BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. ____/2020

SCANNED KPST Peshawar

Kifayat Ullah

V/S

Education Deptt:

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APPELLANT

THROUGH:

M. ASIF YOUSAFZAI ADVOCATE SUPREME COURT

> (TAIMUR ALI KHAN) ADVOCATE HIGH COURT,

(S. NOMAN ALI BUKHRI) ADVOCATE HIGH COURT & S. Khan Shahkar khan yousafzai Advocate

> Room No. Fr-8, 4th Floor, Bilour Plaza, Peshawar Cantt: Contact No. 03339103240

<u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u>

PESHAWAR

14055 <u>APPEAL NO. /2020</u>

Kifayat Ullah, Retired SPST (PBS-14) GPS, Wali Baz Khan Korona Bamkhel, Swabi.

Rhyber Pakhtukhwa Service Tribunal
Diary No. 13663
Dated 29/10/2020

(APPELLANT)

VERSUS

- 1. The Secretary (E&SE) Khyber Pakhtunkhwa, Peshawar.
- 2. The Director (E&SE) Khyber Pakhtunkhwa, Peshawar.
- 3. The District Education Officer (Male) Swabi.
- 4. The district Account Officer, Swabi da.
- 5. The Secretary Finance Khyber Pakhtunkhwa, Peshawar.

(RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 02.09.2019, WHEREBY THE APPELLANT WAS RETIRED WITH EFFECT FROM 30.07.2019 AND AGAINST THE ORDER DATED 11.06.2020, WHEREBY THE APPLICATION FOR WITHDRAWAL/CANCELLATION OF RETIREMENT HAS BEEN REJECTED AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STIPULATED PERIOD OF NINETY DAYS.

PRAYER:

to-daythat on the acceptance of this appeal, the ORDER DATED 02.09.2019 AND 11.06.2020 MAY KINDLY BE SET ASIDE AND THE APPELLANT MAY BE REINSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL THE RESPONDENTS BENEFITS. MAY **FURTHER** BE -supmitted to -da DIRECTED TO RELEASE SALARIES OF THE APPELLANT and filed. WITH EFFECT FROM 01.08.2019 TILL 31.12.2019 AS HE HAS PERFORMED DUTY WITH EFFECT FROM 01.08.2019 TILL 31.12.2019 ON THE DIRECTION OF RESPONDENT NO.3. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT, MAY ALSO, BE AWARDED IN FAVOUR OF APPELLANT.



RESPECTFULLY SHEWETH: FACTS:

- 1. That the appellant was appointed on the post of Naib Qasid on13.04. 1993 and then appointed on the post PST (then PTC) on 21.10.2004 and with the passage of time promoted to the post of SPST (BPS-14) in the year 2014 and since his appointment the appellant has performed his duty with great devotion and honesty whatsoever assigned to him.
- 2. That due to domestic problem the appellant filed an application for early retirement on 21.08.2019 and on the basis of his application, the appellant was retired from service vide order dated 02.09.2019 with effect from 30.07.2019 without availing the benefits of encashment of leave in lieu of LPR due to non completion of 26-years qualifying service. (Copies of application and order dated 02.09.2019 are attached as Annexure-A&B)
- 3. That the appellant then filed application on 13.09.2019 for cancellation/withdrawal of his early retirement and on his application respondent No.3 the told the appellant that his cancellation/withdrawal, application for retirement will be accepted and directed the appellant to came to school for duty and also directed him to deposit commutation and pension which he has already withdrawn and on the direction of respondent No.3 the appellant deposited his commutation and pension and also started teaching in the concerned school and thought in the school till December 2019, which is evident from the attendance register of the teachers. (Copy of application, deposit bank Challan slip and attendance register are attached as Annexure-C,D&E)
- 4. That on his application respondent No.3 wrote a letter dated 13.01.2020 to respondent No.2 for guidance regarding withdrawal of retirement after sanction/ starting of pension on which he replied vide letter dated 21.02.2020 to deal the case at your own level as per rules and policy being a competent authority. (Copies of letter dated 13.01.2020 and 21.02.2020 are attached as Annexure-F&G)
- 5. That the respondent No.2 constituted the inquiry committee to decide the issue of cancellation application of the appellant. The inquiry committee conducted the inquiry on the issue and gave its conclusion that if the appellant was reinstated in his service it would became a precedent for others, which may cause trouble for the department, he has refunded a big amount of Rs. 1512551/- with the direction of high ups as the appellant stated before inquiry/scrutiny on May 11, 2020. Now if he was not reinstated in service, it would be difficult to refund the amount back to him and in intervening period he consistently attend school but neither IMU nor Education Officer took notice of it, while he was officially declared as retired person and the respondent No.3 without observing the comments of inquiry committee and without assurance to the appellant of his withdrawal of retirement

rejected the withdrawal application vide notification dated 11.06.2020. (Copies of inquiry report and notification dated 11.06.2020 are attached as Annexure- H&I).

- 6. That the appellant then filed departmental appeal on 07.07.2020 which was not responded within the statutory period of ninety days. (Copy of departmental appeal is attached as Annexure-J)
- 7. That now the appellant has no other remedy except to file this service appeal in this august Service Tribunal on the following grounds amongst others.

GROUNDS:

- A) That the impugned orders dated 02.09.2019 and 11.06.2020 and not taking action on the departmental appeal of the appellant are against the law, facts, norms of justice and material on record, therefore not tenable and liable to be set aside.
- B) That the appellant has filed application for early retirement on 21.08.2019, while he was retired from on 30.07.2019 vide order 02.09.2019, which shows that the retirement order passed with retrospective effect and such like orders have no effect and null and void-ib-initio.
- C) That the appellant has filed application for early retirement on 21.08.2019, while he was retired from on 30.07.2019 vide order 02.09.2019, which shows that he was retired before filling application for retirement which is not permissible under the law.
- D) That the appellant has filed application on 13.09.2019 for cancellation of his early retirement and on his application the respondent No.3 told the appellant that his cancellation application for retirement will be accepted and directed the appellant to came to school for duty and also directed him to deposit commutation and pension which he has already withdrawn and on the direction of respondent No.3 the appellant deposited his commutation and pension and also started teaching in the concerned school and thought in the school till December 2019, which shows that the appellant has worked for 5-months and also deposited his commutation and pension and he did it on the direction his high ups and has legitimate expectancy for withdrawal of his retirement order.

E) That the inquiry committee also committed in the favour of the appellant but despite that respondent No.3 rejected his application

without observing comments of the committee and assurance given by him of withdrawal of his retirement.

F) That the appellant has already/deposited commutation & pension vide receipt/challan dated 11/05/2020 on the direction of respondent No. 3 but despite that the appellant has been made to suffer.

G) That even benefits of leave encashment of leave in lieu of LPR has not been given to the appellant which also shows the malafide of respondent department.

H) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

APPELLAN'

THROUGH:

GH: M. ASIF YOUSAEZAI ADVOCATE SUPREME COURT

(TAIMUR ALP KHAN) ADVOCATE HIGH COURT,

(S. NOMAN ALI BUKHRI) ADVOCATE HIGH COURT & S. Khanz SHAHKAR KHAN YOUSAFZAI ADVOCATE

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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI.

Email address: email RETIREMENT ORDER (To be substituted with same No. & date)

Sanction is hereby accorded to the grant of premature retirement from Govt. Service in r/o of Mr. Kifayat Ullah, SPST GPS Wali Baz Khan Koroona Barni Khel (Swabi) w.e.f 30.07.2019 (A.N) without availing the benefit of encashment of leave in lieu of LPR due to non-completion of 26-Years qualifying-service.

1. Entry to this effect should be made in his service books & leave account

(NISAR MUHAMMAD) DISTRICT EDUCATION OFFICER (MALE) SWABI.

Endst No. 11258-62/Retirement File No. 1/Vol:III/PST/ Dated 02.09.2019

- 1. District Accounts Officer Swabi.
- 2. District Monitoring Officer Swabi.
- 3. SDEO (Male) Swabi a/w original S/Book.
- 4. EMIS Cell Local Office.
- 5. Official Concerned.

Note:-

DISTRICT EDUCATION OFFICER (MALE) SWABI.

moussifi OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI Email address: emis_startic, theo.com Ph# 0938-280239 RETIREMENT ORDER (To be substituted with same No & date). Sanction is hereby accorded to the grant of presisture Retirement . from Govt. service in r/o Mr. Kifayat Ullah SPST GPS Wali Baz Khan Korgona Barn Khel (Swabi) w.e.f 30-07-2019 (A.N) without availing the benefit of encashment of leave in lieu of LPR due to non-completion of 26-year qualifying service. Note: 1. Entry to this effect should be made in his Service books & leave · account. (NISAR WUCHAMMAD) DISTRICT EDUCATION OFFICER MALE) SWARL Endst. No 🎶 /Retirement File No.1/Vol:III/PST/Dated 0 Forwarded to the: 1. District Accounts Officer Swabi. 2 District Monitoring Officer Swabi. 3. SDEO (Male) Swabi a/w original S/Book S_{ij} 4. EMIS Cell local office. 5. Official Concerned. DISTRICT OFFICER SWABI

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ر المعرف المرام والى مازخان كورون با خل \$ 2019 بابت ماه <u>اکترون</u> ربا جن عل كفايت روزه الله نا آن 1 c 1 er D SPST PSHT 372 وستخط المد الدستخط والجي وستخط المراجي وستخط المراج وستخط المرواحي وستخط فيتحو وانجابه Q, RI -Var 81-1/35 8720 Alno 150 150 1/20 1/35 1125 21 RO 81-1/35 R1_ Ine 153 BM2 Ø ÐI 1/2-7 8/10 1*1*-45 Rel 12/20 (P) 1100 Blue all ist RI 135 150 FB 8/100 01-351 5 R) 1/35 1/2 1 04 3/20 81-1/3\ 4 8/00 il 35 150 820 Ŧ Var R. 11.31 Dine Ro 1/35 PI 5 2/2 1/257 re ø. 1/35 31-1125 Ŵ 7 8/20 OV. 53 100 @12/35 P 250 121-E D Q/-253 12/31 11 100 Q1 8120 21/2-1/35 45 755/135 Æ ŧ. 2 1/36 500 leave. 8120 14 55 34 35 Q) 1/35 Alva 05 - 8 20 ØŶ 15 \mathbf{d} 2/-135 - 8120 1/25 100 Þ. 16 115 \$ 8 10 RI 0/2: 20 21-17 t A 14-11/25 3/16 Q 8/ tar 100 18 $\mathbf{\lambda}$ 1/35 1/35 8120 a b \mathcal{F} Ø 26 9110 135 OU 8/-21 135 (JP Ø 100 120 00 1/30 9 115 + 57 Ł Ê/--ЧP QU Ø.N 135 405 810 1/25 Ð 15 8100 50 810 35 On duty 8/-'al • 7. 12/3 12/-ÐŬ a) ÷., 12/250)/~ ろう 812 -1æ 1/3 R/_ 8100 26 1/35 000 8/20 Q. 1/3 81- \sim Qu Ω_{loc} 1/352 PAO QU 15 1/35 0-20 æ. 22P/3F TD Alve -<u>)</u>. DAM ×19 81, 9/10 A Sleet 13S. ÐŬ المال المسلمة المسلم المسلم المسلم المسلمة المسلمة المسلم المسلم المسلمة المسلمة المسلمة المسلمة المسلمة المسلمة <u>مران</u> 2 اتفاقر 2 3 التحقاق بهاري بقيزان 4

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OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI

The Director, E&SE Khyber Pakhtunkhwa, Peshawar.

Subject:- <u>GUIDANCE REGARDING WITHDRAWAL OF RETIREMENT</u> <u>AFTER SANCTION/STARTING OF PENSION.</u>

Memo:

Tó,

With due respect it is stated that his office Wants to draw your kind attention towards an issue facing by this office on the subject cited above. A teacher named Mr. Kifayat Ullah, SPST of GPS Wali Baz Khan Korona Bam Khel (Swabi) applied for premature retirement w.e.f 30.07.2019 and an order issued his favor vide this office order dated 02.09.2019 (copy attached). His pension & other grants like B/F, RB&DC, G.P.Fund and eef etc have also been processed to the concerned offices/departments. Apart from this the District Account Office Swabi has started monthly pension regularly from date of retirement and a cheque of communication has also been issued in his favour though according to him not yet cashed.

Now, he wants to withdraw his retirement and join duty as SPST again. He raised an application and ready to return any amount paid to him in this regard. This office is in a vague whether to cancel this order or otherwise.

Therefore, it is humbly requested that an opinion from your esteemed office and from office of the Accountant General Khyber Pakhtunkhwa Peshawar is required in this regard with thanks.

DISTRICT EDUCATION OFFICER (MALE) SWABI.

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	<u>DF THE DIST</u> Noろいり	Dated	ICER MALE S	0 0
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subject:	GUIDANCE F	r Pakhtunkhwa Peshawar. <u>REGARDING WITHDRAWAL (</u> STARTING OF PENSION	OF RETIREMENT	AFTER

Memo:

With due respect it is sated that this office wants to draw your kind rattention towards an issue facing by this office on the subject cited above. A teacher named Mr. Kifayat Ullah SPST of GPS Wali Baz Khar koronn Bam Khei (Swabi) applied for premature retirement w.e., 30-07-20...9 and an order issued in his favor vide this office order No.11258-62/Dated: 02-09-2019 (copy attached). His pention & other grants like B/F, RB&DC, G.P.Fund and eef etc have also been processed to the concerned offices/departments. Apart from this the District account office Swabi has started monthly pension regularly from date of retirement and a cheque of commutation has also been issued in his favor though according to him not yet cashed.

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OF ELEMENTARY AND SECONDARY EDUCATION DIRECTORATE KHYBER PAKHTUNKHWA PESHAWAR. /F. No. Guidance of Previous Service. Dated Peshawar the 21/62 /2020. To, The District Education Officer (M) Swabi. 'Subject: -**GUIDANCE REGARDING WITHDRAWAL OF RETIREMENT AFTER** SANCTION/STARTING OF PENSION. Memo:-1 am directed to refer to your office letter No. 254 dated 13.01.2020, on the subject cited above in respect Mr. Kifayat Ullah SPS T GPS Wali Baz Khan Korona Bam Khel District Swabi, and to ask you to deal the case at your own level as per rules and policy being competent authority. Assistant Director (Estab) Elementary & Secondary Edu: Khyber Pakhtunkhwa Peshawar. Endst: No.____ Copy forwarded to the:-1. P.A to Director Elementary and Secondary Education local office. Assistant Director (Estab) Elementary & Secondary Edu: Khyber Pakhtunkhwa Peshawar.

Better Copy Page-H

The District Education Officer, (Male) Swabi.

To,

Subject:- <u>SUBMITTING THE REPORT/COMMENTS REGARDING THE</u> <u>APPEAL OF MR. KIFAYATULLAH SPST BPS-14.</u>

29.0

In reference to your letter No. 3251-57 dated 28.05.2020, it is hereby stated that the committee constituted by your office has probed into the said matter and has summarized the whole matter as thus.

- In pursuance of his specific request, Mr. Kifayatullah Ex-SPST BPS-14 was allowed pre-mature retirement from service by DEO (Male) Swabi Endorst. No. 11258-62, dated 02.09.2019 on domestic ground vide application for retirement dated 01.08.2019 (Annexure-A).
- in his application dated 13.09.2019, Mr. Kifayatullah Ex-SPST BPS-14 has stated that he has been able to settle his family affairs and is now in the position o resume his service he has therefore requested that his pre-mature retirement be cancelled he be allowed to resume duty to complete his service tenure. Annexure-B.
- During his intervening period, he has regularly attended school and CPD trainings while he was officially declared as retired person statement of the head teacher and a photocopy of teacher attendance register is attached herewith Annexure-C & D.
- 1. We have scrutinized the application submit by the employee for the withdrawl of his retirement order and reinstatement in service and found that no dairy number is given to the application in applicant did not follow the proper channel in submitting his application.
- He has availed commutation of Rs. 12, 87278/- under cheque No. 1777575 dated 17.10.2019. He has also availed monthly pension Rs. 225273/- and EEF of Rs. 30000/- under Cheque No. dated 18.11.2019, which is still not cashed by the employee and has thus expired, but Mr. Kifayatullah has refunded all benefits he has availed so far. He refunded commutation challan No. 09. Annexure-E, F, G & H.
- 3. We have sought the notification issued by the Finance Department and concluded that his case is mature Annexure-I.
- 4. Comments:-
- A. IF Mr. Kifayatullah is reinstated in his service it would become a precedent for others, which may cause trouble for the Department.
- B. He has refunded a big amount of Rs. 1512551 with the direction of high ups as he stated, before inquiry/Scrutiny on May 11, 2020. Now if he is not reinstated in service, it would be difficult to refund the amount back to him
- C. In intervening period he consistently attended school but neither IMU nor Education Officers took notice of it, while he was officially declared as retired person.

THE COMPANY STREGARDING THE APPEAL OF MR.

