

1

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 1155/2023


LATIF ULLAH APPELLANT

VERSUS

**GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF
SECRETARY & OTHERS.....RESPONDENTS**

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**Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar**

2

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1155/2023

Diary No. 8633

26-10-23

Latif Ullah S/o Pervaz Khan R/o Muhalla Mandukhel Village Tarnab, Tehsil & District
Charsadda.

..... Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa, through Chief Secretary Civil Secretariat, Peshawar.
2. Government of Khyber Pakhtunkhwa, through Director General of Industries & Commerce Department, Civil Secretariat, Peshawar.
3. Nazim Shah, Assistant (BPS-16), in Directorate General, Industries & Commerce Department.
4. Gulzar Hussain, Assistant (BPS-16), in Directorate General, Industries & Commerce Department.
5. Ahmad Nawaz, Assistant (BPS-16), in Directorate General, Industries & Commerce Department.
6. Irfan Aziz, Assistant (BPS-16), in Directorate General, Industries & Commerce Department.

..... Respondents

JOINT PARA-WISE-COMMENTS ON BEHALF OF RESPONDENTS NO. 01 & 02.

Respectfully Sheweth:-

PRELIMINARY OBJECTIONS:

- A. That the Appellant has no locus standi to file this instant appeal.
- B. That the Appellant has no cause of action.
- C. That the Appellant has not come to this Honorable Court with clean hands.
- D. That the Appeal is bad for misjoinder of necessary parties.
- E. That the Appeal is based on malafide intention and it has been filed with ulterior motives to coerce and pressurize the respondents.
- F. That the Appellant is stopped by his own conduct from instituting this appeal.
- G. That the instant appeal is barred by law.

ON FACTS.

1. No comments.
2. Pertains to record.
3. Pertains to record.
4. Correct.
5. Incorrect. In the Working Paper for promotion to the post of Assistant (BPS-16), the name of the appellant was at Sr. No.06 of the panel. Meanwhile, the appellant came under inquiry and ACRs for the year, 2020 of the appellant were adverse (**Annex-I**) and deferred from promotion to the post of Assistant-BPS-16 (**Annex-II**). The other officials in the panel were promoted legally and the allegations of the appellant are baseless and not true.
6. Correct. The appellant remained under inquiry during the process of promotion with the allegations of submission of fake ACRs for the year 2020.

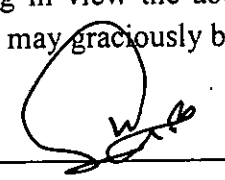
7. Incorrect to the extent that the ACRs for the year 2020 of the appellant were drafted adversely due to which he was deferred from promotion to the post of Assistant (BPS-16).
8. Incorrect to the extent that the appeal of the appellant is processed. The case for expunging of the adverse remarks of the ACRs for 2020 is processed but the reporting officer is the Honorable District and Sessions Judge/Presiding Officer (BPS-21) of the Consumer Protection Court and the Head of Department is in BPS-20, therefore, the case is sent to Establishment Department for opinion as to whom will be the authority for expunging the adverse remarks of the ACRs.
9. Incorrect. The appeal of the appellant for considering for promotion and expunge the remarks of the ACRs for the year 2020 was sent to the Establishment Department for opinion through Industries Department vide letter dated 25.08.2023 (Annex-III). Further to explain that for promotion, good/satisfactory ACRs for the last three years are compulsory at time of promotion.
10. No comments.

GROUND.

