


02.06.2016

Counsel for the appellant, M/S Khurshid Khan, SO
and Hameed-ur-Rehman, AD (lit.) alongwith Mr.
Muhammad Adeel Butt, Additional Advocate General for
respondents present.

The matter in question has already been decided by
this Tribunal vide judgment dated 31.05.2016 in Service
Appeal No. 1343/2012 titled "Javed Iqbal-vs-Government
of Khyber Pakhtunkhwa, through Elementary & Secondary
Education, Peshawar", this appeal is also disposed of as
per judgment dated 31.05.2016 in the afore-mentioned
service appeal. However, the respondent shall ascertain
that the present appellant is a similarly placed person with
appellant in Service Appeal No. 1343/2012. The appeal is
disposed of in the above terms. Parties are, however, left to
bear their own costs. File be consigned to the record room.

ANNOUNCED
02.06.2016


Member


Member

26.02.2015

Counsel for the appellant, M/S Khurshid Khan, SO for respondent No.1, Mosam Khan, AD for respondent No. 2 and Insar Ahmed, AAO for respondent No. 4 alongwith Adl: A.G for respondents present. Written reply by respondent No.4 also submitted. The case is assigned to D.B for rejoinder and final hearing for 3.9.2015.


Chairman

03.09.2015

Counsel for the appellant and Mr. Ansar Ahmad, AAO alongwith Adl:AG for respondents present. Learned counsel for the appellant requested for adjournment. To come up for rejoinder and final hearing on 18.02.2016.




Member


Member

28.11.2013 Vide order sheet dated 28.11.2013 in connected appeal No. 767/2013, this appeal is adjourned to 29.1.2014.

READER

29-1-14 Vide order sheet dated 28.11.2013 in connected appeal No. 767/2013, this appeal is adjourned to 7-4-14.

READER

7-4-14 Vide order sheet dated 28.11.2013 in connected appeal No. 767/2013, this appeal is adjourned to 11-6-14.

READER

11-6-14 Vide order sheet dated 28.11.2013 in connected appeal No. 767/2013, this appeal is adjourned to 18-9-14.

READER

18-9-14 Vide order sheet dated 28.11.2013 in connected appeal No. 767/2013, this appeal is adjourned to 10-12-14.

READER

10-12-14 Vide order sheet dated 28.11.2013 in connected appeal No. 767/2013, this appeal is adjourned to 26-2-15.

READER

Vide order sheet dated 28.11.2013 in connected appeal No. 767/2013, this appeal is adjourned to _____.

READER

Vide order sheet dated 28.11.2013 in connected appeal No. 767/2013, this appeal is adjourned to _____.

READER

Appeal No. 797/2013.
Mr. Noor Puro Khan.

26.08.2013

Appellant with counsel present and heard on preliminary.

Contended that the appellant has not been treated in accordance with the law/rules. He further contended that similar nature of cases have already been admitted to regular hearing. In this respect he referred to one in service appeal No.1322/12 titled Ikramullah vs Govt which has been fixed for hearing before the Hon'ble Final Bench-ii on 10.10.2013. On the same analogy the instant appeal also admitted for regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents.

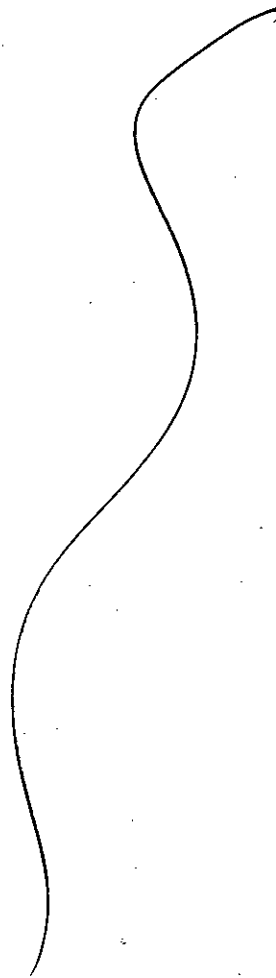
Case adjourned to 28/09/2013 for submission of written reply before Final Bench-II.

Member.

02.07.2013

Clerk to counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 26.08.2013.


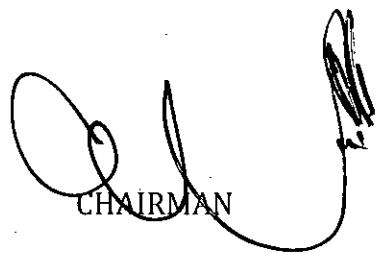

Reader



Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 770/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	26/04/2013	<p style="text-align: center;">The appeal of Mr. Noor Paio Khan resubmitted today by Mr. Mati Ullah Khan Marwat Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	8-5-2013	<p style="text-align: center;">This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>1-7-2013</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Noor Paio Khan son of Sher Abbas Khan received today i.e. on 28/03/2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Index of the appeal may be prepared according to Khyber Pakhtunkhwa Service Tribunal Rules 1974.
- 2- Appeal may be got signed by the appellant.
- 3- Annexures of the appeal may be attested.
- 4- Appeal may be page marked.
- 5- Copy of Notification dated 13.11.2012 is illegible which may be replaced by legible one.
- 6- Six more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 501 /S.T.

Dt. 29/03 /2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR. SARDAR ALI RAZA ADV. PESH.

Sir,
Resubmitted
after doing the
needful.