Subject:--KIFAYARUURALAD.CN In reference to your letter No 3251 57 dated 28/5/2020, it is here by stated that the Sir. committee constituted by your office has probed into the said matter, and has summarized the whole

The District Education -Male Swadi

> In pursuance of his specific request. Mr. Kifayatullan x SPST BPS 14 was allowed pre mature matter as thus. retirement from service by DEO (Male) Swabi under Endost. No.11258-62; dated 02-09-2019 on domestic ground vide application for retirement dated 01-08-2019. Annexure (A In 'his application dated 13/9/2019 Min Kirayatullah Ex-SPST BPS-14 has stated lips he has been able to settle his family affairs and is now in the position to resume his service. He has therefore requested that his Pre-Mature retirement be cancelled and he be allowed to resume duty to

complete his service tenure: Annexure (B)

> During his intervening period the has regularly attended schools and CPD trainings while he was officially declared as relifed person Statement of the head teacher and a photocopy of teacher ostendance register is attached herewith Annexure (C&D)

1. We have scrutinized the application submit by the employee for the withdrawal of his retirement order and reinstatement in service and found that no dairy number is given to ine application in the DEO (Male) office, secondly, no correspondence was made within the office, thirdly, the applicant did not follow the proper channel in submitting his application

He has availed commutation of Rs 12, 87278/- under Cheque No.1777575 dated 17/10/2019 He has also availed monthly pension Rs225273/. and EEF of Rs 30000/1 under Cheque 2. No:1359981544 dated 18-11-2019 which is still not cashed by the employee and has thus expired, but Mr. Kifayatullah has refunded all benefits he has availed so far. He refunded commutation Rs.1287278/- under Challan No.1 dated 11-5-2020 and pension amount of Rs225273/- under Start Series challan No Dau And Auto (E FIS&I) hance.Department and

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mature, Annexure (I)

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612020

Taqweern ul Haq Principak GHSS Sheikh Jana

Fida Muhammad Principal GHS Sheikh Dherich



20-0

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI.

NOTIFICATION.

- 1. WHEREAS, Mr. Kifayatullah, SPST, GPS Wali Baz Koroona submitted an application on 21.08.2019 duly forwarded by Head Teacher and ASDEO concerned for pre-mature retirement.
- 2. AND WHEREAS, the then DEO (M) after accepting his request accorded sanction for pre-mature retirement w.e.f 30.07.2019 vide Endst No. 11258-62/Retirement dated 02.09.2019.
- 3. AND. WHEREAS, the official concerned submitted pension papers duly forwarded by the SDEO (M) concerned for final payment and other pensionary benefits which were further forwarded to DAO office Swabi.
- 4. AND WHEREAS, the DAO Swabi after processing his pension case issued commutation cheque on 17.10.2019 as well as regular monthly pension thenceforth.
- 5. AND WHEREAS, the teacher concerned submitted another application for cancellation/withdrawal of his retirement order on 18.10.2019.
- 6. AND WHEREAS, an inquiry committee was constituted comprising of Mr. Taqweem Ul Haq Principal GHSS Sheikh Jana and Fida Muhammad Principal GHS Sheikh Dheri vide Notification No. 3251-57 Dated 28.05.2020 to look into the matter and submit/propose recommendation thereof.
- 7. AND WHEREAS, the committee after thorough perusal and examining the relevant record submitted inquiry report and recommended that his case has got matured hence attained finality in the light of Finance Department Letter dated 05.09.2018 which cannot be withdrawn being a closed transaction.
- 8. AND WHEREAS, the competent Authority (District Education Officer (M) Swabi) after having considered the evidences and recommendations of the inquiry committee is of the view that retirement sanction in respect of Kifayatullah Ex-SPST GPS Wali Baz Koroona is matured and has got finality.
- **9.** NOW, THEREFORE, I Muhammad Idress, District Education Officer (M) Swabi as Competent Authority is pleased to reject his request for withdrawal of retirement sanction as recommended by the inquiry committee.

DISTRICT EDUCATION OFFICER (MALE) SWABI.

Copy for information to:-

- 1. Director E&SE Khyber Pakhtunkhwa, Peshawar.
- 2. District Monitoring Officer Swabi.
- 3. District Accounts Officer Swabi.
- 4. SDEO (M) Swabi.
- 5. Teachers Concerned.
- 6. Master File.

DISTRICT EDUCATION OFFICER (MALE) SWABI. OFFICE OF ALL IN THE PATION OFFICER (MALE) DISTRICT SWABI

- NOTIFICA 101N WHEREAS, Mr. Kifayatullah SPST, GPS Wali Baz Koroona submitted an application on 21/8/2019 duly forwarded by Head Teacher and ASDEO concerned for pre-mature retirement.
- 2. AND WHEREAS, the then DEO (M) after accepting his request, accorded sanction for pre-mature retirement w.e.f 30-7-2019 vide Endst No. 11258-62/Retirement File No.1/Vol.11/PST Dated 02/09/2019.
- 3. AND WHEREAS, the official concerned submitted pension papers duly forwarded by the SDEO (M) concerned for final payment and other pensionary benefits which were further forwarded to DAO office Swabi.

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7. AND WHEREAS, The committee after thorough perusal and examining the relevant record submitted inquiry report and recommended that his case has got matured hence attained finality in the light of Finance Department Letter No FD(SOSR*II)/4:36/2018/dated 5/9/2018/which cannot be withdrawn being a closed transaction.

AND WHEREAS the Competent Authority (District Education Officer (M) Swabi) after having considered the evidences and recommendations of the inquiry committee is of the view that retirement sanction in respect of Kifayatullah Ex-SPST GPS Wall Baz Koroona is matured and has

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> (DR. MUHAMMAD IDREES) DISTRICTEDUCATION OFFICER (M) SWABI

A DISTRICT EDUCATION OFFICER (M)

Endst: No

Copy for information to ;-

Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar

Dated

- Director Elementary & Secondary
 District Monitoring Officer Swabi.
- District Monitoring Officer Swabi.
 District Accounts Officer Swabi.
- District Accounts C
 SDEO (M) Swabi.
- 5. Teachers Concerned.
- 6. Master File.

GHSS

Fida M GHS Sh

33 1 2 تخصور حنار المرابع ما المراجع مس مراجع (in the president of the series of the seri محسف المحبوليس تفسير مديني وطبي طح مع مع المعالي المعين وتعبير مرزى الله ... رئيس طريق اس سرق مال مال زما - while is a white the tes دن سرمین ساعل رسانی نی سال 1993 میں ریکی حربی کر میں ۱۳ الما تم المان وحبر سے درخور ست بیش رور تو مری (1) تران اللہ سیدوشی کی اپنی کی درخور ست ا و الله مراجع الم على مي د منه من عمل من من من من من من المربع 5 _____ ver viz 11258-62 dater 5, ver bez المعنى مريد الله المريد الله معى الدوميل از والعول علم روميك الما الم الم الم على مع ت لوص در مواني كور فر

من در بالمرب على ملى مت د وى جسير مسالات من و ع ر مسرای) نے مور _ دی مر مس مسرحی . در تشریخ الم عنى عن كامك الدوات الدوت الدوت كور التر باس (مورب میں از <u>354 میرو دون</u> در او سرائے رمعناتی بھی تی نعل على المالي بي مسراب موجندست التي عالى ملا عبة من مرالد ، عالم المن وقد مرام رسدوران ما ولوصر ادر مراح من محمد طروی معال م سا مرسانون الم من مراجد معاده میں اور اور اسطرح معنی <u>354 میروز ان 3</u> را کافروس دین مذیار س دورین من ساعل رمین نظی عمام طور ماهندی الله المالي رورسيول فالأي رورجب مواعدت مالي وجر من الک محدرون عمیر بر مع محلی کی رمی دهیی زوجی کاری کس ایسا المحرين ما في المحرفة المحرفة فعلما عرف فعلما عمر المحرفة فعلما عمل المحرفة فعلما عمر المحرفة فعلما عمر فعلما عمر حی، می او او او ای ای ای او حیا مرید مالد راسا نی منس می می از مال می او او مرید مالد راسا نی منس می می از مال .> الف مفزرس ر) بدیر با وجود اس بک و دور سے میں کی تروری

34> اسی سناری از میری رمد حورصه معلی تعی وسیل خرج رفتر انج س صلا محص مراب کرد اس روما می روم محصر از اللی مورد ر باز المحالية الما الما الما الما الما الما المالي من المالي من المالي المالية المالية المالية المالية المالية ميز مين المسيد دوسي في مسيان مسي فريس في تسييل 102 - 3765-70 da tea 1 2 - 2020 - 3765 - 3765 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 2020 - 202 معامن ب مورد معز ب الدر من من معار م فاست سالی د دوسری میکی میک و کا حومد ماها را تور یک شسار ۲ رج مد الدرس باره من سائل رسال وف الا الدرد و وفراست السبا الجراب را الماري من روز أنه تا معدن رود مذكر من من حسب حزبانيا تر سال شوى فرغا با ب عن در فراست لم ال الظن المجار عدما بعد مد مرض ما من مدان ما من مدان ما من مدان show all an s. ps - and in the July Willing on Ex. S. PST ill will -0302-5688450. i.e.

<u>VAKALAT</u>	<u>NAMA</u>
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NO.____/2020

SCANNED KPST IPeshawar

IN THE COURT OF KP Scanice Tribunal Perhawar

(Appellant) (Petitioner) (Plaintiff)

Education Depth etc.

fayat Ullah

(Respondent) (Defendant)

I/We, _ Kitayat Ullah

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court Peshawar,** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

VERSUS

I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated /2020

(CLIENT)

ACCEPTED

M. ASIF YOUSAFZAI Advocate Supreme Coupt Peshawar.

(TAIMUR ALI KHAN) Advocate High Court Peshawar

(SYED NOMAN ALI BUKHARI) Advocate High Court Peshawar

S. Khanz (SHAHKAR KHAN YOUSAFZAI) ADVOCATE PESHAWAR

OFFICE:

Room # FR-8, 4th Floor, Bilour Plaza, Peshawar, Cantt: Peshawar Cell: (0333-9103240)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 14055 of 2020

KPST Kifayat Ullah, Retired SPST (BPS-14) GPS Wali Baz Khan Korona, Bamkhel (Swabi) -----Appelant.

SCANNED

- 1. Secretary E&SED Khyber Pakhtunkhwa Peshawar.
- 2. Director E&SE Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (E&SE) Male Swabi.
- 4. District Accounts Officer Swabi.
- 5. The Secretary Finance Khyber Pakhtunkhwa Peshawar------Respondents

S.No	Description of documents	Annexure	Page 1-4	
1	Para-wise comments with Affidavit			
2	Revised Leave Rules, 1981	А	5-14	
3	Retirement Order	A1	15	
4	Finance department letter	В	16	
5	Enquiry letter	С	17-18	
6	Appeal rejection notification	C1	19	
7	2007-PLC(CS)718	D	20-24	
8	Appeal & letter to DEO	• E	25-28	
9	Comments of DEO on appeal to Director	F	29	
10	Appeal for withdrawal of retirement	G	30	
11	Letter of Secretary E&SE to Secretary Finance	Н	31	

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DISTRICT EDUCATION OFFICER (MALE) SWABI

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

Service Appeal No. 14055 of 2020

Kifayat Ullah, Retired SPST (BPS-14) GPS Wali Baz Khan Korona, Bamkhel (Swabi) -------Appelant.

- 1. Secretary E&SED Khyber Pakhtunkhwa Peshawar.
- 2. Director E&SE Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (E&SE) Male Swabi.
- 4. District Accounts Officer Swabi.
- 5. The Secretary Finance Khyber Pakhtunkhwa Peshawar------Respondents Parawise Comments on behalf of Respondents No. 1,2 & 3.

Respectfully Sheweth,

Preliminary Objections:

- 1. That the appellant retired from service on his own application/request, which was accepted and the same had attained finality, being a passed and closed transaction, received all the pensionary benefits and now desire to withdraw the option, hence the appeal is not maintainable.
- 2. That the departmental appeal is badly time bard and hit by the Principle of latches, hence not maintainable and is liable to be dismissed.
- 3. That the appellant has not come to the tribunal with clean hands.
- 4. That the appellant has concealed the material facts from the honorable tribunal.
- 5. That the appellant has no local standi or cause of action to file the instant appeal.
- 6. That the appellant has filed the instant appeal just to pressurize the respondents.
- 7. That the appellant is estopped by his own conduct to file the instant appeal.
- 8. The appeal is bad for misjoinder and non-joinder of necessary party.
- 9. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
- 10.That no scope of repeated appeals/representation is available to the civil servant and the period of limitation could not be extended by repeated representations, hence the instant appeal is not maintainable.

Facts:

- 1. Admitted to the extent that the appellant was initially appointed on the post of Naib Qasid on 13-04-1993and then appointed against the primary school teacher (PST.) dated 21-10-2004. After that he was promoted to the post of SPST. (BPS-14) in the year 2014. It is mandatory for each and every Govt. servant to perform his duties upto the entire satisfaction of his superiors, because he is paid for his services from the national exchequer.
- That the appellant himself admits, that due to domestic problems the appellant filed an application for premature retirement on 21-08-2019 and on the basis of his application, the appellant was retired from service vide order dated: 02-09-2019 w.e.f 30-07-2019. According to the Govt. of Khyber

Pakhtunkhwa revised leave rules, 1981 rule-20 (4) clarification vide No. FD.SO(SR-IV) 5-54/80/Vol:II, Dated: 20-11-1986, "the civil servants seeking retirement on voluntary basis should be treated equally and the option should not be necessary if they want to encash their LPR. However, a civil servant who wants to proceed on retiring pension shall have to wait for 365days after qualifying service of 25-years for the purpose of encashment of LPR.

COMMENTARY:

Under the above clarification, encashment of LPR is admissible on completion of 26-years qualifying service".

The appellant only completed 25-years qualifying service, which is less than 26-years qualifying service, therefore, the appellant is not entitled for the benefits of encashment of leave in lieu of LPR. Govt. of Khyber Pakhtunkhwa Revised Leave Rules 1981 annexed as **"A"**.

- 3. Incorrect hence strongly denied. The respondent No.3 did not tell the appellant that his cancellation/withdrawal of application for retirement would be accepted. The respondent did not direct the appellant to come to school for duty. Furthermore, the respondent did not direct him to deposit commutation and pension which he has already withdrawn. The statement of the appellant that on the direction of respondent No.3 he deposited his commutation and pension and also started teaching in the concerned school and taught in the school till December 2019, is false, conjectural and ludicrous. The attendance he annexed is self-made. According to the appellant, he filed an application on 13-9-2019 while his attendance in the annexed page of attendance register is also existed before 13-09-2019, on whom direction the appellant marked this attendance. The appellant is talking argy bargy. No proper and valid request has been made for any right he is seeking. The appeal he claims is doubtful, incomplete, manipulated and consists of concealment of facts.
- 4. Admitted to the extent that the respondent No.3 wrote a letter dated 13-01-2020 to respondent No.2 for guidance regarding withdrawal of retirement after sanction/starting of pension on which he replied vide letter dated 21-02-2020 to deal the case at your own level as per rules and policy being a competent authority. It cannot be ignored that a civil servant though had a right to withdraw the option before its acceptance but not thereafter. Since the same had attained finality being a passed and closed transaction, pursuant whereto he admittedly had received all the pensionary benefits. He is not entitle for re-instatement.
- 5. That appellant claims he filed an application for cancellation of his premature retirement on 13-9-2019 annexed as "C" with page 7 of the appeal and then he filed an application annexed as "J" with page 32 of the appeal for re-instatement. Thus he made a repetitive departmental appeals, which has not legal effect. As there is, "no scope for repeated appeals/representations available to the civil servants and the period of limitations could not be extended by the repeated representations". The same is reported in 2001-SCMR 912, 2004 SCMR 497, 2009 PLC(cs)89 and 2007 PLC (cs) 15 that the appeal of appellant has not legal effect and service appeal is badly time barded, hence not maintainable. That the enquiry report of the enquiry committee is

self explanatory. The committee stressed on the notification issued by Finance department and concluded that the case of the appellant is mature. As per this notification he or she may withdraw his/her option of voluntary retirement before the retirement matures. As per reported Judgment 2007 PLC.(C\$) 718, Art.212 Estacode, chapter No.X serial NO.7 civil servant had sought premature retirement upon completion of 25-years of qualifying service for health reason which request was eventually accepted by notification dated 30-03-2000. Civil servant subsequently acclaimed to have withdraw the option throught hater dated 29-3-2000 addressed to the competent authority alleged to have been received the same day i.e a day prior to acceptance notification, seeking recalling of the notification of his premature retirement which request was turned down.validity. Civil servant though had a right to withdraw the option before its acceptance but not thereafter, since the same has attained finality being a passed and closed transaction, pursuant whereto he admittedly received all the pensionary benefits. Thus the appellant is not entitled to be re-instated in service. The respondent No.3 rightly rejected the withdrawal of retirement application of the appellant. Finance department letter, enquiry report and reported Judgment 2007 PLC (CS) 718 are annexed as "B", "C" & "D".

