18.10.2022

Learned counsel for the appellant present. Mr. Muhammad Nisar, Focal Person alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments before the D.B on 28.11.2022.

(Mian Muhammad) Member (E)

(Salah-ud-Din) Member (J)

deleted from hist to come for the same on 1/2/23

07.02.2023

28/11/22



Clerk of counsel for the appellant present. Muhammad Adeel Butt, Additional Advocate General for respondents present.

File to come up alongwith connected Service Appeal No. 7135/21 titled "Nek Nawaz Khan Vs. Education Department" 15.05.2023 before D.B.

(Fareeha-Paul) Member (E)

(Rozina Rehman) Member (J)

23.12.2021

Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, Addl. AG alongwith Yasir Khan, Junior Clerk for the respondents present.

The respondents have not furnished reply/comments and seek further time. Let the respondents be afforded with last opportunity with the warning that in case they fail to submit the written reply/comments on or before next date, their right for reply/comments shall be deemed as struck off by virtue of this order. Case to come up for arguments on 06.04.022 before the D.B.

Charman

06.04.2022

Appellant present in person. Mr. Kabirullah Khattak Adl. AG along with Mr. Muhammad Nisar (Focal Person) for respondents present. Written reply has been submitted which is placed on file.

Counsel, are at strike. Therefore the case is adjourned to 13.07.2022 before D.B.

(Mian Muhammad) Member (E) Chairman

13.07.2022

Junior of learned counsel for the appellant present. Mr. Naseer Ud Din Shah, Assistant Advocate General for respondents present.

File to come up alongwith connected Service Appeal No.7135/2021 titled "Neik Nawaz Khan Vs. Education Department" on 18.10.2022 before the D.B.

(Rozina Rehman)

Member (J)

(Salah-Ud-Din) Member (J) 28.10.2021

Appellant in person present. Memorandum of appeal and the copies of record annexed there with have been perused.

Learned counsel for the appellant states on his own risk that service appeal No. 8647/2020, 8651/2020 and 8650/2020 involving the similar factual and legal position have already been admitted for full hearing and next date in the said appeal is fixed before the D.B-I on 03.02.2022. Subject to all just factual and legal objections this appeal is also admitted for regular hearing. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file) with a report of non-compliance. Let it be fixed before the S.B. on 23.12.2021 for filing of the reply/comments and thereafter is shall be clubbed with the aforementioned appeal.

Appril 10 11 21 PM

Chairman

Form- A

FORM OF ORDER SHEET

Court or_				
		101		
	()	1.77		
Case No			/2021	
		,		

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	02/08/2021	The appeal of Mr. Gul Rauf resubmitted today by Mr. Not Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.
<u>2</u> -		REGISTRAR, This case is entrusted to S. Bench for preliminary hearing to be properties.
		up there on 10109/21 . CHARMAN
	10.09.2021	Clerk of counsel for the appellant present.
	The state of the s	Due to general strike of the legal fraternity, the case is adjourned. To come up for preliminary hearing before the S.B on 28.10.2021.
		(MIAN MUHAMMAD) MEMBER (E)

The appeal of Mr. Gul Rauf SCT GHS Mandoos Kot District NW Miranshah received today i.e. on 28.06.2021 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 judgment order dated 22.2.2018 and impugned order dated 31.5.2012 mentioned in para-3 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Annexures-G & H of the appeal are illegible which may be replaced by legible/better one.

No. 1434 /S.T.,
Dt. 29 /07 /2021

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Sir 2/8/21

Redulimited after the Camplifion.

2/8/21

Same of the Same

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

GUL RAUF

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EDUCATION DEPTT:

INDEX

S.N	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of appeal with affidavit		1-4
2.	Service certification	A	T
3.	Pay roll	В	: 5
4.	Educational testimonial	C	6
5.	Impugned notification	D	7-12
6.	Judgment 28-01-2016 & 05-04-	E&F	13-18
	2016	LQF	
7.	Notification	G	19-25
8.	Departmental appeal &Registry		26
	receipt	H	
9.	Vakalatnama		27-28
	1	**********	29

Dated ____07/2021

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK ADVOCATE

OFFICE: Flat No.4,2nd Floor, Juma KharıPlaza,Near FATA Secretariat, Warsak Road,Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO	/2021
GUL RAUF s/o Sardar Khan, SCT (BPS-16), GHS Mandoos Kot, North Waziristan.	
	APPELLANT
·	•

VERSUS

- 1- The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The District Education Officer (Male), District North Waziristan.