Adv

BEFORE THE HONOURABLE PESHAWAR HIGH COURT, PESHAWAR

Service Appeal No 770 /2013

Noor Paio Khan
VERSUS

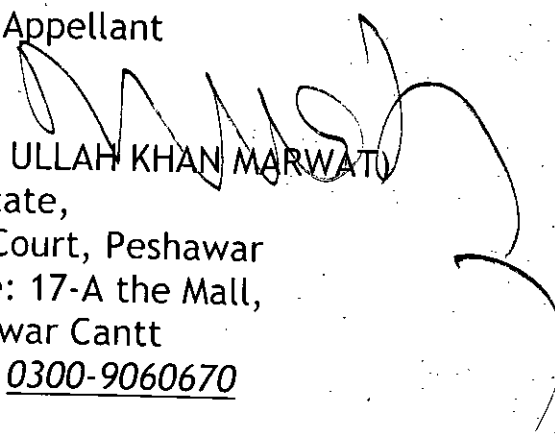
Government of KPK, Peshawar etc

INDEX

S NO	DESCRIPTION	PAGE
1.	Appeal alongwith Affidavit	01 - 05
2.	Application for temporary injunction	06 - 07
3.	Copy of the CNIC	08
4.	Copy of the pay roll and service certificate	09 - 10
5.	Copy of the Departmental Notification/Rules	11-26
6.	Departmental appeal & receipt	27-28
7.	Wakalat Nama (In original)	29

Through:

Appellant


(MATI ULLAH KHAN MARWATI)
Advocate,
High Court, Peshawar
Office: 17-A the Mall,
Peshawar Cantt
Cell # 0300-9060670

Dated: - 06th April, 2013

①

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No 770 /2013

627
28/3/13

Noor Paio Khan S/O Sher Abbas Khan (PST) Government Primary School, GMPS, Zariwala, District Karak

(Appellant)

V E R S U S

1. Government Khyber Pakhtunkhwa through Secretary Elementary and Secondary Education Peshawar
 2. Director Elementary and Secondary Education, Peshawar
 3. Secretary Finance, Finance Department Government of Khyber Pakhtunkhwa Peshawar
 4. Accountant General, Khyber Pakhtunkhwa, Peshawar
- (Respondents)

Appeal under Section 4 of Khyber
Pakhtunkhwa Services Tribunal Act, 1974

PRAYER-IN-APPEAL:-

On acceptance of this Appeal, the notification dated 13th November, 2012 issued by Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar, wherein the additional qualification of primary school teacher certificate or diploma in education were inserted for the appointment of primary school teacher and making it the criteria for promotion from BPS-12 to BPS-15 may please be declared as ultra virus the constitution and against the fundamental right of the Appellant provided to him under the law.

Further, on acceptance of this Appeal, the Honourable Tribunal may please be declared that the abovementioned amendment in the rules cannot be operated retrospectively as for as the case of Appellant is concerned and the Appellant need not to have a qualification prescribed for initial recruitment of primary school teacher for their promotion to BPS-15 as provided in notification dated 13th November, 2012 since it was not the requirement when the Appellant was appointed as PST in the year 1978.

Registered to-
28/3/13

re-submitted to-
and filed.
26/4/13

Respectfully Sheweth:-

- 1) That the Appellant was appointed as primary school teacher and serving the Elementary and Secondary Education Department District Karak since 1978 as a trained teacher, and presently Zariwala, Karak. (Copy of the pay roll and the service certificate is attached as Annex 'A & B').
- 2) That the Appellant was initially appointed in BPS-7 the post was later on upgraded and by now the post of primary school teacher is BPS-12, as such all the primary school teachers have now been rendered in BPS-12.
- 3) That when the Appellant was initially appointed, the requisite qualification was only secondary school certificate and there was no mechanism provided for their promotion and either their pay scale or the post is to be upgraded only then they good enjoy the benefit of high scale despite their unmatched services rendered for decades.
- 4) That the Respondents after great struggles by the Teachers Association for providing them service structure which may accommodate the senior teachers like Appellant who rendered the service for the last more than decade. The Respondents notified the rules for the recruitment and promotion for the teacher dated 13-11-2012. (Copy of the notification is attached as Annex 'C').
- 5) That in the abovementioned notification at S. No 21 the mechanism for initial appointment of primary school teacher BPS-12 is given as:-
 - (i) Intermediate or equivalent qualification, from a recognized board with primary school teacher certificate/diploma in education a recognized institute or
 - (ii) Secondary school certificate from a recognized board in 2nd division with 02 year associate degree in education from recognized university.
- 6) That in the same notification at S No 19 is post of primary school teacher BPS-15, which is liable to be filled by promotion on the basis of seniority-cum-fitness, from amongst senior primary school teacher with at least 10 years and having qualification prescribed for the initial recruitment of the primary school teacher, as already reproduced in the preceding para.

