S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
	22.09.2016	KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR. APPEAL NO.270/2015 (Muhammad Yahya -vs- The Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others. JUDGMENT PIR BAKHSH SHAH, MEMBER: Counsel for the appellant and Mr. Muhammad Adeel Butt, Addl. AG for respondents present. 2. In the instant appeal issue of up-gradation is involved and according to the judgment of august Supreme Court of Pakistan dated 17.02.2016 delivered in Civil Appeal No. 101 & 102-P of 2011 the service Tribunals have no jurisdiction to entertain any appeal involving the issue of up-gradation as it does not part of terms and conditions of service of the Civil servants. 3. In view of the above the appeal was not found maintainable by this Tribunal for want of jurisdiction. The same is therefore dismissed. The appellant may seek his remedy before any other appropriate forum if so advised. File be consigned to the record room. (PIR BAKHSH SHAH) MEMBER (ABDUL LATIF) MEMBER ANNOUNCED 22.09.2016

02.12.2015 None present for appellant. Mr. Daud Jan, Supdt. alongwith Addl: A.G for respondents present. Para-wise comments submitted by respondent No. 5. The learned Addl: AG relies on the same on behalf of respondents No. 1 to 4. The appeal is assigned to D.B for rejoinder and final hearing for 19.4.2016.

Chairman

19.04.2016 Junior to counsel for the appellant and Addl: AG for respondents present. Junior to counsel for the appellant requested for further time for submission of rejoinder. To come up for rejoinder and arguments on 31-8-16.

MEMBER MEMBER

31.08.2016 Counsel for the appellant and Muhammad Jan, GP for respondents present. Counsel for the appellant rejoinder submitted and requested for adjournment. To come up for final hearing on 11.9.2016 before D.B.

Member Chairman

4 28.04.2015 Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is serving in FATA in BPS-5 since the date of appointment. That similarly placed employees including Theological Teachers etc are serving in BPS-12 and above and appellant is also entitled to be dealt with fairly and justly and therefore entitled to the same scale and benefits to which similarly placed employees are held entitled. That departmental appeal was preferred by appellant which was not responded and hence the instant service appeal.

Appellant Deposited Security & Process Fee

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notice be issued to the respondents for written reply/comments for 27.7.2015 before S.B.

Chairman

5 27.07.2015 Counsel for the appellant and Mr. Daud Jan, Supdt. alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 30.9.2015 before S.B.

Chairman

6 30.09.2015 None present for appellant. M/S Irshad Muhammad, SO and Daud Jan, Supdt. alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 2.12.2015 before S.B.

Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 270/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	03.04.2015	The appeal of Mr. Muhammad Yahya resubmitted today by Mr.Bilal Ahmad Durrani Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order. REGISTRAR
2		This case is entrusted to S. Bench for preliminary hearing to be put up thereon 13-4-15. CHAIRMAN
3	13.04.2015	None present for appellant. The appeal be relisted for preliminary hearing for 28.4.2015 before S.B. Notice to counsel for the appellant be issued for the date fixed. Chairman

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No: 270 /2015

.....Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary FATA Peshawar.
2. Additional Chief Secretary FATA Secretariat Peshawar.
3. Finance Secretary FATA Secretariat Peshawar.
4. Secretary FATA, FATA Secretariat Peshawar.
5. Director Education FATA, FATA Secretariat Peshawar.....Respondents.

Para-wise comments on behalf of respondent No:, 5

Respectively Sheweth:

Preliminary Objection

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has not come to this Honourable Tribunal with clean hands.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct to bring the present appeal.
5. That the appeal is bad due to mis-joinder and non-joinder of necessaries parties.
6. That the appeal is barred by law and no departmental appeal is made to the competent authority against the impugned order. Hence not maintainable under Section-4 of Service Tribunal Act.