.....RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, AGAINST OF THE RESPONDENTS BY CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF SST (BPS-16) ON THE BASIS OF THE BASIS OF HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES 24-07-2014 WHEREBY <u>NOTIFIED</u> ON CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO. 1 (B), COLUMN No 3 (i) OF THE TABLE AND AGAINST NOT TAKING ANY ACTION ON THE DEPARTMENTAL APPEAL DATED 29-03-2021 OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned service Rules dated 24.07.2014 may kindly be modified to the extent that the condition of 2nd Division/Class be expunged from Column No. 3 (i), Serial No. 1B of the Table and the respondents may kindly be directed to consider the appellant for promotion to the post of Secondary School Teacher (BS-16) from the date when his colleagues and

junior colleagues were promoted with all consequential back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

<u> 3rief facts giving rise to the present appeal are as under:-</u>

- 2- That appellant is highly qualified person having Master of Art in Islamiyat from Gomal University as well as B. Ed Decrees from reputed & recognized institution of the country. Copy of the Educational Testimonials are attached as annexure C.
- 3- That it is pertinent to mention here that the respondent issued the impugned notification dated 24-07-2014 whereby the post of secondary school teachers was restructured and 20% promotion quota to the aforementioned posts was reserved for Primary School Teachers. That according to the said notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. Copy of impugned notification dated 24-07-2014 attached as annexure
- 4- That it is pertinent to mention here that the respondents denied promotion to some colleagues of the appellant to the post of SST due to having 3rd Division bachelor degree. That feeling aggrieved some colleagues of the appellant filed writ petitions which were allowed in favour fo the petitioners vide judgments dated 05-04-2016 and 28-01-2016 and consequently they were promoted to the post of SST. Copies of the judgments dated 28-01-2016 & 05-04-2016 are attached as annexure E & F.
- 5- That it is worth mentioning here that appellant was also denied from promotion due to having 3rd Class Bachelor degree despite the fact that appellant is having second division in higher qualification i.e. Master as well as in B.Ed & M.Ed.

- 6- That appellant being a similarly placed employee approached the respondent to extend him the benefits of the above mentioned judgments, but still in vain.

- 9- That appellant feeling aggrieved and having no other remedy filed the instant service appeal on the following grounds amongst the others.

GROUNDS:

- A- That the inaction of the respondent by not promoting the appellant to the post of SST (BPS-16) and notification dated 24-07-2014 is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That appellant is entitled to be promoted to the post of SST (BPS-16) from due date in light of judgments of Peshawar High Court by attracting Principle of Parity as mentioned in the apex court judgment reported as 2009 SCMR page 01.
- D-That the appellant has been discriminated on the subject noted above as other colleague who are having 3rd division are given promotion but the appellant has been deprived from the benefit of promotion to the post of SST (BPS-16).
- E- That the respondents while not promoting the appellant to the post of SST (BPS-16) is against the Law & Rules on the subject

matter and as the respondent violated the Principle of Natural, Justice.

- F- That the appellant has 2nd division in higher qualification i.e. Master degree and other educational related degrees i.e. B.Ed & M.Ed that entitle to be promoted from the due date in light of notification dated 15-12-2011.
- G- That the appellant seeks permission to advance other 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

Appellant

GUL RAUF

Through:

NOOR MOHAMMAD KHATTAK

MUHAMMAD MAAZ MADNI

Advocates, Peshawar

CERTIFICATE:

No such like appeal has earlier been filed between the parties

ADVOCATE

AFFIDAVIT:

I, Gul Rauf s/o Sardar Khan do hereby solemnly affirm that the contents of the above appeal are true and correct to the best of my knowledge & believe and nothing has been concealed from this Honourable Court.



DEPONENT 21505-1823658-3

ELEMENTRY & SECONDRY EDUCATION DEPARTMENT KHYBER PAKHTUN KHWA.



OFFICE OF THE HEADMASTER G.H.S MANDOOS KOT NORTH WAZIRSTAN DISTRICT MIRALI.

ANNEXURE A

•			
No	SERVICE CERTIFICATE	Dated/	/

This is to certify That MR.GUL-RAUF S/O Sardar Khan bearing CNIC No.

21505-1823658-3 resident of Tehsil Mir Ali North Wazirstan Tribal District is a provincial government servent oppinted on dated 28/04/1987 having personal No 50213126 warking as senior C.T.BPS.16 at G.H.S Mandoos kot Mir Ali NWTD

Under the control of the undersigned.

He deserves all right of a govt servent as deemed.

EAD MASTER

G.H.S Mandoos (No. Mir Ali (N.W.T.D).

