

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

In Service Appeal No.598/2023

Muhammad Amjid

Diary No. **7537**

..... Petitioner

VS

Dated **14/9/23**

Government of Khyber Pakhtunkhwa & Others

..... Respondents

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Deponent

3384

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No.598/2023.

Mr. Muhammad Amjad V/S Govt: of Khyber Pakhtunkhwa & Others.

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01-05

Respectfully sheweth,

Parawise comments on behalf of respondents are as under: -

Preliminary objections:

- i. That the appeal in hand is not maintainable in its present form.
- ii. That the appeal is bad for mis-joinder/non-joinder of unnecessary and necessary parties.
- iii. That under section 4(6) of Khyber Pakhtunkhwa Services Tribunal Act 1974, no appeal shall lie in the Tribunal against an order or decision of a departmental authority regarding fitness or otherwise of a person to be appointed to or to hold a particular post or to be promoted to a higher post or cadre, on this score alone the appeal is not maintainable.
- iv. That the appellant has got no cause of action to file the instant appeal.
- v. That the appellant has not come to the court with clean hands.

ON FACTS.

1. Pertains to the record, hence no comments.
2. Pertains to the record, hence no comments.
3. Pertains to the record, hence no comments.
4. Incorrect. That the case of the appellant was placed before the DPC wherein the Finance Department raised some observations due to which the petitioner was not promoted to the next scale. The operative part of the decision of the DPC is given as "The DPC deferred the promotion of said officials due to objections raised on the Service Rules of DTS by the representatives of Finance Department and DG DTS was directed to rectify the Service Rules of DTS". The functions of Directorate of Tourists Services was merged in Culture and Tourism Authority and the employees will be

kept in Surplus Pool as per Section 08(iv)(a) of the Act and summary for the same has been approved by Chief Minister Khyber Pakhtunkhwa (**Annex-A**).

- 5. Pertains to the record, hence no comments.
- 6. Pertains to the record, hence no comments.
- 7. As mentioned vide Para 04 above.
- 8. Correct to the extent of appeal to the Chief Secretary. The appellant is not aggrieved party under Section 08 of the Khyber Pakhtunkhwa Tourism Act 2019, under which the Khyber Pakhtunkhwa Culture and Tourism Authority has been established. The attached Departments of Tourism i-e Directorate of Culture and Directorate of Tourist Services are no more in existence and were merged into the Khyber Pakhtunkhwa Culture and Tourism Authority. The functions of Directorate of Tourist Services have been transferred to the Tourist Services Wing of the Khyber Pakhtunkhwa Culture and Tourism Authority vide notification dated 17th November 2022 (**Annex-B**). Under the Khyber Pakhtunkhwa Tourism Act 2019, the Secretary Tourism has issued a certificate that the authority has developed the requisite capacity to take over the functions of the Directorate of Tourist Services vide Notification dated 25th July 2022 (**Annex-C**). All of the employees of the Directorate of Culture and Tourist Services shall be kept in surplus pool and their absorption, retention etc. will be governed under the surplus pool policy. The summary for the creation of surplus pool for the employees of DTS has been approved by the Chief Minister Khyber Pakhtunkhwa and the case will be moved for placement before the Provincial Cabinet for the creation of Surplus pool at the Establishment Department soon (**Annex-D**). Therefore, how will the respondents convene meeting of DPC for the promotion of the appellant when they are no more employees of this department under Section 08 (i)(a) and (b) of the Khyber Pakhtunkhwa Tourism Act 2019 (**Annex-E**).
- 9. Incorrect. Peshawar High Court dismissed the writ petition No.2772-P/2022 on ground that on 30-09-2019, Provincial Assembly of Khyber Pakhtunkhwa passed the Khyber Pakhtunkhwa Tourism Act, 2019. The aim and purpose of the act is to provide legal frame work to promote Tourism and Culture in Khyber Pakhtunkhwa. The Act provides for the establishment of Khyber Pakhtunkhwa Culture and Tourism Authority under Section 06 of the Act and under Section 08 sub section (i) (b), the Directorates shall cease to be Attached Departments of the Department and shall be

merged into the Authority. ~~Section~~ Section 08(iv) of the Act has provided for the creation of the Surplus pool for the employees of DTS. The honourable court in its judgement has further stated that, " *now the brief question as to whether an attached department which is no more in existence and merged into an authority while its employees who would be in surplus pool, and their fate either absorption, retention or utilization has not so far^{been} decided, how come the respondents would convene a meeting of the departmental Selection or promotion committee for their promotion for the simple reason that on which post and in which department they will be given promotion*". The Honourable Court has further decided that their right of promotion shall be in accordance with rules and regulations and terms and conditions of the cadres into which they are absorbed (**Annex-F**).

10. As mentioned in Para 09 above.

ON GROUNDS

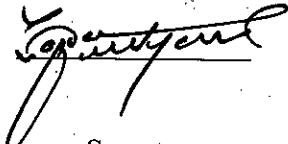
- A. Incorrect.
- B. Incorrect. The appellant was treated in accordance with Law. The Khyber Pakhtunkhwa Culture and Tourism Authority came into existence when the Provincial Assembly of Khyber Pakhtunkhwa passed the Khyber Pakhtunkhwa Tourism Act 2019. Under Section 06 of the ibid Act, the Khyber Pakhtunkhwa Culture and Tourism Authority came into existence for the promotion of tourism. Under Section 08(i) all of the functions of the Directorate of Culture and Directorate of Tourist Services were taken by the Authority, and under Section 08(i) (b) the Directorate of Tourists Services and Directorate of Culture are no more the Attached Departments of the respondent Department. Furthermore the employees of the Directorate of Tourists Services and Directorate of Culture shall be kept in surplus pool as per Section 08(iv)(a) of the Khyber Pakhtunkhwa Tourism Act 2019. So they are treated as per law.
- C. No comments.
- D. The appellant is treated in accordance with Law and Act and as mentioned in B.
- E. No comments.
- F. Incorrect as mentioned above.

G. No comments.

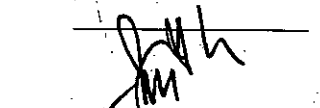
H. The respondents seeks leave to raise additional grounds at the time of arguments.

It is therefore, humbly prayed that the appeal may kindly be dismissed with Costs.