- A. Incorrect. The action of the Respondent No.02 deferring the name of the appellant from promotion with the reasons of adverse remarks in the ACRs for the year 2020 is not against Articles 4 and 25 of the Constitution of Pakistan, 1973.
- B. Incorrect. The representation of the appellant was processed in time but pending due to some legal discrepancies and the allegations of the appellant are not true.
- C. Incorrect. The promotion is not based only on seniority-cum-fitness but fulfilling some other requirements that are deemed necessary that is non-involvement in disciplinary proceedings, non-involvement in NAB cases and Court cases as well as provision of good/satisfactory ACRs for the last 03-Years at the time of promotion and the appellant was deferred due to adverse ACRs. The allegations of the appellant are not true.
- D. Incorrect. Respondent No.02 has not violated any law, rules & regulations and expunging the name of the appellant from the promotion list is explained above and the allegations are baseless and not true.
- E. Incorrect to the extent that Respondent No.02 did not keep pending the representation of the appellant but sent the case to the Establishment Department for opinion as already explained above.
- F. No comments.
- G. Incorrect. The appellant was deferred as he was under inquiry at the time of promotion as well as the ACRs for the year 2020 of the appellant were also adverse. The appellant was deferred as per law, however, the ACRs for the year 2020 of the appellant are still not expunged which is compulsory for promotion.
- H. The Respondents may kindly be allowed to raise other grounds at the time of arguments if needed.

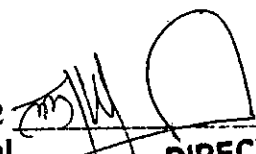
Keeping in view the above, it is very humbly prayed that the petition in hand being devoid of merit, may graciously be dismissed with cost.

Respondent No.1
 Chief Secretary to
 Government of Khyber Pakhtunkhwa,
 Peshawar.



Govt. of Khyber Pakhtunkhwa,
 Industries, Commerce &
 Technical Education Deptt.

Respondent No.2
 Director General,
 Industries & Commerce,
 Khyber Pakhtunkhwa, Peshawar.



DIRECTOR GENERAL
 Directorate General of
 Industries & Commerce
 Khyber Pakhtunkhwa, Peshawar

Amer-I

(4)

APPENDIX 'F' vide 3.1 (i)
Form for
Assistant and Clerks

RESTRICTED

GOVERNMENT OF KHYBER PAKHTUNKHWA

Dte of Industries and Commerce DEPARTMENT

PERFORMANCE EVALUATION REPORT

For the period from 01-01-2020 To 31-12-2020

PART-I

1. Name (in block Letters) LATIFULLAH 1 (a) Father Name _____
2. Designation Senior Clerk
3. Date of Birth 19-04-1987 3 (a). Qualification F.A
4. Date of Entry into Government Service: 14-05-2011
5. Branches/Sections in which employed during the year, with period Courier Court Charasadda.

PART-II

A	PERFORMANCE	AI	A	B	C	D
(1)	Reference, paging of notes correspondence		✓			
(2)	Movement of files and record of suspense causes		✓			
(3)	Keeping files and papers in tidy condition		✓			
(4)	Promptness and accuracy in disposing of work.		✓			
(B)	PERSONAL TRAITS					
(5)	Intelligence		✓			
(6)	Knowledge of procedure and regulations		✓			
(7)	Punctuality		✓			
(8)	Cooperation and tact			✓		
(9)	Amenability to discipline			✓		
(10)	Skill in drafting		✓			

M. Raame
 Assistant Director (Litigation)
 Directorate General of
 Industries & Commerce
 Khyber Pakhtunkhwa, Peshawar

5

- (I) Integrity
- (II) Incorruptible
- (III) Reported to be corrupt
- (IV) Believed to be corrupt, because of his behaviour towards the litigants
- (V) Monetary consideration Yes No
- (VI) Other considerations Yes No
- (VII) Knowledge of Trade/Commerce Yes No
- (VIII) Trustworthiness to confidential and secret matters Yes No
- (IX) Any disciplinary action taken during the period under review Yes No

PART-III

- | | By Reporting Officer | By Investigating Officer |
|--|-------------------------------------|-------------------------------------|
| (a) Recommended for accelerated promotion: | <input type="checkbox"/> | <input type="checkbox"/> |
| (b) Fit for promotion: | <input type="checkbox"/> | <input type="checkbox"/> |
| (c) Recently promoted/appointed - consideration for promotion pro-rationo: | <input type="checkbox"/> | <input type="checkbox"/> |
| (d) Not yet fit for promotion: | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> |
| (e) Unfit for further promotion: | <input type="checkbox"/> | <input type="checkbox"/> |

PART-IV

General Assessment	By Reporting Officer	By Investigating Officer
(I) Very Good		
(II) Good		
(III) Average		
(IV) Below Average	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
(V) Poor		