NWD

ANNEXURE	B
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Total Deductions

79,303.00

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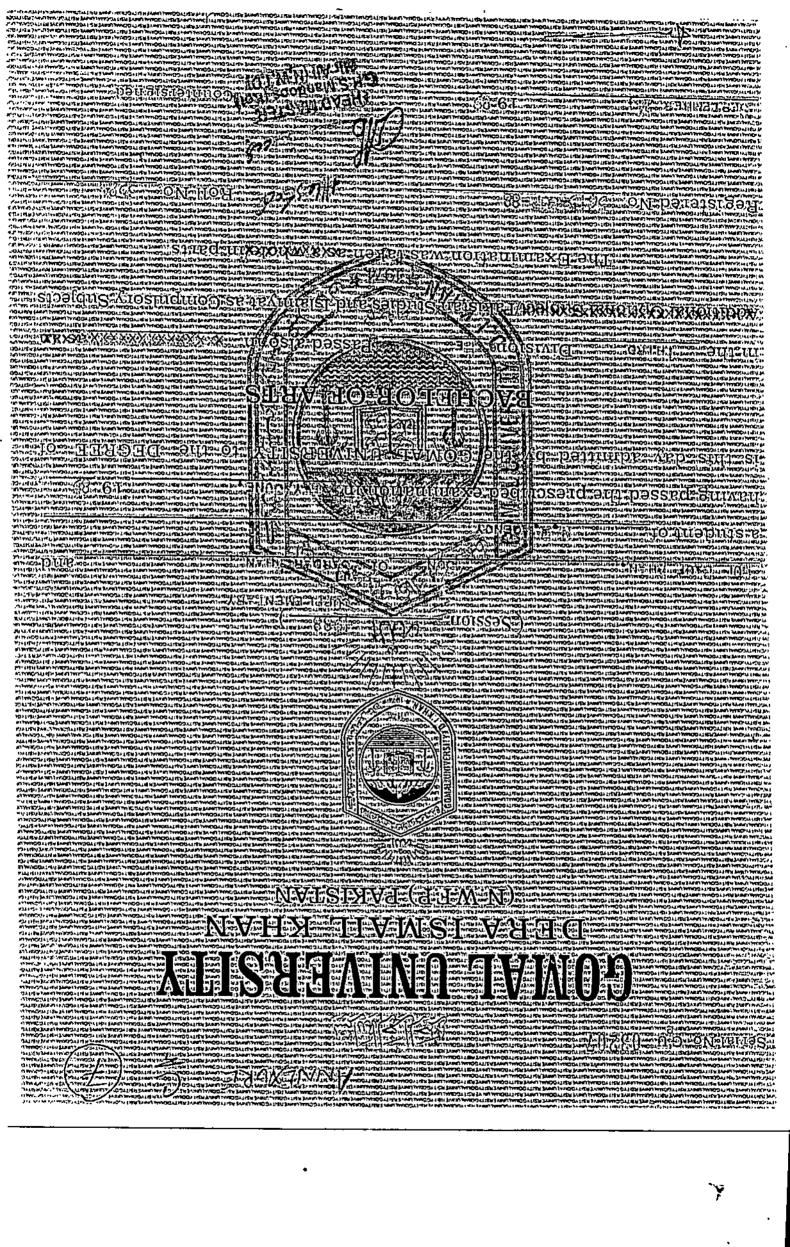
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GOMAL UNIVERSITY



DERA ISMAIL KHAN.

Passed/Re-appear/Failed in Agg/Failed

DETAILED BRICKS CERTIFICATE	
B. A. Examination 1988 Annual/Supplementary/	-Arm
Roll No. 3524	. '
Mr./Miss. Gul Rauf Whom	
	
The candidate secured the following marks & has been placed in Third D	ivision

	Total number	•	MARKS OBTAINED
SUBJECTS	of marks	In figures	In-words
1. English.	150	51	· Fiftime
2. Urdu/Pashto/Acabic/ Persian/English-Elective.	150	50	Fiftigal
3. Islamic Studies.	150	66	Grter
4. Pelitical Science:	150		8914
5. History.	1 80		
6. Есоповы ся	· 150	1	
7. Pakistan Studies (Comp).	40	14	sourteen Me Led
8. Islamic Studies (Comp.)	60	43	Portetie Me Led
9. Statistics.	200		1 0 4
10. Geography	390		The cert
11.			CHEAD MASTER
TOTAL	550	224	Two low to the four

THE EXAMINATION WAS TAKEN AS A WHOLE IN PARTS.

No. 21962

Dated 24 - 9: 1983

Controller of Examinations.

Comal University, Dera Ismail Khan

1.10.89

Serial No. GU 00384



Countersigned

COWAL UNIVERSITY

DERA ISMAIL KHAN



(Session - 9 4 - 4'= -)

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GOMAL UNIVERSITY



DERA ISMAIL KHAN.

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Mr. / Miss	Coul	Raus	2. Khan	
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THE EXAMINATION WAS TAKEN AS A WHOLE/IN PARTS

Nº 051759

GH.S Mandoos (Kol Dontroller of Examinations,

Mit Ali (N.W.T.) Gomal University, Dera Ismail Khan.

Serial No. 2 00391

يسم الله الرحمي الرحيمة



GOMAL UNIVERSITY

DERA ISMAIL KHAN

FAKISTANIA OMATA O

(Session 1999 ANNUAL

GUL PAUF KHAN.	SONof	THAU DESARDAR K	1431 Me.	and
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MAS	STER (OF ARTS) 	
in th		Class being PASHTO.		
The Examination	n was tak	en as a whole	in parts	S.
Registered No. 5515-602-88	10	Allested	Roll No	4272
OCTOBER 6, \$2000		M.		

Controller of Examinations

Countersigned

Vice-Chancellor

GOMAL UNIVERSITY



DERA ISMAIL KHAN.

Passed/Re-appear/Failed in Agg

DETAILED MARKS CERTIFICATE

Apashto Examination 1999 Annual/Supplementary/ Final

Term.

Roll No. 4272

Mr. / Miss _ Grul Rough Khown

The candidate secured the following marks & has been placed in 2 mil. Division.

	Total Number	MARKS OBTAINED				
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THE EXAMINATION WAS TAKEN AS A WHOLE IN PARTS

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Dated 6-10 -19

GHS Mandoof Gontroller of Examinations, Mir Ali (N. Gomal University, Dera Ismail Khan. what wali 13.to 18 Better Copy €

ANNEXURE I





GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY **EDUCATION DEPARTMENT**

Peshawar dated the 24th July, 2014.