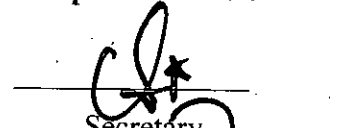
Respondent No. 2


Secretary
Tourism Department

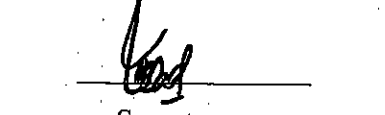
Respondent No.3


Secretary
Finance Department

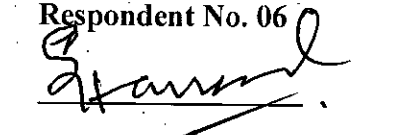
Respondent No. 4


Secretary
Establishment Department

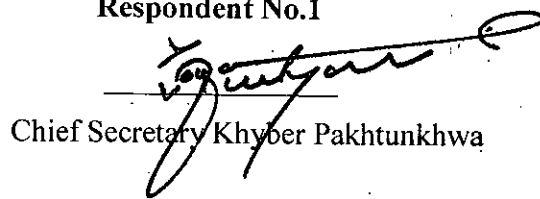
Respondent No.5

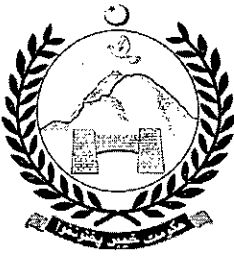

Secretary
Administration Department

Respondent No. 06


Directorate of Tourists services
Through DG Tourists Services.

Respondent No.1


Chief Secretary Khyber Pakhtunkhwa



GOVERNMENT OF, KHYBER PAKHTUNKHWA, (5)
CULTURE & TOURISM DEPARTMENT.

13-A, KHYBER ROAD, PESHAWAR CANTT:



091- 9223448.



091-9212535.



Sportslitigation@gmail.com

NO. SO (LIT)/C&TD/1- 541/2023/ M.Amjid
Dated Peshawar the, __ August 2023.

AUTHORITY LETTER

Muhammad Javed (BPS-17), Section Officer, is hereby authorized to submit the joint Parawise comments and attend the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 598/2023 titled "Muhammad Amjid VS Govt. of Khyber Pakhtunkhwa & others "on behalf of the undersigned till the final decision of the case.

Secretary to Govt. of Khyber Pakhtunkhwa,
Culture, Tourism & Museums Department.

In Service Appeal No.598/2023

Muhammad Amjid

..... Petitioner

VS

Government of Khyber Pakhtunkhwa & Others

.... Respondents

Affidavit

I, Muhammad Javed, Section Officer (Litigation), Culture & Tourism Department Khyber Pakhtunkhwa, do hereby solemnly affirm and declare an oath that the contents of Para wise Comments in the above Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Identified By

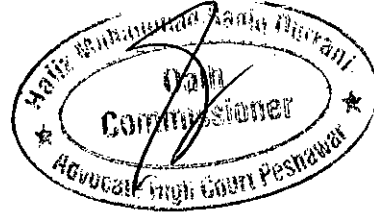
LD. ADVOCATE GENERAL
KHYBER PAKHTUNKHWA

DEPONENT
CNIC 17301-5434725-9
Cell No. 7

3068540467

14 SEP 2023

ATTESTED



Subject:- MINUTES OF THE MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE (DPC) HELD ON 07-11-2022 UNDER THE CHAIRMANSHIP OF SECRETARY SPORTS & TOURISM DEPARTMENT

A meeting of the Departmental Promotion Committee of the Directorate of Tourist Services Khyber Pakhtunkhwa, Peshawar was held on 07.11.2022 at 11.00 AM under the Chairmanship of Secretary Sports, Tourism, Archaeology, Museum & Youth Affairs Department regarding the promotion of the following employees of the Directorate of Tourist Services, Khyber Pakhtunkhwa.

- I. Promotion to the post of Assistant Director IT (BS-17) and Assistant Director Planning (BS-17) on regular basis.
- II. Appointment to the post of Law Officer (BS-17) on acting charge basis.
- III. Promotion / appointment to the post of Assistant Director / Assistant Controller / Assistant Director-cum-Assistant Controller (BS-17) on regular basis / acting charge basis.

2. The following Officers attended the meeting:

- | | |
|--|-----------------|
| i. Mr. Muhammad Tahir Orakzai, Secretary Sports & Tourism Deptt: | Chairman |
| ii. Mr. Yasir Ali Khan, Additional Secretary, Sports & Tourism Deptt: | Member |
| iii. Mr. Afsar Ali Shah Director General, Directorate of Tourists Services, Peshawar | Member |
| iv. Syed Habib-ul-Hassan Gillani, DS (Regulation-I), Establishment Department | Member |
| v. Mr. Muhammad Saleem, DS (Regulation-I), Finance Department | Member |
| vi. Mr. Fazal Wahid, Section Officer (Tourism-I), Sports & Tourism Department | Member |

I. Promotion to the post of Assistant Director IT (BS-17) and Assistant Director Planning (BS-17) on regular basis.

3. The meeting commenced with the recitation from the Holy Quran. The Chair welcomed the participants. The Director General Directorate of Tourist Services, Khyber Pakhtunkhwa informed the forum that there are two (02) sanctioned posts of Assistant Director (IT/Planning) (BS-17) in the Directorate of Tourist Services, Khyber Pakhtunkhwa. 100% quota comes under the share of promotion as per Amended Services Rules of Directorate of Tourist Services KP, duly notified vide Sports & Tourism Department Notification dated 25.04.2022.

4. Accordingly, all working papers and seniority lists of Computer Operators (BS-16) have been prepared by the Directorate of Tourist Services, Khyber Pakhtunkhwa. The seniority list of said cadre is final and free from all sort of litigations. The proposed official i.e. Mr. Muhammad Amajd and Mr. Shaher Yar Khan, Computer Operators (BS-16) have completed their required length of services and there are no adverse remarks recorded in the ACRs of the officials.

5. The Representative of Finance Department has raised some observations on the Services Rules of DTS, which have been duly vetted by Law Department and approved by the Establishment Department being the approving authority. Representative of Finance Department is of the view that both Computer Operators (BS-16) are proposed for promotion, but one is being proposed as AD-IT (BS-17) while other is being proposed to be promoted as AD-Planning (BS-17), to the extent of promotion of Computer Operators to AD-IT (BS-17) seems justified but how can a Computer Operator (BS-16) be promoted to the AD-Planning (BS-17) being different cadre.

