

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA
SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1912/2023


Aman Ullah Khan..... Appellant.

VERSUS

Director (E&SE) Khyber Pakhtunkhwa, & others..... Respondents

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Assistant Director (Lit: II)
E&SE Khyber Pakhtunkhwa
Peshawar

20-10-23

①

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE
TRIBUNAL PESHAWAR.**

Service Appeal No: 1912/2023

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Director (E&SE) Khyber Pakhtunkhwa, & others..... Respondents

PARAWISE COMMENTS FOR & ON BEHALF OF THE RESPONDENTS No: 1-3

Respectfully Sheweth :-

The Respondents submit as under: -

8255
12-10-23

Preliminary Objections

1. The appeal is wholly incompetent & untenable.
2. The appellant has not come to the Honorable Tribunal with clean hands.
3. The appeal is filed by the petitioner with mala fide intent.
4. The appeal is suffer from exaggeration & mis-statement on the proof of the appellant to the post of SST.
5. The appellant has no locus standi & cause of action.
6. That the Respondents have correctly rejected the refusal from promotion & correctly rejected the Departmental Appeal, in accordance with Rules & policy in vogue.
7. That the Notification dated 07-06-2023 is legally & liable to be maintained.

ON FACTS.

- 1 That Para-1 is correct that the appellant is an employee of the Department inducted/promoted against the PST, SPST & PSHT under the Rules & policy.
- 2 That Para-2 is correct that vide Notification dated 03-07-2023 the appellant was promoted to the post of SST in BPS-16 by the Department under the Rules & policy *attached as Annex-A*.
- 3 That Para-3 is relates to the domestic issues of the appellant, however, it is further submitted that as per provision of the Notification No. SO(Policy) E&AD/1-3/2020 dated 06-08-2023 which says that if any Civil Servant

refused his promotion, then he is liable to be proceeded under the relevant provision of E&D Rules, 2011 by the Department **attached as Annex-B.**

4 **That** Para-4 is correct that the appellant has filed Departmental Appeal against the Notification dated 03-07-2023 to the Respondent No. 2 which was forwarded to the authority concerned for disposal of the same, hence, disposed of/rejected vide Notification dated 11-09-2023, hence, the appeal in hand is liable to be rejected on the following grounds inter alia **attached as Annex-C.**

GROUND.

A. **Incorrect & not admitted.** The act of the Department with regard to the order/Notification dated 03-07-2023 is legal & liable to be obeyed by the appellant in terms of the Notification dated 06-08-2023 of the Establishment Department.

B. **Incorrect & not admitted,** as replied in ground A by the Department.

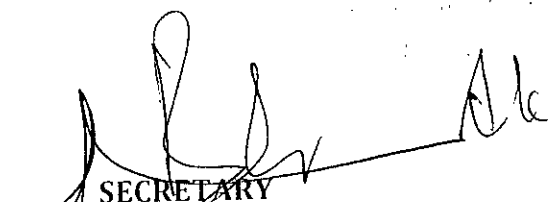
C. **Incorrect & not admitted.** The order/Notification dated 03-07-2023 & 06-08-2023 are legal & even in terms of section-10 of Civil Servant Act, 1973.

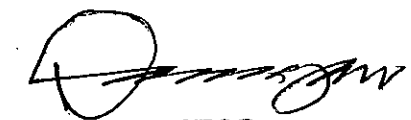
D. **Incorrect & not admitted.** The plea of the appellant is against the actual facts & record of the case as he has been promoted to the post of SST vide Notification dated 03-07-2023 & is liable to be honored in terms of the Notification dated 06-08-2023 by the appellant.

E. **Incorrect & not admitted.** The appellant has got no cause of action to file the titled appeal under Section-4 of Khyber Pakhtunkhwa Service Tribunal Peshawar Act-1974, therefore the Respondents also seek leave of this Honorable bench to submit additional grounds, case law & record on the date of hearing please.

Therefore, it is most humbly requested that the appeal is may kindly be dismissed in favor of the Respondent Department in the interest of justice.

Dated ___/___/2023..


SECRETARY
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 3)


DIRECTOR
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 1 & 2)

3

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE
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AFFIDAVIT

I, Dr. Hayat Khan Assistant Director (Litigation-II) E&SE
Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on
oath that the contents of the instant para wise Comments are true & correct
to the best of my knowledge & belief. It is further stated on oath that in this
appeal the answering Respondents have neither been placed Ex-Parte nor
their defense has been struck off/cost.