NOTIFICATION

No.SO(PE) 4-5/SSRC/meeting/2013/Teaching Cadre: In pursuance of the provision contained in sub rule (2) rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary and Secondary Education Department in consultation with the Establishment Department and the Finance Department hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Voli-II date 09.04.2004, Notification No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, 13-11-2007, and Notification No.SO(PE)4-5/SSRC/meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix.-

Serial No.1 shall be renumbered as 1B and before serial No.1B, as so renumbered new entries shall be inserted in respective columns, namely:

Subject At least second class 23 to 35 a) fifty per cent by specialist (BPS-Master Degree or four years promotion, on the basis Years BS Degree in the of seniority-cum-fitness, Relevant subject: and. for the relevant subject Bachelor of education from amongst the or Master of education Secondary School (industrial Art or Teachers (BPS-16), with Business education) or at least five years' MA education or service as such and equivalent qualification having qualification from a recognized mentioned in column university No.3. Note: if no suitable candidate is available in the relevant subject the post falling in their promotion quota shall be filled by initial recruitment: and b) fifty percent by initial Director recruitment. At least second class master 22-35 a) Fifty percent by physical Degree in physical Education vears promotion on the basis education from a recognized university (BPS-17) of seniority cum fitness from amongst senior Physical Education Teachers BPS-16 with at least five year's service as senior physical education teacher and physical education teacher and having qualification mentioned in column No.3: Provided that if no suitable person is : available from amongst sernior physical education teachers for promotion then the post

_			_/
		shall be filled by promotion, on the basis of seniority cum fitness from amongst the	
		physical education teachers with at lest five years service as such an	e l
		having qualification mentioned in column No.3; Note:- If no suitable	
		the relevant cadres of the above teachers the post falling in their	
		promotion quota shall b filled by initial recruitment; and	e
Li)	afainst serial No. 1	b) fifty percent by initial by initial recruitment";	i
sub	ostituted in rospor	, as so renumbered for the existing entries the following shall be	

substituted in respective column, namely:

	1:	2 :			
Ī	1B	Secondary	1. At least second class	4	5
	` -	School .	bachelor degree's	21 to 35	 seventy five percent
-		Teachers (BPS-	from a recognized	years	by promotion on the
	.	16)	university on need		basis of seniority cum
Ì			basis from the	ļ	fitness from the
1			following groups with	ļ	district concerned in
			two subject		the following manner:
Ė			a) (Chemistry, Botany or		2. forty percent
			zoology),	, ,	amongst the senior
	, I		Or .	. '	certified teachers
ļ		,	b) Physics, Maths 'A or		BPS-16 with at least
			B' or statistics		five years service as
•			Or		senior certified
			c) Humanities and other		teacher and certified
			equivalent groups at	.	teacher and having
			degree level with		qualification
]		English as		mentioned in column
		<u> </u>	compulsory subject;		No.3:
			And		provided that if no
	٠.		11. Bachèlor of Education or		suitable candidate is
			Master of education		available from
	ļ ·		(industrial Art or business		amongst senior
			Education) or MA education		certified teachers for
	•		or equivalent qualifications	1	promotion then the post shall be filled by
			from a recognized university.		promotion on the
	1				basis of seniority cum
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					certified teachers
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					years service as such
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			·	1	No. 3;
		1	2 814	_	b) four percent from
-		The second second second			amongst the senior
٠.			A STATE OF THE STA		drawing master BPS-
	Ļ	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1		· ·	16 with at least five
				<u> </u>	years service as
		,5 .			

senior drawing masters and drawing masters and having qualification mentioned in column No:3; provided that if no suitable candidate is available from amongst senior drawing master for promotion then the post shall be filled by promotion on the basis of seniority cum fitness from amongst drawing master with at least five years service as such and having qualification mentioned in column No.3;

- c) four percent from amongst the senior Arabic teachers BPS-16 with at least five years service as senior Arabic teachers and Arabic teachers and having qualification mentioned column No.3; provided that if no suitable candidate is available from amongst senior Arabic teachers for promotion then the post shall be filled by promotion on the basis seniority cum fitness from Arabic teachers with at least five years service as such and having qualification mentioned in column No.3;
- d) four percent from amongst the senior theology teachers BPS-16 with at least five years service as senior theology teachers and theology teachers and having qualification mentioned in column No.3; provided that if no suitable candidate is

available from



- amongst senior
 theology teachers for
 promotion then the
 post shall be filled by
 promotion on the
 basis of seniority cum
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 the Theology
 Teachers with at least
 five years service as
 such and having
 qualification
 mentioned in column
 No.3:
- e) three percent from amongst the Senior Qari BPS-16 with at least five years service a senior Qari and having qualification · mentioned in column No.3: provided that if no suitable candidate is available from amongst the senior Qari then the post shall be filled by promotion on the basis of seniority cum fitness from Qaris with at least five years service as such and having qualification mentioned in column No.3;
- f) twenty percent from amongst the primary school head teachers BPS-16 with at least seven years service as primary school Head Teachers and senior primary school teachers and primary school teachers and having qualification mentioned in column No.3: provided that if no suitable candidate is available from amongst



ZAMIN KHAN MOMAND SECTION OFFICER (PRIMARY)

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PESHAWAR HIGH COURT BANNU BENCH