6. After detailed discussion, the Departmental Promotion Committee made the following recommendation:-

S.No	Name of Official	From the post	Recommendation
1.	Mr. Muhammad Amjad	Computer Operator (BS-16)	The DPC deferred the promotion of said officials due to objections raised on the Service Rules of DTS by Representative of Finance Department and DG DTS was directed to rectify the Service Rules of DTS.
2.	Mr. Shaher Yar Khan	Computer Operator (BS-16)	

II. Appointment to the post of Law Officer (BS-17) on acting charge basis:

7. The Director General, Directorate of Tourist Services, Khyber Pakhtunkhwa informed the forum that there is one (01) sanctioned post of Law Officer (BS-17) in the Directorate of Tourist Services, Khyber Pakhtunkhwa. 50% quota comes under the share of promotion and 50% quota comes under the share for initial appointment as per Service Rules of Directorate of Tourist Services, KP duly notified vide Sports & Tourism Department Notification dated 31.10.2017.

8. Accordingly, working paper and seniority list of Legal Assistant (BS-16) has been prepared by the Directorate of Tourist Services, Khyber Pakhtunkhwa. The seniority list of said cadre is final and free from all sort of litigations. The proposed official i.e. Mr. Muhammad Waqar Khan, Legal Assistant (BS-16) has no not completed the required length of services, which is short by 03 months as required under the Service Rules of DTS.

9. After detailed discussion, the Departmental Promotion Committee made the following recommendation:

S.No	Name of Official	From the post	Recommendation
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1.	Mr. Muhammad Waqar Khan	Legal Assistant (BS-16)	The DPC deferred the appointment of the said official to the post of Law Officer (BS-17) due to non-completion of required service length.
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III. Promotion / appointment to the post of Assistant Director / Assistant Controller / Assistant Director-cum-Assistant Controller (BS-17) on regular basis / acting charge basis:

10. The Director General Directorate of Tourist Services, Khyber Pakhtunkhwa informed the forum that there are six (06) sanctioned posts of Assistant Director / Assistant Controller / Assistant Director-cum-Assistant Controller (BS-17) in the Directorate of Tourist Services, Khyber Pakhtunkhwa. 80% quota comes under the share of promotion and 20% quota comes under the share for initial appointment as per amended Services Rules of Directorate of Tourist Services, KP duly notified vide Sports & Tourism Department Notification dated 25.04.2022.

11. Accordingly, all working papers and seniority lists of Assistants (BS-16) & Inspectors (BS-16) have been prepared by the Directorate of Tourist Services, Khyber Pakhtunkhwa. The seniority list is final and free from all sort of litigations. Two of the proposed official i.e. (i) Mr. Raza Khan and (ii) Mr. Rafiq Ahmad have completed their required length of services and three of the officials i.e. (i) Mr. Muhammad Bilal (ii) Mr. Hisham Khan and (iii) Mr. Asif Shehzad (Inspectors BS-16), are short of service length. Further there are no adverse remarks recorded in the ACRs of the officials.

12. After detailed discussion, the Departmental Promotion Committee made the following recommendation:-

S.No	Name of Official	From the post	Recommendation
1.	Mr. Raza Khan	Superintendent (ACB) (BS-17)	The said official has already been promoted to the post of Superintendent (BS-17) on ACB in light of Service Rules of DTS duly notified on 31.10.2017 and there is no provision for promotion of said official to the post of Assistant Director / Assistant Controller / Assistant Director-cum-Assistant Controller in the Amended Service Rules of DTS notified on 25.04.2022. Hence the Committee

			deferred the promotion of said incumbent.
2	Mr. Rafiq Ahmad	Assistant (BS-16)	The DPC deferred the promotion of said official due to objections raised on the Service Rules of DTS by Representative of Establishment & of Finance Department and DG DTS was directed to rectify the Service Rules of DTS.
3	Mr. Muhammad Bilal	Inspector (BS-16)	The DPC deferred the appointment to the post of Assistant Director / Assistant Controller / Assistant Director-cum-Assistant Controller (BS-17) on acting charge basis, due to non-completion of required service length as per Service Rules of DTS.
4	Mr. Hisham Khan	Inspector (BS-16)	
5	Mr. Asif Shahzad	Inspector (BS-16)	

13. DG, DTS apprised the forum that objections on Service Rules are not the mandate of DPC as the Service Rules are already approved by the concerned committee (SSRC). Furthermore, as per Promotion Policy, 2009, promotion cases cannot be deferred due to the said reason.

14. The meeting ended with the vote of thanks from the Chair.

Signatures

Additional Secretary,
Sports Tourism Arch:
Museums & Youth Affairs

Director General,
Directorate of Tourist Services,
Khyber Pakhtunkhwa

Deputy Secretary (Reg-I)
Establishment
Department

Deputy Secretary (Reg-I)
Finance
Department

Section Officer (Tourism-I)
Sports & Tourism
Department

Government of Khyber Pakhtunkhwa
Sports, Culture, Tourism, Archaeology, Museums &
Youth Affairs, Department



**GOVERNMENT OF KHYBER PAKHTUNKHWA,
SPORTS, TOURISM, ARCHAEOLOGY, MUSEUMS &
YOUTH AFFAIRS DEPARTMENT.**

Dated Peshawar 17th November, 2022

NOTIFICATION:

No. SO(T)/5-92/Act/2022/ 4184-93: Whereas, as per Section-57 (Repeal Section) read with Section-33 of "Khyber Pakhtunkhwa Tourism Act, 2019" and subsequent Notification of the "KP-Hospitality & Tourism Sector (Regulation, Licensing, Registration & Classification of Tourism Products) Regulation-2021" dated 03.11.2021, the present status of Directorate of Tourist Services, Khyber Pakhtunkhwa will cease to exist from 02.11.2022.

And Whereas, as per Clause-33(2) of the Tourism Act-2019, the entire functions of DTS will be exercised by KP-CTA's Tourist Services Wing (TSW) from 3rd November, 2022 onwards. Moreover, as per Section-57 of Khyber Pakhtunkhwa Tourism Act-2019, all previous Acts of DTS shall deemed to be repealed from the adjustment period of one year as provided in Section-33 of the Act *ibid*. Therefore, new Registration, Renewals etc. of the DTS registered units will be issued on the signature of Controller (GM C&T, KP-CTA), Tourist Services Wing (of KP-CTA) under Regulations-2021 *ibid*.