On Facts:

1. No comments. Pertains to record.
2. No comments. Pertains to record.
3. As replied in Para-5 and 7 below.
4. Incorrect. Relates to Accountant General Officer and Agency Accounts Officer concerned.
5. Subject to proofs. However in Education Department FATA no such up-gradation has taken places which justify the claim of the appellant.
6. Incorrect. Each & Every Case has its own merit and circumstances.
7. Incorrect. The job description of both Pesh Imam and theology teacher are different from one and other and the appellant cannot be treated at par with the theology teacher. Moreover the appellant has further chance of one step promotion as per notification dated 30/06/2015 (Copy attached as Annexure-A).
8. As explained in Para-7 above.
9. Pertains to record.
10. The appellant has got no cause of action to file the instant appeal.

Grounds:

A. Incorrect. The appellant was dealt in accordance with law and rules as no one is allowed to violate the Government rules framed for the better interest of Public.

B. Incorrect. The case of the appellant is not similar to those referred in the appeal.

C. Incorrect. As stated in Para-7 of facts, there is one step promotion chance to the appellant as per notification dated 30/06/2015. Hence under the rules, up-gradation of the appellant cannot be made.

D. Incorrect. The appellant is not similarly placed person to that referred. The appellant is treated legally in accordance with the provision of the constitution.

E. Subject to proofs.

F. Incorrect. The appellant is appointed on the post of Pesh Imam and performing duties as such. The appellant's neither a teacher nor can be treated in teaching cadre.

G. Incorrect. No such post of Pesh Imam is upgraded in Education Department FATA.

H. Incorrect. As replied in Para-7 of facts.

In light of the above facts it is humbly requested to please dismiss the appeal having no legal grounds with cost.

Respondent NO.5

Director Education FATA

AFFIDAVIT

We the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our Knowledge and belief that nothing has been concealed from this Honorable Tribunal.

Respondent NO.5

Director Education FATA

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

"A"

Dated Peshawar, the 30-06-2015

NOTIFICATION

NO.FD/SO(FR)7-20/2015 The competent authority has been pleased to accord approval to the upgradation of pay scales of the following provincial government employees with effect from 01-07-2015:

a) Two pay scale upgradation will be allowed to all provincial government employees from BS-01 to BS-05.

b) One pay scale upgradation will be allowed to all provincial government employees from BS-06 to BS-15

c) Special Compensatory Allowance equal to difference of notional upgradation of BS-16 to BS-17 will be allowed to all provincial government employees in BS-16 in lieu of upgradation.

d) Upgradation will be applicable to both pay and allowances with freezing limits and other conditions currently in vogue unless revised by the government.

e) Pay fixation on upgradation will be applicable w.e.f. 01-07-2015 or 01-12-2015 on the option to be given by the concerned employee.

f) All provincial government employees who have been upgraded en-block or individually in last five years starting from 01-07-2010 or have been granted special allowance / pay equal to 40 % or more of their normal pay shall not be entitled for the instant upgradation.

2. Pay of existing incumbents of the posts shall be fixed in higher pay scales at a stage next above the pay in the lower pay scale.

3. All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner.

4. The above upgradation scheme shall not be applicable to employees of Autonomous Bodies, Semi Autonomous Bodies and Public Sector Companies.

5. Explanatory note and subsidiary instructions on the subject will be issued separately.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst No. & Date even.

Copy of the above is forwarded for information and necessary action to the: -

1) PS to Additional Chief Secretary, FATA.
2) All Administrative Secretaries Government of Khyber Pakhtunkhwa.
3) Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
4) Accountant General, Khyber Pakhtunkhwa, Peshawar.
5) Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
6) Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7) Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8) All Heads of Attached Departments in Khyber Pakhtunkhwa.
9) Registrar, Peshawar High Court, Peshawar.
10) All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
11) Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
12) Registrar, Service Tribunal Khyber Pakhtunkhwa.
13) Secretary to Govt; of Punjab, Sindh and Baluchistan, Finance Department, Lahore, Karachi and Quetta.
14) The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
15) The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir Lower.
16) The Treasury Officer, Peshawar.
17) All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
18) PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
19) PSO to Chief Secretary, Khyber Pakhtunkhwa.
20) Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
21) PS to Finance Secretary.
22) PAs to All Additional Secretaries/ Deputy Secretaries in Finance Department.
23) All Section Officers/Budget Officers in Finance Department.
24) Mr. Jabir Hussain Bangash, President, Class-IV Association, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
25) Mr. Manzoor Khan, President, Civil Secretariat Driver Association Khyber Pakhtunkhwa, Peshawar.
26) Mr. Akbar Khan Mohmand, Provincial President, Class-IV Association, Khyber Pakhtunkhwa, Peshawar.