Date of order	FORM OF ORDER SHEET
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28.01.2016	WP No.73-B-2014
	Present Mr. Ali Jan Khan Advocate for petitioner: MUHAMMAD GHAZANFAR KHAN; 1. the petitioner namely Mumtaz khan son of the Gull Jan, through the instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan 1973, seeks issuance of directions to the respondents/department to the consider him for promotion in the post of SST in BPS-16 in view of the department promotion committee meeting held on 18.01.2014. 2. we have heard learned counsel for the petitioner and gone through the available record of the case. 3. Perusal of the record transpires that the petitioner has passed B.A in third division while as per notification bearing No. dated Bachelor's degree or MA in education bachelor degree in education. The record further shows that the petitioner has also passed M.ed during the year 2000 in second division and M.A History and Pak study during the session 2003 in second division.
	departmental promotion to the post of SST BPS-16 in the next in MA History and Pak Study coupled with M.ed qualifications. The write petition is disposed of in the above terms.
	ANNOUNCED Sd/- ikramullah khan
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Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH JUDICIAL DEPARTMENT

Writ Petition No.1041-A/2015

JUDGMENT

- 1. **IKRAMULLAH KHAN,3:-** Through the instant writ petition under article 199 of the Islamic republic of Pakistan, 1973 the petitioner seeks declaration to the effect that the act of respondent NO, 3 where by the promotion notification dated 28.10.2014 was withdrawn vide impugned notification 24.04.2014 on the ground of having qualification of B.Sc (3rd division) is illegal and without lawful authority and against the judgment of this court passed in W.P.No.58-B of 2014.
- 2. In essence, the petitioner was initially appointed as certified teacher and, as per entitlement, later on promoted to the post of senior certified teacher (BPS-16) Vide notification dated 28.10.2014. where after the petitioner assumed the charge of the said post on 30.10.2014 and after performing his duties to the satisfaction of his competent authority, on 24.04.2015 respondent No,3 has passed the impugned notification and, us such, the promotion order of the petitioner was withdrawn on the ground having B.SC in third division.
- 3. Comments were called from respondent No.3 who filed the same, averring therein that though petitioner was promoted to the post of SST vide notification dated 28.10.2014 by respondent No.2 scrutinizing his qualification documents, it was found that petitioner was not eligible for promotion to the post of SST being B.SC third divisioner hence, his promotion order was de-notified by the director elementary and secondary education: Khyber Pakhtunkhwa Peshawar and on the direction of director the promotion order of the petitioner was withdrawn vide impugned notification dated 24.04.2015.
- 4. It is further been averred in the comments that promotion order of the petitioner was withdrawn on the ground of B.sc third division and it was done in light of policy circulated vide Notification No.SO(PE)4-5/SSRC/meeting/2013/teaching cadre dated 24.07.2014 according to which the method of recruitment of SST was specified with a first condition of at least second class BA/Bsc from a recognized university on need basis with two relevant subjects along with second condition of MA education or B.ed from the recognized university further averred that it is the prerogative of the government to enhance, modify or alter the promotion criteria/ policy for the civil servants and a civil servant is not supposed to be treated with a set of rules of his own choice.
- 5. In response to para-6 of the petition, respondent No.3 averred in the comments that the judgment of this court was announced on 04.06.2015 where as the withdrawal order of the petitioner was passed on 24.04.2015, prior to the announcement of the judgment.
- 6. The man contention of learned counsel for the petitioner is that this court has already declared the condition of having third division as null and void in its judgment dated 04.06.2015 and the case of the petitioner is on better footing for reason that in referred judgment the petitioner had not been appointed but so far as the case of the petitioner is concerned, he was duly promoted rather received its benefits from 28.10.2014 to 24.04.2015 and thus the impugned order is illegal, without lawful authority and jurisdiction.





- 7. Admittedly, the petitioner was duly promoted to the post of question on 28.10.2014, after the departmental promotion committee evaluated his case /PERs.
- 8. Now the question for determination before this court would be that when the petitioner actually performed his duties on the promoted post and that too for six long months, then how the respondent No.3 could withdraw earlier promotion order only on the pretext having B.Sc third division.
 - s. It appears from the record that a division Bench of this had already declared the condition of having third division as null and in its judgment dated 04.06.2015 which fact has also been affirmed by the respondent No.3 in his comments by stating that they were not aware of that judgment at the time of withdrawal of the impugned promotion of the petitioner and when the case of the present petitioner is it par with that of the petitioner there in, rather on better footing because the petitioner was not only promoted to the post in question but he performed his duties for six long months and received its benefits, the impugned notification passed by respondent No,3 is required to be set at naught.
 - 9. It is also a well settled principle of law that once a benefit is granted to a civil servant, cannot taken back from him and, if so, very stringent strong reason are required for the same, which are not available in the case in hand, more so, when the promotion order of similarly placed teachers having B.5c third division have not been so far withdrawn which is clearly violation of article 25 of the constitution of Pakistan.
 - 10. For the reasons mentioned above, this petition is accepted and the impugned notification dated 24.04.2015 issued by respondent No.3 where by the promotion order of the petitioner was withdrawn is declared to be without lawful authority and, as, such the promotion notification dated 28.10.2014 is hereby restored.

Announced: 05.04.2016.