Second to the

- 6. That according to his own statement he filed repetitive appeals, representations, which are badly time bard and having no legal effect.
- 7. The appellant estopped by his own conduct to file the instant appeal. He is not an aggrieved person at all. Therefore, he has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed inter-alia amongst the following grounds.

GROUNDS:

- A. Incorrect hence denied the impugned order 02-09-2019 was issued on the request of appellant. Furthermore, there is no other order dated 11-6-2020 existed anywhere in the whole draft of the appeal. The time bard appeal of the appellant with subject, "appeal for withdrawal of retirement notification" was processed and sent to the Secretary Govt. of Khyber Pakhtunkhwa Finance department for guidance dated 9-10-2020 but without receiving any guidance from the competent authority the appellant filed, the instant appeal which is illegal. The act of the respondents is in accordance with law, facts, norms of justice and material on record. Therefore, is liable to be accepted. Letter to DEO Male Swabi to Director E&SE KP, letter of Director E&SE KP to Secretary E&SED KP and letter of Secretary E&SED to Secretary Govt. of KP Finance Department are annexed as "E, F, G & H".
- B. Incorrect hence denied that the appellant has filed application for premature retirement on 21-8-2019 and was retired from service on 30-07-2019 vide order dated 02-09-2019 on the request of the appellant. His age was less than 55-years, that is why he was retired from service on 30-07-2019 on his own request. The appellant is talking argy-bargy just for the creation of his right falsely.
- C. Incorrect, hence denied. The appellant was retired from service on his own request dated 30-07-2019.
- D. Incorrect, hence strongly denied. The appellant was retired on his own wish and request. He accepted all the terms and conditions of the retirement order without anyagitation. After receiving all the pensionary benefits, when he

knew that encashment of LPR admissible on completion of 26-years of qualifying service but his qualifying service was 25-years, therefore, he was not paid encashment of LPR. Thus the appellant started hue and cry for creating of his right of encashment of LPR in the shape of re-instatement. He did not work for a single day at all. He planted self-made story which has no legal effect at all.

- E. Incorrect, hence denied. The enquiry committee quoted a finance department notification and concluded that his case is mature. In their recommendations they said "if the appellant is re-instated in his service it would become a precedent for others which may cause trouble for the department" thus nothing is existed in favor of the appellant in the enquiry report. Thus the respondent No.3 rightly rejected his application for withdrawal of his retirement. It is a settled law that ill-gotten gain cannot be made a precedent.
- F. Incorrect, hence denied. The respondent No.3 did not direct him to deposit commutation or pension. It is fabricated and a self-made planted story of the appellant.
- G. Incorrect, hence denied. Encashment of LPR is admissible on completion of 26-years qualifying service while the qualifying service of the appellant was 25-years, thus he was not paid encashment of LPR rightly.
- H. That the respondents seek permission to raise/argue other points/grounds on the day of hearing this appeal.

In view of the above stated submissions it is earnestly requested that the appeal may very graciously be dismissed with cost in favor of respondents.

DISTRICT EDUCATION OFFICER MALE SWABI District Education Officer (Male) Swabi.

Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar

E&SED Khyber Pakhtunkhwa Peshawar.

<u>AFFIDAVIT</u>

I do hereby solemnly affirm and declare on oath that the contents of the para-wise comments are true and correct to the best of my knowledge and

belief and nothing has been concealed from this Honorable tribunal or misstated.

DISTRICT EDUCATION OFFICER (MALE) SWABI

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CHAPTER-7

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GOVERNMENT OF KHYBER PAKHTUNKHWA REVISED LEAVE RULES, 1981

Notified vide No. FD SO(SR-IV)5-54/80(Vol-II) dated 17.12.1981

(Amended Up-to-date)

Short title, commencement and application. (i) These rules may be called The 1. Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981.

They shall come into force at once. ii)

They shall apply to all Civil Servants the rule making authority of the iii) Governor except those who opted not to be governed by The Khyber Pakhtunkhwa Civil Servants Leave Rules, 1979.

2. Admissibility of leave to civil servant: Leave shall be applied for, expressed and sanctioned in terms of days and shall be admissible to a civil servant at the following rate and scale:

A Civil servant shall earn leave only on full pay. It shall be calculated at the i) i rate of four days for every calendar month of the period of duty rendered and credited to the leave account as "leave on full pay" duty period of 15 days or less in a calendar month being ignored and those of more than 15 days being treated as a full calendar month, for the purpose. If a civil servant proceeds on leave during a calendar month and returns from it during another calendar month and the period of duty in either month is more than 15 days, the leave to be credited for both the incomplete months will be restricted to that admissible for one full calendar month only.

The provisions of clause (i) will not apply to vacation departments. A civil ii) ation department may earn leave on full pay as under:-

servant of a vacation department may e	
a) When he avails himself of full vacation	At the rate of one day for every calendar
	month of duty rendered
b) When during any year he is prevented	As for a civil servant in non-vacation
Leitime him calf of full vacation	Department for mat year
c) When he avails him self of only a part of	As in (a) above plus such proportion of 30
vacation	days as the number of days of vacation not
Vacation	taken bears to the full vacation

There shall be no maximum limit on the accumulation of such leave.

iii) When leave earned: All service rendered by a civil servant qualifies him to earn leave in accordance with these rules but shall not be earned during period of leave.

		leave in accordance with these rules but shall who channed during period of the					
District Education Of	ficer 4.	Grant of leave on full pay: (I) the magnetized of may be granted at one time by the competent authority shall b	f leave on full pay that e as follows:				
sistrict Ediler St.		Without Medical certificate	120 days				
	<u>(ii)</u>	With Medical certificate	180 days				
	<u>(II)</u>	Plus					
-		in ontino contino	365 days				

On medical certificate from Leave account in entire service. (iii) The maximum prescribed at (i) and (ii) of sub-rule (I) are 2) independent of each other. In other words a civil servant may be granted, at a time, total

leave on full pay on medical certificate upto the permissible extent in continuation of leave upto 120 days without medical certificate, subject to given conditions.

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Grant of leave on half pay-(1) Leave on full pay may be converted into leave on half pay at the option of the civil servant.

2) Debits to the leave account will be at the rate of one day of the former for every two days of the latter, fraction of one-half counting as one full day's leave on full pay.

3) The request for such conversion shall be specified by the civil servant in his application for the grant of leave.

4) There shall be no limit on the grant of leave on half pay so long as it is available by conversion in the leave account.

Conversion of leave account-(1) All leave at credit in the account of a civil servant who was in service on the Its day of July, 1978, shall be carried forward and expressed in terms of leave on full pay. The leave account in such cases shall, with effect from Its July, 1978, or in the case of a civil servant who was on leave on that date with effect from the date of his return from leave, be recast as under, ignoring the fraction if any:

ay
30 Days
1 Day
Day
15 Days
1 Day

2) In carrying forward the leave, the leave at credit of a civil servant in columns, 7 and 8 and half of the leave at credit in column 9 of the existing leave account shall be carried forward to the new leave account of the civil servant.

3) The leave availed under the existing rules from column 13(a) of the leave account shall be debited against the maximum limit of 365 days fixed under Rule-4 (I) (iii).

Leave not due- (1) Leave not due may be granted on full pay, to be offset against leave to be earned in future for a maximum period of three hundred and sixty five days in the entire period of service, subject to the condition that during the first five years of service it shall not exceed ninety days in all.

2) Such leave may be converted into leave on half pay.

3) Such leave shall be granted only when there are reasonable chances of the Civil Servant resuming duty on the expiry of the leave.

4) Such leave shall be granted sparingly and to the satisfaction of the sanctioning authority/but it shall not be admissible to the temporary Civil Servants.

Leave Salary-(1) Leave pay admissible during leave on full pay shall be the greater V-Vertical Officer

(Male) Swabi.

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the average monthly pay earned during the twelve complete months immediately preceding the month in which the leave begins; and

(b) the rate equal to the rate of pay drawn on the day immediately before the beginning of the leave.

When leave on half pay is taken, the amount calculated under clause (a) and
(b) of sub-rule (1) shall be halved to determine the greater of the two rates.

3) A Civil Servant shall be entitled to the leave pay at the revised rate of pay if general revision in pay of civil servants takes place or an annual increment occurs during the period of leave of the civil servant.

Sub Rule-3 Added vide No.FD.SO(SR-IV)5-54/80/Vol-III, dated 26.10.1994.

9. **Special leave to female civil servants.** A female servant may, on the death of her husband, be granted special pay on full pay not exceeding 130 days. This leave shall not be debited to her leave account and will commence from the date of death of her husband. For this purpose she will have to produce death certificate issued by competent authority either along with her application for special leave or, if that is not possible, the said certificate may be furnished to the leave sanctioning authority separately.

10. Maternity leave-(1) Maternity leave may be granted on full pay, outside the leave account, to a female civil servant to the extent of ninety days in all from the date of its commencement or forty five days from the date of her confinement, whichever is earlier.

2) Such leave may not be granted for more than three times in the entire service of a female civil servant except in the case of a female civil servant employed in a vacation department who may be granted maternity leave without this restriction.

3) For confinement beyond the third one, the female civil servant would have to take leave from her normal leave account.

4) The spells of maternity leave availed of prior to the coming into force of these rules shall be deemed to have been taken under these rules.

5) Maternity leave may be granted in continuation of, or in combination with, any other kind of leave including extraordinary leave as may be due and admissible to a female civil servant.

6) Leave salary to be paid during maternity leave shall be regulated as for other leave, in accordance with the formula provided in rule 8.

7) The leave salary to be paid during maternity leave will, therefore, remain unaffected even if any increment accrues during such leave and the effect of such an increment ; will be given after the expiry of maternity leave.

*Decision: -

A female Government servant proceeded on maternity leave; her pay shall continue to be drawn under the object-01100-Pay of officers-01200- Pay of Establishment excluding conveyance allowance during maternity leave period. Further more no appointments are made on leave vacancy. *FD tetter No.BI/5-17/95-96/FD dated 27.6.1996

Disability leave-(1) Disability leave may be granted outside leave account on each occasion up to a maximum of seven hundred and twenty days on such medical advice as the head of office may consider necessary, to a civil servant, other than civil servant in part time

service, disabled by injury, ailment or disease contacted in course or in consequence of duty or official position.

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2) The leave salary during disability leave shall be equal to full pay for the first one hundred and eighty days and on half pay for the remaining period.

12. Extraordinary leave (Leave without pay)-(1) Extraordinary leave may be granted outside leave account on each occasion up to a maximum period of five years at a time; provided that the civil servant to whom such leave is granted has been in continuous service for a period of not less that ten years. In case a civil servant has not completed ten years of continuous service, extraordinary leave without pay for a maximum period of two years may be granted at the discretion of the leave sanctioning authority, This leave can be granted irrespective of the fact whether a civil servant is a permanent or temporary employee.

The maximum period of extraordinary leave without pay combined with leave on full pay and leave on half pay shall be subject to the limit of 5 years prescribed in FR-18, i.e. the maximum period of extraordinary leave without pay that would be admissible to a civil servant who has rendered continuous service for a period of not less than 10 years shall be 5 years less the period of leave on full pay and leave on half pay so combined.

3) Extraordinary leave may be granted retrospectively in lieu of absence without leave:

4)* Notwithstanding anything to the contrary contained in the preceding sub-rules, the Finance Department may in cases of individual hardship, grant extra-ordinary leave in excess of the maximum leave admissible to a civil servant under sub-rule(1) or sub-rule(2), as the case may be. *Added vide No.FD.SO(SR-IV)5-54/80.Vol-IV dated 6-7-1999.

CLARIFICATION.

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i) Extra ordinary leave (Leave without pay) of 5 years is admissible to a Government servant for 'each spell' of 10 years of continuous service. If, however, a civil servant has not completed 10 years of continuous service on each occasion/time. Extra Ordinary leave (leave without pay) for maximum period of two years may be granted at the discretion of the Competent Authority.

ii) Maximum leave availed during one continuous period of 10 years should also not exceed 5 years. The cases already decided need not be reopened.

No. FD/SO(SR-IV)5-54/80/Vol-IIII, dated 31.7.91. 13. Leave on Medical Certificate. Leave applied for on medical certificate shall not be refused. The authority competent to sanction leave may, however, at its discretion, secure a second medical opinion by requesting the Civil Surgeon or the Medical board to have the applicant medically examined. The existing provisions contained in Supplementary Rules 212,213 and Rules 220 to 231 for the grant of leave on medical grounds will apply.

14. Leave preparatory to retirement- The maximum period up to which a Civil Servant may be granted leave preparatory to retirement shall be 365 days only. It may be taken subject to availability in the leave account, either on full pay or partly on full pay and partly on half pay, or entirely on half pay, at the discretion of the Civil Servant and it will not extend beyond the age of superannuation.



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15. **Recreation leave** - Recreation leave may be granted for fifteen days once in a calendar year, the debit to the leave account may, however, be for 10 days leave on full pay;

Provided that such leave shall not be admissible to a Civil Servant enjoying vocation.

Note: Casual leave (as Recreation Leave) shall, however, continue to be granted for 10 days only subject to other conditions under conditions under Government instructions.

16. Leave Ex-Pakistan: 1) Leave Ex-Pakistan may be granted on full pay to a Civil Servant who applies for such leave or who proceeds abroad during leave, or takes leave while posted abroad or is otherwise on duty abroad & makes a specific request to that effect. 2) The leave pay to be drawn abroad shall be restricted to a maximum of three thousand rupees per month.

3) The leave pay shall be payable in sterling, if such leave is spent in Asia other than Pakistan and India.

4) Such leave pay shall be payable for the actual period of leave spent abroad subject to maximum of one hundred and twenty days at a time/.

maximum of one number and twenty days are unner
 5) The Civil Servants appointed after 17th May 1958, shall draw their leave salary in rupees in Pakistan irrespective of the country where they spend their leave.

rupees in Pakistan inespective of the country intereated and be subject to the same limits and
 6) Leave Ex-Pakistan will be regulated and be subject to the same limits and conditions as prescribed in rule 4,5 and 12.

17. Assigning reasons for Leave- It shall not be necessary to specify the reasons for which leave has been applied, so long as that leave is due and admissible to Civil Servant.

18. Commencement and end of Leave- Instead of indicating whether leave starts/ends in the forenoon or afternoon, leave shall commence from the day following that on which a Civil Servant hands over the charge of his post. It shall end on the day preceding that on which he resumes duty.

19. Absence after the expiry of Leave-Unless his leave is extended by the leave sanctioning authority, a Civil Servant who remains absent (except for circumstances beyond his control) after the end of his leave shall not be entitled to any remuneration for the period of such absence, and double the period of such absence shall be debited against his leave account. Such debit shall if there is insufficient credit in the leave account, be adjusted against future accumulations. Such double debit shall not preclude any disciplinary action that may be considered necessary under any rule for the time being in force, after affording reasonable opportunity to Civil Servant concerned to indicate his position.

20. Encashment of Leave preparatory to retirement: 1) Where a civil servant opts not to avail the leave preparatory to retirement admissible to him under rule 14, he shall be allowed leave salary for the period for which leave preparatory to retirement is admissible, subject to a maximum of 365 days. For the purpose of lump sum payment in lieu of leave preparatory to retirement only the senior post allowance will be included in the leave pay so made to the Civil Servant either in lump sum at the time of retirement or may at his option, be drawn by him month-wise, in arrears, for and during the period of L.P.R.

District Education Officer



2) Encashment of leave preparatory to retirement (LPR) not exceeding three hundred and sixty five days shall be effective from the first day of July, 2012 and shall, for the entire period of leave refused or opted for encashment, be applicable to a civil servant retired, as the case may be, retiring on or, after the first day of July, 2012, provided such leave is available at his credit to a maximum of three hundred and sixty-five days.

(3) If at any time during such period, leave is granted on account of ill health supported by medical certificate or for performance of Hajj, the amount of cash compensation on account of leave pay shall be reduced by an amount equal to the leave pay for the period of leave so granted

(4) Leave pay for the purpose of encashment of LPR shall be computed on the basis of pay and allowances reckonable towards pension as shown in the last pay certificate of a civil servant".

Rule-20 substituted vide FD No.SOS: (IV)5-54/80-Vol-11,dated 24.8.1983 & further amended vide FD No.SO FR 5-92/2005/ Vol-V,dated 13/12/2012.

Government Decision: It has now been decided that;

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a) Unless a civil servant opts to proceed on LPR or submits an application for LPR, he may be deemed to have opted for encashment of LPR according to the rules; and

b) On receipt of a request from a civil servant deemed to have opted for encashment of LPR, the authority competent to sanction LPR, will issue formal sanction for the payment of cash compensation.

No.FD SO(SR-IV)5-54/80-Vol-II dated 26.2.1986

Clarification:- The Civil Servants seeking retirement on voluntarily basis should be treated equally and the option should not be necessary if they want to encase their LPR. However, a civil servant who wants to proceed on retiring pension shall have to wait for 365 days after qualifying service of 25 years for the purpose of encashment of LPR. NO.FD.SO (SR-IV) 5-54/80/Vol-II, dated 20:11:1986.

