			27.05.2012	17	By Initial Recruitment	Project Manager, Khyber Area Dev. Project on deputation, 13.10.2015	
300.	Mr. Abdul Haq, Matric	06.07.1956 Bajaur Agency	07.10.1979	29.05.2008	04.10.2012	17	By Promotion	SO, Sports Department	
301.	Mr. Mustafa Kamal, D.Com	4.2.1959 Karak	03.10.1979	29.05.2008	04.10.2012	17	By Promotion	SO, Auqaf Deptt (21.12.2011)	
302.	S. Amir Hussain Shah, D.Com	28.2.1960 Peshawar	15.01.1980	29.05.2008	04.10.2012	17	By Promotion	Section Officer, STI, E&A, Department. (04.11.2013)	
303.	Mr. Khalil-ur-Rehman, BA	26.2.1961 Peshawar	14.1.1980	29.5.2008	04.10.2012	17	By Promotion	Section Officer, Information Deptt: (03.01.2014)	
304.	Mr. Noor Ihsan Shah, Matric	10.9.1956 Peshawar	13.02.1980	29.05.2008	04.10.2012	17	By Promotion	SO, Sports Deptt: 01.06.2011	
305.	Mr. Akhtar Khan, Matric	4.5.1958 Peshawar	16.06.1980	29.05.2008	04.10.2012	17	By Promotion	SO, Population Welfare Deptt: 17.08.2012	
306.	Mr. Naeem Akhtar S/o Muhammad Dawood (M.A Pol.S)	11.6.1968 Swat	29.04.1998	06.09.2008	04.10.2012	17	By Promotion	Asstt: to Commissioner (Dev/Pol), Malakand Division, Swat. 22.10.2012	

S.No	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF 1ST ENTRY INTO GOVT SERVICE	DATE OF APPOINTMENT / PROMOTION IN BS-16	REGULAR APPOINTMENT / PROMOTION TO PRESENT POSTS			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
307.	Mr. Niaz Muhammad S/O Habib Khan, (M.A)	15.1.1970 Swat	29.04.1998	06.09.2008	04.10.2012	17	By Promotion	Assistant to Commissioner (Rev), Malakand Division, Swat 31.12.2012	
308.	Mr. Abdul Mateen Khan Qasuria S/O Abdul Hameed Khan Qasuria, (BA. LLB)/MSc	22.12.1966 D.I. Khan	24.06.2000	06.09.2008	04.10.2012	17	By Promotion	Secretary, Distt: Public Safety Commission, D.I. Khan. 01.01.2013	
309.	Mr. Shaukat Hussain, (BA LLB)	15.2.1957 Haripur	07.11.1979	06.09.2008	04.10.2012	17	By Promotion	Finance Officer, Abbottabad (24.03.2014)	
310.	Mr. Gul Nawaz Ali, (F.A)	24.4.1958 Haripur	07.11.1979	06.09.2008	04.10.2012	17	By Promotion	Secretary, DPSC Abbottabad, 06.08.2013	
311.	Mr. Nowsheraan, Matric	20.6.1960/ Kohistan	7.02.1979	06.09.2008	04.10.2012	17	By Promotion	Asstt Commissioner, Palas, Kohistan. 26.09.2013	
312.	Qazi Atta-ur-Rehman, (B.A)	20.4.1957 Abbottabad	11.08.1985	06.09.2008	04.10.2012	17	By Promotion	Report to Estt: Deptt 28.10.2015	
313.	Mr. Muhammad Iqbal-I, MA	16.11.1956 Bannu	29.06.1977	02.12.2008	04.10.2012	17	By Promotion	Section Officer, Finance Department (17.12.2014)	
314.	Mr. Asif Kamal, FA	14.3.1957 Peshawar	14.08.1978	02.12.2008	04.10.2012	17	By Promotion	Planning Officer ST&IT (01.06.2011)	
315.	Mr. Naeem Khan, B.A	7.12.1959 Peshawar	14.01.1981	02.12.2008	04.10.2012	17	By Promotion	SO. Finance Deptt, 04.06.2011	
316.	Mr. Saleem Jan, MSc. Economics	7.6.1975 Lakki Marwat	07.01.2002	02.02.2009	04.10.2012	17	By Promotion	Assistant Chief, Capacity Building Prject (CBP), P&D Deptt: (22.04.2014)	
317.	Mr. Irfan Ali. BA. LLB	12.4.1976 Mohmand Agency	02.02.2009	02.02.2009	04.10.2012	17	By Promotion	Services placed at the disposal of E&S Edu Deptt, for further posting as DMO in Independent Monitoring Unit on deputation basis 09.01.2014)	
318.	Mr. Gohar Ali, MA	3.2.1979 Swabi	02.02.2009	02.02.2009	04.10.2012	17	By Promotion	Addi Asstt Commissioner (Rev), Mardan, 01.01.2013	

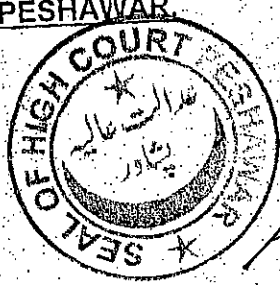
(28)

Amir H

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W P No _____ /2019

(27)



Amir G

1. Said Rasool, Section Officer, Home and Tribal Affairs Department, Civil Secretariat, Peshawar.
2. Muhammad Jehan, Section Officer Governor's Secretariat, Peshawar.
3. Muhammad Ayaz, Section Officer, Finance Department, Civil Secretariat, Peshawar..... Petitioners

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary, Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa, administration Department, Civil Secretariat, Peshawar.
3. Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
4. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.

..... Respondents

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

ATTESTED
[Signature]
EXAMINER

Respectfully Sheweth:

1. That the petitioners are law abiding citizens and serving as Section Officers (Bps-16) current charge / Superintendent / Private Secretaries as PMS Officer (BPS-17) on acting charge basis with immediate effect i.e., 25th Jan-2010. (Copy of the Notification is attached herewith as annexure "A")

WP1374-2019- Said Rasool VS Govt KP Full PG 33 SUB

[Signature]
Att. No. 0

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ix. That feeling aggrieved, we approached the Peshawar High Court, Peshawar vide W.P. No.1374-P/2019 for our regular promotion from the date of our Acting Charge appointment i.e. on 25-01-2010. The Hon'ble Peshawar High Court held that the petition is not maintainable being involving service matter and directed that the petitioners are at liberty to approach proper forum for redressal of their grievances (Annex-XII).

x. In light of the directions of the High Court, the instant representation is submitted for your kind consideration with the following prayer:-

PRAYER

That as per the legal proposition of the instant case as highlighted in Para-iii (a), the rules as explained in Para-iii (b) above, the judgments of the Services Tribunal in the Service Appeals of Fazal Hussain and others, Nazeem Akhtar and Niaz Muhammad, and the Supreme Court's judgment reported as "1996 SCMR 1182", our case is crystal clear, however, the Establishment Department is still reluctant to grant us regular promotion from the date of our Acting Charge basis appointment i.e. 25-01-2010 on the analogy of our other colleagues.

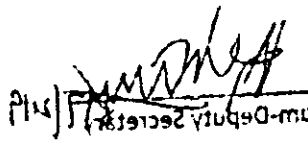
Keeping in view the aforementioned facts, it is therefore, most humbly prayed that on acceptance of this representation, the Establishment Department may be directed to grant us also regular promotion with effect from 25-01-2010 on the analogy of that of Fazal Hussain etc. Mr Nazeem Akhtar and Niaz Muhammad, please.

We shall be thankful to you.