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GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT Dated Peshawar the December, 15 of 2011

NOTIFICATION

No. SOE-II (ED) 2(14)2011:-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 THE Khyber Pakhtunkhwa is pleased to direct that in the Khyber Pakhtunkhwa Provincial Management Service Rules 2007, the following further amendment, shall be made, namely:

AMENDMENT

In Schedule-I, against Sr. No.1, in Column No.3, the full stop appearing at the end shall be replaced by colon and thereafter that following proviso shall be added, namely:

"Provided that a candidate who has obtained a 3rd Division or D-Grade in Bachelor's Degree will be eligible for the examination in cases where he/she has obtained a higher Division in Master's Degree".

CHIEF SECRETARY KHYBER PAKHTUNKHWA



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To,

The secretary, E&SE department, Khyber Pakhtunkhwa, Peshawar.

Subject:

DEPARTMENTAL APPEAL AGAINST THE INACTION OF THE RESPONDENTS BY NOT CONSIDERING THE APPELLANT FOR PROMOTION TO THE POST OF SST (BPS-16)ON THE BASIS OF HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24.07.2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO, 18 COLUMN NO, 3(i) OF THE TABLE.

Respected Sir,

With due respect it is stated that I was initially appointed as Certified School Teacher in the respondent Department and right from the date of my 1st appointment I am performing my my duties quite efficiently and up to the entire satisfaction of his superiors. During service, later on I was promoted to the post of SCT. That I have the higher qualification of Master in Arts, B.ed in 2^{nd} Division but the authorities issued the impugned Notification dated 24.07.2014 whereby the post of SST was restricted and 20% promotion quota to the aforementioned post was reserved for Certified Teachers. That according to the said Notification required qualification for initial recruitment as well as promotion was mentioned as second class bachelor degree. That the concerned authority denied promotion of my some colleagues to the post of SST due to having third class bachelor degree. They were feeling aggrieved filed writ petitions which were allowed in favor of petitioners vide judgment dated 05.04.2016 and 28.01.2016 and consequently they were promoted to the post of SST. That I was also denied from promotion due to having third class bachelor degree despite the fact that I am having second division in higher qualification of Master of Arts, B.ed. That being a similar placed employee approached the concerned authority to extend the same benefit of the above mentioned judgments but in vain. That the establishment Department issued a Notification dated 15.12.2011 whereby amendment has been made in PMS rules 2007 by providing that a candidate who has obtain 3* division In bachelor degree will be eligible for the examination in cases where he/she has obtained a higher division in Master's degree. That feeling aggrieved from the inaction of the concerned authority by not considering me for promotion to the post of SST(BPS-16) filed the instant Departmental appeal before your good self.

It is therefore, most humbly prayed that on acceptance of this Departmental appeal I may very kindly be considered for promotion to the post of SST (BPS-16) from the date when my colleagues and junior colleagues were promoted with all consequential benefits including seniority. Any other remedy which your good self deems fit that may also be awarded in my favor.

GUL RAUF, SCT (BPS-16)
GHS Mandoos kot,
North Waziristan, District Miransha

The Secretary, ESSE Department, Khyber Pakhrunkhwa; Pashawar.

Subject:

DEPARTMENTAL APPEAL AGAINST THE INACTION OF RESPONDENTS BY NOT CONSIDERING THE APPELLANT PROMOTION TO THE POST OF SST (BPS-16) ON THE BASIS OF HAVING BACHELOR DEGREE IN 3RD DIVISION AND AGAINST THE SERVICE RULES NOTIFIED ON 24,07,2014 WHEREBY THE CONDITION OF BACHELOR 2ND DIVISION HAS BEEN INSERTED IN SERIAL NO. 18 COLUMN NO. 3(1) OF THE TABLE

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It is therefore; most humbly prayed that on acceptance of this Department appeal i may very kindly be considered for promotion to the post of SST, (BPS-16), from the date; when my colleagues; and junior colleagues, were promoted; with all consequential benefits including seniority. Any other remedy which your good self-deems fit that may also be awarded in my favor.

Date:1:29:03:2021

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VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL N	O:	OF 2021
Gul Rauf	Khan	(APPELLANT) (PLAINTIFF) (PETITIONER)
:	<u>VERSUS</u>	
Education	Deptt:	(RESPONDENT)(DEFENDANT)
Do hereby appoint KHATTAK Advocate compromise, withdra my/our Counsel/Adv without any liability to engage/appoint any I/we authorize the se	te, Peshawar to are wocate in the a form the afformation of the action of the Advocate Contact Advocate to behalf all sums an action of the ac	NOOR MOHAMMAD appear, plead, act, bitration for me/us as above noted matter, d with the authority to bunsel on my/our cost. deposit, withdraw and d amounts payable or noted matter.
Dated//	² 2021 —	CLIENTS
;		ACCEPTED MOHAMMAD KHATTAK KAMRAN KHAN
	UMER	SAID KHAN AHATTA

ADVOCATES

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

An	peal	No.	713	36/	202	1
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GUL RAUF	S/O Sardar Khan, SCT(BPS-16),GHS Mandoos Kot,North
Waziristan,	
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VERSUS

- The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4. The Director Education (E&SE) Department, Khyber Pakhtunkhwa; Peshawar
- 5. District Education officer (M), District North Waziristan, Miranshah
 ------ Respondents.