Alam

Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

Better Copy

- i. Integrity Assessment
- ii. Incorruptible
- iii. Prepared in the corrupt
- iv. Believed to uncorrupt..... because his behavior the litigants
 - (i) Money consideration (Yes)
 - (ii) Other consideration (Yes)
- 12. Knowledge of Typing/Computer. Yes YES NO
- 13. Trust worth lines in confidential and secret. No
- 14. Any disciplinary action taken during the period under report. No

PART III

By
Reporting
Officer

By
Countersigning
Officer

(a). Recommendation for accelerated Promotion.

--	--

(b). Fir for Promotion.

--	--

(c). Recently promotion/appointed consideration for promotion pre-mature

--	--

(d). No you fit for promotion.

✓	Sd
---	----

(e). Unfit for further promotion.

--	--

General Accountant	By Reporting Officer	By Countersigning Officer
(i) Very Good		
(ii) Good		
(iii) Average	✓	Sd
(iv) Below Average		
(v) Poor		

Latifullah
SPC

(6)

³
PEN PICTURE

He needs careful supervision

Reporting Officer's Signature

Name (in Block Letters) FARID KHAN ALIZAI

Designation D.A.S.J./J.C.C.

Date

General Remarks by Higher Officers.

Agree with entry of R.O.

Countersigning Officer's Signature

Name (in Block Letters)

Date

Designation

Hanif Khan DD

Assistant Director (Litigation)
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar



Annex-II

(7)

**DIRECTORATE GENERAL OF
INDUSTRIES & COMMERCE,
KHYBER PAKHTUNKHWA, PESHAWAR.**

**MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION COMMITTEE
HELD ON 21.12.2021 AT 10:00 A.M**

A meeting of Departmental Promotion Committee of the Directorate General Industries and Commerce, Khyber Pakhtunkhwa, Peshawar was held on 21.12.2021 at 10.00 AM under the Chairmanship of Director General, Industries and Commerce, Khyber Pakhtunkhwa, Peshawar in his office. The following attended the meeting:-

- | | | |
|----|--|-------------------|
| 1. | Mr. Iftikhar Ahmad
Director General, Industries & Commerce, Khyber
Pakhtunkhwa | Chairman |
| 2. | Muhammad Yasir Hassan,
Director, Industries & Commerce, Khyber Pakhtunkhwa | Member |
| 3. | Mr. Sananullah Khan,
Dy. Director (Administration) | Member |
| 4. | Syed Muhammad Saqib,
Section Officer (Admn:), Industries Department, Peshawar | Member |
| 5. | Mr. Asif Zaman,
Administrative Officer | Member/ Secretary |

Item No.1 **Promotion of Senior Clerk (BPS-14) to the post of Assistant (BPS-16) on regular basis in the Directorate General Industries and Commerce, Khyber Pakhtunkhwa.**

2. It was explained to the committee that 93-posts of Assistant (BPS-16) exist in the Directorate General Industries & Commerce out of which 60-posts falls to the share of promotion quota and required to be filled in by promotion from amongst the Senior Clerks (BPS-14) under the existing Service Rules, 2012 (amended, 2021). In the above 60-posts, 11-posts of Assistant (BPS-16) are laying vacant in the Directorate General Industries and Commerce, Khyber Pakhtunkhwa falling to the share of promotion quota.. A panel of the following Senior Clerk (BPS-14) was placed before the committee for determining their suitability for promotion to the posts of Assistant (BPS-16) on regular basis:-

S. No	Name	Post	Date of regular appointment to the present post	Whether completed 3-years service?	Whether eligible for promotion?
1.	Muhammad Tahir	Senior Clerk	23.11.2015	Yes	Yes
2.	Mr. Amjad Ali	Senior Clerk	23.11.2015	Yes	No
3.	Manzoor Ahmad	Senior Clerk	27.02.2017	Yes	Yes
4.	Muhammad Rashid	Senior Clerk	31.03.2017	Yes	Yes
5.	Ahmadullah	Senior Clerk	20.06.2017	Yes	Yes
6.	Waqas Ahmad	Senior Clerk	20.06.2017	Yes	Yes
7.	Latifullah	Senior Clerk	28.11.2017	Yes	Yes
8.	Nazim Shah	Senior Clerk	28.11.2017	Yes	Yes
9.	Gul Zar Hussain	Senior Clerk	28.11.2017	Yes	Yes
10.	Ahmad Nawaz	Senior Clerk	28.11.2017	Yes	Yes
11.	Irfan Aziz	Senior Clerk	28.11.2017	Yes	Yes