COMMENTARY:-Under the above clarification encashment of LPR is admissible on completion of 26 years qualifying service.

Decision: A civil servant may either draw leave pay for the period for which leave is admissible subject to a maximum of 365 days in lump sum after retirement or on month-to-month basis during such period as under:

a) Leave pay may be drawn at any time for which duty has already been rendered; and

b) The rate of pay shall be the rate admissible at the time the leave pay is drawn. This order shall take with immediate effect. NO. FD.SO(SR-IV)5-54/80-Vol-III, dated 12.4.1988.

21. In-service Death etc: 1) In case a Civil servant dies, or is declared permanently incapacitated for further service by a Medical Board, while in service, a lump sum payment equal to leave pay up to 180 days out of the leave at his credit shall be made to his "family" as defined for purposes of the family pension or, as the case may be, to the civil servant.

2) For the purpose of lump sum payment to the family of civil servant who dies while in service only the "Senior Post Allowance" will be included in the "leave Pay" so admissible Rule-21 substituted vide FD No.SO(SR-IV)5-54/80-Vol-III dated 3.5.1988.

District Education Officer (Male) Swabi.

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Recall from Leave- If a civil servant is recalled to duty compulsorily with the 22. approval of leave sanctioning authority, from leave of any kind, which he is spending away from his Headquarters, he may be granted single return fare Plus Daily Allowance as admissible on tour from the station where he is spending his leave to the place where he is required to report for duty. In case he is recalled to duty at Headquarters and his remaining leave is cancelled, then fare admissible shall be for one-way journey only. If the order of recall to the civil servant is optional, then the concession above mentioned will not be admissible.

Any Type of Leave may be Applied:- A civil servant may apply for the type of 23. leave which is due and admissible to him and it shall not be refused on the ground that another type of leave should be taken in the particular circumstances for example, a civil servant may apply for extraordinary leave or leave on half pay even if leave on full pay is otherwise due and admissible to him, or he may proceed on extraordinary leave followed by leave on half pay and full pay rather than on full pay, half pay, and without pay.

Combination of different types of leave, etc:- One type of leave may be combined with joining time or with any type of leave otherwise admissible to civil servant. 24.

Provided that leave preparatory to retirement shall⁴ not be combined with any other kind of leave.

Civil Servants on leave not to join duty without permission before its expiry:-25. Unless he is permitted to do so by authority which sanctioned his leave a civil servant on leave may not return to duty before expiry of the period of leave granted to him.

Leave due may be granted on abolition of post, etc:- (1) When a post is 26. abolished, leave due to the civil servant, whose services are terminated in consequence there of, shall be granted without regard to the availability of a post for the period of leave

The grant of leave in such cases shall, so long as he does not attain the age of 2) superannuation be deemed automatically to have also extended the duration of the post and the tenure of its incumbent.

Manner of handing over charge, when proceeding on leave, etc:- (1) A civil 27. servant proceeding on leave shall hand over the charge of his post, and if he is in grade-16 and above, he shall, while handing over charge of the post, sign the charge relinguishment report.

If leave Ex-Pakistan has been sanctioned on medical grounds, the civil 2) servant shall take abroad with him copy of the medical statement of his case.

Assumption of charge on return from leave, etc: (1) A civil servant, on return 28. from leave, shall report for duty to the authority that sanctioned his leave and assume charge of the post of which he is directed by that authority unless such direction has been given to him in advance.

2) In case he is directed to take charge of a post at a station other than that from where he proceeded on leave, travel expenses as on transfer shall be payable to him

Account office to maintain leave account - (1) Leave account in respect of a civil servant shall be maintained as part of his service book.

(Male) Swabi.

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2) The accounts offices shall maintain the leave accounts of civil servants of whom they were maintaining the accounts immediately before the coming into force of these rules.

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30.. Leave to lapse when civil servant quits service - All leave at the credit of a civil servant shall lapse when he quits service.

31. Leave application its sanction, etc - (1) Except where otherwise stated, an application for leave or for an extension of leave must be made to the head of office where a civil servant is employed and in the case of the head of office to the next-above administrative authority and the extent of leave due and admissible shall be stated in the application.

2) An audit report shall not be necessary before the leave is sanctioned.

3) When a civil servant submits a medical certificate for the grant of leave, it shall be by an authorised medical attendant in the prescribed form.

4) Leave as admissible to a civil servant under these rules may be sanctioned by the head of a Department, attached Department, Office or any other officer authorized by him to do so and, when so required, leave shall be notified in the official Gazette.

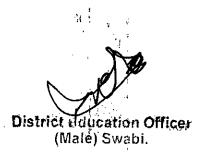
5) In cases where all the applications for leave can not, in the interest of public service, be sanctioned to run simultaneously, the authority competent to sanction leave shall, in deciding the priority of the applications consider:-

(i) Whether, and how many applicants can, for the time being, best be spared.

- (ii) Whether any applicants were last recalled compulsorily from leave; and
- (iii) Whether any applicants were required to make adjustment in the timing of their leave on the last occasions.

LEAVE SANCTIONING AUTHORITY

Kind of leave	Civil servants drawing pay in BPS	Sanctioning authority		
All kinds of leave except study leave and	17 and above other than civil servants in All Pakistan Unified Grades, working in Attached Departments or any other office or organization.	Administrative Secretary		
disability leave	In other cases	Appointing Authority		
Study Leave and Disability leave	All civil servants	Finance Department		
(Rule-3 of West Pakist I(S&GAD)1-46/80 dat	an Civil Services Delegation of powers Rules, 1962 read with F ed 19.4.1982).	FD Notification No. SOR-		



CHALLAN NO.

. P. -

CHALLAN OF CASH PAID IN TO THE NATIONAL BANK SWABI (0406)

PROVINCIAL To be filled in To be filled in the Remitter or the Depts Officer or Treasury Name or designation and Full barticulars of the By whom Head of remittance and of address of the persons on Amount Account Tendered whose Behalf money is paid authority if any Mr. Kijay at ullah \$1. Abdul Akbar Name Er-SpST BPS-19 13=225273, 62243 1225231 12 5/ Signature Total C02243 (in words Rupees) Date An 549192 18 find di Acobernt SWAR **Received Payment** Treasurer **Treasury Office**

EXERM OF MEDICAL CERTIFICATE.

Signature of applicant

MEDICAL CERTIFICATE FOR CIVIL SERVANTS RECOMMENDED FOR LEAVE OR EXTENSION.

 1
 after careful personal examination of the case, hereby certify

 bat.
 whose signature is given above, is suffering

 frem
 and I consider that a period of absence from duty;

 ot
 more with effect from

 is absolutely

 becossary for the restoration of his/her health.

Oated, the Government Medical attendant

APPLICATION FOR LEAVE.

Notes:-Item 1 to 9 must be filled in by all applicants. Item 12 applies only in the case of Government servants of Grade 16 and above.

- L Name of applicant
- 2. Leave Rules applicable.

3. Post held.

4. Department or office

5. Pay

7.

9.

6. House Rent Allowance/conveyance allowance or other compensatory allowances drawn in the present post.

(a) Nature of leave applied for

(b) Period of leave in days.

(c) Date of commencement.

8. Particular Rule/Rules under which leave is admissible.

(a) Date of return from last leave

(b) Nature of leave.

(c) Period of leave in days.

Signature of applicant

10. Remarks and recommendation of the Controlling Officer.

Certified that leave applied for is admissible under Rule and necessary conditions are fulfilled.

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Report of Audit Officer

Signature/ Designation.

Signature / Designation

Orders of the sanctioning authority certifying that on the expiry of leave the applicant is likely to return to the same post carrying the compensatory allowances being drawn by him.

District Education Officer (Male) Swabi.

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Signatus e/Designation .

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		GOVERNMENT/DEPARTMENT SERV	ED UND	DER	DATE OF DATE OF	LEAV		
2 3	FROM TO	Dist CEducation Officer		PERIOD OF DUTY	OF OF	(II)		
4	YМД	Officer Officer	-	OOF	AINI	UNT		
S	FULL CLENDAR MONTHSS	set 1		סטדץ	DATE OF COMMENCEMENT OF SERVICE	ACCOUNT OF MR/MISS/MRS		
6	DAYS	LEAVE EARNED ON FULL PAY @ 4 I EAC는 CALENDAR MONTH	DAYS F(OR	OF SERV PËRAN	SS/MRS-		
7	DAYS	LEAVE AT CREDIT (COLUMN 21+6)			VICE-	Cr r		ر
8	FROM		۲. ۱۰.	PERIOD	TION			
9	то	, ,	,	U 		A		
-10	DAYS	LEAVE ON FULL PAY WITHOUT ME CERTIFICATE SUBJECT TO MAXIMU 120 DAYS & 365 DAYS IN CASE OF L	JM OF			FORM OF LEAVE ACCOUNT ONDER		
. 11	DĄYS	LEAVE ON FULL PAY ON MEDICAL CERTIFICATE SUBJECT TO MAXIMU 180 DAYS	JM OF	· · ·		ONDE		Form []]
12	DAYS	LEAVE ON FULL PAY ON MEDICAL CERTIFICATE SUBJECT TO MAXIMU 365 DAYS IN ENTIRE SERVICE	JM OF					
13	DAYS	IN TERM OF FULL PAY	PAY	LEAV				
14	DAYS	IN TERM OF ON FULL PAY	HALF	AVE	-			
15	DAYS	RECREATION LEAVE OF 15 DAYS IN YEAR BUT 10 DAYS TO BE DEBITED	N A) 	TAKEN			-	
16	DAYS	IN TERM OF HALF PAY	DUE	LEA				٩
17	DAYS	IN TERM OF FULL L PAY				TOL	001	
18	DAYS	ACTUAL NO OF DAYS	. ș. Î	ABSI	-7 9 15			
19	DAYS	NO OF DAYS DEBITED(DOUBLE THE ACTUAL NO OF DAYS)		ABSENCE	ž			
20	DAYS	TOTAL LEAVE (COLUMNS 10+11+12+14+15+17+19)	; -			۰		
21	DAYS	BALANCE ON 1-7-1978 RETURN FRO (COLS.7-20)	OM LÉA	VE 	-			
22		REMARKS	, 					
<u>23</u>		ATTESTATION	;					
·	- · · · · · · · · · · · · · · · · · · ·	h	n ang tak L	· ·		-	, v .	

Annexuse-f

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) SWABI

Email address: emis_stwictier, shoeldon: Ph# 0938-280239

RETIREMENT ORDER (To be substituted with same No & date)

Sanction is hereby accorded to the grant of premeture Petirement from Govt. service in r/o Mr. Kifayat Ullah SPST GPS Wali Baz Khan Koroona Bam Khel (Swabi) w.e.f. <u>30-07-2019 (A.N)</u> without availing the benefit of encashment of leave in lieu of LPR due to non-completion of 26-year qualifying service.

Note:

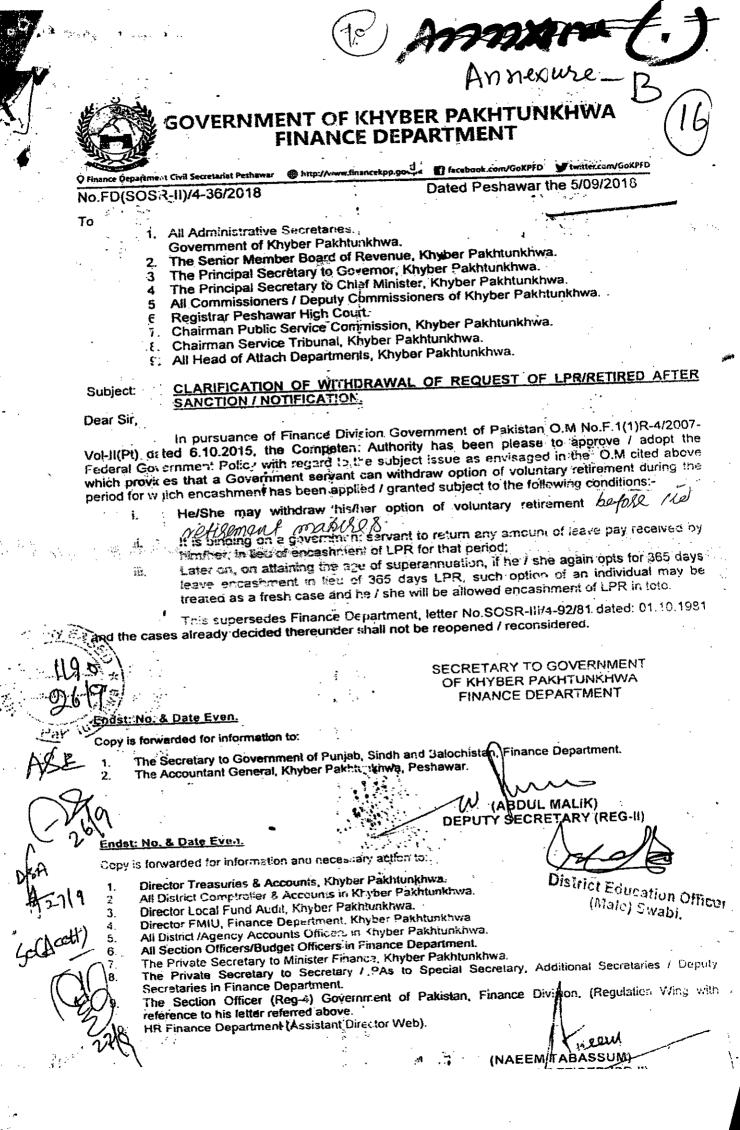
 Entry to this effect should be made in his Service books & leave account.

Endst. No $\frac{125}{Retirement}$ File No.1/Vol:III/PST/Dated $\frac{0.2}{0.2}$ /2019 Forwarded to the:

- 1. District Accounts Officer Swabi.
- 2. District Monitoring Officer Swabi.
- 3. SDEO (Male) Swabi a/w original S/Book
- 4. EMIS Cell local office.
- 5. Official Concerned.

DISTRICT EDUCATION OFFICER

(NISAR MUHAMMAD) DISTRICT EDUCATION OFFICER (MALE) SWABI





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GOVERNMENT OF KHYBER PAKHTUNKHWA FINANCE DEPARTMENT

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All Administrative Secretaries 5 Government of Khyber Pakhturikhwa.

- The Senior Member Board of Revenue, Khyper Pakri Junkhwa.
 - The Principal Secretary to Governor, Khyber Pakhtunknwa
- The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
- All Commiss oners / Deputy Commissioners of Knyber Pakhtunkhwa
 - Pegistrar Pesnawer High Coult. Э
 - Chairman Public Service ConFriesson, Khyber Pakhtunkhwa
 - Chuirman Service Tribunal, Khyber Pakhtunkhwa ñ
 - All Head of Attach Departments, Khyber Pakhtur 4mva . }

CLARIFICATION OF WITHDRAWAL OF REQUEST OF LPRIRETIRED AFTER Subject SANCTION ! NOTIFICATION

Dear Sir.

In pursual to of Finance Division Government of Play stan O M No F 1(1)R-4/2002-Vol-II(PI) arted 6.10.2015, the Competen, Authority has been please to approve adopt the רב לסיפו לכ י חתה דמיכי שוח המנגיל י זיי שולופכן והשני אה מתייאקפיט וחיניים O.M כיותר בעסיי which provides that a Government servant can withdraw option or voluntary refirement during - should for W 1.0h encashment has been applied granted subject to the for which conditions -

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The Scotlon Officer (Rog-) Government of Pakuten, Promo Carifo, Reprint

SECRET-PY TO GOVERNMENT OF KHYBER PAKHYE STHNA TO FINANCE DEPERTMENT

(ABDUL MALIK) DEPUTY SECRETARY (REG-II)

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Endst: No. & Date Even.

Copy is forwarded for information to:

The Secretary to Government of Punjab, Sindh and Balochistic Finance Department The Accountant General, Kityber Pak "1, "Anwa, Peshawa"

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DISTRICT EDUCATION OFFICE (MALE) SWABI

SCRUTINY COMMITTEE.

Consequent upon approval of the competent authority, the following committee is hereby constituted for scrutiny of documents and to find out the legal position/grounds regarding appeal of Mr. Kifayat Ullah Ex-SPST of GPS Wali Baz Khan Korona Bam Khel Swabi requesting for withdrawal of his retirement order (copy attached), re-instatement in service & deciding intervening period.

- 1. Mr. Taqweem-Ul-Haq Principal GHSS Sheikh Jana Swabi. Convener Member
- 2. Mr. Fida Muhammad Principal GHS Sheikh Dheri. Furthermore, TOR's may be:
- 1. Applications submitted by the employee on 13-09-2019 & 18-10-2019 be scrutinized.
- 2. The grants like RB&DC, B/F, EEF & other pensionary benefits be checked out whether he has availed all or some of the pensionary benefits or otherwise.
- 3. The notification issued by the Finance department be also sought out and it may be reported whether his case is mature or not in the light of said letter.
- 4. Any other comments will be appreciated in this regard.