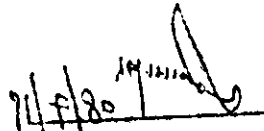
Yours faithfully,



1. SAID RASOOL
Deputy Secretary
Home & T.A. Department



2. MUHAMMAD IZHAN
Retd Deputy Director-cum-Deputy Secretary
Staff Training Institute



3. MUHAMMAD AYAZ
Deputy Secretary
Social Welfare Department



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

(34)

Secy: Est. & P. M. S. Deptt.

Diary No. 9752

Dated 29.7.20

Am J

Dated Peshawar the July 28, 2020

(32)

(33)

✓ Annex I

ORDER

NO.SOE-II(ED)3(760)2008:- The applicants Mr. Said Rasool, Mr. Muhammad Ayaz and Mr. Muhammad Jehan (PMS officers) filed a representation in pursuance of the Judgement of Peshawar High Court Peshawar dated: 12.06.2019 in writ petition No: 1374/2019 wherein the court passed the following order "**the petition being not maintainable stands dismissed in limine. The petitioners are at liberty to approach the proper forum for the redressal of their grievances, if so desire**". The applicants therefore via their representation prayed for;

- i. Grant of regular promotion from the date of their acting charge basis appointment i.e. 25.01.2010, and extend the benefit of the judgements of Khyber Pakhtunkhwa Services Tribunal Peshawar passed in appeals No: 1398/2010 dated: 11.01.2012 titled Fazal Hussain VS Govt. of Khyber Pakhtunkhwa and No: 394/2013 dated: 11.01.2018 titled Naeem Akhtar VS Govt. of Khyber Pakhtunkhwa, to them as per the dicta of Apex Court in "1996 SCMR 1185",
 - ii. Regular promotion from 25.01.2010 be granted in the light of legal proposition of Sub Rule (1) of Rule (9) of APT Rules, 1989 "**no such appointment (Acting Charge Appointment) be made if the prescribed length of service is short by more than three years**". Therefore, the applicants had completed the prescribed length of service and undergone 09 weeks mandatory training.
2. Official record reveals that PSB in its meeting held on 15.12.2009 recommended 18 Superintendents / Private Secretaries for their regular promotion to PMS BS-17 against the posts falling in their share, while 28 officials including the applicants were appointed on acting charge basis under Rule-9(3) of APT Rules, 1989 against the 71 posts lying vacant meant for initial recruitment. In addition to the above, as per PSB minutes the applicants were also short of required length of service for their regular promotion to the post of PMS BS-17.
 3. The applicants were notified to be appointed on acting charge basis on 25.01.2010 against the posts reserved for initial recruitment to meet the exigency of service and to fill the gap of officers that does not confer any right for regular promotion within the parameters of Rule 9 (3) & (6) of APT Rules, 1989.
 4. Contrary to the assertion of the applicants the case of Fazal Hussain and others is not identical to the plea of the applicants. The benefit of judgements passed in appeals dated: 11.01.2012 and 11.01.2018 cannot be extended to the applicants. Mr. Fazal Hussain, Mr. Naeem Akhtar and Mr. Niaz Muhammad etc were granted antedation of promotion w.e.f. 25.03.2010 in pursuance of Khyber Pakhtunkhwa Service Tribunal judgments dated: 11.01.2012 and 11.01.2018 and Supreme Court of Pakistan Judgement dated: 23.01.2013. There were 11 posts falling in the share quota of Tehsildars while 28 temporary posts of

DSA
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29.7.20

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DS (Kakul)
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1/18

Attested

DDO(R) / DDO(J) in the field meant for initial recruitment were also vacant and Mr. Naeem Akhtar and Niaz Muhammad were at S.No.31 and 32 respectively. It is pertinent to mention here that Service Tribunal in its judgement dated: 11.01.2018 held that at the relevant time there were 21 seats and not 11 in the share quota of Tehsildars. Besides, 05 available vacancies were reserved for their seniors which was declared illegal and the appellants should have also been promoted being next in the seniority.

5. Contrary to the claims of the applicants their case has no similarity to the case of Mr. Fazal Hussain, Mr. Naeem Akhtar and Mr. Niaz Muhammad etc hence the legal principle established by Supreme Court in its judgement dated: 24.04.1996 in 1996 SCMR 1185 which has been referred to by Law Department, Khyber Pakhtunkhwa in its letter No: SO(OP-I)/LD/5-6/2012-VOL-VII/5256-58 dated: 29.06.2020 cannot be extended to them.

6. The applicants were promoted to PMS (BS-17) on regular basis when clear vacancies in their share became available.

7. After due consideration of all the points voiced in the appeal and official record, appeal is turned down being devoid of merit.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN.

A copy is forwarded to the:-

1. PSO to Chief Secretary, Khyber Pakhtunkhwa.
2. PS to Chief Secretary, Khyber Pakhtunkhwa.
3. Section Officer (Litigation-II), Establishment Department.
4. SO(Admn)/EO/Librarian, Establishment Department.
5. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
6. PS to Special Secretary (Estt), Establishment Department, Khyber Pakhtunkhwa.
7. PA to Deputy Secretary (Estt), Establishment Department, Khyber Pakhtunkhwa.
8. Officers / applicants concerned. *Dy Secy Social Welfare Department*
9. Manager, Government Printing Press.
10. Persona files.

(28/07/20)

(SHAHBAZ KHATTAK)
SECTION OFFICER (E-II)

- (iv) the person concerned is a bona fide resident of the ¹⁹[Khyber Pakhtunkhwa].
(v) a vacancy exists to accommodate the request for such a transfer; and:
(vi) Provided further that in most deserving cases, the merit of which shall be determined on case to case basis and the decision of the Competent Authority in that behalf shall be final, Government may allow transfer of a civil servant in BPS-16 and above, subject to the aforesaid conditions.

(2) A person so transferred shall be placed at the bottom of the cadre strength which he joins for the purpose of determining his seniority vis-à-vis other members borne on the cadre.

(3) It will be the sole discretion of the appointing authority to accept or refuse a request for transfer under this rule and any decision made in this behalf shall be final and shall not be quoted as precedence in any other case.

9. **Appointment on Acting Charge or current Charge Basis.** (1) Where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service the authority may appoint him to that post on acting charge basis;

²⁰Provided that no such appointment shall be made, if the prescribed length of service is short by more than ²¹[three years].

²²[(2)].

(3) In the case of a post in Basic Pay Scale 17 and above, reserved under the rules to be filled in by initial recruitment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

(6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

PART-III

INITIAL APPOINTMENT

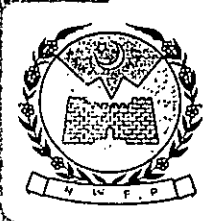
¹⁹ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

²⁰ Full stop at the end of Rule 9 (1) replaced with colon and proviso added by Notification No. SOR-I (S&GAD)4-1/80/Vol-II, dated 20-10-1993.

²¹ The words one year substituted by Notification No. SOR-I(S&GAD)4-1/80/III, dated 14.3.96.

²²Sub rule (2) of rule-9 deleted vide by Notification No. SOR-VI(E&AD)1-3/2009/Vol-VIII, dated 22-10-2011.