(MURAD AHMED)
SECTION OFFICER (FR)

BEFORE THE KHYBER PUKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No: 271 /2015

Saeed-ur-Rehman

Khyber Agency .....Appellant.

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary FATA Peshawar.
2. Additional Chief Secretary FATA Secretariat Peshawar.
3. Finance Secretary FATA Secretariat Peshawar.
4. Secretary FATA, FATA Secretariat Peshawar.
5. Director Education FATA, FATA Secretariat Peshawar.....Respondents.

Para-wise comments on behalf of respondent No:, 5

Respectively Sheweth:

Preliminary Objection

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant has not come to this Honourable Tribunal with clean hands.
3. That the appellant has concealed material facts from this Honourable Tribunal.
4. That the appellant is estopped by his own conduct to bring the present appeal.
5. That the appeal is bad due to mis-joinder and non-joinder of necessaries parties.
6. That the appeal is barred by law and no departmental appeal is made to the competent authority against the impugned order. Hence not maintainable under Section-4 of Service Tribunal Act.

On Facts:

1. No comments. Pertains to record.
2. No comments. Pertains to record.
3. As replied in Para-5 and 7 below.
4. Incorrect. Relates to Accountant General Officer and Agency Accounts Officer concerned.
5. Subject to proofs. However in Education Department FATA no such up-gradation has taken places which justify the claim of the appellant.
6. Incorrect. Each & Every Case has its own merit and circumstances.
7. Incorrect. The job description of both Pesh Imam and theology teacher are different from one and other and the appellant cannot be treated at par with the theology teacher. Moreover the appellant has further chance of one step promotion as per notification dated 30/06/2015 (Copy attached as Annexure-A).
8. As explained in Para-7 above.
9. Pertains to record.
10. The appellant has got no cause of action to file the instant appeal.

Grounds:

A. Incorrect. The appellant was dealt in accordance with law and rules as no one is allowed to violate the Government rules framed for the better interest of Public.

B. Incorrect. The case of the appellant is not similar to those referred in the appeal.

C. Incorrect. As stated in Para-7 of facts, there is one step promotion chance to the appellant as per notification dated 30/06/2015. Hence under the rules, up-gradation of the appellant cannot be made.

D. Incorrect. The appellant is not similarly placed person to that referred. The appellant is treated legally in accordance with the provision of the constitution.

E. Subject to proofs.

F. Incorrect. The appellant is appointed on the post of Pesh Imam and performing duties as such. The appellant's neither a teacher nor can be treated in teaching cadre.

G. Incorrect. No such post of Pesh Imam is upgraded in Education Department FATA.

H. Incorrect. As replied in Para-7 of facts.

In light of the above facts it is humbly requested to please dismiss the appeal having no legal grounds with cost.

Respondent NO.5

Director Education FATA

AFFIDAVIT

We the above respondents do hereby declare and affirm that the above comments are true and correct to the best of our Knowledge and belief that nothing has been concealed from this Honorable Tribunal.