The committee officers are directed to probe into the matter and submit detail report/recommendations within a week for further processing.

3251-57 28705/ 12020 Endst. No

(MUHAMMAD IDREES) DISTRICT EDUCATION OFFICER (MALE) SWABI

Annexuse

Forwarded to the:

- 1. District Accounts Officer Swabi.
- 2. District Monitoring Officer Swabi.
- 3. Mr. Taqweem-Ul-Haq Principal GHSS Sheikh Jana Swabi.
- 4. Mr. Fida Muhammad Principal GHS Sheikh Dheri Swabi.
- 5. ADEO (Estab) Local office.
- 6. SDEO Male Swabi.
- 7. Official concerned.

District Education Officer (Male) Swabi.

DFFICER DISTRICT EDU (MALE) SWABI

The District Education Officer

Male Swabi

Subject:-

Τo

Sir,

SUBMITTING DETAIL REPORT/COMMENTS REGARDING THE APPEAL OF MA

In reference to your letter No.3251-57 dated 28/5/2020, it is here by stated that the committee constituted by your office has probed into the said matter and has summarized the whole matter as thus,

- In pursuance of his specific request, Mr. Kifayatullah Ex- SPST BPS 14 was allowed pre-mature retirement from service by DEO (Male) Swabi under Endost: No.11258-62, dated 02-09-2019 on domestic ground vide application for retirement dated 01-08-2019. Annexure (A).
- In his application dated 13/9/2019, Mr. Kifayatullah Ex-SPST BPS-14 has stated that he has been able to settle his family affairs and is now in the position to resume his service. He has therefore requested that his Pre-Mature retirement be cancelled and he be allowed to resume duty to complete his service tenure. Annexure (B)
- During his intervening period, he has regularly attended school and CPD trainings while he was officially declared as retired person. Statement of the head teacher and a photocopy of teacher attendance register is attached herewith. Annexure (C&D)
- 1. We have scrutinized the application submit by the employee for the withdrawal of his retirement order and reinstatement in service and found that no dairy number is given to the application in the DEO (Male) office, secondly, no correspondence was made within the office, thirdly, the applicant did not follow the proper channel in submitting his application.
- He has availed commutation of Rs.12, 87278/- under Cheque No.1777575 dated 17/10/2019. He has also availed monthly pension Rs.225273/- and EEF of Rs.30000/- under Cheque No.1359981544 dated 18-11-2019, which is still not cashed by the employee and has thus expired, but Mr. Kifayatullah has refunded all benefits he has availed so far. He refunded commutation Rs.1287278/- under Challan No.1 dated 11-5-2020 and pension amount of Rs.225273/- under challan No.09. Annexure (E,F,G&H)
- 3. We have sought the notification issued by the finance Department and concluded that his case is mature. Annexure (1)
- 4. Comments:-
- A. If Mr. Kifayatullah is reinstated in his service it would become a precedent for others, which may cause trouble for the Department.
- B. He has refunded a big amount of Rs.1512551 with the direction of high ups as he stated, before inquiry/ Scrutiny on May 11, 2020. Now if he is not reinstated in service, it would be difficult to refund the amount back to him.
- C. In intervening period he consistently attended school but neither IMU nor Education Officers took notice of it, while he was officially declared as retired person:

0/2020

Tagweem ul Hag Principal GHSS Sheikh Jana

Fida Muhammad Principal GHS Sheikh Dheri

District Education Officer (Male) Swabi.

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) DISTRICT SWABI NOTIFICATION.

- 1. WHEREAS, Mr. Kifayatullah SPST, GPS Wali Baz Koroona submitted an application on 21/8/2019 duly forwarded by Head Teacher and ASDEO concerned for pre-mature retirement.
- 2. AND WHEREAS, the then DEO (M) after accepting his request, accorded sanction for pre-mature retirement w.e.f 30-7-2019 vide Endst No. 11258-62/Retirement File No.1/Vol:III/PST Dated 02/09/2019.
- 3. AND WHEREAS, the official concerned submitted pension papers duly forwarded by the SDEO (M) concerned for final payment and other pensionary benefits which were further forwarded to DAO office Swabi.

- 4. AND WHEREAS, the DAO Swabi after processing his pension case issued commutation cheque on 17/10/2019 as well as regular monthly pension thenceforth.
- 5. AND WHEREAS, the teacher concerned submitted another application for cancellation/withdrawl of his retirement order on 18/10/2019.
- 6. AND WHEREAS, an inquiry committee was constituted comprising of Mr. Taqweem UI Haq Principal GHSS Sheikh Jana and Fida Mohammad Principal GHS Sheikh Dheri vide Notification No. 3251-57 Dated: 28/05/2020 to look into the matter and submit/propose recommendations thereof.
- 7. AND WHEREAS, The committee after thorough perusal and examining the relevant record submitted inquiry report and recommended that his case has got matured hence attained finality in the light of Finance Department Letter No.FD(SOSR-II)/4-36/2018 dated 5/09/2018 which cannot be withdrawn being a closed transaction.
- 8. AND WHEREAS the Competent Authority (District Education Officer (M) Swabi) after having considered the evidences and recommendations of the inquiry committee is of the view that retirement sanction in respect of Kifayatullah Ex-SPST GPS Wali Baz Koroona is matured and has got finality.
- 9. NOW, THEREFORE, I Muhammad Idrees, District Education Officer (M) Swabi as Competent Authority is pleased to reject his request for withdrawl of retirement sanction as recommended by the inquiry committee.

06_12020. Dated Endst: No

DISTRICT EDUCATION OFFICER (M) SWAR

Copy for information to ;-

District Education Officer (Male) Swabi.

Innexure-C,

- 1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
- 2. District Monitoring Officer Swabi.
- 3. District Accounts Officer Swabi.
- 4. SDEO (M) Swabi.
- 5. Teachers Concerned.
- Master File.

OCH DISTRICT EDUCATION OFFICER (M)

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(DR. MUHAMMAD IDREES)

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2007 P L C (C.S.) 718

[Supreme Court of Pakistan]

Present: Syed Deedar Hussain Shah and Falak Sher, JJ

MUHAMMAD YOUSAF BUTT

Versus

lase Judger an

CENTRAL BOARD OF REVENUE and another

Civil Appeal No.2587 of 2001, decided on 9th June, 2004.

(On appeal from the judgment dated 19-9-2001 passed by the Federal Service Tribunal in Appeal No.206(K)(CS/2000).

Constitution of Pakistan (1973)---

----Art. 212---ESTACODE, Chap. No. X, Serial No. 7---Civil servant had sought premature retirement upon completion of 25 years of qualifying service for health reasons which request was eventually accepted by notification dated 30-3-2000---Civil servant, subsequently acclaimed to have withdrawn the option through letter dated 29-3-2000 addressed to the Competent Authority, alleged to have been received the same day i.e. a day prior to the acceptance notification, seeking recalling of the notification of his premature retirement, which request was turned down---Validity---Civil servant though had a right to withdraw the option before its acceptance but not thereafter since the same had attained finality being a past and closed transaction, pursuant whereto he admittedly had received all the pensionary benefits.

M.M. Aqil Awan, Advocate Supreme Court and Ch. Muhammad Akram, Advocate-on-Record for Appellant.

Nahida Mehboob Elahi (Standing Counsel) for Respondents Nos. 1-2.

Date of hearing: 9th June, 2004.

JUDGMENT

1. of 5

FALAK SHER, J.--Appellant while serving as Commissioner of Income Tax (Appeals) Zone-VI, Karachi in BS-20 through letter dated 25-2-2000 sought premature retirement, consequent upon completion of 25 years of qualifying service reportedly for health reasons, hotly pursuing it with the prescribed formalities which was eventually accepted vide Notification, dated 30-3-2000 of the Income Tax Establishment, Government of Pakistan Revenue Division, Central Board of Revenue, relevant text whereof for the sake of convenience is reproduced hereinbelow:

"(To be published in the Gazette of Pakistan Part-I)

Government of Pakistan Revenue Division

District Education Officer (Male) Swabi.

03-Jun-20, 11:46 AM

Central Board of Revenue (Administration Income tax)

Islamabad, the 30th March, 2000

Notification (Income-tax Establishment)

<u>No.88-ITE/2000</u>.---The competent Authority has been pleased to accept premature retirement from Government Service of Mr. Muhammad Yousaf Butt, Commissioner of Income Tax (BS-20), Appeals Zone-VI, Karachi, who shall proceed on premature retirement with effect from 26-5-2000."

2. Subsequently, acclaiming to have withdrawn the option through letter, dated 29-3-2000 addressed to the Chairman, Central Board of Revenue, Government of Pakistan, Islamabad alleged to have been received by the Chairman's Secretariat vide daily Diary No.2402 of the same date i.e. a day prior to the acceptance notification, sought recalling of the Notification through letter dated 13-5-2000 which request was turned down vide letter, dated 26-5-2000 enshrining the following:--

"From

Mr. S. Anjum Bashir, Secretary (DTA).

То

Mr. Muhammad Yousaf Butt,

Commissioner of Income Tax (Appeals-VI),

26-Garden Road, Income Tax Officers Colony, Karachi.

Subject: <u>Retirement on completion of 25 years service</u>

I am directed to refer to your request dated 13-5-2000 regarding withdrawal of your option to retire on completion of 25 years qualifying service.

(2) The matter has been examined in detail in consultation with Establishment Division and regretfully inform you that you cannot withdraw your option as per terms of Note-1, below CSR 465(b) read with Establishment Division's O.M. No.F.14/10/95-R.2, dated 25-8-1996, a Civil Servant cannot be allowed to withdraw his request for premature retirement after its acceptance by the Competent Authority.

(3) You have already been notified to retire w.e.f. 26-5-2000 vide Notification No.88-ITE/2000, dated 30-3-2000."

3. Against which his appeal, dated 21-6-2000 addressed to the President of Pakistan having remained un-responded, impugned legality thereof before the Federal Service Tribunal urging bifold submissions viz. had withdrawn the option of premature retirement prior to the issuance of the acceptance notification which even otherwise has not been accepted by the Competent Authority.

4. Which was dismissed vide impugned judgment, dated 19-9-2001 repelling both the submissions opining that the letter of withdrawal dated 29-3-2000 being a fake and forged document, the Competent Authority had accepted the option, in addition to the appeal being barred by time, concluding as under:--

"(12) Learned counsel for the appellant, during the course of arguments, has argued that the appellant himself gone to Islamabad and submitted application dated 29 3-2000, but when he was confronted with the situation that the appellant was very much present on duty at Karachi on the said date, then he changed the version and argued that the cousin of the appellant had gone to Islamabad to submit the application, which was received by the Department and diarized at serial No.2402 on 29-3-2000.

(13) This submission made by the learned counsel for the appellant is not acceptable to us due to the reason that there is cutting in the date in the first instance and secondly <u>when the Diary No."2402" was verified from the original diary register, it appears that serial No.2402</u>, was a letter received from "HQ Artillery 5 Corps., Karachi-4", such photo copy has been kept on record after sealing the original. This shows that the diary number, which was given by the appellant, is not only fake and forged one but appears to have beefs manoeuvred only to create a ground and to show that the said application was moved prior to the issuance of the notification. If at all the appellant was so interested in withdrawal of his option for retirement on medical ground, he could have sent it by fax immediately when he got advice from the Doctors that he could continue in service, but this was not done: No doubt, option once made can be withdrawn or taken back prior to the issuance of the notification and such mention finds place in ESTACODE Serial No.6(2), page 968, 2000 Edition, which is reproduced below:-

"(2) The matter has been examined in consultation with the Law Division and the Finance Division and it has been decided that, in partial modification of the existing rules/orders, if a Government servant withdraws his application for premature retirement or modifies the date of retirement, before its acceptance by the Competent Authority, the application or the date of retirement shall be deemed to have been withdrawn or modified, as the case may be."

(14) In such a situation it appears that moving of belated application is nothing but afterthought and if the appellant had the intention to withdraw the option for retirement, he could have done so at an early date and when this was not done, application appears to have been planted with fake diary number, which has been compared with the original number where no such mention finds place and in such circumstances, we will not be in a position to consider the submissions made by the counsel for appellant that the application dated 29-3-2000, was well within time. No doubt, the fact of non-genuineness of the application dated 29-3-2000 is not mentioned in the comments but the very receipt of the said application has been denied, as such, the argument of learned counsel for appellant in that context is without any force. At the same time, the argument of learned counsel for the respondent about limitation is worthy of consideration on the ground that the impugned Notification is dated 30-3-2000 against which departmental appeal was filed on 13-5-2000 and the rejection order was passed on 26-5-2000, whereafter the appellant addressed appeal to the President of Islamic Republic of Pakistan on 21-6-2000 and when the same was not responded, he filed service appeal before this Tribunal on 11-10-2000. Calculation if made reveals that the time will be counted from the date of Notification i.e. 30-3-2000 meaning thereby that the appeal was to be filed within 30 days from the date of impugned order, but the appellant filed appeal on 13-5-2000, which was rejected on 26-5-2000. Thereafter, the appeal was made to the President of Islamic Republic of Pakistan on 21-6-2000 but in all fairness, the said appeal ought to have been made within 30 days from the date of impugned order. In such circumstances, the question raised by the counsel for the respondents has some force. We are in respectful agreement with the authorities cited by the counsel for the respondents, but the judgment of learned Sindh Service Tribunal in Appeal No.11 of 1999, cited by counsel for appellant, appears to be somewhat distinguishable as in the instant case the Department itself had wiftten that they need the services of the appellant therein, but subsequently, his case was idered whereas in the present case the Department has not at all claimed that it

District Education Officer 3 of 5 (Mole) Swabi. Case Judgement

needed experienced persons' as has been claimed by the appellant."

5. Hence the captioned appeal by leave of the Court reiterating the submission, additionally assailing the finding as to limitation contending that the appeal before the Tribunal was filed within the statutory period awaiting fate of the departmental appeal.

6. Which we are afraid is utterly misconceived even if the plea as to limitation is accepted.

7. Adverting to the submission as to the alleged withdrawal of the sought for premature retirement letter dated 29-3-2000, it may be pointed out that though the appellant had a right to withdraw the same before its acceptance vide Notification dated 30-3-2000, as postulated by serial No.7 of Chapter No.X of the ESTACODE styled as "retirement and re-employment", text whereof for the sake of convenience is reproduced hereinbelow:--

"SI. No.7 <u>Recall to duty after premature retirement</u>.---Attention is invited to Establishment Division's O.M. No.23/2/81-CV(B) dated 12-4-1981 according to which option to withdraw or modify the request for premature retirement is available to a Government servant only before the said request is accepted by the Competent Authority. Requests for premature retirement once accepted by the competent authority cannot, repeat cannot, be allowed to be withdrawn or modified. Recall to duty after acceptance of request for voluntary retirement amounts to re-employment for which approval of the Prime Minister is required.

(2) Ministries/Divisions are requested to bring the above position to the notice of all concerned including their attached departments and subordinate offices, autonomous and semi-autonomous organizations, etc. to ensure strict compliance with the above stated provision;"

but not thereafter since the same attained finality being a past and closed transaction. Pursuant whereto the appellant admittedly had received all the pensionary benefits which even otherwise has been factually found to be a fake and forged document which finding is duly borne out from the register which was produced in these proceedings by the learned Standing Counsel on behalf of the respondents.

7-A. Likewise the second plea that the President was the competent authority to accept the appellant's request for premature retirement banking upon section 5 of the Civil Servants Act, 1973 read with Rule 6(1) of The Civil Servant (Appointment, Promotion and Transfer) Rules, 1973 and Rule 2(2) of The Government Servants (Efficiency and Discipline) Rules, 1973, relevant texts whereof for the sake of convenience of reference are reproduced hereinbelow seriatim:--

Section 5

"(5) <u>Appointments</u>.--- Appointments to an All Pakistan Service or to a civil post of the Federation or to a civil post in connection with the affairs of the Federation, including any civil post connected with defence shall be made in the prescribed manner by the President or by a person authorized by the President in that behalf."

"Rule 6(1). The authorities competent to make appointments to the various posts shall be as follows:

Posts.

site to

Appointing Authority

District Education Officer

4 of 5

1.

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(24)

Posts in basic pay scale 20 and above President or equivalent, i.e. posts carrying pay with the maximum of Rs.5,240 and above.-----"

"Rule 2(2). `authority' means the President or an officer or authority designated by him to exercise the powers of the authority under these rules;"

is ill-founded because plain reading thereof, patently spells out that under section 5 of the Civil Servants Act, 1973 the appointing authority is the President or a person authorized by the President in that behalf and Rule 6(1) (ibid) having been made pursuant to the Rule-making power perceived by section 25 (ibid) is subservient thereto, whereunder serial No.2 of Chapter No.X of the ESTACODE contemplates that the competent authority in the case of Grade 21 Officers and above is the Prime Minister and in the case of Officers in Grade 17 to 20 is the Secretary of the Ministry/Division concerned which in the instant case happens to be the Chairman, C.B.R. Ex officio Secretary, who has accepted the appellant's option.