- 7) That due to additional qualification for the initial recruitment is enhanced in these rules, whereas at the time of appointment of the Appellant, no such requirement was prescribed, therefore, the Appellant was left in the vacuum, without any chance of promotion. In this regard the Appellant has also preferred a departmental appeal. (Copy of the appeal and receipt is attached as Annex 'D & E').
- 8) That feeling aggrieved from the impugned rules, the Appellant seeks the indulgence of this Honourable Tribunal through the instant appeal inter-alia on the following grounds:-

GROUND:-

- A) That at the time of appointment of the Appellant as PTC, the requisite qualification was only secondary school certificate and no other academic qualification or training was required as a condition precedent for appointment against this post. Therefore, the additional qualification of primary school teacher certificate or diploma in education, introduced through the impugned rules later on, cannot be given retrospective effect.
- B) That the Appellant being SSC appointment in the year 1978 has to be treated on equal footing at the time of promotion with any other PST having intermediate, PSTC or diploma in education on his credit but appointed recently.
- C) That the reach experience of the Appellant as PST cannot be ignored and he cannot be left out on the basis of new rules framed in the year 2012
- D) That the rule of promotion against the post of Primary School Head Teacher (PSHT) is defective yet an another score, as the Appellant and similar other senior teachers have been afforded no opportunity of further enhancement by way of promotion or otherwise in their service career.
- E) That the impugned rule is not sustainable for yet another defect. All the rules on the subject of promotion in almost all departments give a good margin to experience / length of service but this criterion is lacking in the impugned provision.
- F) That in the matter of up-gradation of the same post of PST from BPS-12 to BPS-15 only length of service of 10

years was required as requisite qualification and no other conditions was attached thereto.

- G) That the Appellant has not been treated in accordance with law, as against the provisions contained in Article 4 of the Constitution.
- H) That the Appellant seeks leave to argue additional grounds, after the stance of the Respondents became known to him.

PRAYER:-

It is, therefore, respectfully prayed that on acceptance of this Appeal, the notification dated 13th November, 2012 issued by Government of Khyber Pakhtunkhwa Elementary and Secondary Education Department Peshawar, wherein the additional qualification of primary school teacher certificate or diploma in education were inserted for the appointment of primary school teacher and making it the criteria for promotion from BPS-12 to BPS-15 may please be declared as ultra virus the constitution and against the fundamental right of the Appellant provided to him under the law.

Further, on acceptance of this Appeal, the Honourable Tribunal may please be declared that the abovementioned amendment in the rules cannot be operated retrospectively as far as the case of Appellant is concerned and the Appellant need not to have a qualification prescribed for initial recruitment of primary school teacher for their promotion to BPS-15 as provided in notification dated 13th November, 2012 since it was not the requirement when the Appellant was appointed as PST in the year 1978 .

Through:

Appellant *Mati Ullah Khan Marwat*
Sardar Ali Raza
 (SARDAR ALI RAZA)
 &

(MATI ULLAH KHAN MARWAT)
Advocates,
High Court, Peshawar

Dated: -26th March, 2013

5

BEFORE THE HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR

Noor Paio Khan

VERSUS

Government of KPK, Peshawar etc

AFFIDAVIT

I, Noor Paio Khan S/O Sher Abbas Khan, do hereby solemnly affirm and declare on Oath that all the contents of accompanying appeal are true and correct to the best of my knowledge and nothing has been concealed or withheld from this Honourable Court.

DEPONENT

Noor Paio Khan

ATTESTED
Noor Paio Khan
27-3-2023

6

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

C M No _____ 2013

In

Service Appeal No _____ 2013

Noor Paio Khan

V E R S U S

Government of KPK, Peshawar etc

Application for temporary injunction to the effect that Respondents may kindly be restrained from taking any action for the promotion of PSTS to BPS-12/15 as according to the procedure mentioned in the impugned rule/notification dated 13th November, 2012

Respectfully Sheweth:-

- 1) That the Appellant has filed the above titled service appeal before this Honourable Tribunal, in which no date of hearing has yet been fixed.
- 2) That Respondents vide notification dated 13-11-2012 with regard to the fresh education policy has given a method of promotion, which is bound to violate the promotion right of the thousands of teachers including the Appellant.
- 3) That the Applicant/Appellant has prima facie and is very sanguine for its success.
- 4) That the three ingredients i.e. prima facie case, balance of convenience and irreparable loss as per spirit of the rules for granting injunction are present in the accompanying appeal.
- 5) That in case the injunction as prayed for is denied, the Applicant/Appellant would suffer extreme irreparable loss as impugned vacancies will be fill up and there would be no chance for Applicant/Appellant's accommodation. Therefore, it is in the interest of justice to stay further proceedings on the impugned notification dated 13-11-12 till the final decision of the instant appeal.

5

6) That the facts and grounds taken in the memo of appeal may kindly be considered integral part and parcel of the instant appeal.

It is, therefore, humbly requested that in the light of above submissions, this Honourable Tribunal may please be kind enough to restrain the Respondents from taking any action towards promoting the PSTS teachers on the basis of above noted notification.

Applicant / Appellant

Through:

Sardar Ali Raza
(SARDAR ALI RAZA)

&

Mati Ullah Khan Marwat
(MATI ULLAH KHAN MARWAT)
Advocates,
High Court, Peshawar

Dated: -26th March, 2013

AFFIDAVIT:-

I, Noor Paio Khan S/O Sher Abbas Khan, do hereby solemnly affirm and declare on Oath that all the contents of accompanying appeal are true and correct to the best of my knowledge and nothing has been concealed or withheld from this Honourable Court.

Noor Paio Khan

DEPONENT

ATTESTED
Zahid Ullah Khan Advocate
Oath Commissioner
Distt. Courts Peshawar
27-3-13



GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

NOTIFICATION

Peshawar, dated the November 13, 2012.

No.SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all Notifications issued in this behalf, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby lays down the method of recruitment, qualification and other conditions specified in the Appendix to this Notification which shall be applicable to all the posts specified in Column No. 2 of the said Appendix and the schedule therewith.

[Signature]
SECRETARY TO GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

Endst. No. & Date as above.