Attested



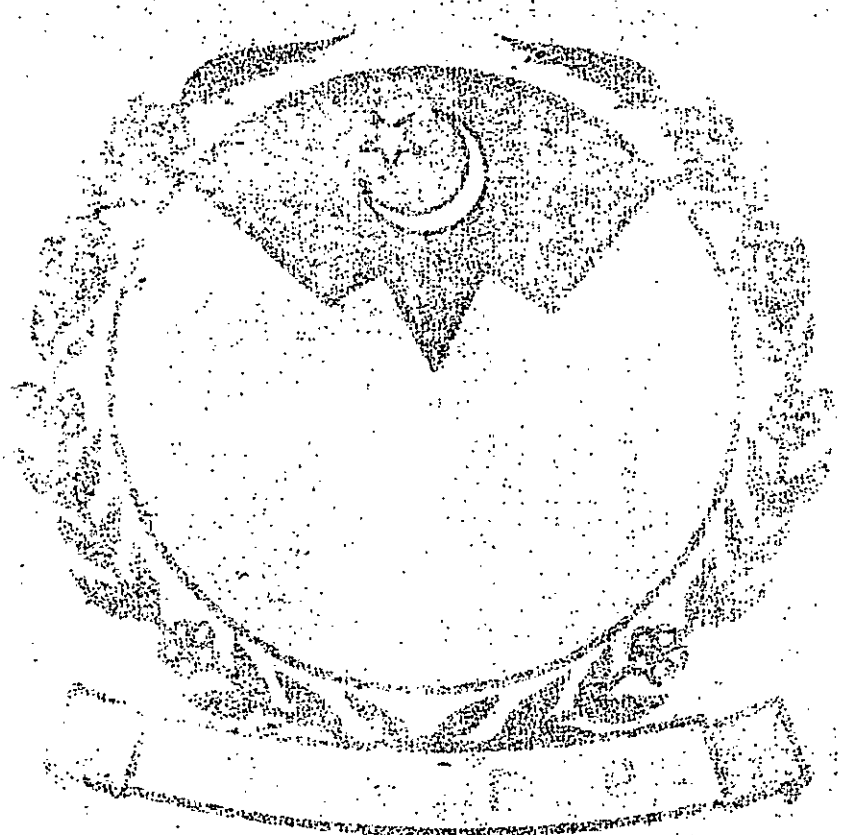
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Amir

N

**NORTH WEST FRONTIER PROVINCE
PROVINCIAL MANAGEMENT
SERVICE RULES, 2007**



**Government of N.W.F.P.
Establishment Department**

*9/11/13
Attestal*

SCHEDULE-I

S. No.	Nomenclature of posts	Minimum qualification for appointment by Initial recruitment	Age limit for initial recruitment	Method of recruitment
1	PMS(BS-17) as per detail at Schedule-II	2 nd Division Bachelor Degree from a recognized University.	21-30 year	<p>1) Fifty per cent by initial recruitment on the recommendations of the Commission based on the result of competitive examination to be conducted by it in accordance with the provisions contained in ³Schedule - VII.</p> <p>2) Subject to rule 7, by promotion in the following manner:</p> <p>(a) twenty per cent from amongst Tehsildars, who are graduates, on the basis of seniority-cum-fitness, having five years service as Tehsildar and have passed the prescribed Departmental Examination; and</p> <p>(b) twenty per cent from amongst Superintendents /Private Secretaries on seniority-cum-fitness basis, who are graduate and have undergone a training course of 9-weeks at the Provincial Management Academy/Provincial Staff Training Institute. A joint seniority list of the Superintendents and Private Secretaries shall be maintained for the purpose of promotion on the basis of their continuous regular appointment to the respective posts.</p> <p>3) Ten per cent by selection on merit, on the basis of competitive examination, to be conducted by the Commission in accordance with the provisions contained in ⁴Schedule-VII, from amongst persons holding substantive posts of Superintendents, Private Secretaries, Personal Assistants, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerks who possess post graduate qualification from a recognized University and have atleast five years service under Government.</p>
2.	PMS(BS-18) as per detail at Schedule-II	NIL		By promotion, on seniority-cum-fitness basis, from amongst the officers of PMS in BS-17 having at least five years service and have passed the prescribed Departmental Training or Departmental Examination.
3.	PMS(BS-19) as per detail at Schedule-II.	NIL		By promotion, on the basis of seniority-cum-fitness, from amongst PMS officers holding posts in BS-18 and having at least 12 years service against posts in BS-17 and above and have passed the prescribed Departmental Training/Examinations.

		Department could not process the cases of appellants. Hence the judgment of Service Tribunal as well as the Peshawar High Court may be implemented in letter and spirit.	(36)	
3	Antedated promotion case of S. Rasool, M. Jehan and M. Ayaz	No copy of the judgment of service tribunal is annexed however para-4 of the working paper prepared by the establishment department provides that service tribunal in its judgment dated 11.1.18 held that at the relevant time there were 21 seats not eleven in the share quota of tehsildar. 5 available vacancy reserved for their senior which was not legal and the appellants who have been promoted being next in the seniority.	Nothing is available whether the impugned judgment has been challenge in Supreme Court of Pakistan or otherwise. Hence the judgment attains finality and the Provincial Selection Board may examine the case as per merit of the case and may be promoted if found eligible.	
4	Promotion case of Mr. Jamshed Ali Baloch	Mr. Jamshed Ali Baloch filed service appeal No. 963/2013 before the KPK Service Tribunal against the order of rejection of his promotion and the Service Tribunal vide judgment dated 14.12.18 directed the official respondents to examine the case of appellants and in case he is found fully eligible to be	Opinion wing is of the view that the case of appellant came under the domain of amending provision of promotion policy of 2009 dated 17.3.14 wherein the case of employees who have gone on LPR has been considered. Hence the PSB may consider as	

(38)

Law Dep't's Comments on the
Postponed PSB This year

		Department could not process the cases of appellants. Hence the judgment of Service Tribunal as well as the Peshawar High Court may be implemented in letter and spirit.	Jan-Feb, 2020 (37)
3	Antedated promotion case of <u>S. Rasool, M. Jehan and M. Ayaz</u>	No copy of the judgment of service tribunal is annexed however para-4 of the working paper prepared by the establishment department provides that service tribunal in its judgment dated <u>11.1.18</u> held that at the relevant time there were 21 seats not eleven in the share quota of tehsildar. 5 available vacancy reserved for their senior which was not legal and the appellants who have been promoted being next in the seniority.	Nothing is available whether the impugned judgment has been challenge in Supreme Court of Pakistan or otherwise. Hence the judgment attains finality and the Provincial Selection Board <u>may examine the case as per merit of the case and may be promoted if found eligible.</u>
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VAKALATNAMA

(POWER OF ATTORNEY)

IN THE Khyber Pakhtunkhwa Service Tribunal, Peshawar

Case. _____ No. _____ /2020

Said Rasool Deputy Secretary, HomePetitioner

Govt of K.P. etc. VersusRespondents

I, Said Rasool S/o, D/o Deputy Secretary the Appellant do hereby appoint and constitute Babar Khan Yousafzai, Abdul Baqi Afridi, Muhammad Ali, Advocates High Court of Legal Oracles, in the above-mentioned cause, to do all or any of the following acts, deeds and things:-


1. To appear, act, and plead for me in the above-mentioned cause, in this court or any other court in which the same may be tried or heard, and in any other proceedings arising out of or connected therewith;
2. To sign and verify and file or withdraw all proceedings, petitions, appeals, affidavits, and applications for compromise or withdrawal, or for submission to arbitration of the said cause, or any other documents as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said cause at all its stages;
3. To receive payment of, and issue receipts for, all moneys that may be or become due and payable to me/us during the course or on the conclusion of the proceedings;
4. To do all other acts and things which may be deemed necessary or advisable during the course of proceedings;
5. To delegate all or any of the above powers to any other legal practitioner;

AND I, hereby also agree:-

- (a) To ratify whatever the Advocate(s) or their substitutes may do in the proceedings;
- (b) not to hold the Advocate(s) or their substitutes responsible if the said cause be proceeded ex parte or dismissed in default in consequence of their absence from the court when it is called for hearing unless such absence is due to the gross negligence of the Advocate(s) or their substitutes; and
- (c) That the Advocate(s) shall be entitled to withdraw from the prosecution of the said cause if the whole or any part of the agreed fees remain unpaid.