Deponent

ATTESTED


10-2-2023

Annexure -

(76) (4)

**OFFICE OF THE DISTRICT EDUCATION OFFICER
MALE LAKKI MARWAT**

☎: 38291, :emisc@i@yahoo.com, :w.f.facebook.com/deomalelakki, :w.twitter.com/deo_m_lakki

OFFICE ORDER:

In pursuance to the Director Elementary & Secondary Education Khyber Pakhtunkhwa. Notification bearing No. 4580-85 /File No.488/SST-ASDEOs/complaints. Lakki Marwat Dated 27-06-2023, the promotion of SST (Bio-Chem) is hereby adjusted in the school mentioned against his, in the interest of public service with immediate effect.

| SST (Bio-Chem) | | | |
|-----------------------|---|--|---------|
| S.# | Name with present place of posting | Further Place of Posting as SST (Bio-Chem) | Remarks |
| 1. | Aman Ullah Khan PSHT GPS No.2 Kotka Shadi Khan Marmandi | GHS Wanda Shahab Khel | A.V.P |

TERMS AND CONDITIONS:

1. He shall be on probation for the period as specified in Rules(15) substituted vide No. SO (Policies)/E&AD/1-3/2017 Dated 07-12-2017 in Appointment, Promotion & Transfer Rules,1989.
2. He will governed by such rules and regulations as may be issued from time to time by the Govt:
3. His services can be terminated at any time, in case of his performance is found unsatisfactory during probationary period. In case of misconduct; he will be proceeded under the rules framed time to time.
4. Charge report should be submitted to all concerned.
5. His Inter-Se-Seniority on lower post will remain intact as per Rules (17)(4) of Appointment, Promotion and Transfer Rules,1989.
6. No TA/DA is allowed for joining the duty.
7. He will give and undertaking to be recorded in his service book to the effect that if any over payment is made to him in the light of this order, will be recovered and if he is wrongly promoted, he will be reversed.
8. Before handing over charge, his documents may be checked. If he has not the required relevant qualification as per rules, he may not be handed the charge of the post.

District Education Officer
(Male) Lakki Marwat

Endst No. 5233-39 /

Dated 03/07/2023

Copy to the:

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar with reference to his office no. & Date cited above.
2. Deputy District Education Officer (Male) Local Office.
3. District Accounts Officer Lakki Marwat.
4. District Monitoring Officer (EMA) Lakki Marwat.
5. Head Master School Concerned.
6. AD DEMIS Local Office.
7. Teachers concerned.

[Handwritten Signature]

District Education Officer
(Male) Lakki Marwat

[Handwritten Initials]



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

5

NOTIFICATION

Dated Peshawar the, 06 / 8 / 2020

No.SO(Policy)E&AD/1-3/2020: In exercise of the powers conferred by section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), the Chief Minister of Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989, the following further amendment shall be made, namely:

AMENDMENT

In rule 7, sub-rule (5) shall be deleted.

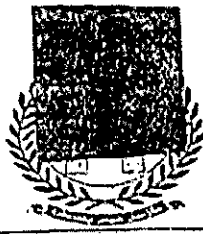
CHIEF SECRETARY
GOVERNMENT OF THE KHYBER PAKHTUNKHWA

ENDST: NO & EVEN DATE

Copy is forwarded to:-

1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
2. 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 Pakhtunkhwa.
7. All Heads of Attached Departments in Khyber Pakhtunkhwa.
8. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
9. All Deputy Commissioners in Khyber Pakhtunkhwa.
10. The Registrar Peshawar High Court, Peshawar.
11. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
12. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
13. The Deputy Director (II), E&A Department.
14. All Section Officers in Establishment & Administration Department.
15. The Section Officer (Admn), Administration Department with the request to arrange 20 gazette copies.
16. The Caretaker, Administration Department.

(WARDAH LATIF)
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GOVERNMENT

KHYBER PAKHTUNKHWA

ESTABLISHMENT DEPARTMENT
(REGULATION WING)

Dated Peshawar, the 22nd October, 2011

802

TEB

6

NOTIFICATION.