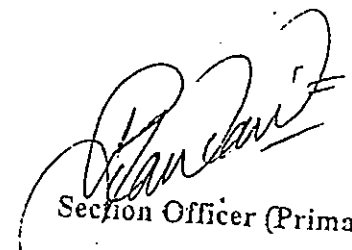
Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa Peshawar.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director Education (FATA), Peshawar.

[Signature]
TESTED
ADVOCATE

21

1. The Director Curriculum & Teachers Education Abbottabad
2. The Director (PITE) Khyber Pakhtunkhwa Peshawar
3. The Director (ESSE) Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
4. The Deputy Director Database (EMIS) E&SE Department.
5. All District Coordination Officers in Khyber Pakhtunkhwa.
6. All Executive District Officers Elementary & Secondary Education in Khyber Pakhtunkhwa.
7. All District Accounts Officers in Khyber Pakhtunkhwa / Agency Accounts Officers FATA.
8. All Agency Education Officers FATA.
9. P.S to Governor, Khyber Pakhtunkhwa.
10. P.S to Chief Minister, Khyber Pakhtunkhwa.
11. P.S to Chief Secretary, Khyber Pakhtunkhwa.
12. P.S to Minister E&SE Khyber Pakhtunkhwa Peshawar.
13. P.S to Secretary E&SE Department.
14. Master File.


Section Officer (Primary)

ATTESTED
ADVOCATE

19

APPENDIX

**TESTED
APPROPRIATE**

1.	2.	3.	4.	5.
S.No.	Nomenclature of the post.	Minimum qualification and experience for initial appointment or by transfer.	Age limit.	Method of recruitment.
1.	Secondary School Teacher (BPS-16).	(i) Second class Bachelor's Degree with two subjects as Chemistry, Botany, Zoology, Physics, Mathematics, Statistics Humanities and other equivalent groups from a recognized University; or (ii) M.A in Education or Bachelor's Degree in Education, from a recognized University.	18 to 35 years.	(a) Fifty percent by promotion on the basis of seniority-cum-fitness, in the following manner: (i) forty per cent from amongst the Certified Teachers (General), Certified Teachers (Agriculture), Certified Teachers (Industrial Arts) and Certified Teachers (Home Economics) with at least five years service as such and having qualification mentioned in column No. 5; (ii) four per cent from amongst the Drawing Masters with at least five years service as such and having qualification mentioned in column No.3; (iii) four per cent from amongst the Physical Education Teachers with at least five years service as such and having qualification mentioned in column No. 3;

Handwritten initials

14

~~ATTORNEY~~
ADVOCATE

one per cent from amongst the Instructional Material Specialists, with at least five years service as such and having qualification mentioned in column No. 3; and

(v) one per cent from amongst the Arabic Teachers with at least five years service as such and having qualification mentioned in Column No.3; and

(b) fifty per cent by initial recruitment.

By promotion, on the basis of seniority-cum-fitness, from amongst Arabic Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Arabic Teacher.

By promotion, on the basis of seniority-cum-fitness, from amongst Theology Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Theology Teacher.

By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers (General), with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (General)

2.	Senior Arabic Teacher (SAT) (BPS-16)		
3.	Senior Theology Teacher (STT) (B-16)		
4.	Senior Certified Teacher (SCT)(General) (BPS-16).		

15

	Senior Certified Teacher (Industrial Arts) (BPS-16).			By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers (Industrial Arts), with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (Industrial Arts).
6.	Senior Certified Teacher (Agriculture) (BPS-16).			By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers (Agriculture), with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (Agriculture).
7.	Senior Drawing Master (BPS-16).			By promotion on the basis of seniority-cum-fitness from amongst Drawing Masters, with at least five years service as such and having qualification as prescribed for initial recruitment of Drawing Master.
8.	Senior Certified Teacher (SCT) (Home Economics) (BPS-16).			By promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers (Home Economics), with at least five years service as such and having qualification as prescribed for initial recruitment of Certified Teacher (Home Economics).
9.	Senior Physical Education Teacher (BPS-16).			By promotion, on the basis of seniority-cum-fitness, from amongst Physical Education Teachers, with at least five years service as such and having qualification as prescribed for initial recruitment of Physical Education Teacher.

5
ATTESTED
ADVOCATE

15

TESTED
 ADVOCATE

10.	Arabic Teacher (AT) (BPS-15)	(i) Second Class Secondary School Certificate from a recognized Board with Shahdatul Alamiya fi Uloomul Arabia wal-Islamiya from a recognized Tanzimatul Wafaqui Madaris, or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Arabic from a recognized University.	10 to 35 years.	By initial recruitment
11.	Theology Teacher (TT) (BPS-15).	(i) Second Class Secondary School Certificate, from a recognized Board with Shahdatul Alamiya from a recognized Tanzimatul Wafaqui Madaris or Darul Uloom Saidu Sharif Swat, Darul Uloom Charbagh Swat, Darul Uloom Chitral, Darul Uloom Darosh Chitral and any other Government run Darul Uloom, as notified by the Government from time to time; or (ii) Second Class Master's Degree in Islamiyat from a recognized University.	20 to 35 years.	(a) Seventy-five per cent by initial recruitment; and (b) twenty-five per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Qaris, with at least five years service and having qualification prescribed for initial recruitment of Theology Teacher. Note: In case of non availability of suitable person for promotion, then by initial recruitment.
12.	Senior Qari (BPS-15).			By promotion, on the basis of seniority-cum-fitness, from amongst Qaris, with at least five years service as such and having qualification prescribed for initial recruitment.
13	Certified Teacher (General) (BPS-15).	Bachelor's Degree or equivalent qualification from a recognized University with Certified Teacher	18 to 35 years.	(a) Forty per cent by initial recruitment; and

ADVOCATE

6

Certificate or two year Associate degree in Education from a recognized University or eighteen months Diploma in Education.