Now therefore, The KP-Culture & Tourism Authority, is directed to ensure taking over all the above-mentioned record, assets with immediate effect and to start exercising the functions of DTS. Whereas, the services of DTS staff will be managed by Controller, TSW, KP-CTA and their monthly bio-matric report shall be shared with this Department on regular basis, till the creation of surplus pool for these employees.

-Sd-

**Secretary to Government of Khyber Pakhtunkhwa
Tourism, Culture Archaeology & Museums Department**

Endst: No. & Date even:

Copy forwarded to the:

1. Director General, KP-Culture & Tourism Authority, Peshawar for immediate necessary action and report.
2. Director General, Directorate of Tourist Services, Khyber Pakhtunkhwa for strict compliance for handing-over all remaining record including Capacity Building Project, Guarantees and bank accounts, Vehicles, Motorcycles & assets etc. with immediate effect.
3. PSO to Chief Secretary, Khyber Pakhtunkhwa.
4. Chairman, KP-Travel Agents & Tour Operators Association, Peshawar.
5. All Heads of Attached Formations of Tourism, Culture, Archaeology & Museums Department.
6. Chief Planning Officer, Tourism, Culture, Archaeology & Museums Department.
7. All Section Officers, Tourism Department.
8. P.S to Secretary, Tourism Department.
9. PA to A.S-I, Tourism Department.
10. PA to DS-III, Tourism Department.
11. Master File.

SECTION OFFICER (TOURISM-I)



Dated Peshawar 25th July, 2022 Annex: C

NOTIFICATION:

No. SO(Tourism)5:92(A)/Act/2022/ 3224 :

Consequent upon the certification of Director General Culture and Tourism Authority (CTA) on 10.05.2022 that the Authority has developed the requisite capacity to take over the function of "Directorate of Tourist Services", I, as Secretary Sports, Culture, Tourism, Archaeology, Museums and Youth Affairs Department to the Government of Khyber Pakhtunkhwa, am of the considered opinion that pursuant to Section 8, clause (iii) of the Khyber Pakhtunkhwa Tourism Act, 2019 that the Culture and Tourism Authority has developed requisite capacity to handle activities, offices or centers etc of Directorate of Tourist Services, Khyber Pakhtunkhwa, and therefore certify this fact towards the purposes of clauses (i) and (ii) of Section 8 read with Section 1, sub-section (3) of the Khyber Pakhtunkhwa Tourism Act, 2019 as invoked by the Provincial Cabinet in its meeting held on 21.07.2021 along with following directions to implement with immediate effect:

- (a) Culture and Tourism Authority shall take over the Administrative, Financial and Regulatory control of all activities, offices, projects, sub-offices, assets including all movable and immovable assets and liabilities including furniture, fixtures, equipment, vehicles, records, data etc of the Directorate of Tourist and it shall be ensured by the Director General Culture and Tourism Authority as well as Director General, Directorate of Tourist Services that smooth handing / taking takes place immediately;
- (b) Section 57 read with section 33 of the Khyber Pakhtunkhwa Tourism Act, 2019 shall take effect after the transition period mentioned in the said Act;
- (c) Case may be taken up with Establishment Department in accordance with Section 8 (iv)(a) of the Khyber Pakhtunkhwa Tourism Act, 2019;
- (d) The Tourism Department to move case / summary for amendment in Rules of Business, 1985 to delete the Directorate of Tourist Services from the list of Attached Departments; and
- (e) The above may be notified as speaking order and all departments may be informed, so that consequential and ancillary actions may be taken accordingly where required especially by Finance, Establishment and Planning & Development Departments.

25/7/22
[Handwritten signature]

**Secretary to Government of
Khyber Pakhtunkhwa Sports, Tourism,
Archaeology, Culture, Museums & Youth Affairs
Department**

14

Endst. No. & Date even:

Dated: 25th July, 2022

Copy forwarded to:

1. Additional Chief Secretary, Khyber Pakhtunkhwa.
2. Principal Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. All Administrative Secretaries, Govt. of Khyber Pakhtunkhwa.
5. Director General, Culture & Tourism Authority Khyber Pakhtunkhwa (KP-CTA).
6. Director General, Directorate of Tourist Services, Khyber Pakhtunkhwa.
7. Managing Director, Pakistan Tourism Development Corporation (PTDC), Islamabad.
8. PSO to Chief Secretary, Khyber Pakhtunkhwa.
9. Manager Printing Press, Khyber Pakhtunkhwa with the request to publish the same in the official gazette and provide 15 copies of the same for official record.
10. All Heads of Attached Departments, Sports & Tourism Department.
11. Chief Planning Officer, Sports & Tourism Department.
12. All Section Officers in Sports & Tourism Department.
13. PS to Secretary Sports, Tourism, Archaeology, Museums and Youth Affairs.
14. PA to Additional Secretary-I & II, Sports & Tourism Department.
15. PA to Deputy Secretaries-I, II, III & IV, Sports & Tourism Department.
16. Master File.

~~21~~ 25-7-22
SECTION OFFICER (TOURISM)



**GOVERNMENT OF KHYBER PAKHTUNKHWA,
CULTURE, TOURISM, ARCHAEOLOGY & MUSEUMS
DEPARTMENT**

SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA

SECRETARY
Culture, Tourism,
Archaeology & Museums Department
Khyber Pakhtunkhwa
Diary No: 517
Date: 12/14/23

Subject: **CREATION OF SURPLUS POOL FOR EMPLOYEES OF DIRECTORATE
OF TOURIST SERVICES, KHYBER PAKHTUNKHWA UNDER KHYBER
PAKHTUNKHWA TOURISM ACT, 2019**

A self-contained summary on the subject captioned above is submitted for perusal and approval of the Chief Minister, Khyber Pakhtunkhwa please.