8. Consequently, the appeal being devoid of any substance fails and is hereby dismissed with costs.

9. Before parting, we may observe that the Chairman, C.B.R. being the competent authority would be at liberty to proceed against the appellant in accordance with law for having fabricated fake withdrawal letter, dated 29-3-2000 and used the same alleging its receipt by the Chairman's Secretariat vide Daily Diary No.2402 of 29-3-2000.

M.B.A./M-127/SC^{*}

.Appeal dismissed.

District Education Officer (Male) Swabi.

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Jer wy	The District Educat Swabi.	ion Officer (M)			
				:	
Subject: -	<u>APPEAL.</u>	I		:	

Memo:-

I am directed to refer to the subject noted above and to enclose herewith a copy of appeal in respect of Mr. Kifayat Ullah SPST GPS Wali BazKorona Bam Khel District Swabi, and to ask you to submit detail report/comments to this office within a week time.

ssistant Director (Estab :) Elementary & Secondary Edu: Khyber Pakhtunkhwa Peshawar.

Endst: No.

Copy forwarded to the:-

1. P.A to Director Elementary and Secondary Education local office.

Assistant Director (Estab :)

Elementary & Secondary Edu: Khyber Pakhtunkhwa Peshawar.

لفات الله TSPST (Ex) ولا عبد الألب من المعلم علو فللمالي المالي المعلمة الى المالية المعلمة الى المالية المعلمة المالية المعلمة المالية المعلمة المالية المعلمة المعلى المعلمة المعلم مرسط رميونيس ترفيس ميدين _ طريقي طويع را محرف رجونيس رفيه July - - - - (ریس) زفر نیس) اس براقه عالى مالازمت حنا. عالى: - رسم مر خ بر عرابى ب دن مرمن سام رسان ما 1993 ما 1993 میں مرد 29 میں M. M. M. M. M. M. 12 2010 2010 2010 - 12 VILLE VILLE 2019 مسائل کا در سے در حفار سر تربی اور کو سری (M) تر MA سے سیدوشی کی ارتباکی . نقل در خزار سرے سے رج بد بد المالی مرتب من النب معیدی تعلی حسبی ردشی N/2 - 30 - 07 010 bior (2,000 m) 5 _____ ver ber (11258-62 dated 5 / ber 2.09.2019 المحالي ، بر رفعا تر منط ليف معي ادر قبل رز و المول علم رود ال District Education Officer (Male) Swabi.

<u>اور 13 کر سرائے محالی حالی زمت دے دی جسب زمین از</u> مر (O.J. D.E. O) نے حوالے دی کہ صبل اس حیا۔ دانہ ال الم عنى المعنى كالما الدوق المروت الدوت الدوت طور فاقه باللي موار محلی انم <u>354</u> مورم <u>ان 3</u> در لا سرائے رمعناتی بھی تی انعلی حصی لف سے جسم اللہ مور عزدست سرائے کالی مالاز صب مالد دی لقل لو وق المراس ورون ما ولو صبر المسم المرامع من محمد جرد المحمد طريق فيرتدر سيانونش ومن برية مرية بدر لودد باره -1, e's reg and 5 2 2 35 001 0 2 10 2 10 - 2020 تخوالم تعلى مرتبع معروف معرف 12 كرموليل ميل على حمقی فوزران دام مربس دورون من سائل رمین نظ باقاعده طور سر حافرای المرا مع رور سول فالم الد مدر مر ما ورت سر) و ف سے لاک محدرون عمیر را تو طح لیوٹی کی رہی کہ دمیں روک دیگئری تعل ر حمری حافزی نے معرف میں اس 8/عدد قطق میں ار مالور رئيسا نظر من من من من مخور مال ن مات ا مرا ماه من سال 2020 مد بر 1572 517 در من مرات نوم مالا لف موزمين . رم، مرم باوجود اس تک ودور عام مرم کی می توری کے

مری شنور ای در معرق رور حور مع معی تعی اسم می خرج اخراج سر صالم محف مراف بالوكور) سے ادعا لي وقع محف مرالى ليرى حور المبداني زقم كاحطاليد مرت الراسخ الروسخ الذي ولير ليتيالى عيل فتر مر مور . مرد دومه والب مرساند مس خان خان المرسان 2 7 3765-70da امر اسی الفی ط مخواند محفی اس محق كامن مع مودد ف مور م LAD.E.O.W. كانبنا بيب مردوس كمنى منادتي اجريد ماحال التورير) شعار ؟ رج مديد المذرس باره صن سائل الميل منط ف الم ادر در دور ال مورد 27 × 201 ی مناری منارکرتی شمورتی مز میرتی ادر ا ر میساند نیش رفعاری میں رور سرخا مجدس رور مذیا سرخا معیر آجا جا صن سائل رسیل نشوی و افاع بے تعل دروز است کے ردم ميز در غدعايد مرمده خوري رسل موز من سائل كدر اني الترمان مد مرده مرد مر مال مرد مر مال مرد inded a contraction of the start of the for List This TS. S. S. T all Sulling IS 20302-5688450, jo



OFFICE OF THE DISTRICT EDUCATION OFFICER

(MALE) SWABI

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No_4814 Dated <u>v</u> /2020

То

The Director E&SED Khyber Pakhtunkhwa Peshawar.

Subject: APPEAL.

Memo:

Reference your letter No. <u>9202</u>/F.No. Guidance of Previous Service/ Dated Peshawar the 09-07-2020 on the captioned subject. Detail report/comments of this office are as under:

- 1. That Mr. <u>Kifayat Ullah</u> SPST had been working in E&S Education Department since: 12-04-1993 and lastly posted as SPST BPS-14 at GPS Wali Baz Korona Bam Khel Swabi.
- 2. That he submitted an application on 21-8-2019 through SDEO concerned for premature retirement.
- 3. That the then DEO Male Swabi accorded sanction of pre-mature retirement w.e.f 30-7-2019 (A.N) vide E/No. 11258-62/Dated: 2-9-2019.
- 4. That his pension case duly forwarded by SDEO Male was sent to DAO Swabi and resultantly the DAO issued commutation cheque and started his monthly pension.
- 5. That the teacher concerned submitted another application for cancellation/ withdrawal of his retirement order & re-instatement in service on 18-10-2019. (Annexed A).
- 6. That an enquiry committee was constituted comprising of Mr. Taqweem-Ul-Haq Principal GHSS Sheikh Jana Swabi and Mr. Fida Muhammad Principal GHSS Sheikh Dheri Swabi vide this office notification No. 3251-57/Dated 28-5-2020 to look into the matter and submit recommendations thereof. (Annexed B)
- That the enquiry committee after thorough perusal and examining the relevant record submitted a report with recommendations that his case got matured hence attained finality in the light of Finance Department letter No.FD(SOSR-II)/4-36/2018 dated 05-09-2018 which cannot be withdrawn being a closed transaction. (Annexed C).
- 8. That in the light of recommendations of the enquiry committee, this office rejected his appeal for withdrawal/cancellation of retirement order and re-instatement order vide E/No. 3765-70/dated 11-6-2020. (Annexed D).
- 9. That according to the appellant he deposited an amount of Rs. 15,12,551/= in the Govt. treasury through two different challans and submitted photo copies of the same to this office. (Annexed E&F).

Hence comments/report is hereby submitted for perusal and further necessary action accordingly please.

Encl: as above.

District Education Officer (Male) Swabi.

DISTRICT EDUCATION OFFICER

Directorate of Elementary & Secondary: Education ANNEAULE G Khyber Pakhtunkhwa, Peshawar. No.____/F.No. Guidance regarding previous service. 30 Dated Peshawar the _____ 2020

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

Subject: - <u>APPEAL FOR WITHDRAWL OF RETIREMENT NOTIFICATION</u> Dear Sir,

I am directed to refer to the subject cited above and to enclose herewith connected documents in respect of Mr. Kifayat Ullah Ex-SPST B-14 at GPS Walibaz Korona Bamkhel District Swabi regarding the subject matter for your perusal and onward submission to Establishment Department for guidance if deem appropriate by your good office please.

> Deputy Director (Estab) Elementary & Secondary Education Khyber Pakhtunkhwa

Endst: No.

Vier

PEO

To

Copy of the above is to:-

DEO(M) Swabi.
 PA to Director Local Directorate.

Deputy Director (Estab) Elementary & Secondary Education Khyber Pakhtunkhwa



To

GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

SCANNED KPST SO (A/Cs)/E&SE/7-9/Guidance/2020 Peshawar, the 09 October, 2020

mnegur

The Secretary, Govt. of Khyber Pakhtunkhwa, Finance Department.

Attention: Section Officer (SR-II)

Subject: APPLICATION FOR WITHDRAWAL OF RETIREMENT NOTIFICATION.

Dear Sir,

I am not directed to refer to the subject noted above and to enclose herewith an application along with other relevant documents (which are selfexplanatory) in r/o Mr. Kifayat Ullah Ex-SPST GPS Walibaz Korona Bamkhel District Swabi for guidance please.

(Encl: All relevant documents.)

(ABDUL GHAFFAR) SECTION OFFICER (ACCOUNTS)

Endst: of even No.& date:

Copy for information to:-

- 1. The Deputy Director (Establishment), Directorate of Elementary & Secondary Education, Khyber Pakhtunkhwa, Pesawhar.
- 2. District Education Officer (Male), Swabi.

SECTION OFFICER (ACCOUNTS

District Education Officer (Male) Swabi.

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 14055/2020

Kifayat Ullah

VS

Education Deptt etc.

<u>REJOINDER ON BEHALF OF APPELLANT</u>

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-10) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1. It is correct that every Government Servant has paid for his service from the government exchequer and the appellant has performed his duty and for that duty he was paid.
- 2. Correct to the extent that the appellant have some domestic problem and due to the reasons of that domestic problems he was compelled to file application for early retirement on 21.08.2021, however, the respondent department retired the appellant on the basis of that application on 02.09.2019 w.e.f 30.07.2019 which is illegal and void abi-initio as authority has no power to pass an order with retrospective effect.
- 3. Incorrect the appellant filed application for cancellation of his early retirement on which respondent No. 3 told the appellant that his application for withdrawal will be accepted and directed him to deposit commutation and pension and came to school for duty and on t he direction of respondent No.3, the appellant deposited his commutation and pension and also performed duty from September, 2019 to December, 2019 which is evident from Annex-D & E attached with the appeal.
- 4. First portion of Para-4 is admitted correct and other portion of Para-4 is incorrect hence denied as the appellant has filed application for

early retirement due to the reason of domestic problem and as per Superior Courts Judgment that the resignation due to pressure or some other compulsion the resignation can be withdraw after acceptance.

- 5. Incorrect while Para-5 of the appeal is correct.
- 6. Incorrect the appellant has filed only departmental appeal which was not responded within the stipulated period.
- 7. Incorrect the appellant has good cause of action to file the instant appeal which is liable to be accepted.

GROUNDS:

- A) Incorrect. While Para-A of grounds of the appeal is correct. Moreover, the order dated 02.09.2019 and 11.06.2020 are against the law, facts and norms of justice, there not tenable and liable to be seta side.
- B) Incorrect, at the time of application for premature retirement the Government has changed the premature retirement on 25-Years Service to 55 Years of age but the respondent department retired the appellant on 25 years of service which is illegal as the rules at that time for early retirement was 55 years of age and as such the retirement order is illegal and void and has no legal effect, therefore, liable to be set aside on the score alone.
- C) Incorrect the appellant filed application for his premature retirement on 21.08.2019 but he was retired w.e.from 30.07.2019 and as such the retirement order of the appellant was passed with retrospective effect and such like order have no effect and null and void abi-initio.
- D) Incorrect while Para-D of the appeal is correct.
- E) Incorrect while Para-E of the appeal is correct.
- F) Incorrect. The appellant has deposited commutation and pension on the direction of respondent No. 3.
 - G) Incorrect while Para-G of the appeal is correct.
- H) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT

Through:

(M. ASIF YOUSAFZAI) ADVOCATE SUPREME COURT OF PAKISTAN & (TAIMUR ALI KHAN) ADVOCATE HIGH COURT

<u>AFFIDAVIT</u>

It is affirmed and declared that the contents of rejoinder and appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'able Tribunal.

DEPONENT



PEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 14055 of 2020

Kifayat Ullah, Retired SPST (BPS-14) GPS Wali Baz Khan Korona, Bamkhel (Swabi) ------Appelant.

1. Secretary E&SED Khyber Pakhtunkhwa Peshawar.

- 2. Director E&SE Khyber Pakhtunkhwa Peshawar.
- 3. District Education Officer (E&SE) Male Swabi.
- 4. District Accounts Officer Swabi.
- 5. The Secretary Finance Khyber Pakhtunkhwa Peshawar------**Respondents Parawise Comments on behalf of Respondents No. 4.**

Respectfully Sheweth,

Preliminary Objections:

- 1. That the appellant retired from service on his own application/request, which was accepted and the same had attained finality, being a passed and closed transaction, received all the pensionary benefits, hence the appeal is not maintainable.
- 2. Relates to other respondents.
- 3. That the appellant has not come to the tribunal with clean hands.
- 4. That the appellant has concealed the material facts from the honorable tribunal.
- 5. That the appellant has no local standi or cause of action to file the instant appeal.
- 6. Relates to other respondents.
- 7. Relates to other respondents.
- 8. Relates to other respondents.
- 9. Relates to other respondents.
- 10.That no scope of repeated appeals/representation is available to the civil servant and the period of limitation could not be extended by repeated representations, hence the instant appeal is not maintainable.

Facts:

- 1. Admitted to the extent that the appellant was initially appointed on the post of Naib Qasid on 13-04-1993and then appointed against the primary school teacher (PST) dated 21-10-2004. After that he was promoted to the post of SPST (BPS-14) in the year 2014. It is mandatory for each and every Govt. servant to perform his duties upto the entire satisfaction of his superiors, because he is paid for his services from the national exchequer.
- 2. That the appellant himself admits, that due to domestic problems the appellant filed an application for premature retirement on 21-08-2019 and on the basis of his application, the appellant was retired from service vide order dated: 02-09-2019 w.e.f 30-07-2019. According to the Govt. of Khyber Pakhtunkhwa revised leave rules, 1981 rule-20 (4) clarification vide No. FD.SO(SR-IV) 5-54/80/Vol:II, Dated: 20-11-1986, "the civil servants seeking retirement on voluntary basis should be treated equally and the option

should not be necessary if they want to encash their LPR. However, a civil servant who wants to proceed on retiring pension shall have to wait for 365-days after qualifying service of 25-years for the purpose of encashment of LPR.

COMMENTARY:

Under the above clarification, encashment of LPR is admissible on completion of 26-years qualifying service".

The appellant only completed 25-years qualifying service, which is less than 26-years qualifying service, therefore, the appellant is not entitled for the benefits of encashment of leave in lieu of LPR. Govt. of Khyber Pakhtunkhwa Revised Leave Rules 1981 annexed as "A".

- 3. Relates to other respondents.
- 4. Relates to other respondents.
- 5. Relates to other respondents.
- 6. Relates to other respondents.
- 7. Relates to other respondents.

GROUNDS:

- A. Relates to other respondents.
- B. Relates to other respondents.
- C. Relates to other respondents.
- D. Relates to other respondents.
- E. Relates to other respondents.
- F. Relates to other respondents but it is true that challan No.1 Rs. 128728/dated 11.05.2020 and Rs. 225273/- dated 8.5.2020 has been deposited into Govt. treasury i.e NBP Swabi and it is further stated that ex-official still drawing pension up to date. (copy of pension roll is attached).
- G. That the respondents seek permission to raise/argue other points/grounds on the day of hearing this appeal.

In view of the above stated submissions it is earnestly requested that the appeal may very graciously be dismissed with cost in favor of respondents.

ACCOUNTS OFFICER DISTRICA ŚWABI

<u>AFFIDAVIT</u>

I do hereby solemnly affirm and declare on oath that the contents of the para-wise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable tribunal or misstated.