IN WITNESS WHEREOF I have signed this Power of Attorney hereunder on this ____ day of ____ 2020 at Peshawar and the contents of this Power of Attorney have been read, fully explained and understood by me.


Signatures of executants:


ACCEPTED
LEGAL ORACLES

Suite No. 1, Opposite Cantt Railway Station,
Saddar Road, Peshawar Cantt.
T: 92 91 5284140 - E: fmanan@legaloracles.com
W: www.legaloracles.com

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 12441/2020

Said Rasool **Appellant**


VERSUS

Chief Secretary, Khyber Pakhtunkhwa & Others **Respondents**

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6.	Appeal / Representation regarding seniority as PMS Officers in BS-17	IV	13
7.	Judgment dated 11.01.2018 in Service Appeal No. 395/2013	V	14-15
8.	Supreme Court Judgment dated 23.01.2013	VI	16-20

Dated: **12.11.2021**


Deponent
CNIC No: 17301-1286739-5
Mobile: 0345-5285465

12

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 12441/2020

Said Rasool, Deputy Secretary, Home and Tribal Affairs Department, Civil Secretariat,
Peshawar

..... (Appellant)

Versus

1. Chief Secretary, Khyber Pakhtunkhwa and others.(Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1,2,3 & 4

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
2. That the appeal is not maintainable.
3. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
4. That the appeal is barred by law/time.
5. That this Honourable Tribunal lacks jurisdiction in the matter.
6. That the appellant has concealed material facts from the Tribunal.
7. That the appellant has not come to the Tribunal with clean hands.
8. That the appellant is estopped to file the instant appeal due to his own conduct.
9. That the appeal is bad for non-joinder and misjoinder of necessary and proper parties.
10. That the instant appeal is hit by Section 4(1) (b) of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974.

ON FACTS:

1. **Incorrect**, hence denied. The official record reveals that PSB in its meeting held on 15.12.2009 recommended 18 Superintendents / Private Secretaries for their regular promotion to PMS (BS-17) against the posts falling in their share, while 28 officials including the appellant were appointed on acting charge basis under Rule-9(3) of APT Rules, 1989 as stop gap arrangement against the posts lying vacant meant for initial recruitment vide order dated 25-01-2010 (Annex-I). Later on, their services were regularized on availability of the vacancy in their own share vide notification dated 21-12-2011 respectively (Annex-II).
2. **Incorrect**, hence denied. It is clarified that promotion requires clear availability of vacancies in the relevant quota while in the instant case, no vacancies for regular promotion were available due to which they were appointed on acting charge basis and to meet the exigency of service and to fill the gap of officers that does not confer any right for regular promotion within the parameters of Rule 9 (3) & (6) of APT Rules, 1989 (Annex-III).

3. **Incorrect**, hence denied. The departmental appeal of the appellant was processed and regretted being not covered under the rules.
4. **Correct** to the extent that the appellant alongwith the other colleagues filed writ petition No. 2707-P/2012 before Peshawar High Court, Peshawar which was disposed off on 22-11-2012 with the conversion of the petition to departmental appeal and intimating the appellate authority for decision in view of dicta laid down by the apex court; to be done within 2 months.
5. **Incorrect**, hence denied. The appellant alongwith other PMS officers submitted joined application / representation requesting therein for Grant of regular promotion from the date of their acting charge basis appointment i.e. 25.01.2010, and extend the benefit of the judgements of Khyber Pakhtunkhwa Services Tribunal Peshawar passed in appeals No: 1398/2010 dated: 11.01.2012 titled Fazal Hussain VS Govt. of Khyber Pakhtunkhwa and No: 394/2013 dated: 11.01.2018 titled Naeem Akhtar VS Govt. of Khyber Pakhtunkhwa, to them as per the dicta of Apex Court in "1996 SCMR 1185". The officers intimated that on the said date they had already rendered more than five years service. The said appeal was processed, regretted and appellants were informed accordingly through letter dated 29-01-2013(Annex-IV).
6. **Incorrect**, hence denied. Mr. Naeem Akhtar was granted antedated promotion in pursuance of Service Tribunal Judgment dated 11-01-2018 as a matter of fact, each and every case has its own merits and judgments of various courts mentioned by the appellant cannot be implemented in the instant case.
7. **Incorrect**, hence denied. Contrary to the assertion of the applicant the case of Fazal Hussain and others cannot be juxtaposed to ibid representation as every case has its own facts and circumstances therefore; the benefit of the judgements passed in appeals dated: 11.01.2012 and 11.01.2018 (Annex-V) cannot be extended to the appellant. Mr. Fazal Hussain, Mr. Naeem Akhtar and Mr. Niaz Muhammad etc were granted ante-dated of promotion w.e.f. 25.03.2010 in pursuance of Khyber Pakhtunkhwa Service Tribunal judgments dated: 11.01.2012 and 11.01.2018 and Supreme Court of Pakistan Judgement dated: 23.01.2013 (Annex-VI). There were 11 posts falling in the share quota of Tehsildars while 28 temporary posts of DDO(R) / DDO(J) in the field meant for initial recruitment were also vacant and Mr. Naeem Akhtar and Niaz Muhammad was at S.No.31 and 32 respectively. It is pertinent to mention here that Service Tribunal in its judgement dated: 11.01.2018 held that at the relevant time there were 21 seats and not 11 in the share quota of Tehsildars. 05 available vacancies were reserved for their seniors which was not legal and the appellants should have also been promoted being next in the seniority.
8. **Incorrect** to the extent of discrimination, hence denied. No discrimination has been done. Moreover, the position has already been explained in above paras.
9. **Incorrect**, hence denied. Contrary to the claims of the appellant his case has no similarity to the case of Mr. Fazal Hussain, Mr. Naeem Akhtar and Mr. Niaz Muhammad etc hence the legal principle established by Supreme Court in its judgement dated: 24.04.1996 in 1996

14

SCMR 1185 which has been referred to by Law Department, Khyber Pakhtunkhwa in its letter No: SO(OP-I)/LD/5-6/2012-VOL-VII/5256-58 dated: 29.06.2020 cannot be extended to them. The applicants cannot be promoted with retrospective effect on a regular vacancy as retrospective promotions are considered to be violation of the legal right of serving incumbents. After due consideration of all the points voiced in the appeal and official record, the instant appeal can be turned down being devoid of merit.

10. That the instant appeal is barred by law.

ON GROUNDS


- A. **Incorrect.** The appellant has got no vested right for his ante-dated promotion w.e.f. 25.01.2010 as under the rules promotion is always with immediate effect and there were no posts of PMS (BS-17) falling in the promotion share quota of Supdt: / PS.
- B. **Incorrect.** In December 2009, 18 posts of PMS (BS-17) were available in the promotion share quota of appellant. However, appellant was at S.No.53 of the panel and he was appointed as PMS (BS-17) on acting charge basis against vacant posts of PMS BS-17 meant for initial recruitment under Section 9 (3) of Khyber Pakhtunkhwa Civil Servants (APT) Rules 1989. Similarly in May 2011, 11 posts were available in the promotion share quota of appellant and the appellant was at S. No. 30 of the panel and was not considered for regular promotion to the post of PMS (BS-17). However, he was promoted on regular basis upon the availability of post on 21-12-2011.
- C. **Incorrect,** hence denied. The respondents acted according to law/rules as explained in Para-B above.
- D. The position has been explained in Para-B above.
- E. **Incorrect,** hence denied. The case of the appellant is not identical to the cases of those PMS (BS-17) officers whose promotion was ante-dated from the date of occurrence of vacancies or the date of acting charge appointment whichever was later as there were vacancies available in the promotion share quota. While in December 2009, 18 posts of PMS (BS-17) were available in the promotion share quota of appellant. However, appellant was at S.No.53 of the panel and he was appointed as PMS BS-17 on acting charge basis against vacant post of PMS (BS-17) meant for initial recruitment under Section 9 (3) of Khyber Pakhtunkhwa Civil Servants (APT) Rules 1989. Similarly in May 2011, 11 posts were available in the promotion share quota of appellant and the appellant was at S.No. 30 and was not considered for regular promotion to the post of PMS (BS-17) as no vacancy in the promotion share quota was available. --
- F. As explained in paras above.
- G. **Incorrect.** No fundamental right of the appellant have been violated.