Respondent NO.5

Director Education FATA

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING)

"A"

Dated Peshawar, the 30-06-2015

NOTIFICATION

NO.FD/SO(FR)7-20/2015 The competent authority has been pleased to accord approval to the upgradation of pay scales of the following provincial government employees with effect from 01-07-2015:

a) Two pay scale upgradation will be allowed to all provincial government employees from BS-01 to BS-05.

b) One pay scale upgradation will be allowed to all provincial government employees from BS-06 to BS-15

c) Special Compensatory Allowance equal to difference of notional upgradation of BS-16 to BS-17 will be allowed to all provincial government employees in BS-16 in lieu of upgradation.

d) Upgradation will be applicable to both pay and allowances with freezing limits and other conditions currently in vogue unless revised by the government.

e) Pay fixation on upgradation will be applicable w.e.f. 01-07-2015 or 01-12-2015 on the option to be given by the concerned employee.

f) All provincial government employees who have been upgraded en-block or individually in last five years starting from 01-07-2010 or have been granted special allowance / pay equal to 40 % or more of their normal pay shall not be entitled for the instant upgradation.

2. Pay of existing incumbents of the posts shall be fixed in higher pay scales at a stage next above the pay in the lower pay scale.

3. All the concerned Departments will amend their respective service rules to the same effect in the prescribed manner.

4. The above upgradation scheme shall not be applicable to employees of Autonomous Bodies, Semi Autonomous Bodies and Public Sector Companies.

5. Explanatory note and subsidiary instructions on the subject will be issued separately.

SECRETARY TO GOVT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Endst No. & Date even.

Copy of the above is forwarded for information and necessary action to the: -

1) PS to Additional Chief Secretary, FATA.
2) All Administrative Secretaries Government of Khyber Pakhtunkhwa.
3) Senior Member, Board of Revenue, Khyber Pakhtunkhwa Peshawar.
4) Accountant General, Khyber Pakhtunkhwa, Peshawar.
5) Secretary to Governor, Khyber Pakhtunkhwa, Peshawar
6) Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7) Secretary Provincial Assembly, Khyber Pakhtunkhwa.
8) All Heads of Attached Departments in Khyber Pakhtunkhwa.
9) Registrar, Peshawar High Court, Peshawar.
10) All Deputy Commissioners, Political Agents, District & Sessions Judges / Executive District Officers in Khyber Pakhtunkhwa.
11) Chairman, Khyber Pakhtunkhwa, Public Service Commission, Peshawar.
12) Registrar, Service Tribunal Khyber Pakhtunkhwa.
13) Secretary to Govt; of Punjab, Sindh and Baluchistan, Finance Department, Lahore, Karachi and Quetta.
14) The District Comptroller of Accounts, Peshawar, Mardan, Kohat, Bannu, Abbottabad, Swat and D.I. Khan.
15) The Senior District Accounts Officer Nowshera, Swabi, Charsadda, Haripur, Mansehra and Dir Lower.
16) The Treasury Officer, Peshawar.
17) All District/Agency Accounts Officers in Khyber Pakhtunkhwa / FATA.
18) PSO to Senior Minister for Finance, Khyber Pakhtunkhwa.
19) PSO to Chief Secretary, Khyber Pakhtunkhwa.
20) Director Local Fund Audit, Khyber Pakhtunkhwa Peshawar.
21) PS to Finance Secretary.
22) PAs to All Additional Secretaries/ Deputy Secretaries in Finance Department.
23) All Section Officers/Budget Officers in Finance Department.
24) Mr. Jabir Hussain Bangash, President, Class-IV Association, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
25) Mr. Manzoor Khan, President, Civil Secretariat Driver Association Khyber Pakhtunkhwa, Peshawar.
26) Mr. Akbar Khan Mohmand, Provincial President, Class-IV Association, Khyber Pakhtunkhwa, Peshawar.

(MURAD AHMED)
SECTION OFFICER (FR)

The appeal of Mr. Muhammad Yahya son of Siraj-ul Haq received to-day i.e. on 24.03.2015 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Copy of impugned order is not attached with the appeal which may be placed on it.
2- Annexures of the appeal may be attested.
3- Address of the appellant is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974
4- Departmental appeal having no date be dated.

No. 398 /S.T,

Dt. 25/3/2015

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Bilal Ahmad Durrani Adv. Pesh.

1. the case is of upgradation and no trial order has been passed.