(b) sixty per cent by promotion on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (General):

Provided that if no suitable candidate is available amongst the Primary School Head Teachers for transfer, then the posts will be filled by promotion on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (General).

Note: In case of non availability of suitable person for promotion, then by initial recruitment.

14.	Certified Teacher (Industrial Arts) (BPS-15).	<p>(i) Bachelor's Degree from a recognized University with two years training in the relevant technical subjects from any Government Industrial or Govt. Technical Vocational Institute or Center; or</p> <p>(b) Bachelor's Degree from a recognized</p>	18 to 35 years.	<p>(a) Forty per cent by initial recruitment; and</p> <p>(b) sixty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher</p>
-----	---	--	-----------------	--

7.7

18

8

		<p>University with nine months training from any Government Agro Technical Teacher Training Center of the Level of Certified Teacher, Agro technical (Industrial Arts).</p>		<p>(Industrial Arts):</p> <p>Provided that if no suitable candidate is available amongst the Primary School Head Teachers for Promotion, then the posts will be filled by promotion on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (Industrial Arts).</p> <p><u>Note:</u> In case of non availability of suitable person for promotion, then by initial recruitment.</p>
15.	<p>Certified Teacher (Agriculture) (BPS-15).</p>	<p>(i) Bachelor's Degree from a recognized University with one year training in Agriculture from any Government institute or center with nine months training from Government Agro Technical Teacher Training Center of the level of Certified Teacher Agro Technical (Agriculture); or</p> <p>(ii) Bachelor's Degree with Agriculture as one of the subject, from a recognized University; or</p> <p>(iii) Bachelor's Degree from a recognized</p>	<p>18 to 35 years.</p>	<p>(a) Forty per cent by Initial recruitment; and</p> <p>(b) sixty per cent by promotion, on the basis of seniority-cum-fitness from amongst the Primary School Head Teachers, with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (Agriculture):</p> <p>Provided that if no suitable candidate is available amongst the</p>

ATTESTED
ADVOCATE

2/2

any Government Agro Technical Teacher Training Center at the level of Certified Teacher, Agro technical (Agriculture);

promotion, then the posts will be filled by promotion on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Certified Teacher (Agriculture).

Note: In case of non availability of suitable person for promotion, then by initial recruitment.

ATTESTED
ADVOCATE

16. Certified Teacher (Home Economics) (BPS-15).

- (i) Bachelor's Degree with Home Economics, as one of the subject, from a recognized University with in service training from Government Agro Technical Teacher Training Center; or
- (ii) Certified Teacher Certificate with Home Economics, as one of the subjects, from any Government Training school or college with Bachelor's Degree; or
- (iii) Bachelor's Degree from a recognized University with nine months training from Government Agro Technical Teacher Training Center of the level of the Certified Teacher Agro Technical (Home Economics); or

18 to 35 years.

- (a) Forty per cent by Initial recruitment; and
- (b) sixty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service as such and having qualification prescribed for initial recruitment of Certified Teacher (Home Economics):

Provided that if no suitable candidate is available amongst the Primary School Head Teachers for promotion, then the posts will be filled by promotion on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of

(iv) Bachelor's Degree from a recognized

20

		University with one year technical training from any Government training center or institute with nine months training from Government Agro-Technical Teacher Training center of the level of certified Teacher Agro Technical (Home Economics).		Certified Teacher (Home Economics). <u>Note:</u> in case of non availability of suitable person for promotion, then by initial recruitment.
17.	Drawing Master (BPS-15).	Bachelor's Degree from a recognized University with one year Drawing Master (DM) course Certificate.	18 to 35 years.	(a) Eighty per cent by initial recruitment; and (b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Drawing Master: Provided that if no suitable candidate is available for promotion then on the basis of seniority-cum-fitness, from Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Drawing Master. <u>Note:</u> in case of non-availability of suitable candidate for promotion, then by initial recruitment.

~~ATTESTED~~
ADVOCATE

[Handwritten signature]

7

18.	Physical Education Teacher (BPS-10).	Bachelor's Degree from a recognized University with one year junior Diploma in Physical Education course or Army equivalency or other equivalent qualification.	18 to 35 years	(a) Eighty per cent by initial recruitment; and (b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School Head Teachers with at least five years service and having qualification prescribed for initial recruitment of Physical Education Teacher. Provided that if no suitable candidate is available for promotion then on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Physical Education Teacher. <u>Note:</u> In case of non-availability of suitable candidate for promotion, then by initial recruitment.
19.	Primary School Head Teacher (PSHT) (BPS-15).			By promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least ten years service and having qualification prescribed for initial recruitment of Primary School Teacher.
20.	Senior Primary School Teacher (BPS-14).			By promotion, on the basis of seniority-cum-fitness, from amongst Primary School Teachers

TESTED
ADVOCATE

Handwritten signature

2

ATTESTED
ADVOCATE

				with at least five years' service as such and having qualification prescribed for initial recruitment of Primary School Teacher.
1.	Primary School Teacher (BPS-12).	(i) Intermediate or equivalent qualification, from a recognized Board with Primary School Teacher Certificate/ Diploma in Education from a recognized Institute; or (ii) Secondary School Certificate, from a recognized Board in second Division with two years Associate Degree in Education from a recognized University.	18 to 35 years.	By initial recruitment on merit at Union Council level: provided that if no suitable candidate is within the Union Council is available, then from the adjacent Union Councils on merit.
22.	Qari (BPS-12).	Intermediate with Hifz-e-Quran and Qirat Sanad from a recognized Institution.	18 to 35 years.	By initial recruitment.