No.SOR-VI (E&AD)1-3/2009/Vol-VIII: - In exercise of the powers conferred by Section 26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No.XVIII of 1973), read with this Department's Notification No.SOR-I(S&GAD)1-206/74/Vol:V, dated 18th April 1989, the Chief Minister of the Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the following further amendments shall be made, namely:

AMENDMENTS

1. In Rule-7, after sub-rule (4), the following new sub-rule shall be added, namely:

"(5) If on an order of promotion or before promotion any civil servant declines in writing, to accept promotion, such civil servant shall not be considered for such promotion for the next four years following the order:

Provided that if he declines to avail the benefit of promotion for the second time, then he shall stand superseded permanently for such promotion."

2. In rule 9, sub-rule (2) shall be deleted.

CHIEF SECRETARY
GOVERNMENT OF THE KHYBER
PAKHTUNKHWA

Endst: No. and dated even.

Copy forwarded to:-

1. Additional Chief Secretary, Govt of Khyber Pakhtunkhwa, Planning & Development Department.
2. Additional Chief Secretary (FATA), FATA Secretariat Peshawar.
3. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
5. The Secretary to Governor, Khyber Pakhtunkhwa.
6. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. The Registrar, Peshawar High Court, Peshawar.
8. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
9. The Director General, Provincial Disaster Management Authority.
10. All Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & Administration Department.
11. Private Secretaries to all Provincial Ministers in Khyber Pakhtunkhwa.
12. Private Secretary to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
13. Private Secretary to Secretary Establishment Department.
14. Private Secretary to Secretary Administration Department.
15. The Incharge Resource Centre, Estt:&Admn: Department.
16. The Manger, Government Printing and Stationary Department for Publication in the official Gazette and supply of 20-copies thereof at an early date

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(ASHFAQ KHAN)
SECTION OFFICER (REG: VI)

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Directorate of Elementary and Secondary Education
Khyber Pakhtunkhwa Peshawar

7

NOTIFICATION

1. WHEREAS, Mr. Aman Ullah was promoted to SST (B/Ch) BPS-16 vide this office notification No. 4580-85 dated 27/06/2023 and further adjusted vide DEO(M) Lakki Marwat office order No. 5233-39 dated 03/07/2023 at GHS Wanda Shahab Khel Lakki Marwat.
2. AND WHEREAS, The District Education Officer (M) Lakki Marwat submitted his refusal from promotion vide letter No.5703 dated 25/07/2023.
3. AND WHEREAS, a meeting of the DPC was called on 31-08-2023 by this office vide letter No.5433 dated 28/08/2023 wherein the committee recommended to reject his refusal from promotion in the light of the establishment department letter No.SO(Policy)E&AD/1-3/2020 dated 06/06/2023.
4. NOW THEREFORE, consequent upon recommendation of the Departmental Promotion Committee, the Director Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar, is pleased to reject the appeal of Mr. Aman Ullah and in case of non compliance with this office order, the DEO(M) Lakki Marwat may proceed the teacher under E&D Rules,2011, as specified in letter No. SO(Policy)E&AD/1-3/2020 dated 06/06/2023 ibid dated 06/06/2023.

Appeal
Rejected
Dr. Iqbal Khan.
Director
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

No. 4354-57 /F.No. 488/SST/Lakki/Estab-M-1 Dated Peshawar the 11-9 /2023.
Copy forwarded for information to the:-

1. District Education Officer (Male) Lakki Marwat.
2. District Accounts Officer Lakki Marwat.
3. P.A. to Director E & S Education, Local Directorate,
4. Official concerned
5. Master File

Assistant Director (Estab-M-1)
Elementary & Secondary Education
Khyber Pakhtunkhwa, Peshawar

OFFICE OF DISTRICT EDUCATION OFFICER MALE LAKKI MARWAT

No. 7264-67

Dated 18/9/2023

Copy to the:

1. Director E&S Education Khyber Pakhtunkhwa for information
2. Headmaster GHS Wanda Shahab Khel
3. Sub Divisional Education Officer Male Serai Naurang
4. Aman Ullah PSHT GPS.No.02 Kotka Shadi Khan Marmandi with the direction to assume the charge of SST Bio/Che in GHS Wanda Shahab Khel within two days positively otherwise strict disciplinary action will be taken against you under E&D rules 2011.

District Education Officer
(Male) Lakki Marwat

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