Ghousullah Jan Senior Auditor District Accounts Office Swabi

PENSION ROLL DATA SHEET NOT A PAYMENT ADVICE

1.	
Date of issue	: 04.03.2021
PPO Type :	FRESH
PPO Number :	00338610-01
Pensioner ID :	00338610
Pension Register N	lo:
Pensioner's Name	: KIFAYAT ULLAH
Father / Husband r	ame : ABDUL AKBAR
Designation:	SENIOR PRIMARY SCHOOL TEA
NIC No.:	1620230781527
Grade / Scale -	: 14
Department:Min:	GOVERNMENT PRIMARY SCHOOL
Pensioner's Type:	SELF
Pension Type:	RETIRING PENSION
Date of Birth	:03.11.1972
Date of appointme	
Date of retirement:	: 31.07.2019
Date of Death:	
Date of commence	:31.07.2019
¹ Date of Restoration	n :
Accounts office ID):SU
Accounts office Na	ame :Sawabi
Federal / Province	:Khyber Pakhtunkhwa
	ng Service :25 years,10 months,18 days
No. and Date of sa	nction of pension / Letter No. :
$\frac{1}{2}$ and the date of the	e other Audit and Accounts officer authourising
the Pension/Gratui	ty/Commutation
Permanent Addres	S:
	51

Note :	
Age: 47 years	
Last Drawn pay/Emoluments(Rs.)): 29220.00
Gross Pension(Rs.)	: 17726.80
1/4th Surrendered Portion (Rs.)	•
Commuted Portion (Rs.)	: 6204.38
Net Pension (Rs.)	: 11522.42
Net Family Pension (Rs.)	: 0.00
Amount of Commutation(Rs.)	: 1515519.00
With Held Amount (Rs.)	: 0.00
Life Time Arrears (Rs.)	: 0.00
Arrears Of Pension (Rs.)	: 0.00
Special Additional Pension (Rs.)	: 0.00
Commutation Percentage	: 35.00
Commutation Table value	: 20.36
Recovery on A/C of	:
Debitable to Govt	:Khyber Pakhtunkhwa

PROPOSED PENSION SLIP

Payment details

Wage Type	Wage Type Text	Amount
0100	Monthly Pension - Self	11522.00
0101	Pension Increases - Self	9818.00
1599	Medical Allow - Pensioner	2881.00
1600	Med. All. 2015 Pensioner	720.00
		· ~_

He/She is also entitled to the following increases

Sr. No.	Period .	Increase % or amount	Increase Amount	W.E.F.
1	JUL.2011	15.00 %	1728.36	01.10.2019
2	JUL.2015	10.00 %	1325.08	01.10.2019
3	JUL.2016	10.00 %	1457.59	01.10.2019
4	JUL.2017	10.00 %	1603.35	01.10.2019
5	JUL.2018	10.00 %	1763.68	01.10.2019
6	JUL.2019	10.00 %	1940.05	01.10.2019
7	0.	Rs. 0.00	0.00	
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Bank Details

Bank Account Number: 140801009744 Bank Branch : BAMKHEL BAMKHEL И. Payment Mode :UNITED B NTS OFFICER (Pension)

\$7

Document Printed on 04.03.2021 by 235541

EXTRAORDINARY

GOVERNMENT



REGISTERED NO. PIII

GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, WEDNESDAY, 31st JULY, 2019.

PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION Dated Peshawar, the 31st July, 2019.

No. PA/Khyber Pakhtunkhwa/Bills-58/2019/2340.— The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill, 2019 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 22nd July, 2019 and assented to by the Governor of the Khyber Pakhtunkhwa on 30th July, 2019 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ACT, 2019, (KHYBER PAKHTUNKHWA ACT NO. XXX OF 2019)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 31st July, 2019).

> AN ACT

further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973.

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. Short title and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019.

(2) It shall come into force at once.

134

135 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 31# July, 2019.

2. Amendment of section 13 of the Khyber Pakhtunkhwa Act No. XVIII of 1973.---In the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), in section 13,-

- (a) in clause (a), after the words "qualifying service", the words and commas "or attaining the age of fifty-five years, whichever is later." shall be inserted; and
- (b)
- in clause (b), for the word "sixtieth" the words "sixty- three" shall be substituted.

BY ORDER OF MR. SPEAKER PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK) Secretary Provincial Assembly of Khyber Pakhtunkhwa

Printed and published by the Manager, Staty. & Ptg. DeptL., Khyber Pakhtunkhwa, Peshawar

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ons of the appropriate Departmental Pro	protion Committee and to posts in B-17 and above is made or		1
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The Provincial Government	are pleased to direct that the Provincial Selection Board		
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If a Civil Servant is superceded, he shall not be considered for promotion unless he ervas one more ACR for the ensuing one full year.

. 6. The Civil Servant whose promotion has been deferred will be considered for promotion as soon as the reason on the basis of which deferment took place ceases to exist. The cases of the Civil Servants [falling] under any of the three categories in sub-para 'C' of para 3 above do not warrant proforma promotion but are required to be considered for promotion after determining the correct seniority

7. If and when an officer after his seniority has been correctly determined or after be has been exonerated of the charges or his CR dossier is complete or the adverse remarks in his CRs have been expunged, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/Departmental Promotion Committee and the Competent Authority and is ideclared fit for promotion to the next higher grade, he shall be deemed to have been cleared for Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion and second for the will be allowed seniority in accordance, with the proviso of sub-section (4) of Section 8 of the North-West Frontier Province Civil Servants Act, 1923, whereasty officers releated for promotion to a higher part West Frontier Province Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se seniority in the lower grade can be determined, the officer older in age shall be treated senior. This provise also applies to cases where the promotions of two or more officers are notified on the same date but the junior of these officers takes over charge earlier than his senior, particularly in cases where the senior officer is forced to take over later for reasons of distance or difficulty in the assumption of charge. This proviso read with general principles of seniority which are deemed to be rules made under Section 26 of the North-West Frontier Province Civil Servants Act, 1973, enable the left over persons to regain seniority without effecting increments under F-R 26 (c) but without areas.

5.

8. Officers who are approved by the Provincial Selection Beard/Departmental Promotion Committee and the Competent Authority for promotion to the higher grade on an earlier date shall rank senior to those who are approved on a later date except those referred to in para 7 above.

9. A Civil Servant will only be promoted within his own cadre. side his cadre temporarily on account of deputation on foreign service or duty abroad including Pakistan Mostions abroad will be considered for promotion on his turn but if selected, the offer of premotion should be made to him and he should be asked to revert to his parent cadre/Department to take up the higher appointment. If he declines to revert, then his actual promotion will take place only when he brighting flis parent cadre. His seniority in the higher post/grade would be determined from the date he is promoted

10. A Civil Servant on deputation to a Foreing Government, International Agency or Private Organization abroad will be considered for promotion only on his return to Pakistan. He will be given mimation and asked to return to Pakistan before his case comes up for consideration for promotion in accordance with his seniority position; if he fails to return he will not be considered for promotion. Such an officer will have to earn at least one ACR after his return to Pakistan before he is cousidered The clearince/approval already accorded in the past to promote a deputationist would apper automatically if he fails to return on expiry of the deputation period already approved by the

11. If a Civil Servant is cleared for promotion to the higher post/grade by the Competent Authority is not promoted within a period of six months or the expiry of the current calendar year, beforel Provincial Selection Reard/Computationation Reard Computing Selection Reard/Computationation tion Computing Selection Reard/Computationation Computing Selection Reard/Computationation Computing Selection Reard/Computationation Computationation Computation Computationation Computationation Computationation Computation before Provincial Selection Board/Departmenta: Promotion Committee afresh.

Your Obedient Servant,

ZARIN-DAD KHATTAK, Additional Secretary (Regulation)

Endst.No. SOR-1 (S&GAD) 1-29/75

Dated Peshawar, the 13th April, 1987.

Copy forwarded to :---

2.

Additional Secretaries, Services and General Administration Department. All Deputy Secretaries in Services and General Administration Department. Private Secretary to Chief Secretary, North-West Frontier Province. 3.

4. All Section Officers in Services and General Administration Department.

5. Private Secretary to Secretary, Services and General Administration Department.

ATA MUHAMMAD. Section Officer (R-I).



194170

GOVERNMENT OF N.-W.F.P. ESTABLISHMENT & ADMINISTRATION DEPARTMENT (ESTABLISHMENT WING)

SUBJECT: NORTH-WEST FRONTIER PROVINCE CIVIL SERVANTS PROMOTION POLICY, 2009.

Dear Sir,

) am directed to refer to the subject noted above and to say that in order to consolidate the existing Promotion Policy, which is embodied in several circular letters issued in piecemeal from time to time, and to facilitate the line departments at every level in prompt processing of promotion cases of Provincial civil servants, it has been decided to issue the "North-West Frontier Province Civil Servants Promotion Policy, 2009" duly approved by the competent authority, for information and compliance by all concerned. This Policy will apply to promotions of all civil servants holding appointment on regular basis and will come into effect immediately. The Policy consists of the provisions given hereunder:-

I. Length of service.

(a) Minimum length of service for promotion to posts in various basic scales will be as under:

Basic Scale 18	5 years' service in BS-17
Basic Scale 19	12 years' service in BS-17 & above
Basic Scale 20	17 years' service in BS-17 & above

No proposal for promotion shall be entertained unless the condition of the prescribed length of service is fulfilled.

(b) Service in the lower pay scales for promotion to BP-18 shall be counted as follows:

- Half of the service in BS-16 and one fourth in Basic Scales lower than 16, if any, shall be counted as service in Basic Scale 17.
- (ii) Where initial recruitment takes place in Basic Scale 18 and 19, the length of service prescribed for promotion to higher Basic Scales shall be reduced as indicated below:

Basic Scale 19 :	7 years' service in BS-18
Basic Scale 20	10 years' service in BS- 18 and above or 3 years' service in BS-19.

II. Linking of promotion with training:

(a) Successful completion of the following trainings is mandatory for promotions of officers of the Provincial Civit Service / Provincial Management Service to various Basic Scales:

¹ Notified vide letter No. SOE-III (E&AD)1-3/2008 Dated Peshawar the 28th January, 2009

National Institute Management Course at Career Management (NIM), for promotion to BS-19

Management Course at National Management College, Lahore promotion to 8S-201

tional Management Course at National Management College, Lahore promotion to BS-21

this condition will not be applicable to civil servants in specialized uch as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of

specialization asienvisaged in the existing Promotion Policy.

(c) The outlifying thresholds of quantification of PERs for nomination to

these trainings are as under.

1

I-MCMC		60
PLACE AND SMC 1	•.	70
NMC		[•] 75
王 [1] 《北京》 [1]	+	

(d) There will be no exemptions from mandatory trainings. An officer may, however request for temporary exemption in a particular moment in time but

grant of such exemption would be at the discretion of the competent authority. No such request with regard to an officer would be made by the Government

Departments concerned.

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Three officers shall be nominated for each slot of promotion on the basis of their seniority. Those unwilling to attend will be dropped at their own

expense without prejudice to the rights of others and without thwarting or minimizing the chance of improving the quality of service.

(f) I Officers failing to undergo mandalory training in spite of two time hominations for a training shall stand superseded if such failure was not for

the reasons beyond the control of the officers concerned.

Development of Comprehensive Efficiency Index (CEI) for promotion:

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

The minimum of aggregate marks for promotion to various (i)'

grades shall be as follows:

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

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A panel of two senior most officers shall be placed before the Provincial Selection Board for each vacancy in respect of promotion to BS-18 & 19. Similarly, a panel of three senior most officers shall be submitted to the Provincial Selection Board for each position in respect of promotion to BS-20 and 21 and the officer with the requisite score on the Efficiency Index shall be recommended for promotion.

(ii)

(iii)

The senior most officer(s) on the panel securing the requisite threshold of the Efficiency Index shall be recommended by the Provincial Selection Board for promotion unless otherwise deferred. In case of failure to attain the requisite threshold, he (she)/they shall be superseded and the next officer on the panel shall be considered for promotion.

(b) Marks for quantification of PERs, Training Evaluation Reports and Provincial Selection Board evaluation shall be assigned as under:-

ſ	S: 1	Factor .	Marks for promotion to BS-18 & 19	Marks for promotion to BS-20 & 21
	No. • 1.	Quantification of PERs relating to present grade and previous grade(s) @ 60% : 40%	100%	70%
	2:	Training Evaluation Reports as explained		15%
	3.	hereafter. Evaluation by PSB	-	15%
	╞┯╧━╍	Total	100%	100%

(c) A total of fifteen (15) marks shall be allocated to the Training Evaluation Reports (Nine marks @ 60% for the training in the existing BPS and Six marks @ 40% in the preceding BS). Evaluation of the reports from the Training Institutions shall be worked out as under:-

- (i) It shall be on the basis of Grade Percentage already awarded by the National School of Public Policy (National Management College and Senior Management Wing) and its allied Training Institutions as provided in their reports.
- (ii) Previous reports of old Pakistan Administrative Staff College and old NIPAs where no such percentage has been awarded,

points shall be worked out on the basis of weighted average of the percentage range of grades followed by these Institutions as reflected in table-A below:

TABLE-A

働

Old PASC & NIPAs

Calegory	Range	Weighled Average	Points of PASC @ 60%=9	Points of NIPAs @ 40%=6
A. Outstanding	91-100%	95.5%	8.60	5.73
B. Very Good	80-90%	85%	7.65	5.10
	66-79%	72.5%	6.52	4.35
C. Good		57.5%	5.17	3,45
D. Average	50-65%			2 52
E. Below Average	35-49%	42%	3.78	2.52

(iii) Grades from National Defence University will be computed according to the weighted average based on the Grading Key for the range provided by the NDU as reflected in Table-B below:

TABLE-B

NATIONAL DEFENCE UNIVERSITY

Calegory		Range	Weighted Average	Points @ 60%=9
	Outstanding	76-100%	88%	7.92
A.	Very Good	66-75.99%	71%	6:39
B-Plus.	Good	61-65.99%	63.5%	5.71
B- High.	Average	56-60.99%	58.5%	5.26
B-Average.	Below Average	51-55.99%	53.5%	4.81
B-Low.		46-50.99%	48.5%	4.36
B-Minus.	Below Average	40-45.99%	43%	3.87
С.	Below Average	l	37.5%	3.37
F.	Below Average	35-39.99%	57.576	

(d) The officers who have been granted exemption from mandatory training having attained the age of 56 years or completed mandatory period of serving in a Training Institution upto 27-12-2005, may be awarded marks on notional basis for the training factor (for which he/she was exempted) in proportion to the marks obtained by them in the PERs.

(e) Status quo shall be maintained in respect of officers of special cadres such as teachers, doctors, professors, research scholars and incumbents of technical posts for promotion within their own line of speciality. However, for calculation of their CEI, 70% marks shall be assigned to the quantified score of PER s and 30% marks shall be at the disposal of the PSB.

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

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

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

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

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

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

IV. <u>Promotion of officers who are on deputation, long leave, foreign</u> <u>training:</u>

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

A The civil servants who are on deputation abroad or working with international **新闻的A**行 SPESSION-MARKER V agencies within Pakistan or abroad, will be asked to return before their cases artifice to distance come up for consideration. If they fail to return, they will not be considered for promotion. They will be considered for promotion after earning one calendar 物理行用自己推进的国际 計出さ 之時已却 PER and their seniority shall remain intact. in case of projects partially or fully funded by the Federal or Provincial Government, where PERs are written by officers of Provincial Government, the condition of earning one calendar PER shall not be applicable to officer on a a start when the TOTOV FRAME PARTY deputation and the officer on return to his/her cadre shall be considered for は行動が元 promotion. The civil servants on deputation to Federal Government, Provincial Government, autonomous/semi-autonomous organization shall be considered for promotion and informed to actualize their promotion within their cadres. State a state to state akir Balan Bark They shall have to stay and not be allowed to go back immediately after promotion. Such stay shall be not less than a minimum of two years. If he/she declines his/her actual promotion will take place only when he/she returns to his/her parent cadre. His/her seniority in the higher post shall, however, stand protected. The cases of promotion of civil servants who have not successfully completed e) the prescribed mandatory training (MCMC, SMC & NMC) or have not passed the departmental examination for reasons beyond control, shall be deferred. Promotion of officers still on probation after their promotion in their existing f) Basic Scales shall not be considered. A civil servant initially appointed to a post in a Government Department but g) retaining lien in a department shall not be considered for promotion in his parent department. However, in case he returns to parent department, he would be considered for promotion only after he earns PER for one calendar year. : h) A civil servant who has resigned shall not be considered for promotion no matter the resignation has yet to be accepted. Deferment of Promotion: ۷. -1 Promotion of a civil servant will be deferred, in addition to reasons (a). given in para-IV, if His inter-se-seniority is disputed/sub-judice. (i)

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(ii) Disciplinary or departmental proceedings are pending against him.

(iii) The PER dossier is incomplete or any other document/ information a required by the PSB/DPC for determining his suitability for promotion is not available for reasons beyond his control.

(b) The civil servant whose promotion has been deferred will be considered for promotion as soon as the reasons for deferment cease to exist. The cases falling under any of the above three categories do not warrant proforma promotion but the civil servant will be considered for promotion after determining his correct seniority over the erstwhile juniors.

(c) If an officer is otherwise eligible for promotion but has been inadvertently omitted from consideration in the original reference due to cterical error or plain negligence and is superseded, he should be considered for promotion as soon as the mistake is noticed.

(d) If and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/ Departmental Promotion Committee and is declared fit for promotion to the next higher basic scale, he shall be deemed to have been cleared for promotion alongwith the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section (4) of Section 8 of the North-West Frontier Province Civil Servants Act, 1973, whereby officers selected for promotion to a higher post in one batch on their promotion to the higher post are allowed to retain their inter-se-seniority in the lower post. In case, however, the date of continuous appointment of two or more officers in the lower post/grade is the same and there is no specific rule whereby their inter-se-seniority in the lower grade can be determined, the officer older in age shall be treated senior.

(e) If a civit servant is superseded he shall not be considered for promotion until he earns one PER for the ensuing one full year.