23

SCHEDULE

Selection criterion and other conditions for direct recruitment against the below mentioned posts shall be as under:-

Arabic Teacher

Educational Qualification	Total Marks: 100
SSC	Marks obtained X 20 / total marks = ____
HSSC	Marks obtained X 20 / total marks = ____
BA/BSc	Marks obtained X 20 / total marks = ____
M.A Arabic / Shahdatul Alamia Fil Uloomul Arabia wal Islamia from a recognized Tanzimuudtul Wafaqul Madaris	Marks obtained X 20 / total marks = ____
Other MA/MSc/M.Ed / MA Edu	Marks obtained X 15 / total marks = ____
MPhil/PhD	Marks = 05

APPROVED
ADVOCATE

[Handwritten Signature]

Theology Teacher

Category of Qualification	Total Marks 100
SSC	Marks obtained X 20 / total marks = ____
HSSC	Marks obtained X 20 / total marks = ____
BA/BSc	Marks obtained X 20 / total marks = ____
MA/MSc/M.Ed / MA Edu	Marks obtained X 20 / total marks = ____
M.A Islamia / Shahdatul Alamia Fil Uloomul Arabia wal Islamia from a recognized Tanzimuudtul Wafaqul Madaris	Marks obtained X 15 / total marks = ____
MPhil/PhD	Marks = 05

152

14

Qualification

Category of Qualification	Total marks 100
SSC	Marks obtained X 20 / total marks = ____
Qirt Sanad from a recognized Institution.	Marks obtained X 20 / total marks = ____
HSSC	Marks obtained X 20 / total marks = ____
BA/BSc	Marks obtained X 20 / total marks = ____
MA/MSc/ M.Ed / MA Edu	Marks obtained X 15 / total marks = ____
MPhil/PhD	Marks = 05

ADVOCATE
SHEKHAR

Certified Teacher
(General, Industrial Arts, Agriculture, Home Economics)

Handwritten initials

Category of Qualification	Total Marks 100 For Humanities group at Intermediate/Graduation Level	For Candidate of Science group
SSC	Marks obtained X 28 / total marks = ____	5 Extra marks for F.Sc, 5 Extra marks for B.Sc and 5 Extra marks for M.Sc will be added to the total score obtained by a candidate during his selection
HSSC	Marks obtained X 20 / total marks = ____	
BA/BSc	Marks obtained X 20 / total marks = ____	
CT Certificate/ Diploma in Education /A.D.E.	Marks obtained X 20 / total marks = ____	
MA/MSc/M.Ed / MA Edu	Marks obtained X 15 / total marks = ____	
MPhil/PhD	Marks = 05	

25

14
ADVOCATE
TESTED

Qurt/Qurtia

Category of Qualification	Total marks 100
SSC	Marks obtained X 20 / total marks = ____
Qurt Sanad from a recognized Institution.	Marks obtained X 20 / total marks = ____
HSSC	Marks obtained X 20 / total marks = ____
BA/BSc	Marks obtained X 20 / total marks = ____
MA/MSc/ M.Ed / MA Edu	Marks obtained X 15 / total marks = ____
MPhil/PhD	Marks = 05

Certified Teacher
(General, Industrial Arts, Agriculture, Home Economics)

Category of Qualification	Total Marks 100 For Humanities group at Intermediate/Graduation Level	For Candidate of Science group
SSC	Marks obtained X 20 / total marks = ____	5 Extra marks for FSc, 5 Extra marks for B.Sc and 5 Extra marks for M.Sc will be added to the total score obtained by a candidate during his selection
HSSC	Marks obtained X 20 / total marks = ____	
BA/BSc	Marks obtained X 20 / total marks = ____	
CT Certificate/ Diploma in Education / A.D.E.	Marks obtained X 20 / total marks = ____	
MA/MSc/M.Ed / MA Edu	Marks obtained X 15 / total marks = ____	
MPhil/PhD	Marks = 05	

26

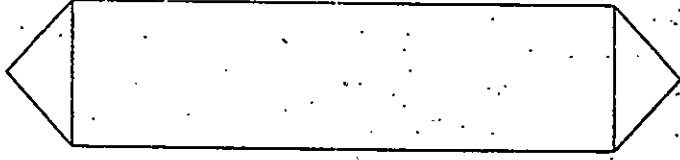
Drawing Master

Category of Qualification	Total Marks 100	For Candidate of Science group
SSC	Marks obtained X 20 / total marks = ____	5 Extra marks for F.Sc, 5 Extra marks for B.Sc and 5 Extra marks for M.Sc will be added to the total score obtained by a candidate during his selection
HSSC	Marks obtained X 20 / total marks = ____	
BA/BSc	Marks obtained X 20 / total marks = ____	
DM Certificate	Marks obtained X 20 / total marks = ____	
MA/MSc/M.Ed / MA Edu	Marks obtained X 15 / total marks = ____	
MPhil/PhD	Marks = 05	