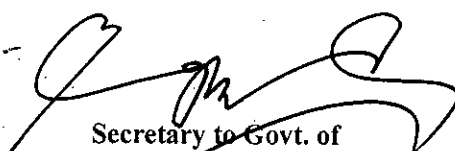
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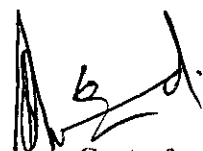
H. **Incorrect.** The request of the appellant has been considered and processed at each forum but regretted being devoid of merit.

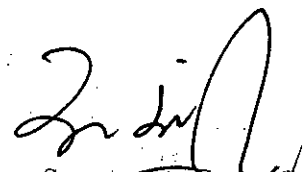
I. That the respondents seek permission to raise further grounds during arguments.

It is, therefore, most humbly prayed that on acceptance of these parawise comments, the instant Appeal may very graciously be dismissed with costs.


Chief Secretary
Khyber Pakhtunkhwa
(Respondent No.1)


Secretary to Govt. of
Khyber Pakhtunkhwa
Administration Department
(Respondent No.2)


Secretary to Govt. of
Khyber Pakhtunkhwa
Finance Department
(Respondent No.3)


Secretary to Govt. of
Khyber Pakhtunkhwa
Establishment Department
(Respondent No.4)

GOVERNMENT OF NWFP
ESTABLISHMENT DEPARTMENT

Dated Peshawar the 25th January, 2010

NOTIFICATION:

No. SOE-II(ED)3(45)2010 Consequent upon the recommendations of the Provincial Selection Board, the competent authority is pleased to appoint the following Section Officers (Section Officer (Current Charge) / Superintendents / Private Secretaries as PMS Officers (BS-17) on acting charge basis with immediate effect:-

Sr. #	Name of officer
1.	Mr. Diwalar Shah
2.	Mr. Rahim Badshah
3.	Mr. Jamroz Khan
4.	Mr. Muhammad Jehan
5.	Mr. Sher Akbar
6.	Mr. Wamiq
7.	Mr. Said Wali Khan
8.	Mr. Munir/Jan
9.	Mr. Bashir Khan
10.	Mr. Zar Gul Khan
11.	Mr. Syed Rasool
12.	Mr. Muhammad Afzal
13.	Mr. Aurangzeb Awan
14.	Mr. Noor Muhammad
15.	Mr. Amir Muhammad
16.	Mr. Ghulam Hussain
17.	Mr. Wazir Muhammad
18.	Mr. Muhammad Ishaq
19.	Mr. Shabbir Ahmad
20.	Mr. Wazir Gul
21.	Mr. Farooq Ahmad
22.	Mr. Khurshid Ali Khan
23.	Mr. Ghulam Muhammad
24.	Mr. Fazal Nabi
25.	Mr. Abdul Qadcer
26.	Mr. Muhammad Saeed
27.	Mr. Muhammad Ayaz
28.	Mr. Zarimullah

On their promotion the above officers will be on probation for a period of one year in terms of section-6(2) of NWFP Civil Servants Act 1973 read with Rule-15(1) of NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

Resultantly the following postings / transfers are ordered with effect:-

Sr.	Name of officer	From	To
1	Mr. Diwalar Shah	Section Officer, CM's Secretariat.	Retained on the same post.
2	Mr. Rahim Badshah	Section Officer, C & W Deptt.	Retained on the same post.
3	Mr. Jamroz Khan	Section Officer, Finance Deptt.	Retained on the same post.
4	Mr. Muhammad Jehan	Section Officer, Governor's Sectt.	Retained on the same post.
5	Mr. Sher Akbar	Section Officer, Higher Education	Retained on the same post.
6	Mr. Wamiq	Section Officer, ST&T Deptt.	Retained on the same post.
7	Mr. Said Wali Khan	Section Officer; Mineral Dev. Deptt.	Retained on the same post.
8	Mr. Munir Jan	PS, FATA Dev. Authority	Section Officer(R I), Establishment Deptt. as substitute of Mr. Tehsinullah
9	Mr. Bashir Khan	Section Officer, P&D Deptt.	Retained on the same post.
10	Mr. Zaf Gul Khan	Section Officer, Finance Deptt.	Retained on the same post.
11	Mr. Syed Rasool	Section Officer, Home & TAs Deptt.	Retained on the same post.
12	Mr. Muhammad Afzal	Section Officer, Establishment Deptt.	Retained on the same post.
13	Mr. Aurangzeb Awan	Section Officer, Health Deptt.	Retained on the same post.
14	Mr. Noor Muhammad	Section Officer, Housing Deptt.	Retained on the same post.
15	Mr. Amir Muhammad	Section Officer, CM's Secretariat	Retained on the same post.
16	Mr. Ghulam Hussain	PS to Minister for Agriculture	Retained on the same post.
17	Mr. Wazir Muhammad	Section Officer, Finance Deptt.	Retained on the same post.
18	Mr. Muhammad Ishaq	Section Officer, ST&T Deptt.	Retained on the same post.
19	Mr. Shabbir Ahmad	Supdt. STI, E&AD	Home & TAs Deptt. against the vacant

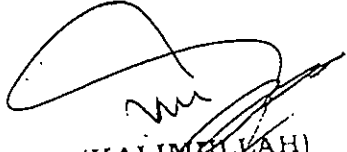
20	Mr. Wazir Gul	Section Officer, Industries Deptt:	post Retained on the same post
21	Mr. Farooq Ahmad	PS, ST&IT Deptt:	Higher Education Deptt: against the vacant post.
22	Mr. Khurshid Ali Khan	Section Officer, Elementary & Secondary Education Deptt:	Retained on the same post.
23	Mr. Ghulam Muhammad	PS Food Deptt:	Finance Deptt: against the vacant post.
24	Mr. Fazal Nabi	Section Officer, STI, E&AD:	Retained on the same post
25	Mr. Abdul Qadeer	Section Officer, Auqaf Deptt:	Retained on the same post
26	Mr. Muhammad Saeed	Section Officer, Social Welfare Deptt:	Retained on the same post
27	Mr. Muhammad Ayaz	PS CM Secretariat	Finance Deptt: against the vacant post.
28	Mr. Zarimullah	Section Officer, IPC Deptt: /	Retained on the same post

CHIEF SECRETARY, N.W.F.P.

ENDST NO: SOE-II(ED)3(45)2010 Dated Pesh the 25 January, 2010

A copy is forwarded to :-

1. All Administrative Secretaries to Govt of NWFP.
2. Secretary to Governor, NWFP.
3. Principal Secretary to Chief Minister, NWFP.
4. Accountant General, NWFP, Peshawar.
5. Accountant General(PR), NWFP, Peshawar.
6. Secretary, FATA Dev. Authority, Peshawar.
7. Director, STI, E&A Department.
8. S.O.(Secret)/(Admn)/E-IV/E.O/Programmer/Librarian, E&A Deptt.
9. Officers concerned.
10. P.S. to Chief Secretary NWFP.
11. P.S. 16 Secretary Establishment NWFP.
12. PS to Special Secretary (Regulations) Establishment Deptt.
13. PS to Minister Agriculture, NWFP.
14. PA to AS (E)/ DS (E) Establishment Department.
15. Personal files of the officers concerned.
16. Office Order file.
17. Manager, Govt Printing Press, Peshawar.