(Signature)
(MUHAMMAD TAHIR ORAKZAI)

SECRETARY
Secretary to Government
Culture, Tourism, Archaeology
& Museums Department
Khyber Pakhtunkhwa
27/2/23

ScnID-95-89-cc469

SECRETARY ESTABLISHMENT, KHYBER PAKHTUNKHWA

SECRETARY LAW, KHYBER PAKHTUNKHWA

Off. Secy. Secretary Registration
Establishment Department
608
Date: 08/08/23

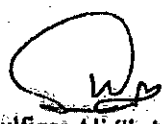
CHIEF SECRETARY, KHYBER PAKHTUNKHWA

CHIEF MINISTER, KHYBER PAKHTUNKHWA

PS/Secy E&AD KP
Diary No: 519
FTS No: 13/23
Date: 2/3/23

Addl. Secretary (R-I)
Establishment & Admn. Deptt:
Diary No: 517
Dated: 02-03-23
136
12/14/23

2. Views of Establishment Department may kindly be perused vide para 9-12 of the Summary.


(Zulfiqar Ali Shah)
Secretary Establishment
17 March, 2023

Secretary Law Deptt.

30/3/23
30/3/23

3. Views added vide para 13 please

Chief Secretary



30/03/2023
Secretary

Law & Public Security Affairs
Establishment Department
Islamabad

4. For views as desired by the Competent Authority, please.

Sec. Finance



07.4.23.

CSO to Chief Secretary
Govt. of Khyber Pakhtunkhwa

PS 10 Secretary Law, NPA
Dian#: 107
Date: 17/3/23
30/3/23

FTS No. 11/3/23
Date: 11/3/23

Views of Finance Department are added at Para-14 of the summary.

Muhammad Ayaz
Secretary, Finance Department
02/05

Chief Secretary

PS/om.

21/5/2023.

CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

25/05
Principal Secretary
to Chief Minister
Khyber Pakhtunkhwa

WLS

Sec: Culture

30.5.23
CSO to Chief Secretary
Govt. of Khyber Pakhtunkhwa

Office of the PSCM

Diary No. 560

Dated 22/05/23

Office of the PSCM

Diary No. 136

Date 03/5/23

and terms and conditions of the cadres into which.



(18)

**GOVERNMENT OF KHYBER PAKHTUNKHWA,
CULTURE, TOURISM, ARCHAEOLOGY & MUSEUMS
DEPARTMENT**

SUMMARY FOR CHIEF MINISTER, KHYBER PAKHTUNKHWA

Subject: **CREATION OF SURPLUS POOL FOR EMPLOYEES OF DIRECTORATE OF TOURIST SERVICES, KHYBER PAKHTUNKHWA UNDER KHYBER PAKHTUNKHWA TOURISM ACT, 2019**

The Government of Khyber Pakhtunkhwa promulgated the Tourism Act in October, 2019 to establish a legal framework for the development, standard setting, promotion, management and marketing of Cultural heritage and sustainable tourism in the Province. The Act also envisaged a dedicated Authority for attaining objectives elaborated in section 10 of the Act **ibid (Annex-I)**. Accordingly, Khyber Pakhtunkhwa Culture & Tourism Authority (KP-CTA) was notified on 02.01.2020 **(Annex-II)**.

2. Directorate of Culture and Directorate of Tourist Services are attached bodies of this Department. To integrate the functions of the said Directorates, Section 8 of Tourism Act, 2019 **(Annex-III)** provides that the KP-CTA shall take over the administrative, financial & regulatory control of all the activities, offices, projects etc. of the Directorate of Culture and Directorate of Tourist Services (herein after referred to as The Directorates) along with their movable & immovable assets and liabilities. However the taking over is subject to issuance of a certificate by the Secretary of the Department to the effect that KP-CTA has developed the requisite capacity to handle the functions, activities, centers, offices of the Directorates. The Department, on the recommendation of KP-CTA has accordingly issued certificates in respect of both the Directorates on 06.10.2021 and 25.07.2022 respectively **(Annex IV & V)**.

3. Section 8(iv)(a) of the Act **ibid**, as reproduced below further entails the mechanism to deal with the employees of the Directorates after taking over by the KP-CTA. The Act **ibid** provides that:

"Government shall create Surplus Pool in the Establishment Department for employees of the Directorate till the retirement of last incumbent. These employees shall continue to enjoy all the benefits currently admissible to them and shall be entitled to their salary and benefits, as if they had continued to work against the existing cadres or posts. The services of such employees shall either:

- (i) Be utilized by Government in such offices as controlled by Government under such terms and conditions as decided by Government; or*
- (ii) Absorb the services of the employees of the Directorates at the discretion of Government in various Government Departments, and in such case, the right of promotion shall be in accordance with rules and regulations and terms and conditions of the cadres into which they are absorbed."*

4. It merits mention that on the advice of Establishment Department, this Department had earlier moved a summary for creation of surplus pool for employees of Directorate of Culture (Annex-VI), which is pending in Law Department.

5. It is also pertinent to mention that prior to issuance of certificate by this Department in respect of Directorate of Tourist Services, its employees had moved a case to the Department for their promotion through Departmental Promotion Committee. The DPC in its meeting held on 07.11.2022 deferred the promotions due to observations on the Service Rules of Directorate of Tourist Services, raised by Representatives of Establishment and Finance Department (minutes of DPC at Annex-VII).

6. In the meanwhile, 32 employees of DTS have filed WPs No.2772 and No. 2773-P/2022 in PHC contending therein that the employees are in promotion zone and the Department is not convening Departmental Promotion Committee thereby depriving them from right to promotion which will be lost once surplus pool is created. Now, the Peshawar High Court, Peshawar has announced its judgment in the instant case on 26.01.2023 and dismissed the Writ Petitions 2773-P/2022 and WP 4119-P/2022 being meritless (judgment of PHC at Annex-VIII). List of employees as received from the Directorate of Tourist Services at Annex-IX.

7. The honorable Chief Minister, Khyber Pakhtunkhwa may allow placement of the case of creation of surplus pool for employees of Directorate of Tourist Services, before the Provincial Cabinet for consideration and approval please.