Physical Education Teacher

Category of Qualification	Total Marks 100	For Candidate of Science group
SSC	Marks obtained X 20 / total marks = ____	5 Extra marks for F.Sc, 5 Extra marks for B.Sc and 5 Extra marks for M.Sc will be added to the total score obtained by a candidate during his selection
HSSC	Marks obtained X 20 / total marks = ____	
BA/BSc	Marks obtained X 20 / total marks = ____	
JDE or Equivalent Certificate	Marks obtained X 20 / total marks = ____	
MA/MSc/M.Ed / MA Edu	Marks obtained X 15 / total marks = ____	
MPhil/PhD	Marks = 05	

ATTESTED
ADVOCATE



29

2013ء پنجاب ہائی کورٹ
 وزیر بہبود زمین
 وزیر بہبود زمین کے لیے
 درخواست نمٹانے کے لیے

وزیر بہبود زمین

موردہ
 مقدمہ
 دعویٰ
 جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
 آن مقام لیسٹاوسر دار علی علیہ مطیع اللہ خان ممبروں کے لیے پشاور ہائی کورٹ
 مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
 بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائین پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
 اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
 مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
 تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
 اور اس کا ساختہ پر داختم منظور قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے
 سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
 گے۔ کہ پیروی مذکور کریں۔ لہذا ذاکالت نامہ لکھد یا کہ سندر ہے۔

20

ماہ

المرقوم

Advocate Peshawar
 کے لیے منظور ہے۔

SARDAR ALI RAZA
 Advocate Peshawar
 High Court

دستخط وزیر بہبود زمین - وزیر بہبود زمین

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA PESHAWAR

SERVICE APPEAL No: 770/2013.

My. Noor Rais Khan G/PS/GMPS; Zariwala KarakApplicants

VERSUS

The Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar & others
-----Respondents

PARAWISE COMMENTS/REPLY FOR AND ON BEHALF OF THE RESPONDENTS

No: 1, 2, 3 & 5.

Respectfully Sheweth:-

Preliminary objections

- 1 The appellant has no cause of action/locus standi.
- 2 The instant appeal is badly time barred.
- 3 The appellant has concealed the material fact from this Hon! able Tribunal hence liable to be dismissed.
- 4 The appellant has not come to Hon!able Tribunal with clean hands.
- 5 The present appeal is liable to be dismissed for non joinder/mis-joinder for necessary parties.
- 6 The appellant has filed the instant appeal on malafide motives.
- 7 The instant appeal is against the prevailing laws & rules.
- 8 The appellant is stopped by his own conduct to file in present appeal.
- 9 The instant appeal is not maintainable in the present form & also in the present circumstances of the issue.
- 10 This Hon!able Tribunal has no jurisdiction to adjudicate the present appeal.
- 11 The appellant has not submitted any departmental appeal through proper channel and in accordance with Section -22 of Khyber Pakhtunkhwa civil servant Act 1973 and civil servant appeal rules 1986. Hence the present appeal is not tenable and liable to be dismissed.
- 12 That the rule 3(2) of Khyber Pakhtunkhwa Civil Servant (appointment, Promotion and Transfer) rules 1989, authorize the department to lay down the method of appointment, qualification and other conditions applicable to the post in consultation with the Establishment & Administration Department and Finance Department. Hence the appeal in hand is liable too be dismissed.
- 13 That it was observed by the Apex Court that it is exclusively with in the domain of the government to decide whether a particular qualification will be considered sufficient for promotion from a particular grade and it is also with in the domain of the government to change the above policy from time to time as no body can claim any vested right in the policy.

ON FACTS

- 1 This Para pertains to the service record of the appellant. While the appellant has not presented his appointment order and attested copy of service book, hence no comments.
- 2 Incorrect. The statement of the appellant in this Para is misleading one and meaningless.

In fact according to the prevailing method of recruitment as per notification dated 13/11/2012 (annexure "C" of the appeal) on S/No: 21 the appointment of PST shall be made by initial recruitment on merit having the prescribed qualification and age as in columns 3 & 4. Moreover, the same rules were framed with the consultation of Establishment & Finance Departments.

- 3 - As replied in fore going Paras.
- 4 Correct to the extant that respondent department notified the rules for the recruitment and promotion for the teachers of various cadres dated 13/11/2012, in accordance with the prevailing law, rules on the subject and to improve enhance the quality education in the best interest of Public while other contents of this Para are incorrect, misleading one and denied.
- 5 The mentioned rules and qualification in this Para are applicable to those fresh candidates direct recruitment having the age 18-35 years and intends to enter in the E&SE Department as PST BPS-12. While the appellant has 32-years service.
- 6 Incorrect and denied. The rules/qualification mentioned in this Para is not related to the appellant being PST. The qualification and other condition mentioned in this Para relates to senior PSTs BPS-14 and their promotion to Head Teacher post BPS-15 in E&SE Department. It would not be out of place to mention here that under the said rules/policy hundreds of PSTs has already been upgraded/promoted to senior PST, and Head Teacher post and the same are not impleaded in the present petition.
- 7 Incorrect and not admitted. No civil servant has legal and vested right in promotion and policy as held by the apex court while the government has the right to enhance the qualification and standard for recruitment and promotion in order to maintain efficiency in service and to improve/uplift the standard and quality of education, in best interest of public. The appellant himself is responsible for not improving his academic qualifications, teaching skills during his 32-years service, being connected/attached with teaching profession.

Moreover the appellant has not filed any departmental appeal representation through proper channel and in accordance with civil servant Appeal rules 1986. The alleged/annexed departmental appeal is neither through proper channel no diarized. The mentioned appeal dated 7/12/2012 is posted on 8-12-2011 which is strange enough & question mark on the face of receipt as (annexure "F" D&E of the appeal) and also against civil servant rules 1986, hence the whole Para is denied being deceptive one.