Pt 2, 3 and 4 has been completed

BEFORE THE PROVINCIAL SERVICE TRIBUNAL PESHAWAR

Appeal No- 270/15

Muhammad Yahya s/o Molvi Siraj-ul-Haq

VERSUS

1. Government of Khyber Pukhtoon Khwa through its Chief Secretary Peshawar.
2. Additional Chief Secretary FATA Secretariat Peshawar.
3. Finance Secretary FATA Secretariat Peshawar.
4. Secretary Education FATA Secretariat Peshawar.
5. Director Education FATA Secretariat Warsak road Peshawar.

INDEX

No	Description of Documents	Annexure	Pages
1.	Appeal with Affidavit		1-4
2.	Copy of Appointment Letter	"A"	5
3.	Copy of Pay roll Slip	"B"	6
4.	Copy of Representation	"C"	7-13
5.	Wakalatnama		14

Appellant

Through

Bilal Ahmed Durrani
Advocate High Court
4-D, Haroon Mension
Khyber Bazar Peshawar
0300-8594514

BEFORE THE PROVINCIAL SERVICE TRIBUNAL PESHAWAR

Service appeal No. 270 /2015

Muhammad Yahya son of Moulvi Siraj Ul Haq R/o Mohallah Fatha Khel Tangi Charsadda.

.....Appellant

VERSUS

1. Government of Khyber Puhtoon Khwa through its Chief Secretary Peshawar.
2. Addition Chief Secretary FATA Secretariat Peshawar.
3. Finance Secretary FATA Secretariat Peshawar.
4. Secretary Education FATA Secretariat Peshawar
5. Director Education FATA Secretariat Warsak road Peshawar.

.....Respondent

SERVICE APPEAL UNDER SECTION 4 OF THE KHYBER PUKHOONKHWA SERVICE TRIBUNALS ACTS, 1974 WHEREBY THE APPELLANT POST HAD NOT BEEN UPGRADED

Respectfully sheweth:

The appellant submits as under:

1. That the appellant is permanent resident of Momand Agency.
2. That the appellant was appointed as Pesh Imam in BPS-5 in the Momand agency since then he is working in govt. High School Mohmand Agency Education Department on the same grade. Copy of appointment letter is attached. (Annexure "A")
3. That the post of Pesh Imam exists in the other department of the province of Khyber Pukhtoon Khwa and the basic pay scale was

upgraded to BPS-12, 14 and BPS-16 in different departments of the province.

4. That the appellant since his appointment is still working in same grade with increase in his salary from time to time which has now being raised to the salary equivalent to BPS 16. copy of pay role slip of the appellant is attached. (Annexure "B")

5. That the government has upgraded the post of Theology teachers from BPS 09 to BPS 12, BPS 15 and 16, and Arabic teacher to BPS 16 according to each and every case, in differed department of the province.

6. That even post of clerk Lab Assistant and class 4 has been upgraded to 7 and 12 respectively, but the appellant is deprived from his lawful rights, which have rendered the appellant at mercy of respondents.

7. That the qualification and criteria of a theology teacher is the same as that of Pesh Imam and basic qualification for holding post is of Sanad Firagh and Metric. However, the Pesh Imam also have the same appointment criteria with the same basic qualification, whereas, the appellant is working in BPS-09, and the post of theology teachers has been up-graded from BPS-07 to BPS-12, 14, 15 and to BPS-16. it is pertinent to mention here that there is no chances of promotion of the appellant in the existing rules.

8. That the appellant have to their credit up to 20 years of service having no complaint against him, but still their posts have not been up-graded and will retired in the same scale if not up-graded.

9. That the appellant preferred departmental representation to the respondents but till date no response to his representation have been made. Copy of representation is attached. (Annexure-"C")

10. That the appellant prefers this appeal on the following grounds amongst other:

GROUNDS:

A. That the non up-gradation of the appellant post is illegal, unwarranted, unjustified, based on malafide and discrimination.