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4	Promotion Policy 24/07/2014	A	5 - 11

Assistant District Education Officer

North Waziristan Tribal District

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No. 7136/2021

1. GUL RAUF S/O Sardar Khan, SCT(BPS-16),GHS Mandoos Kot,North Waziristan,

-Appellant

VERSUS

- 1. The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4. The Director Education (E&SE) Department, Khyber Pakhtunkhwa; Peshawar
- 5. District Education officer (M), District North Waziristan, Miranshah

Respondents.

Comments on behalf of respondent No.1 to 5

Respectfully Sheweth:

Preliminary Objection:

- That the appellant has got no cause of action, locus standi to file the instant appeal.
- That the appellant has not come to this honorable Tribunal with clean hands.
- That the appellant has concealed material facts from this Honorable Tribunal.
- That the appeal is not maintainable in the present form.
- That the appellant has estopped by his own conduct to bring the present appeal.
- That the appeal is badly time barred as there is no appeal on record on part of the appellant in the respondent department.
- That the appellant is lacking prescribed qualification i.e Third division and not eligible for promotion under the in-vogue rules/policy.

On facts:

- 1) That Para-1 pertains to record.
- 2) That Para-2 pertains to record.
- 3) That para-3 is correct to the extent that 20% promotion quota was reserved from 75% for promotion to the post of SST from the eligible Primary School Teachers, Policy is attached as (Annexure A).
- 4) That the appellant is misleading this Honorable Tribunal by and exerting illegal pressure through instant appeal. The respondent department is bound to abided by the rules/policy in-vogue ,the policy dated 24-07-2014 for promotion to the post of SST General is;
 - "At least second class bachelor's Degree from a recognize university on need basis from the humanities and other equivalent groups at Degree level with English as compulsory Subject"

And

II. Bachelor of Education or Master of Education(Industrial Art or Business Education) or equivalent qualification from a recognize university, attached as (Annexure A)

In view of the said policy, appellant is with 3rd division, so he is not eligible for promotion

- 5) That the appellant is not eligible as he is not fulfilling required criteria, i.e. the appellant is with 3rd division in Bachelor Degree.
- 6) That the appellant is not eligible as he is not fulfilling required criteria i.e. the appellant is with 3rd division in Bachelor Degree, so he is not entitle/eligible under the in-vogue policy/rules, furthermore, there is no appeal on record on part of the appellant in the Respondent Department.
- 7) The detail reply is already submitted under Para-4 above while the respondent Department has its own rules/policy for promotion and induction, which is attached as (Annexure A)

- 8) That the appellant is not eligible as he is not fulfilling required criteria i.e. the appellant is with 3rd division in Bachelor Degree, so he is not entitle/eligible under the in-vogue policy/rules, furthermore, there is no appeal on record on part of the appellant in the Respondent Department.
- 9) Legal, The respondent also submits on following grounds inter alia.

Grounds:

- A. <u>Incorrect and Denied</u>, The appellant is exerting illegal pressure on the respondent department through instant appeal and the respondent department has acted according to the rules/policy.
- B. <u>Incorrect and Denied</u>. The Respondent department did not violate Article 4&25 of the constitution of the Islamic republic of Pakistan 1973 and has been acted according to the rules and policy.
- C. <u>Incorrect and Denied</u>, the Respondent Department is bound to abided by the law /Rules and Policy.
- D. <u>Incorrect and Denied</u>, Detail Reply has already been submitted above under Para-4above on facts.
- E. <u>Incorrect and Denied</u>, Detail Reply has already been submitted above under Para-4above on facts.
- F. Incorrect.
- **G.** Respondents are also seeking permission of the Honorable Tribunal to produce additional grounds and proofs at the time of Hearing.

PRAYER:

In the light of the above stated facts, it is requested to dismiss the case of the appellant.

Respondent No: 4

Director Education (E & SE)

Khyber Pakhtunkhwa Peshawar

Respondent No: 5

District Education officer(M)
North Waziristan Tribal District

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No. 7136/2021

GUL RAUF S/O Sardar Khan, SCT(BPS-16),GHS Mandoos Kot,North
 Waziristan,

Appellant

VERSUS

- 1. The Secretary Elementary and Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.
- 2. The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 3. The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4. The Director Education (E&SE) Department, Khyber Pakhtunkhwa; Peshawar
- 5. District Education officer (M), District North Waziristan, Miranshah

------ Respondents.

AFFIDAVIT

I, Muhammad Nisar Focal Person Litigation, DEO North Waziristan do solemnly affirm and declare that the Comments of Respondent No 4&5 in the Appeal NO 7136/2021 is true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.

Muhaminad Nisar Assistant District Education Officer North Waziristan Tribal District

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AUTHORITY LETTER

This office has the honor to state that Mr. Muhammad Nisar has been serving in the District Edu: Office as Focal Person Litigation. He has been given the authority to attend all kinds of court case. So he may be considered as representative of the District Edu: officer, N.W.T.D

DISTRICT EDUCATION OFFICER

NORTH WAZIRISTAN Tribal District





ELEMENTARY & SECONDARY EDUCATION DEPARTMENT GOVERNMENT OF KHYBER PAKHTUNKHWA

Peshawar, dated the 24th July, 2014.