8. Law Department and Establishment may add views en-route; please.

(MUHAMMAD TAHIR ORAKZAI)

SECRETARY
Secretary to Government
Culture, Tourism, Archaeology
& Museums Department
Khyber Pakhtunkhwa

27/2/23

SECRETARY ESTABLISHMENT, KHYBER PAKHTUNKHWA

SECRETARY LAW, KHYBER PAKHTUNKHWA

CHIEF SECRETARY, KHYBER PAKHTUNKHWA

CHIEF MINISTER, KHYBER PAKHTUNKHWA

9- Summary for Chief Minister, Khyber Pakhtunkhwa regarding creation of surplus pool for employees of Directorate of Tourist Services under Section 8(iv)(a) of the Khyber Pakhtunkhwa Tourism Act, 2019 (Annex-I) has been examined. The Administrative Department vide Paras 7 & 8 ante has proposed placement of the case before Provincial Cabinet for creation of surplus pool for employees of Directorate of Tourist Services and has sought views of Establishment Department & Law Departments.


10- The Administrative Department upon winding up both the Directorates of Culture and Tourist Services, Khyber Pakhtunkhwa (Annex-IV & V) has submitted the case for placement before Provincial Cabinet for creation of surplus pool for the employees of these Directorates in terms of the ibid Section. The Administrative Department had moved a Summary for creation of surplus pool for employees of Directorate of Culture (Annex-VI) which was pending in Law Department, however, the said Summary is now received wherein the Law Department has endorsed views of Advocate General regarding placement of the instant case before Cabinet to decide the case in accordance with Section 8 of the Khyber Pakhtunkhwa Culture Tourism Authority 2019 (Annex-IX). However, prior to issuance of certificate in respect of Directorate of Tourist Services, the Administrative Department convened meeting of Departmental Promotion Committee on 07.11.2022, wherein, the DPC deferred the promotions due to the observations on the Service Rules (Annex-VII). Moreover, employees of Directorate of Tourist Services (DTS) filed W.Ps No.2772 and 2773-P/2022 in Peshawar High Court with the plea that they are in promotion zone and the Administrative Department is not convening Departmental Promotion Committee thereby depriving them of their right to promotion which will be lost once surplus pool is created; however, the Hon'ble Court vide Judgment dated 26.01.2023 dismissed these Writ Petitions being meritless (Annex-VIII).

11- Proposal of the Administrative Department contained in Para 7 is submitted for approval of the Chief Minister Khyber Pakhtunkhwa for placement of the case for creation of surplus pool before the Provincial Cabinet for consideration and approval, please

12- Law Department may add views en route.

Secretary Law Department

N.B.O.


(ZULFIQAR ALI SHAH)
Secretary Establishment
17 March 2023




(21)

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT

SUBJECT: CREATION OF SURPLUS POOL FOR EMPLOYEES OF
DIRECTORATE OF TOURIST SERVICES, KHYBER
PAKHTUNKHWA UNDER KHYBER PAKHTUNKHWA
TOURISM ACT, 2019.

Reference Para-12 of the Summary.

13. The instant case has been examined and as such Law Department endorses the proposal of the Administrative Department, contained in Para-7 read with Para-10 of the Summary.



(MASOOD AHMAD)

Secretary Law

F.S.
CHIEF SECRETARY

Subject: CREATION OF SURPLUS POOL FOR EMPLOYEES OF DIRECTORATE OF OF TOURIST SERVICES, KHYBER PAKHTUNKHWA UNDER KHYBER PAKHTUNKHWA TOURISM ACT, 2019.


14. The summary moved by Culture, Tourism, Archeology and Museum Department regarding placement of a case for creation of surplus pool for the employees of Directorate of Culture before the Provincial Cabinet has been examined. Finance Department endorses the proposal of Administrative Department at Para-7 of the summary.


(Muhammad Ayaz)
Secretary, Finance Department
07/05

Chief Secretary, Khyber Pakhtunkhwa

14. Chief Minister may kindly allow placement of the instant matter which is encapsulated in the proposal at para 7/s before the Cabinet for its consideration.

Chief Minister


21/5/2023

CHIEF SECRETARY
Govt. of Khyber Pakhtunkhwa

15. Approved as proposed in para 07 ante. M. Jha
CS

29/5/2023
CHIEF MINISTER
(CARETAKER)
KHYBER PAKHTUNKHWA

THE KHYBER PAKHTUNKHWA TOURISM ACT, 2019.**(KHYBER PAKHTUNKHWA ACT NO. XXVIII OF 2019)****CONTENTS****PREAMBLE****CHAPTER-I
PRELIMINARY****SECTIONS**

1. Short title, extent and commencement.
2. Definitions.

**CHAPTER-II
PROVINCIAL TOURISM STRATEGY BOARD**

3. Provincial Tourism Strategy Board (PTSB).
4. Provincial Tourism Strategy.
5. Functions of Provincial Tourism Strategy Board (PTSB).

CHAPTER-III**ESTABLISHMENT OF KHYBER PAKHTUNKHWA CULTURE AND TOURISM
AUTHORITY**

6. Establishment.
7. Headquarter of the Authority.
8. Status of the Corporation, Directorates and Institute.
9. Administrative and financial transaction.
10. Objectives of the Authority.
11. Power to acquire land.
12. Board of Directors.
13. Powers and functions of the Board.
14. Disclosure of interest.
15. Conduct of meetings and procedure of the Board.
16. Establishment of regional offices.
17. Appointment of Director General.
18. Functions of the Director General.

CHAPTER-IV**POWER TO CREATE SPECIAL PURPOSE AUTHORITIES**

19. Establishment of special purpose Authorities.

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(3) Provincial Tourism Strategy Board (PTSB) shall periodically review the Provincial Tourism Strategy and publish a revised Provincial Tourism Strategy, when approved by Government.

(4) All Government Departments and other relevant public bodies in the Province shall, when exercising or performing any statutory functions, take into account and give effect to the Provincial Tourism Strategy.

5. Functions of Provincial Tourism Strategy Board (PTSB).—(1) Provincial Tourism Strategy Board (PTSB) shall assess the impact of any development initiative or project, public or private, and issue guidelines, to bring such development initiative or project in line with Provincial Tourism Strategy. Guidelines so issued, shall be binding on any public or private entity, undertaking such an initiative or project.

(2) The Provincial Tourism Strategy Board (PTSB) shall only take cognizance of any initiative or project under sub-section (1), when the Authority makes a clear case that such a project or initiative is in violation of Provincial Tourism Strategy and refers such a project or initiative to the Provincial Tourism Strategy Board (PTSB).