B. That the post of similarly placed Government employees have been up-graded in various departments and they are at present working in BPS-12, 15 and 16, but the appellant since his appointment is working in the same scale of BPS-09, which is in sheer violation of law and constitution provision and discrimination.

C. That the basic aim and object of up-gradation policy is to up-grade those posts who have not prospective of promotion in their service cadre as such the appellant has no service structure nor having any prospect of promotion in their cadre, therefore, under the policy of up-gradation they are entitled for up-gradation of his post in the interest of justice.

D. That the KPK Provincial Government in Education Department, Auqaf Department has up-graded the Pesh Imam Post to BPS-12 & 15 respectively, but the appellant is being deprived from such benefits which are illegal, unwarranted, unjustified also the violation of Constitutional Provision of Article-4, 25 & 27.

E. That the appellant has repeatedly approach to the respondents through different application for the up-gradation of his post, but respondent have not redressed the grievance of the appellant and turned deaf years.

F. That the appellant is serving in the department of FATA and comes in the definition of teaching cadre, these post exists in Education Department of Provincial Government, who have already up-graded the post, but the respondents have kept deaf ears on the demands of the petitioner, which is illegally, unwarranted, based on malafide and also discriminatory.

G. That not only the Teaching Cadre but other post of Clerical Staff have been up-graded from BPS-05 to BPS-16, but unfortunately the appellant is deprived from the benefits of up-gradation till date with no plausible reason cause.

H. That the respondent is not fulfilling the basic and aim and object of the up-gradation, wherein, it is specifically mentioned that the post of those employees should be up-graded, who have no prospects of promotion, in their service cadre as the appellant appointed in BPS-09 and will retire in same scale therefore, the non up-gradations of the petitioners post are also against the up-gradation policy and natural justice.

It is, therefore, respectfully prayed that, on acceptance of this appeal, an appropriate direction may please be issued to the respondents to up-grade the post of the appellant from BPS-09 to BPS-15 respectively.

M. Yahya

Appellant

Through

Bilal Ahmed Durrani
Advocate High Court
4-D Haroon Mension
Khyber Bazar Peshawar.
03008594514

VERIFICATION

It is affirmed on oath that the contents of the appeal are correct to the best of my knowledge and belief and nothing has been concealed from this tribunal.

M. Yahya

Deponent

(5) (10)

OFFICE OF THE AGENCY EDUCATION OFFICER,MOHMAND AGENCY AT GHALLANAI

APPOINTMENT ORDER:-

Consequent upon the approval by the Departmental Selection Committee the following P/Imam candidates are hereby appointed in BPS No.05 Plus usual allowances as admissible under the rules on contract basis in the interest of public service with effect from the date of their taking over charge at the schools noted against their names

S.No	Name & Father,s Name	School where posted at	Remarks
4307/01	Mohd Yahya S/O Sirajul Haq	GHS Lakkarai	Against Vacant Post
3018/02	Hazir Jan S/O Azim Khan	GHSS Ghallanai	Against Vacant Post

TERMS/CONDITIONS.

1:- They are appointed purely made on contract basis and liable to termination at any time without showing any reason. In case of their wish to resign the posts they shall have to give one month prior notice or forfeit one month pay in lieu thereof.

2:- Health and age certificate should be produced from the Agency Surgeon Ghallanai.

3:- They will not be handed over charge of the posts if they are below 18 Years and above 33 Years.

4:- If they failed to report of their arrival with in 15 days their appointment will be deemed as cancelled.

5:- Their original educational qualification date of birth, Domicile certificate, NIC and professional certificate will be checked before the their handing over charge of the posts and attested copies thereof be furnished for officer record.

6:- They will not be paid their salaries until their documents are verified from the quarter concerned.

7:- Charge report should be submitted to all concerned.

(SYED YOUNAS ALI SHAH)
Agency Education officer,
Mohmand Agency at Ghallanai.

Endst:No.18808-16 /dt: 21-11-2005.