NOTIFICATION

4-5/SSRC/Meeting/2012/Teaching Cadre, dated, 13.11.2012, the following further amendments shall be made, namely: hereby directs that in this Department's Notifications No.SO(G)S&LD/1-28/2003/Vol-II dated, 09-04-2004, Notification and Secondary Education Department in consultation with the Establishment Department and the Finance Department rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Elementary No.SO(PE)4-5/SSRC/Meeting/2013/Teaching Cadre: In pursuance of the provisions contained in sub rule (2) of No.SO(G)S&L/1-69/06/Vol-1/DPE/LIB dated, No.SO(PE

In the Appendix,-

AMENDMENTS

Serial No. I shall be renumbered as IB and before Serial No. IB, as so renumbered, the following new entries shall be inserted in respective columns, namely:

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 		<u>,</u>)
		(BPS-17)	Subject Specialize	
	ii Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A. Education or equivalent qualification from a	(BPS-17) four years BS Degree in the relevant years of subject; and		
	,	23 to 35 years	4	
Note: If no suitable candidate is available in the relevant subject the post falling in their promotion quota shull be filled by initial	subject from amongst the Secondary School Teachers (BPS-16), with at least five years service as such and having qualification mentioned in column No. 3.	(a) Fifty per cent by promotion, on the basis of seniority-cum-fimess, for the relevant	-1	•





against Serial No. 1B, as so renumbered, for the existing entries, the following Shall be substituted, in respective columns, namely:

	II.	;	(a,	"IB. Secondary School I. Teacher (BPS-16)	I 2
	Bachelor of Education or Master of Education or Master of Education or Master of Education or Master or Business Education) or MA Education or equivalent qualifications from a recognized University.	(c) (Humanities and other equivalent, groups at degree level with English as compulsory subject;	following groups with two subject (a) (Chemistry, Botany or Zoology), Or (b) (Physics, Maths "A" or "B" or Statistics) Or	At least second class Bachelor 2. Degree's from a recognized your control on need basis from the	3 4
*		-		21 to 35 years.	-
(b) four per cent from amongst the Senior Drawing Masters(BPS-16), with at least five years service as Senior Drawing Masters and brawing Masters and having qualification mentioned in	Senior Certified Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Certified Teachers, with at least five years service as such and having qualification mentioned in column No. 3;	having qualification mentioned in column No.3: Provided that if no suitable candidate is available from amongst	(a) forty per cent from amongst the Senior Certified Teachers (BPS-16), with at least five years service as Senior Certified Teacher and Certified Teacher and	 Seventy Five per cent by promotion, on the basis of seniority-cum-fitness, from the district concerned in the following manner 	5

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having qualification mentioned in		
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Provided that if no suitable candidate is available from amongst Senior Theology Teachers for promotion

then the post shall be filled by promotion,

on the basis of seniority-cum-fitness, from amongst Theology Teachers with at least five years service as such and having qualification mentioned in column No. 3;

(e) three per cent from amongst the Senior Qaris (BPS-16), with at least five years service as Senior Qari and Qari and having qualification mentioned in column No.3:

Provided that if no suitable candidate is available from amongst the Senior Qaris then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from Qaris with at least five years service as such and having qualification mentioned in column No. 3;

twenty per cent from amongst the Primary School Head Teachers (BPS-16), with at least seven years service as Primary School Head Teachers and Senior Primary School Teachers and Primary School Teachers and Primary School Teachers and Aprimary School Teachers and Primary School Teach

Provided that if no suitable candidate is quallable from amongst

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II. Posts of General SST a and SST-2 Science supromotion or initial reconed basis separately."					
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asis of seniority-cum-igst Senior Primary Head Teachers for post shall be filled by cation mentioned in r Priniary School ary School Teachers i at least seven years

ther that if no suitable ilable from amongst School Teachers for se post shall be filled nary School Teachers ears sei vice as such ation nientioned in

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- didate is available in of the above teachers, heir promotion quota ial recruitment.
- T and SSTs-1 Science shall be filled by recruitment, each on





SECRETARY TO GOVERNMENT OF KITYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date

- The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
- The Secretary to Covernment of Khyber Pakhtunkhwa, Finance Department Peshawar.
- The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar
- The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar
- The Accountant General Khyber Pakhtunkhwa Peshawar,
- The Director, Elementary and Secondary Education Department Khijber Pakhtunkhwa Peshawar,
- The Director of Education (FATA) Peshawar.
 The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
- The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
- 10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar,
- 12. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar. 12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
- 13 All District Education Officer (M&F) in Khyber Pakhtunkhwa.,
- 14. All District Account Officer in Khyber Pakhtunkhwa.
- 15, All Agency Education Officer in FATA
- 16. All Agency Account Officer in FATA.
- 17. PS to Covernor Khyber Pakhtunkhwa Peshawar
- 18. PSito Chief Minister Khyber Pakhtunkhwa. Peshawan
- 20.PS to Minister E&SE Khyber Pakhtunkhwa. Peshawar. 19. PS to Chief Secretary Khyber Pakhtunkhwa. Peshawar:
- 21. PS to Secretary E&SE Khyber Pakhtunkhwa. Peshawar

SECTION OFFICER (PRIMARY) (ZAMIN KHAN MOMAND)

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