(f) If a civil servant is recommended for promotion to the higher basic scale/post by the PSB/DPC and the recommendations are not approved by the competent authority within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

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VI. Date of Promotion:

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Promotion will always be notified with immediate effect.

VII. Notional Promotion:

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

VIII. Promotion of Civil Servants who are awarded minor penalties.

(a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.

(b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

IX. Promotion in case of pending investigations by NAB:

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion for which may take a considered decision on merits of the case.

2. All the existing instructions on the subject shall stand superseded to the above extent, with immediate effect.

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(MUHAMMAD ABID MAJEED) Special Secretary (Regulations)

Yours fuithfully,

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	Endst: No. SOĘ-III(E&AD)1-3/2008	Dated Peshawar the 28th January, 2009
	Copy forwarded to:	
	1. The Accountant General, N	WFP, Peshawar.
	2. The Registrar, Peshawar, H	ligh Court, Peshawar.
	3. The Director, Staff Training	Institute, E&A Department, Peshawar.
	 All Additional Secretaries in 	E&A Department, GoNWFP.
	5. Réforms Coordinator, Refo	rms Cell, E&A Department.
	6 All Deputy Secretaries in E	&A Department, GonwrP.
	7. The Secretary, NWFP Pub	lic Service Commission, Peshawar.
	8. The Director, Anti-Corrupti	on Establishment, NW.F.P., Peshawar.
	9. The Registrar, NWFP Sen	Pereting Collins
	10. All Section Officers in E&A	Second N WER
	11. Private Secretary to Chief	lary, Establishment Department, GoNWFP.
		aly, Establishment Department, Content P
	13. Librarian, E&A Departmen	
		(Syeda Tanzeela Sabahat)
		Section Officer (E-111)
	R I	
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	1. The Chiel Secretary, Gov	ernment of the Punjab, Lahore.
	2 The Chief Secretary, Gov	ernment of Sindh, Karachi.
	3. The Chiel Secretary, Gov	vernment of Baluchislan, Quella.
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Ð <u>ANNI:X: 1</u> hmetic mean will be calculated for each calendar year or more PERs to derive the PER score for that year as follow: Σ My Μ Ny Where marks for each PER recorded in calendar year 'y', L Number of PERs recorded in year 'y'. È. and Σ stands for summation. -Second Step ⁵³£91.3 **EFREN** Average marks for each level will be calculated according to the following formula: 2 Σ<u>Μ</u> Τ Average marks Marks for PERs; and Total number of PERs in posts at that level. Third Step Weightage for posts held at each level will be given as follows in computing the aggregate score against a uniform scale of 100 marks for (promotion: 45 to post carrying basic pay scale 18 10xA , (i) (6xB)+(4xA)(ii) 🐪 to post carrying basic pay scale 19 to post carrying basic pay scale 20 (5xC)+(3xB)+(2xA)(iii) (5xD)+(3xC)+(A+B)- to post carrying basic pay scale 21 , (iv) Where A = Average marks for reports in posts carrying basic pay scale 17 B = Average marks for reports in posts carrying basic pay scale 18 C = Average marks for reports in posts carrying basic pay scale 19 = Average marks for reports in posts carrying basic pay scale 20 D 10

Fourth Step

The following additions/deductions shall be made in the total marks worked out in the third step for purposes of mandatory trainings.

Additions: Α.

(i) for serving in a Government training 2 marks institution, including those meant for specialized training in any particular cadre,

- for a period of 2 years or more

Deductions: В.

- (i). for each major penalty imposed under the 5 marks (Efficiency and Government Servants Discipline) Rules, 1973/Disciplinary Rules

 - prevailing at the time.
- for each minor penalty imposed under the 3 marks (ii) Government Servants (Efficiency and Discipline) Rules, 1973/Disciplinary Rules prevailing at the time.
- (iii) for adverse remarks (deductions be made 1 mark for such remarks only as were duly per PER conveyed to the concerned officer and were containing not expunged on his representation, or the adverse remarks officer did not représent)
- Note: For purpose of CEI, the negative marks for adverse entries and / or imposition of penalty shall be deducted from the quantilied score of the relevant grade. However, additions for serving in a Government training institution for a period of two years or more shall be made in the total quantified scores of the PERs.

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ANNEX: II

INSTRUCTIONS FOR GUIDANCE

While filling in the quantification Form and working out quantification marks the following factors may be kept in view to avoid in error:-

(i) <u>DEDUCTION</u> is to be made as indicated below:-

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- (a) <u>One mark</u> for each adverse report;
- (b) <u>3 marks</u> for each <u>minor penalty</u> imposed on a civil servant in a disciplinary case under E&D Rules, 1973/Disciplinary Rules prevailing at the time;
- (c) <u>5 marks</u> for each major penalty imposed on a civil servant in a disciplinary case under E&D Rules, 1973/Disciplinary Rules prevailing at the time.
- (ii) Addition of 2 marks is to be made for service in a (specified training) institutions for a period of two years or more.
- (iii) If more than one PERs have been initiated on an officer during the
 calendar year, their average marks would be the marks for the
 whole calendar year.
- (iv) Writing of a PER covering part periods of two calendar years is not permissible.
- (v) If a period of report is less than 3 months, it shall be ignored for purposes of quantification.
- (vi) Quantification marks should be in round figure.
- (vii) If the overall grading in a PER is ambiguous e.g. placed between 'Good' and 'Average' the quantification will be based on the lower rating.
- (viii) Where Only two reports or less are available on an officer against posts in a particular basic pay scale, these PERs will be added to the PERs earned in the lower post for calculating the average marks.
- (ix) Where an officer appointed to a higher post on acting charge basis is considered for regular promotion that post, the PER earned during acting charge appointment will be added to PERs earned in the lower post for calculating average marks.

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GOVERNMENT OF THE KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT. REGULATION WING

Dated: 05.12.2017

NOTIFICATION

No.SO(Policy)/E&AD/1-16/2017. The Competent Authority is pleased to direct that in the "Khyber Pukhtunkhwa Promotion Policy, 2009" circulated vide this department letter No.SOE-III(E&AD)1-3/2008 dated 28.1.2009, the following amendments shall be made, namely:-

AMENDMENTS

- 1. The following words (in italic form) shall be added after the word and dot "PER." appearing in the 3rd line of sub-para (a) of para IV:
 - "The requirement of earning one culendar year report will start from the date the officer joins back and the training period will also be included for completion of the requirement of such PER."
 - After sub-para (h) of para IV the following sub-para (i) shall be inserted: 2
 - "the mere fact that the seniority is sub-judiced will not debar the competent forum to make recommendation, However, in such cases following shall be applicable:
 - All promotion based on sub-judice seniority will be conditional i.e. subject to final (i) outcome of Court cases.
- (ii)

(iv)

3.

An officer who gets his seniority restored and becomes senior to already promoted officers in the cadre will be considered for promotion by the relevant board from the date when his junior got promoted.-

In case, the officer expires or retires from service and subsequently, his seniority is (iii) restored his case will be considered for proforma promotion alongwith all financial

benefits. Juniors promoted on sub-judice seniority list will be assigned seniority as per final Court Orders and will be reverted in case there is no vacancy".

Para II (b) shall be substituted as follow: "(b) This condition will not be applicable to civil servants in specialized cadres such as Dectors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of specialization as envisaged in the existing promotion policy. However, for promotion against technical posts in BS-20, which require managerial and administrative skills, the SMC shall be mandatory."

The clause (i) of sub-para (a) of para V shall be deleted and the next below clause (ii) and (iii) 4. shall be re-numbered as (i) and (ii). In sub-para (b) of Para V the word three shall be

substituted with the word "two".

Sd/-Secretary to Government of Khyber Pakhtunkhwa Establishment Department

ENDST: NO & EVEN DATE

Copy is forwarded to:-Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development

- Department. Additional Chief Secretary (FATA), FATA Secretariat Peshawar.
- ş. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
- 3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa. 4.
 - The Principal Secretary to Governor, Khyber Pakhtunkhwa.
- 5. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
- 6. All Divisional Commissioners in Khyber Pakhunkhwa. 7.
- All Heads of Attached Departments in Khyber Pakhlunkhwa.
- 8. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
- 9. All Deputy Commissioners in Khyber Pakhtunkhwa and Political Agents in FATA.
- 10. The Registrar Peshawar High Court, Peshawar.
- 11. The Registrar. Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
- All Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & 13. 14. Administration Department.

05/12/17

(BEENISH IQBAL) SECTION OFFICER (POLICY) EXTRAORDINARY

REGISTERED NO. PIII

GAZETTE

GOVERNMENT



KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 18th MAY, 2021.

PROVINCIAL ASSEMBLY SECRETARIAT KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 18th May, 2021.

No. PA/Khyber Pakhtunkhwa/Bills-150/2021/7705.— The Khyber Pakhtunkhwa Civil Servants (Amendment) Bill, 2021 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 20th April, 2021 and assented to by the Governor of the Khyber Pakhtunkhwa on 30th April, 2021 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA CIVIL SERVANTS (AMENDMENT) ACT, 2021. (KHYBER PAKHTUNKHWA ACT NO. XI OF 2021)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa, (Extraordinary), dated the 18th May, 2021).

AN

· ACT

further to amend the Khyber Pakhtunkhwa Civil Servants Act. 1973

WHEREAS it is expedient further to amend the Khyber Pakhtunkhwa Civil Servants Act. 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) in the manner hereafter appearing:

It is hereby enaced by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

1. Short title and commencement.--- (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2021.

(2) It shall come into force from 31^{st} July, 2019.

2. Substitution of section 13 of the Khyber Pakhtunkhwa Act No. XVIII of 1973. --- In the Khyber Pakhtunkhwa Civit Servants Act. 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), hereinalter referred to as the said Act, for section 13, the following shall be substituted, namely:

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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 18th MAY, 2021.

"13. <u>Retirement from service</u>.--- (1) A Civil Servant shall retire from service on the completion of sixtieth (60^{th}) year of his age.

(2) A Civil Servant may opt to retire early from service, after completion of twenty five (25) years of qualifying service or attaining the age of fifty five (55) years, whichever is later.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the competent authority may in the public interest, direct that a Civil Servant may retire from service, from such date, as may be determined by the competent authority, after he has completed twenty (20) years of service, qualifying for pension or other retirement benefits, in the manner as may be prescribed:

Provided that no direction under this sub-section shall be made until the Civil Servant has been informed in writing of the grounds on which it is proposed to make the direction, and has been given a reasonable opportunity of showing cause against the said direction.

Explantation.- In this section, the expression "competent authority" means the appointing authority prescribed in rule 4 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.".

3. Insertion of section 13A of the Khyber Pakhtunkhwa Act No. XVIII of 1973. --- In the said Act. after section 13, as so substituted, the following new section shall be inserted, namely:

***13A.** Protection of certain acts.--- (1) All the Civil Servants, who were conditionally retired from service on or after 31^{sl} day of July, 2019 shall, for all intents and purposes, be deemed to have been regularly retired from service on the date of attaining sixtieth (60th) years of age.

(2) Any Civil Servant, who has completed sixty (60) years of age but is not retired from service, by virtue of or in pursuance of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2019, shall be deemed to have been retired from service from the date when such Civil Servant has completed sixty (60) years of age.

(3) Any salary, allowances and other ancillary benefits received or drawn by such Civil Scrvant under this section on or after 31^{st} day of July, 2019 shall be deemed to be validly received and drawn."

4. **Repeal.**— The Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance, 2021 (Khyber Pakhtunkhwa Ordinance. No. II of 2021), is hereby repealed.

BY ORDER OF MR. SPEAKER PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

(NASRULLAH KHAN KHATTAK) Secretary Provincial Assembly of Khyber Pakhtunkhwa

Printed and published by the Manager, Staty, & Ptg. Depit, Khyber Pakktunidwa, Peshgwar

The Regional Police Officer Mardan Region Mardan

SUBJECT:- REQUEST FOR GRANTED DUE SENIORITY AND PROMOTION AS ASI AND SUB INSPECTOR WITH COLLOGUES.

Respected Sir,

It is submitted for kind information that I was ignored from promotion in the rank of ASI during the year 2012, 2014 due to adverse report for the year 2011. My adverse report was expunged by Khyber Pakhtunkhwa Service Tribunal.

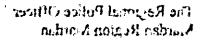
According to promotion policy 2009 if and when an officer, after his seniority has been correctly determined or after he has been exonerated of the charges or his PER dossier is complete, Or his inadvertent omission for promotion comes to notice, is considered by the Provincial Selection Board/ Departmental Promotion Committee and declared fit for promotion to the next higher basic scale, he shall be deemed to have been cleared for promotion along with the officers junior to him who were considered in the earlier meeting of the Provincial Selection Board/Departmental Promotion Committee. Such an officer, on his promotion will be allowed seniority in accordance with the proviso of sub-section (4) of section 8 of the North-West Frontier Province Civil Servants Act, 1973.

Moreover according to promotion policy 2009 amended vide Letter No. SO (Policy) E&AD/1-16/2017. Dated: December 05th 2017, an officer who gets his seniority restored and becomes senior to already promoted officers in the cadre will be considered for promotion by the relevant board from date when his junior got promotion.

Keeping in view the above facts and circumstances, it is humbly requested that the petitioner may kindly be assigned due seniority promotion as ASI with effect from 2012 and promotion in the rank of SI with his colleagues.

Your's obediently

ASI Miraj Habib Police Lines District Charsadda



I EARTH REPORTST FOR GRANTED DUE SEMORITE AND PROMOTION AS

Respected Sir,

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Let prove the nivive facts and effectivities of the bundly requested that the perioder nervection reav and p on the sector of the constances of the effective factor and production to the rank of S1 with his collectures.

Your'r obedientry

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

SERVICE APPEAL NO. 1405 /2028

KifayatUllah

VS

Education Department

APPLICATION FOR FIXING THE INSTANT APPEAL ON ANY EARLY DATE INSTEAD OF 31.07.2023

RESPECTFULLY SHEWETH:

- 1. That the appellant has filed the instant appeal in this Honorable Tribunal against the order dated02.09.2019, whereby the appellant was retired w.e.f 30.09.2019and against the the order dated 11.06.2020, whereby the application for withdrawal of retirement has been rejected.
- 2. That the instant appeal was fixed on 11.05.2023, but due to the strike the case of the appellant was adjourned to 31.07.2023, which is too long.
- 3. That as the appellant was retirement from service due to which he is jobless and his financial position is unbearable, therefore urgent hearing is requested in the instant case.

It is therefore very humbly prayed that on acceptance of this application, the instant appeal may kindly be fixed on any early date instead of 31.07.2023.

THROUGH:

APPELI

TAIMUR ALI KHAN ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

SERVICE APPEAL NO. /2023

KifayatUllah

Education Department

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- 3. That as the appellant was retirement from service due to which he is jobless and his financial position is unbearable, therefore urgent hearing is requested in the instant case.

It is therefore very humbly prayed that on acceptance of this application, the instant appeal may kindly be fixed on any early date instead of 31.07.2023.

APPELLA THROUGH:

TAIMUR ALI KHAN ADVOCATE HIGH COURT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. <u>4655</u>/2020

Khyber Falshakhwi Service Telkanal - <u>32</u>

SCANNED KPST Poshawar

Kifayat Ullah

V/S-

Education Department.

APPLICATION FOR FIXING OF AN EARLY DATE OF HEARING IN THE ABOVE TITLED INSTEAD OF 16.03.2023

<u>...</u>....................

RESPECTFULLY SHEWETH:

- 1. That the appellant has filed appeal against the order dated 02.09.2019, whereby the appellant was retired from service with effect from 30.07.2019 and against the order dated 11.06.2020 whereby the application for cancellation of retirement has been rejected.
- 2. That the instant appeal was fixed on 19.12.2022, however the case was adjourned and the next fixed in the instant appeal is 16.9.2023, which is too long.
- 3. That the main issue in the appeal is regarding the preretirement from service of the appellant. The appellant is facing great hardships in shape of unemployment due to which the whole family is suffering a lot.

4. That it is interest of justice to fix the instant appeal on any early date instead of 16.03.2023.

It is, therefore, most humbly prayed that the appeal is hand may kindly be fixed on an early date instead of 16.03.2023 to meet the ends of justice.

THROUGH:

APPELLANT

(TAIMUR ALI KHAN) **ADVOCATE HIGH COURT**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. /2020

Kifayat Ullah

V/S

Education Department.

APPLICATION FOR FIXING OF AN EARLY DATE OF HEARING IN THE ABOVE TITLED INSTEAD OF 16.03.2023

RESPECTFULLY SHEWETH:

1.

4.

That the appellant has filed appeal against the order dated 02.09.2019, whereby the appellant was retired from service with effect from 30.07.2019 and against the order dated 11.06.2020 whereby the application for cancellation of retirement has been rejected.

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It is, therefore, most humbly prayed that the appeal is hand may kindly be fixed on an early date instead of 16.03.2023 to meet the ends of justice.

APPELLANT.

THROUGH:

(TAIMUR ALI KHAN) ADVOCATE HIGH COURT