Copy of the above is forwarded to the:-

1:- Director of Education,FATA.NWFP.Peshawar.
2:- Political Agent Mohmand Agency at Ghallanai.
3:- Agency Accounts Officer,Mohmand Agency at Ghallanai.
4:- Agency Surgeon Mohmand Agency at Ghallanai.
5-6:- Principals GHSS, Ghallanai and GHS Lakkarai.
7:- Acct/Pay clerk at this office.
8-9:- Candidates concerned.

Agency Education Officer,
Mohmand Agency at Ghallanai.

Niqab Shah

ATTESTED

(7)

To,

The Director of Education,
FATA Secretarial
Warsak Road Peshawar.

Subject: **DEPARTMENTAL APPEAL OF THE APPELLANT FOR UPGRADATION.**

Respected Sir,

The appellant submits as under:

1) That the appellant was as Pesh Imam in G.H.S Lakarro Momand Agency in BPS-5 on 23/11/2005.

2) That the appellant has been working in the above said school on the above said post since his appointment.

3) That the qualification and the criteria for the appointment as Pesh Imam and the Theology Teacher is one and same as the basic qualification for the said post is holder of sanad firagh and matric.

4) That the Government has initiated the up gradation policy for the posts of Teachers/ clerical staff since so many year and all the Teacher community including the PSTs, TTs, Drawing Masters, SLTs and PLTs along.

ATTESTED

with the clerical staff has been upgraded from BPS-09 to BPS-12, BPS-15 and BPS-16 as according to each and every case.

5) That the Appellant has got at his credit a long tenure extending over about 19 years and is still serving at the above said post in BPS-09 whereas the other colleagues of the Appellant whom have been appointed as Theology Teachers and other posts, have been upgraded to BPS-12, BPS-14 and BPS-15 as according to their cases.

6) That there is no service structure for the Appellant's post i.e. Pesh Imam nor there is any chance of promotion to a higher grade.

7) That the Appellant is also eligible for the upgradation as Theology Teachers have been upgraded from BPS-7 to BPS-12, similarly some of them have been upgraded from BPS-12 to BPS-15 and now some of them have been upgraded to BPS-15 whereas the Appellant is still serving in BPS-09 at the post

on which he was appointed about 13 years back.

8) That the Appellant has been serving the above noted department/school by hot and sole and has never given any chance of complaint to the students community or to the high-ups, whatsoever, may be.

9) That non-upgrading the post of the Appellant is an act of illegal, unlawful, without jurisdiction/ authority and based on the malafide intention of the concerned authorities, hence, the post of Appellant is liable to be upgraded on the following grounds amongst others:-

GROUNDS:-

A. That depriving the Appellant from the upgradation is quite illegal, unlawful, without authority/jurisdiction and based on malafide intention, hence, the post of the Appellant is liable to be upgraded.

ATTESTED

B. That it is the constitutional right of the Appellant that he should be treated equally with the other teachers or the clerical staff, whatsoever, may be but the Appellant has not been treated in accordance with law and has kept at BPS-09 on the same grade in which he was appointed at the first day of his service.

C. That when all the clerical and teaching staff have been given upgradation to the higher posts, it was the duty of the department to consider the Appellant for the upgradation, however, the Appellant along with his other colleagues serving as Pesh Imams in BPS-09 who have never been given any attention for the upgradation of their posts.

D. That it is the legal right of the Appellant that he should have been upgraded and they should have been given promotion to the higher grade, however, no such service structure has ever been evolved by the

department thereby keeping the Appellant in BPS-09 from the date of his appointment till the age of his retirement.

E. That the Appellant should have been treated equally with other employees serving in Education Department and he should have been upgraded to BPS-12/15 as according to his case, but all the legal and constitutional rights of the Appellant have been bulldozed by the department thereby ignoring the Appellant from the upgradation of his post.

F. That the Appellant has got every right to be upgraded to the higher grade and it is his constitutional right to better livelihood, however, the said basic right which has already been protected by the Constitution of Islamic Republic of Pakistan has been snatched from the Appellant by the concerned authorities without any cogent reason.