(KALIMULLAH)
SECTION OFFICER (E-II)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the December, 21, 2011

NOTIFICATION

NO. SOE II (ED) 3(45) 2011

Consequent upon the recommendations of the Provincial Selection Board, the competent authority is pleased to order the promotion of the following Private Secretaries/Superintendents/Section Officer(OPS)/PMS BS-17 (acting charge), to Provincial Management Service (BS-17), on regular basis with immediate effect:-

S.#	Name of Officer
1	Mr. Said Rasool
2	Mr. Muhammad Aizal
3	Mr. Aurangzeb Awan
4	Mr. Noor Muhammad Awan
5	Mr. Amir Muhammad
6	Mr. Ghulam Hussain
7	Mr. Wazir Muhammad
8	Mr. Mohammad Ishag
9	Mr. Shabbir Ahmad
10	Mr. Wazir Gul
11	Mr. Khurshid Ali
12	Mr. Ghulam Muhammad
13	Mr. Akbar Khan
14	Mr. Fazal Nabi
15	Mr. Muhammad Saeed
16	Mr. Muhammad Ayaz
17	Mr. Zarinullah
18	Mr. Waheed Khan
19	Mr. Jehanzeb Khan

2. On promotion the above officers will be on probation 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. Resultantly the following postings/transfers are ordered with immediate effect:-

S.#	Name of Officer	From	To
1	Mr. Said Rasool	Section Officer, Home Deptt.	Retained on the same post
2	Mr. Muhammad Aizal	Section Officer, E&AD	Retained on the same post
3	Mr. Aurangzeb Awan	Section Officer, Health Deptt.	Retained on the same post
4	Mr. Noor Muhammad	Section Officer, Housing	Retained on the same post

	Awan	Deptt:	
5.	Mr. Amir Muhammad	Section Officer, CM Sectt	Retained on the same post
6.	Mr. Ghulam Hussain	PS to Minister Agriculture	Retained on the same post
7.	Mr. Wazir Muhammad	Section Officer, Finance Deptt	Retained on the same post
8.	Mr. Mohammad Ishaq	Section Officer, SI&I Deptt	Retained on the same post
9.	Mr. Shabbir Ahmad	Section Officer, Higher Education Deptt	Retained on the same post
10.	Mr. Wazir Gul	Section Officer, Industries Deptt	Retained on the same post
11.	Mr. Khurshid Ali	Section Officer, E&S Edu Deptt	Retained on the same post
12.	Mr. Ghulam Muhammad	Section Officer, Finance Deptt	Retained on the same post
13.	Mr. Akbar Khan	Section Officer, Information Deptt	Retained on the same post
14.	Mr. Fazal Nabi	Section Officer, IPC Deptt	Retained on the same post
15.	Mr. Muhammad Saad	Section Officer, Social Welfare Deptt	Retained on the same post
16.	Mr. Muhammad Aziz	Section Officer, Finance Deptt	Retained on the same post
17.	Mr. Zarimullah	Section Officer, IPC Deptt	Retained on the same post
18.	Mr. Waheed Khan	Section Officer, Higher Educ. Deptt	Retained on the same post
19.	Mr. Jehanzeb Khan	Section Officer, Industries Deptt	Section Officer, Population Welfare Deptt against the vacant post

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

ENDST: NO. & DATE EVEN

A copy is forwarded to:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. Secretary (Admn. & Coord), FATA Secretariat.
5. Accountant General, Khyber Pakhtunkhwa.
6. Accountant General (PR), Sub-Office, Peshawar.
8. SO(Secret)/SO(E-IV)/SO(Admn)/ EO/Librarian, E&A Department.
9. PS to Minister for Agriculture, Khyber Pakhtunkhwa.
10. PS to Chief Secretary, Khyber Pakhtunkhwa.
11. PS to Secretary Establishment
12. PS to Special Secretary(Regulation), E&AD
13. PAs to AS(E)/DS(E) Estab. Deptt
14. Officers concerned.
15. Office order file.
16. Personal file of the officers concerned

(FARYAL KAZIM)
SECTION OFFICER(E-II)

MIHSAN AFRIDI

(3) It will be the sole discretion of the appointing authority to accept or refuse a request for transfer under this rule and any decision made in this behalf shall be final and shall not be quoted as precedence in any other case.

9. **Appointment on Acting Charge or current Charge Basis.** (1) Where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned who is otherwise eligible for promotion, does not possess the specified length of service the authority may appoint him to that post on acting charge basis;

³⁷Provided that no such appointment shall be made, if the prescribed length of service is short by more than ³⁸[three years].

(2) So long as a civil servant holds the acting charge appointment, a civil servant junior to him shall not be considered for regular promotion but may be appointed on acting charge basis to a higher post.

(3) In the case of a post in Basic Pay Scale 17 and above, reserved under the rules to be filled in by initial recruitment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

(6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

PART-III

INITIAL APPOINTMENT

10. **Appointment by Initial Recruitment :-**(1) Initial appointment to posts ³⁹[in various basic pay scales] shall be made-

(a) if the post falls within the purview of the Commission, on the basis of Examination or test to be conducted by the Commission; or

³⁷ Full stop at the end of Rule 9 (1) replaced with colon and proviso added by Notification No. SOR-I (S&GAD)4-1/80/Vol-II, dated 20-10-1993.

³⁸ The words one year substituted by Notification No. SOR-I(S&GAD)4-1/80/III, dated 14.3.96.

³⁹ The words in basic pay scale-16 to 21 substituted by Notification No. SOR-I(S&GAD)1-117/91 (C), dated 12-10-1993.

To

The Chief Minister,
NWFP, Peshawar.

Through Proper Channel.

SUBJECT: APPEAL / REPRESENTATION AGAINST
NOTIFICATION NO. DATED 25.03.2010.

Respected Sir,

Reference subject mentioned Notification, I
Naeem Akhtar HRDO submit my Departmental Appeal/
Representation for your Honor's sympathetic & benevolent considerations as under:-

1. That, although I have been promoted as PMS Officer in BPS-17, but on acting charge basis by the Provincial Selection Board, which is against the Law and the Rules.
2. That, there is clear vacancy of PMS Officer lying vacant since November 2009 and I had acquired the required length of service against the post of Tehsildar.
3. That, in the month of November 2009 and December 2009 two PSB were held but without any reason or justification I was not considered for promotion inspite of the fact that the posts were lying vacant and I was eligible, competent and fit for promotion against the said Post. As such I had the right for anti-dated promotion w.e.f. when the post was lying vacant and I was eligible for promotion.
4. That, I am being discriminated and treated with different yard stick.

It is, therefore, requested that on acceptance of this Departmental Appeal / Representation, I may kindly be promoted as PMS Officer in BPS-17 on regular basis with effect from the date when post became vacant and I became eligible or atleast from the day when PSB was held and I was not considered without any reason or justification

Thanking you.

Respected Sir
gr
adv

Naeem Akhtar
NAEEM AKHTAR
HUMAN RESOURCE DEV; OFFICER
SWAT

Dated: _____

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

14

(12)

ANNEXURE

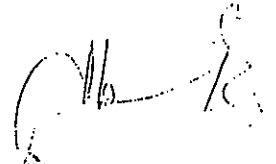
NO.SOE-II(ED) 2(192)/2012
Dated Peshawar the December, 20, 2012

1. ✓ Mr. Naccim Akthar,
Assistant to Commissioner (Dev),
Mafakand Division,
Swat.