2 | DUL (Admin)
Admin oki

Waqas
Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

21/12


nothing attested

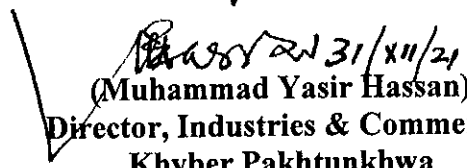
Admin
Director of Industries & Commerce,
Khyber Pakhtunkhwa, Peshawar

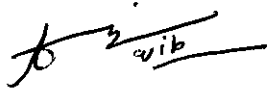
3. The members of the committee checked the required documents of Senior Clerk (BPS-14) of the above panel found them good/ satisfactory except the official at S.No.2 of Panel Mr. Amjid Ali, Senior Clerk (BPS-14) was deferred as his ACR for 2017,2020 are not checked. Official at S. No. 07 Mr. Latifullah is differed as he is under enquiry. The committee unanimously recommended the placed below Senior Clerk (BPS-14) for promotion to the posts of Assistant (BPS-16) on regular basis. The officials will be on probation for a period of one year, extendable as per laid down procedure:-

S.No	Name	Post	Date of regular appointment to the present post
1.	Muhammad Tahir	Senior Clerk	23.11.2015
2.	Manzoor Ahmad	Senior Clerk	27.02.2017
3.	Muhammad Rashid	Senior Clerk	31.03.2017
4.	Ahmadullah	Senior Clerk	20.06.2017
5.	Waqas Ahmad	Senior Clerk	20.06.2017
6.	Nazim Shah	Senior Clerk	28.11.2017
7.	Gul Zar Hussain	Senior Clerk	28.11.2017
8.	Ahmad Nawaz	Senior Clerk	28.11.2017
9.	Irfan Aziz	Senior Clerk	28.11.2017


5. The meeting ended with a vote of thanks from and to the chair.

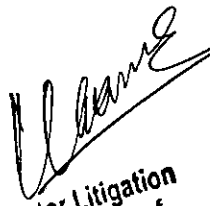

(Asif Zaman)
Administrative Officer
Member/ Cum Secretary


(Muhammad Yasir Hassan)
Director, Industries & Commerce,
Khyber Pakhtunkhwa
Member


(Syed Muhammad Saqib)
Section Officer (Admn:), Industries
Department, Peshawar
Member


(Sananullah Khan)
Dy. Director (Administration)
Member


Mr. Iftikhar Ahmad
Director General, Industries & Commerce,
Khyber Pakhtunkhwa
Chairman


Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

2

Admin officials
as drawn

31/12





**DIRECTORATE GENERAL,
INDUSTRIES AND COMMERCE
KHYBER PAKHTUNKHWA, PESHAWAR**

Government Printing Press Building Shami Road, Peshawar.

No. 8169 /3/423-DI-Admn:
To,

Dated. 25/08 /2023.

The Worthy Secretary,
Government of Khyber Pakhtunkhwa,
Industries, Commerce and Technical Education
Department, Peshawar.

Subject: **APPLICATION FOR CONSIDERING FOR PROMOTION AND
EXPUNGE THE REMARKS OF THE ACR FOR THE YEAR 2020.**

Dear Sir,

I am directed to refer to the subject cited above and to state that the opinion is solicited in the matter as per format of Establishment Department, please.