ATTESTED

(12)

G. That all the above said acts of the department authorities for not upgrading the post of the Appelant, are against the prevailing rules and are based on malafide and unjustified attitude of the concerned authorities.

H. That it has been held by the Apex Courts that once a benefit is extended to a citizen of the Pakistan, therefore, all the other employees being on the same footing, should have extended the same benefits.

I. That the Appellant has been serving on the above said posts since long and the Appellant has been waiting for his turn to be promoted/upgraded to some higher scale, however, after having a tenure of such a long legitimate expectations the Appellant has been treated unlawfully, without any cogent/solid grounds.

J. That no complaint, whatsoever has been made by any student while serving in Respondents department/school as the

Appellant was preforming the duties in the said competent department /school to the utmost satisfaction of the high up.

In the light of the above stated facts it is humbly requested that on acceptance of his departmental appeal, the applicant should be treated equally with other employees whom have been upgrade from BPS-5 to BPS-15 and even 16 and appellant may please be extended the said benefits through up gradation of his post to BPS-12/BPS-15 as the case may be.

Yours sincerely

Mohmand Agency

Pesh imam

Date 25-09-2014

ATTESTED

(121)

بعدالت جناب خیبر پختونخوا سروس ٹربیونل پشاور

محمد یحییٰ بنام گورنمنٹ

منجانب اپیلانٹ

مورخہ ------

مقدمہ ------

دعویٰ ------

جرم ------

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام پشاور کیلئے بلال احمد درانی ایڈووکیٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ از عرضی دعوی اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظرثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے وہ ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 20 ماہ مارچ 2015ء

العبد ------ گواہ شد ------ العبد

M-Yahya

محمد یحییٰ اپیلانٹ

بمقام ------ کے لئے منظور ہے۔

Accepted
[signature]

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No: - /2015

Muhammad Yahya

----------(Appellant)

VERSUS

Govt through Chief Secretary FATA & Others-----(Respondents)

REJOINDER TO THE COMMENTS FILED BY THE RESPONDENT NO.5 ON BEHALF OF APPELLANT.

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Respectfully Sheweth:-

Reply to Preliminary Objection:

1. That the preliminary objection taken by the Respondent No.5 are incorrect, vague and without substance.
2. That the appellant have in time made departmental appeal to the competent authority, and the same have been attached with the appeal.

Reply of facts:-

1. Para 1, 2 & 3 since not denied need no reply.
2. Para 4 of the appeal has not been denied, therefore the same is confirm in favour of the appellant.
3. Para 5 of the reply is incorrect, the post of theology teacher from BPS-9 to 12, BPS-15 & 16 has been upgraded in each & every department of the province, whereas the appellant has the same qualification and they have been denied from the up-gradation.
4. Para 6 of the reply need no reply.

5. In reply to para 7 it is submitted that Pesh Imam & theology teacher have same basic qualification, same criteria for appointment but with malafide the appellant post have not been upgraded which shows discrimination with the appellant, the notification dated 30/06/2015 serves no purpose of the appellant as the same has not being specific and one step promotion is a joke with the appellant.
6. Para 8 & 9 of the reply needs no reply.
7. Para 10 of reply is incorrect, hence the appeal is well within time and the appellant has got cause of action.

Reply of Grounds:

A. Para A of the reply is incorrect.
B. Para B to H of the reply are incorrect, hence the detail reply has already been given in the above paras, therefore needs no repetition.

It is therefore requested that on acceptance of this re-joinder on behalf appellant the appeal of the appellant may kindly be accepted as prayed for.

Appellant

Through

Bilal Ahmad Durrani
Advocate
High Court Peshawar

Dated:____/08/2016

AFFIDAVIT

I, **Mr Bilal Ahmed Durrani** Advocate High Court Peshawar as per instruction of my client do hereby solemnly affirm and declare that all the contents of the accompanied re-joinder are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld from this Honorable court.

KHALID MAHMOOD ADVOCATE ATTESTED NOTARY PUBLIC PESHAWAR HIGH COURT

DEPONENT