CHAPTER-III ESTABLISHMENT OF KHYBER PAKHTUNKHWA CULTURE AND TOURISM AUTHORITY

6. Establishment.---(1) Government shall, by notification in the official Gazette, establish an Authority in accordance with the provisions of this Act, to be known as the Khyber Pakhtunkhwa Culture and Tourism Authority.

(2) The Authority shall be a body corporate, having perpetual succession and a common seal, with power to acquire, hold and dispose of property, both movable and immovable, in its name and shall by its name, sue and be sued.

7. Headquarter of the Authority.---The Headquarter of the Authority shall be at Peshawar.

8. Status of the Corporation, Directorates and Institution.--- (1) Subject to sub-section (3) of section 1 of this Act, after the notification of the establishment of Authority in the official Gazette, -

(i) the Authority shall take over the administrative, financial and regulatory control of all the activities, offices, projects, centers etc. of the Corporation, Directorates and Institute in prescribed manner and as result thereof-

(a) the instruments establishing the Corporation and Institute shall cease to have its effect and the Corporation shall be wound up in the prescribed manner in accordance with the laws for the time being in force; and

(b) the Directorates shall cease to be the Attached Department of the Department and shall be merged in to the Authority;

(ii) all movable and immovable assets and liabilities of the Corporation, Directorates and Institute including furniture, fixtures, equipment, vehicles, record, data

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etc. shall be transferred to the Authority and the ownership of such assets shall vest in the Authority;

- (iii) once the Secretary of the Department certifies that the Authority has developed requisite capacity to handle the functions, activities, offices or centers of the Corporation, Directorates and Institute, the provisions of clauses (i) and (ii) above shall be given effect under sub-section (3) of section 1 of this Act.
- (iv) upon taking over by the Authority, the employees of the Corporation, Directorates and Institute shall be dealt in the following manner:
 - (a) Government shall create Surplus Pool in the Establishment Department for employees of the Directorates till the retirement of the last incumbent. These employees shall continue to enjoy all the benefits currently admissible to them and shall be entitled to receive their salary and other benefits, as if they had continued to work against existing cadres or posts. The services of such employees shall either-
 - (i) be utilized by Government in such offices as controlled by Government under such terms and conditions as decided by Government; or
 - (ii) absorb the services of employees of the Directorates at the discretion of Government in various Government Departments, and in such case, the right of promotion shall be in accordance with rules and regulations and terms and conditions of the cadres into which they are absorbed;
 - (b) the employees of the Corporation and Institute shall be examined by a Scrutiny Committee, to be constituted in the prescribed manner and recommend to the Board for their retention in the service of the Authority or otherwise. Existing employees performance to be evaluated and better human resource be retained. Those Corporation and Institute employees, whose services are regularized under this Act by the Board, shall be governed in accordance with the service regulations, to be made under this Act; and
 - (c) to avoid rapid staff turnover, the staff or re-organized Corporation should be hired on long term contract. There should be periodic performance evaluation and those failing to achieve targets shall be removed.

Annex. F-7
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Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR

(Judicial Department)

WP No.2772-P/2022

Muhammad Ilyas and 23 others

Versus

**Govt of Khyber Pakhtunkhwa through Chief Secretary
and 4 others**

JUDGMENT

Date of hearing 26.01.2023

Petitioner (by) Mr. Ali Gohar Durrani, Advocate

Respondents (by) M/s. Mubashir Manzoor, AAG and
Farmanullah Khattak, Advocate alongwith
Sanaullah, Deputy Director (L) and
Muhammad Javed, SO (Litigation)

ABDUL SHAKOOR, J: - As the instant writ petition and
the following two connected writ petitions involve
common question of law and facts, therefore, we intend to
decide the same through this single judgment;

- i. **WP 2773-P/2022**
Muhammad Amjad and 7 others vs. Govt of KP
through Chief Secretary and 4 others,
- ii. **WP 4119-P/2022**
Israr Ahmad Khan and another vs. Govt of KP
through Chief Secretary and 6 others,

2. The petitioners of all the three writ petitions are
serving in the Directorate of Tourist Services "DTS",
Khyber Pakhtunkhwa against their respective positions,
mentioned in the memo of the petitions. Under S. 8 of

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newly promulgated Khyber Pakhtunkhwa Tourism Act, 2019 "Act", the said Directorate is ceased and merged into the Khyber Pakhtunkhwa Culture and Tourism Authority "CTA" established under S. 6 of the Act and for its employees, a surplus pool is created. In this regard, the respondents issued impugned Notification dated 25.5.2022 qua abolition of DTS and impugned letters dated 30.8.2022 qua physical and formal handing / taking over of all the assets, projects etc as well as letter dated 04.10.2022 qua delay so occurred in handing/taking over.

3. In the instant and the connected WP 2773-P/2022, the grievances of the petitioners are non-calling of Departmental Selection Committee "DSC" by the respondents to determine the suitability of their promotion despite the fact that similar relief has already been extended to alike employee of DTS by the Provincial Selection Board. As such, they seek issuance of direction to the respondents to call the DSC to consider their cases for promotion before they are sent to surplus pool.

4. The petitioners are also aggrieved of issuance of impugned notification dated 25.5.2022 of the respondents qua abolition of DTS with averments that before the completion of adjustment period as provided under the

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Act, the respondents cannot issue the same. The notification alongwith the impugned letters dated 30.8.2022 and 04.10.2022 qua handing / taking over of assets, projects and record etc of DTS, and its delay have also been impugned by the petitioners of WP 4119-P/2022 before this Court; and seek direction to declare the same to be illegal, unlawful and violative of the provisions of the Act.

5. Pursuant to notice, the respondents filed their joint Para-wise comments, wherein they strongly resisted the issuance of the desired writ by stating that the petitioners did not exhaust the legal remedies available to them under the law prior to invoking the writ jurisdiction of this Court; that the petitioners themselves have admitted in the relevant Para of their petitions that guidance have been solicited in case of their promotion, and once the advice is rendered, the respondents will proceed in accordance with the law. In respect of objection so raised by the petitioners qua adjustment period, the respondents stated that S. 33 read with S. 57 of the Act is more relevant to operators of tourist products and subsequent repeal of the laws under which these products are being regulated. Thus, the objection that nothing can be done in respect of DTS

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during the transition period, is the petitioners' own interpretation of law. The taking over of functions of DTS is a gradual process as elaborated in Sections 8, 9 read with S. 33 and 57 of the Act. So far as, the impugned notification dated 25.5.2022 coupled with impugned letters of handing/taking over of all assets etc are concerned, the respondents commented that S. 9(3) of the Act provides that the administrative and financial transition be completed in one year after the commencement of the Act thus, in line with the provisions of the Act, the impugned notification and letters have rightly been issued.