- 8 Incorrect & not admitted. The present appellant does not fall within the definition of aggrieved person and there is no reason for the petitioner to be aggrieved from the mentioned prevailing policy dated 13/11/2012. While the appellant did not implead the upgraded/promoted and the said rules and those having the higher qualification than appellant and waiting for promotion. Hence the appellant has no cause of action / locus standi to invoke the jurisdiction of this Hon!able Tribunal, hence the appeal in hand is liable to be dismissed inter alia on the following grounds:-

ON GROUNDS


- A Incorrect & not admitted. The statement of the appellant in this Para is false, against the facts and record. In fact Primary School Teaching certificate i.e PTC is required qualification for PTC teacher (now PST), hence the whole Para is denied.
- B Incorrect and not admitted. How it can be justified that the appellant possessing only SSC, be treated on equal footing with other PST teachers having higher academic and professional qualification, and the same is against norms of natural justice and merit.
- C The statement of the appellant in this Para is baseless against the law, rules on the subject and without any legal support.
- D Incorrect and denied. The statement of the appellant in this Para is based on malafied motives.
- E Incorrect and not admitted. The statement in this Para is against facts. The length of service for promotion/up-gradation is mentioned in the said notification i.e in S/No: 19 & 20 in column: 3.
- F The statement of the appellant in this Para is ambiguous and meaningless hence needs no comments.
- G Incorrect. The appellant has been treated in accordance with law, rules on the subject constitution of the Pakistan.
- H The respondents seek the permission of this Hon! able Tribunal to adduce more grounds & proofs at the time of arguments.

In view of the above submission, it is requested that this Hon' able Tribunal may very graciously be pleased to dismiss the appeal with cost in favour of the respondent Department.



Secretary

Govt. of Khyber Pakhtunkhwa,
(Finance) Department Peshawar

Accountant General
Khyber Pakhtunkhwa, Peshawar.


Director

Elementary & Secondary Education
Khyber Pakhtunkhwa
Peshawar.


Secretary

Elementary & Secondary Education
Department, Government of Khyber
Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR

APPEAL NO. 797 /2013.

Noor parago KhanAppellant.

Versus

Government of Khyber Pakihtunkhwa through,
Secretary Elementary and Secondary Education
Peshawar and other's.....Respondent.

(Reply on behalf of respondent No. 4)

Preliminary Objections

- 1). That the Appellant has no cause of action.
- 2). That the Appellant has no locus standi.
- 3). That the instant appeal is not maintainable.
- 4). That the grievances of the appellant not covered under the rules.

Respectfully Sheweth:-

Para No. 1 to 8:- Relate with respondent No. 1 to 3, however, it is submitted that whenever Notification is issued by the Government or any Department, then it is Obligatory for the Departments to follow the rules. Verdict of Notification dated 13.11.2012, is very clear, therefore, the appellant is not entitled for any benefit.

The appellant has no grievances against this office, therefore, Administrative Departments (Both) will be in a better position thereby satisfying the appellant.

It is, therefore, humbly prayed that the name of this office may be excluded from the list of respondents.


DEPUTY ACCOUNTANT GENERAL
(Litigation)
KHYBER PAKHTUNKHWA.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT

NOTIFICATION

Peshawar, dated the November 13, 2012.

No. SO(PE)4-5/SSRC/Meeting/2012/Teaching Cadre:- In pursuance of the provisions contained in sub rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all Notifications issued in this behalf, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby lays down the method of recruitment, qualification and other conditions specified in the Appendix to this Notification which shall be applicable to all the posts specified in Column No. 2 of the said Appendix and the schedule therewith.

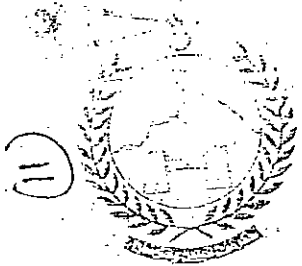
SECRETARY TO GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT.

Encls. No. & Date as above.

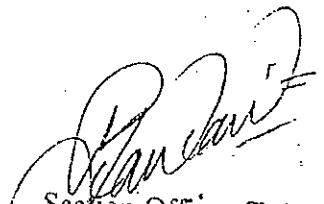
Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department.
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General, Khyber Pakhtunkhwa Peshawar.
6. The Director (E&SE) Khyber Pakhtunkhwa Peshawar.
7. The Director Education (E&SE) Peshawar.

Annexure-6



10. The Director Curriculum & Teachers Education Abbottabad
11. The Director (PITE) Khyber Pakhtunkhwa Peshawar
12. The Director E&SE, Elementary & Secondary Education, Khyber Pakhtunkhwa, Peshawar
13. The Deputy Director Database (EMS) E&SE Department.
14. All District Coordination Officers in Khyber Pakhtunkhwa.
15. All Executive District Officers Elementary & Secondary Education in Khyber Pakhtunkhwa.
16. All District Accounts Officers in Khyber Pakhtunkhwa / Agency Accounts Officers FATA.
17. All Agency Education Officers FATA.
18. P.S to Governor, Khyber Pakhtunkhwa.
19. P.S to Chief Minister, Khyber Pakhtunkhwa.
20. P.S to Chief Secretary, Khyber Pakhtunkhwa.
21. P.S to Minister E&SE Khyber Pakhtunkhwa Peshawar.
22. P.S to Secretary E&SE Department
23. Master File.


Section Officer (Primary)