2. Mr. Niaz Muhammad,
District Officer (R&E),
Swat.

Subject:- APPEAL/REPRESENTATION REGARDING SENIORITY AS PMS
OFFICERS IN BS-17

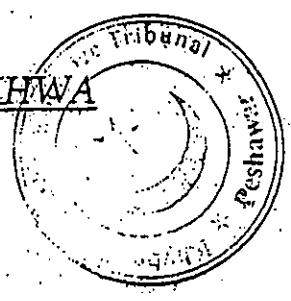
I am directed to refer to your applications dated nil on the subject noted
above and to inform that after thorough examination of your appeal/ representation in this
Department, the competent authority has regretted the same being not covered under the



(TABASSUM)
SECTION OFFICER (E-II)

steered
gm
Adv

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR



Service Appeal No. 395 of 2013

Naiz Muhammiad PMS BS-17, office of the
Commissioner Malakand Division at Saidu Sharif,
District Swat.

A. W. J. Provent
15
18-11

...Appellant...

VERSUS

Respondent No-1
is deleted vide
order dt: 1-4-2013

- Deleted*
- ① That Chief Minister Khyber Pakhtunkhwa,
Through Principal Secretary K.P., Peshawar
 2. The Chief Secretary, Government of Khyber
Pakhtunkhwa, Peshawar.

...Respondents...

Appeal under Section 4 of the Khyber
Pakhtunkhwa Service Tribunal Act, 1974 against
the order of the respondent No. 2 bearing No.
SOE-II(ED)3(45)2011 dated Peshawar the
December, 21, 2011 vide which other colleagues
of the appellant in PMS BS-17 were regularized
while leaving the appellant without any
reasons, whatsoever, to the detriment of the
appellant against the law and rules on the
subject and infringing his Constitutional rights,
against which the appellant filed a departmental
appeal to the respondent No. 1 which was also
rejected vide order No. SOE-II(ED)2(192)/2012
dated Peshawar the December, 20, 2012 in
violation to the law and rules

ATTESTED

[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar
Co-submitted to
and filed.

[Signature]
14/2/2013



395/13

11.1.2018

Appellant alongwith counsel and Mr. Muhammad Jan, District Attorney alongwith Khanzad Gul S.O for the respondents present. Arguments were heard. Record perused.

This appeal is accepted as per our detailed judgment of today in connected service appeal No. 394/2013; entitled "Naeem Akhtar Vs. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others". Parties are left to bear their own costs. File be consigned to the record room.

Announced
11.01.2018

Self Niaz Muhammad Khan,
Chairman

Certified to be true copy

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Self M. Amin Khan Kundi,
Member

Date of Presentation of Appeal: 06-02-18
Number: 800
Copy: 6
Urgent: 2
Total: 8
Name of Copy:
Date of Completion: 06-02-18
Date of Delivery of Copy: 06-02-18

↓

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE TARIQ PARVEZ

CIVIL PETITION NOS. 152-P TO 158-P OF 2012

(on appeal from the judgment of the KPK Service Tribunal,
Peshawar dated 11.01.2012 passed in Service Appeal Nos.
1398, 1399, 1372, 1400 to 1403 of 2010)

Government of KPK through
Chief Secretary Peshawar & others. ...Petitioners.

VERSUS

Fazal Hussain and others	(in CP 152-P/12)
Naeem Akhtar etc	(in CP 153-P/12)
Abdul Mateen Qasuria	(in CP 154-P/12)
Hidayatullah	(in CP 155-P/12)
Muhammad Nasir	(in CP 156-P/12)
Niaz Muhammad	(in CP 157-P/12)
Syed Kazim Hussain Shah	(in CP 158-P/12)

...Respondents.

For the Petitioners: Mr. Zahid Yousaf, Addl. AG.

For the Respondents: Mr. Ejaz Anwar.
(in CPs 152, 155, 156 & 158-P/12)

Other Respondents: N.R.

Date of Hearing: 23.01.2013.

JUDGMENT

NASIR-UL-MULK, J.— The Government of Khyber Pakhtunkhwa through its Chief Secretary and others filed these petitions assailing the judgment of K.P.K. Service Tribunal dated 11.01.2012 whereby appeals filed by the respondents were allowed in terms to be stated later. The respondents were all serving as Tehsildar (BPS-16) and were appointed on acting charge basis against the posts of Provincial Management Services (PMS) Officers in BPS-17 by Notification of the Establishment Department, Government of Khyber

ATTESTED

(Signature)
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar

4/7 90

Pakhtunkhwa dated 25.03.2010 on the recommendations of the Provincial Selection Board (PSB). They filed service appeals before the Tribunal praying for promotion to the posts they held on acting charge basis with effect from the date on which the vacancies became available. The appeals of Fazal Hussain, Hidayatullah, Muhammad Nasir and Syed Kazim Hussain Shah, Respondents in Civil Petition Nos. 152-P, 155-P, 156-P and 158-P of 2012, respectively, were allowed in the terms that they were directed to be granted ante-date regular promotion to the post of PMS Officer (BPS-17) with effect from 25.03.2010 with all back and consequential benefits. The service appeals of Naeem Akhtar, Abdul Mateen Qasuria and Niaz Muhammad, Respondents in Civil Petition Nos. 153-P, 154-P and 157-P of 2012, respectively, were disposed of in the terms that they shall be considered for regular promotion as and when the vacancies became available for them. We may straight away dismiss the latter set of petitions filed by the Government of Khyber Pakhtunkhwa as no relief was granted to the said Respondents by the Tribunal and the direction was merely restatement of the law that whenever vacancies reserved for Tehsildars for promotion to the post of PMS Officer become available they shall be considered.

2. As regards the other petitions where the Respondents have been granted ante-date regular promotion to the post in question, the learned Additional Advocate General contended that the said Respondents were not eligible for promotion as they did not possess the requisite service of three years as Tehsildar for promotion to the higher post. This argument fails for two reasons. Firstly, that this was never the case of the Provincial Government before the Service Tribunal as nowhere in the comments filed by them before the Tribunal had they

ATTESTED

Registrar,
Court of Pakistan,
Rawalpindi.

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questioned the eligibility of the Respondents to be promoted. The same is also not discernable from the impugned judgment as no arguments to that effect were advanced before the Tribunal. Furthermore we have perused the minutes of the Meeting of the Provincial Selection Board which considered the question of appointment of the Tehsildars against the vacant posts reserved for them. Its recommendations that the respondents be appointed on acting charge basis was not on account of their ineligibility for promotion to the said posts. Remarks against each of the respondents by the Board were favourable and there is no mention anywhere about their ineligibility. Rather it was expressly stated that they had passed their prescribed Departmental examination. Even otherwise the Additional Advocate General was not in a position to show from the available record that the respondents were not eligible for promotion to the post of PMS Officer.

3. The learned Additional Advocate General further contended that the respondents were duly promoted with immediate effect on 21.12.2011 during the pendency of their service appeals before the Tribunal. That the respondents had not challenged the said Notification superseding the Notification of their appointments on acting charge basis, which was the subject matter of their service appeals. In the impugned judgment the Tribunal did take note of the Notification of 21.12.2011. In case the respondents were otherwise found entitled for regular promotion with effect from the date of their appointment on acting charge basis the subsequent Notification of 21.12.2011 was not an impediment in the way of the Tribunal to grant such relief.