6. Arguments heard and record carefully gone through.

7. A perusal of the record would suggest that on 30.9.2019, the provincial assembly of Khyber Pakhtunkhwa passed the Khyber Pakhtunkhwa Tourism Act, 2019, which was assented to by the Governor of the Khyber Pakhtunkhwa on 04.10.2019. The aim and purpose of the Act is to provide for a legal framework to promote culture and tourism in the province of the Khyber Pakhtunkhwa. The Act provides for establishment of an Authority known as the Khyber Pakhtunkhwa Culture and

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Tourism Authority under S. 6 after certification and notification of the government; ceasing of Directorate of Culture and Directorate of Tourist Services (*attached department of Sports, Culture, Tourism, Youth Affairs, Archaeology and Museums Department*) and its merging in to the said Authority under the provisions of S. 8(i)(b). The Act has also provided for creation of Surplus Pool for the employees of DTS under S. 8(iv)(a) i.e. that the Government shall create Surplus Pool in the Establishment Department till the retirement of the last incumbent. There is no second opinion that main purpose behind the creation of Surplus Pool for the employees of DTS as is evident from the provisions of the S. 8 is to properly utilize their services in such offices as controlled by the Government, absorb their services at the discretion of Government in various Government Departments or to retain them in the Authority or otherwise after examining by Scrutiny Committee to be constituted in the prescribed manner and recommend to the Board. It is also specifically provided in the *ibid* section of law that in case of absorption of the employees of DTS, the right of promotion shall be in accordance with rules and regulations and terms and conditions of the cadres into which they are absorbed. It is also pertinent to mention here that the employees of DTS

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have earlier filed WP 4931-P/2021 and WP 1551-P/2022 with respect to certain amendment in Section 8 of the Act and advertising 54 posts ranging from Class-IV to BPS-19. However, this Court, while disposing of the said petitions, directed the respondents to strictly follow the law and to decide their cases in terms of Section 8 of the Act within a period of three months positively. Afterwards, the petitioners moved the respondents for convening the meeting of the departmental selection committee to determine their cases for promotion.

8. Now, the brief question as to whether an attached department which is no more in existence and merged in to an Authority while its employees who would be in Surplus Pool, and their fate either absorption, retention or utilization has not so far been decided, how come the respondents would convene a meeting of the Departmental Selection or Promotion Committee for their promotion for the simple reason that on which post and in which department they will be given promotion. When confronted with the situation, neither learned counsel for the petitioners wriggle out of the same nor this Court has found any law or judgments of the superior Courts backing the petitioners' prayer for issuing a writ to the respondents

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to call the desired meeting of the Committee in exercise of Constitutional Jurisdiction of this Court.

9. So far as, issuance of the impugned notification and letters of the respondents are concerned, needless to mention that under sub-section (3) of Section 9 of the Act, all actions required for giving effect to the provisions of the Act including administrative and financial transition shall be completed within one year of the commencement of this Act. Besides, this Court in its earlier judgment rendered in the *ibid* writ petitions directed the respondents to strictly follow the law; therefore, the respondents being administrative authority were bound to play positive role while complying with the provisions of the law and judgment of this Court. Further, the abolition of DTS and its merging in to the Authority was requirement of the law and undeniably when a department is going to abolish there must be some handing/taking over of its assets etc for proper management or otherwise, which cannot be termed an inaction or illegality in eye of law. Thus, the respondents while issuing the impugned notification and letters have not committed any illegality or irregularity, which could be questioned before this Court under its Constitutional Jurisdiction. Moreso, the learned counsel

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for the petitioners has also miserably failed to point out any infringement of right of the petitioners by the respondents while issuing the impugned notification and letters in line with the provisions of law and direction of this Court in the ibid judgment. Being so, the petitioners could not make out a case for issuance of the desired writ.

10. In view thereof, the instant and the connected WP 2773-P/2022 and WP 4119-P/2022 are dismissed being meritless.

Announced:
26.01.2023

JUDGE

JUDGE

Nazir

(DB)

Hon'ble Mr. Justice Abdul Shakoor, J
Hon'ble Mr. Justice Syed Arshad Ali, J



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**MOST IMMEDIATE
COURT MATTERS**

**GOVERNMENT OF, KHYBER PAKHTUNKHWA,
CULTURE, TOURISM, ARCHAEOLOGY &
MUSEUMS DEPARTMENT.**

13-A, KHYBER ROAD, PESHAWAR CANTT:



091- 9223448.



091-9212535.



Sportslitigation@gmail.com

NO. SO(LIT)/S&TD/1- 476/2022M. Ilyas & M. Amjid
Dated Peshawar the, 10th April, 2023/1423-26

To

The Section Officer(Tourism)
Tourism Department.

Subject: **IMPLEMENTATION MODALITIES OF SECTION 8 OF THE KHYBER
PAKHTUNKHWA TOURISM ACT, 2019 IN LIGHT OF JUDGMENT OF PESHAWAR
HIGH COURT IN WRIT PETITION NO. 4931-P/2021.**

(ii) **ADVICE REGARDING CONVENING OF DEPARTMENTAL PROMOTION COMMITTEE
(DPC) MEETING IN LIGHT OF JUDGMENT OF PESHAWAR HIGH COURT IN WRIT
PETITION NO. 4931-P/2021.**

Dear Sir,

I am directed to refer to the subject noted above and to enclose herewith a copy of letter No.DLO-III/Legis: 1(34)2017/Vol-IV/3538-42 dated 05-04-2023 received from Law Department along with its enclosures for strict compliance, please.

Being Court matter, hence may please be treated as MOST URGENT.

Yours faithfully,

[Signature]
SECTION OFFICER (LITIGATION)
10/04/23

Encl: As Above.

Endst: No. & date even.

Copy forwarded for information to the: -

1. PS to Secretary, Tourism, Department.
2. PA to Additional Secretary, Tourism Department.
3. PA to Deputy Secretary Tourism Department.

[Signature]
SECTION OFFICER (LITIGATION)
11/04/23