S.No	Subject matter	Promotion and Expunction of ACR for the year 2020.
i.	Detailed background of the case and point for advice.	It is stated that the Directorate General is the appointing authority for the staff of Consumer Protection Courts working under the administrative and financial control of Directorate General of Industries and Commerce, Khyber Pakhtunkhwa. The judge/presiding Officers of Consumer Protection Courts are posted by transfer from Peshawar High Court, Peshawar. The staff of Consumer Protection Courts are posted/transferred by Directorate General of Industries & Commerce, Khyber Pakhtunkhwa. Since the staff is working in courts, Presiding Officers/District & Session Judges are reporting officer of the court staff, however, in case of adverse remarks whether the appointing authority shall expunge the adverse remarks of Presiding Officer of Consumer Protection Courts or otherwise?
ii.	Whether the case was earlier to the S&GAD and if so, what advice was given.	No.
iii.	Whether the case has also been referred to Finance Department/Law Department for examination and advice.	No.
iv.	Whether the case actually concerns S&GAD and is being referred to S&GAD with the prior approval of Administrative Secretary concerned or otherwise.	Yes.

[Signature]
Administrative Officer
Directorate General Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

Enclst: No. 8170 /3/423-DI-Admn: *elr*

Dated. 25/08 /2023.

Copy of the above is forwarded to PS to Director General, Industries & Commerce, Khyber Pakhtunkhwa, Peshawar.

[Signature]
Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

[Signature]
Administrative Officer
Directorate General Industries & Commerce
Khyber Pakhtunkhwa, Peshawar

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

SERVICE APPEAL NO. 1155/2023

LATIF ULLAH APPELLANT

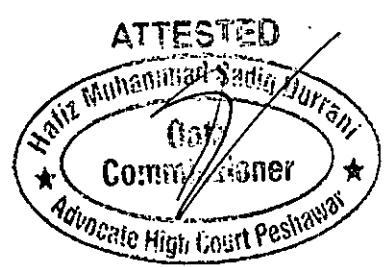
VERSUS

**GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH CHIEF
SECRETARY & OTHERS.....RESPONDENTS**

AFFIDAVIT

I, Muhammad Mansoor, Assistant Director Litigation (BPS-17) in Directorate General of Industries & Commerce, Khyber Pakhtunkhwa, Peshawar (Attorney for Respondents No.01 and 02) do hereby solemnly affirm and declare on oath that the contents of the accompanying comments/ reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court. It is further stated on oath that in this Appeal the answering respondent have neither been placed Ex-Parte nor their defense has been struck off/cost.

25 OCT 2023



DEPONENT
CNIC: 17301-3240835-5
CELL: 0332-9228808
Assistant Director Litigation
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar



**DIRECTORATE GENERAL OF INDUSTRIES AND
COMMERCE KHYBER PAKHTUNKHWA, PESHAWAR.**
Government Printing Press Building, Shami Road, Peshawar. (091) 9210234

AUTHORITY LETTER.


Mr. Muhammad Mansoor, Assistant Director Litigation (BPS-17), H/Qtrs Office Peshawar is hereby authorized to defend Chief Secretary, Khyber Pakhtunkhwa, Peshawar (Respondent No.01) and Director General, Industries and Commerce, Khyber Pakhtunkhwa, Peshawar (Respondent No.02) in the Service Tribunal, Khyber Pakhtunkhwa, Peshawar and to submit any documents on behalf of the aforementioned respondents whenever required by the Honourable Court in Service Appeal No.1155/2023 in the case titled as:

LATIF ULLAH

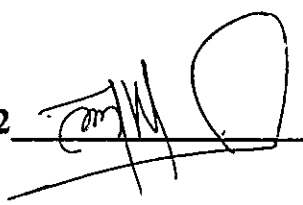
VERSUS

CHIEF SECRETARY, KHYBER PAKHTUNKHWA & OTHERS.

Respondent No. 01
Chief Secretary,
Khyber Pakhtunkhwa,
Peshawar.


Secretary to
Govt. of Khyber Pakhtunkhwa,
Industries, Commerce &
Technical Education Deptt.

Respondent No. 02
Director General,
Industries and Commerce,
Khyber Pakhtunkhwa, Peshawar.


DIRECTOR GENERAL
Directorate General of
Industries & Commerce
Khyber Pakhtunkhwa, Peshawar