4. The learned Additional Advocate General then submitted that respondents could only have been promoted with immediate effect and not entitled to ante-date promotion. In response the learned

counsel representing the Respondents pointed out that being duly qualified and vacancies available for their promotion they ought to have been promoted regularly when they were found duly fit and qualified by the Provincial Selection Board. He placed reliance on the judgment of this Court in the case of LUOMAN ZAREEN AND OTHERS v. SECRETARY EDUCATION, NWFP AND OTHERS (2006 SCMR 1938) and an unreported judgment GOVERNMENT OF NWFP THROUGH SECRETARY ESTABLISHMENT AND ANOTHER v. MUHAMMAD IQBAL KHATTAK AND ANOTHER (Civil Appeal No. 860 and 861 of 2010) decided on 24.05.2012.

5. In order to examine the merit of the above contention we went through the minutes of meeting of the Provincial Selection Board of 29.12.2009 where the question of promotion/appointment on regular charge basis of the respondents for the post of PMC Officers was under consideration. From the minutes it transpired that at that time 11 posts were available in the quota reserved for Tehsildars for promotion to the post of PMS Officers. It appears from the minutes that the respondents were not being considered for promotion as some Tehsildars senior to them were for one reason or another not eligible for promotion. By Notification of 21.12.2011, the respondents as well as the said senior Tehsildars were together promoted to the posts of PMS Officer on regular basis. It seems that the only reason that the respondents were not being promoted when they were otherwise qualified for such promotion was the ineligibility of their senior colleagues. Such reason is not legally justifiable. The respondents were entitled to be considered for promotion against the available vacancies and they could not have been made to suffer and their promotion delayed on account of ineligibility of their seniors. The minutes of the Provincial Selection

Board clearly indicates that the respondents were otherwise eligible for promotion to the posts of PMS Officer. That being the situation, they were entitled to be promoted on the date when their acting charge basis appointments to the posts of PMS Officer were notified.

6. In this view of the matter, no exception can be taken to the impugned judgment of the Service Tribunal. The petitions are therefore dismissed and leave declined.



Sd/- Nasir-ul-Mulk, J.
Sd/- Tariq Farveez, J.

Certified to be true copy

07.02.213
Deputy Registrar,
Supreme Court of Pakistan,
Peshawar.

PESHAWAR
23rd January, 2013.
Mudassar

29/1

"Not approved for reporting."

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

C M No. _____/2022
In
Service Appeal No.12441-P/2020



Said Rasool

Versus


Chief Secretary & others

APPLICATION FOR EARLY HEARING


Respectfully Sheweth:

1. That the above titled service appeal is pending adjudication before this honourable court and is fixed for 22.11.2022.
2. That during the course of proceedings on the last date of hearing i.e. 08.08.2022 which was declared as public holiday and the proceedings were not held and now the next date for proceeding is fixed for 22.11.2022.
3. That the purpose of the very service appeal will become infructuous if the same is not heard at earliest as two of the colleagues who's similar cases are pending before this tribunal had reached to the superannuation and held retired, therefore the instant case may kindly be fixed at earliest.
4. That there is no legal bar if the instant service appeal be accelerated and non-fixation of case for early date would cause irreparable loss to the applicants.

It is, therefore, humbly prayed that on acceptance of this Application, the Writ Petition may kindly be accelerated and an early date may be fixed.


Applicant/petitioner

Through


BABAR KHAN YOUSAFZAI
Advocate Supreme Court.

*Delegated,
22/9/22*

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

C M No. _____/2022

In

Service Appeal No.12441-P/2020

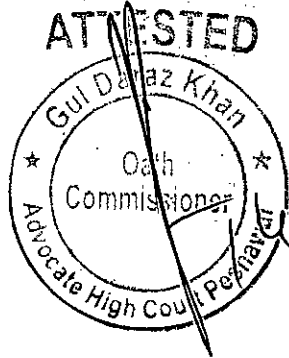
Said Rasool

Versus

Chief Secretary & others

AFFIDAVIT

I, Said Rasool, Ex-Deputy Secretary, Home Department, Civil Secretariat Peshawar, do hereby solemnly affirm and declare on oath that all the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.




DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

PROFORMA FOR EARLY HEARING

FORM 'A'

To be filled by the Counsel/Applicant

Case Number

S. A no 12441/2020

Case Title

Said Rasool vs Chief Secretary

Date of

2020

Institution

Bench

SB

DB

✓

Case Status

Fresh

Pending

✓

Stage

Notice

Reply

Argument

✓

Urgency to clearly stated.

Two colleagues of the appellant had already retired during the pendency of the appeal.

Nature of the relief sought.

Promotion

Next date of hearing

22-11-2022

Alleged Target Date

First week of October 22

Counsel for

Petitioner

✓

Respondent

In person

Signature of counsel/party

gts

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

PROFORMA FOR EARLY HEARING

FORM 'B'

Inst#

Early Hearing _____ -p/20 22

In case No. 12441 -p/20 22

Said Rasool vs Chief Secretary

Presented by Babur Khan on behalf of Appellant. Entered
in the relevant register.

Put up alongwith main case 12441

Last date fixed

Reason(S) for last adjournment, if
any by the Branch Incharge.

Date(s) fixed in the similar matter
by the Branch Incharge

Available dates Readers/Assistant
Registrar branch

8/8/2022

Assistant Registrar

REGISTRAR

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

Service Appeal No. 12441/2020

Said Rasool.....**APPELLANT**

Versus

Chief Secretary, KPK & others.....**RESPONDENTS**

REJOINDER ON BEHALF OF APPELLANT.

Respectfully Sheweth:

Reply to Preliminary Objections

1 - 10 Para No. 1 to 10 are incorrect, the objections raised are stereo type. The only forum available to the appellant is this Honorable Tribunal and this fact is further ascertained by the honorable Peshawar High Court in Writ Petition No. 1374-P/2019. (Annex H of the Service Appeal). Moreover this Honorable Tribunal has also ascertained the decision in favor of other similarly placed employees. The only forum available with the Appellant is this Honorable Tribunal. The appeal is not barred by any law, hence duly maintainable. The right of the Appellant is infringed therefore, the locus standi is also in his favor. All the facts narrated by the appellant are duly annexed with documented annexures. The respondent is highlighting the lacks of Jurisdiction but miserably

relief. The relevant parties has been duly included in the list of respondents. Better relief cannot be sought from any other forum but rather than only this Honorable Tribunal,

Reply On Facts

1. That in Para no.1 incorrectly stated the respondent department is duly relying on order dated: 21.12.2011 duly annexed by the appellant with the service appeal as annexure A and reproduced by the respondent unnecessarily as annexure II with comments. The notification annexure as I cannot be denied regarding acting charge bases but producing the same at this stage is only for the purpose of misleading this Honorable Tribunal. Once a subsequent notification is issued that will prevail over the previous one.
2. That Para No. 2 is incorrect, the documents on which the appellant relying upon is duly annexed as annexure B and the same cannot be denied.
- 3 - 9 The stance presented by the appellant is rightly admitted at most of the paras and the one sated incorrect cannot be denied as the same were produced with relevant annexures. The denials are stereo type. The annexures produced by the respondents are only for misleading the court.


GROUNDS:

Are incorrect, details are provided in the proceedings paras and in the main appeal may be considered as integral part of this reply.

It is therefore, most humbly prayed that on acceptance of this rejoinder this honorable tribunal may very graciously be allowed the appeal as prayed for in the main appeal.


Appellant

Through


BABAR KHAN YOUSAFZAI
Advocate Supreme Court.

Dated: 18.02.2022

AFFIDAVIT

I, Said Rasool, Ex-Deputy Secretary, Home Department, Peshawar, do hereby solemnly affirm and declare on Oath that the contents of the accompanying **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this hon'ble court.




DEPONENT