

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 1042/2023

Mr. Shamshad Khan, SS-Physics (BPS-18).....Appellant

VERSUS

Chief Secretary, Govt: of Khyber Pakhtunkhwa & others.....Respondents.

I N D E X

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Govt. of Khyber Pakhtunkhwa & others..... Respondents

AFFIDAVIT

I, **Mr. Amjad Ali**, Section Officer (Litigation-II) Elementary & Secondary Education, Department do hereby solemnly affirm and declare that the contents of the accompanying para-wise comments, submitted by the respondents, 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 Respondents have neither been placed ex-parte nor has their defense been struck off.



DEPONENT

A handwritten signature in black ink, appearing to read "Amjad Ali".

Mr. Amjad Ali
Section Officer (Lit-II)
E&SE Department Peshawar



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Block "A" Civil Secretariat, Peshawar

Phone No. 091-9211128

AUTHORITY LETTER

It is certified that **Mr. Fahim Ullah, Legal Representative (Litigation-II)** Elementary & Secondary Education Department, Government of Khyber Pakhtunkhwa, Peshawar is hereby authorized to submit parawise comments on behalf of Secretary Elementary & Secondary Education Department Peshawar in **Service Appeal No. 1042/2023 Case Titled Mr. Shamshad Khan, SS-Physics (BPS-18)**, vs Government of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa, Peshawar.

Mr. Amjad Ali
Section Officer (Lit-II)
E&SE Department Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. 1042/2023

Mr. Shamshad Khan, SS-Physics (BPS-18) & Others.....Appellant.

VERSUS

Chief Secretary to Govt of KPK Peshawar..... Respondents.

PARAWISE COMMENTS ON BEHALF OF THE RESPONDENTS NOS. 1, 2 & 3.

Respectfully Sheweth,

Preliminary Objections:

1. The appellant has not come to this Tribunal with clean hands.
2. The appellant is not an aggrieved person nor has any locus standi to file the present appeal.
3. That the appellant has concealed material facts from this Tribunal.
4. That the appellant is estopped by his own conduct to file the present appeal.
5. That the present appeal is against the prevailing law and rules.
6. That the appellant is not entitled for any relief, he has sought from this Honorable Tribunal.
7. That the present appeal is liable to be dismissed being devoid of any merits.
8. That the present appeal is barred by law and hence not maintainable.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8343
Dated 2-11-23

On Facts

1. Pertains to record.
2. Incorrect hence denied. The seniority list issued by the Elementary & Secondary Education Department on 01-01-2019 was revised & updated seniority list of SS/HM (Male) BPS-17 which was at the time prepared with full caution and care. It is now not an issue nor has been challenged before this Honorable Tribunal in the present appeal in hand. This issue has become past and closed transaction. Needless to mention here that the appellant has only prayed for and against the Notification dated 13-12-2022, wherein he illegally demanding promotion from 17-05-2019 alongwith back benefits. It is also pertinent to mention here that the appellant is not entitled for the relief sought in the appeal because of the fact that promotion is given to any Civil Servant on the criteria of seniority cum fitness. And the appellant was much junior in the seniority list, therefore he was legally and rightly promoted on 13-12-2022 on the availability of vacant post in light of the seniority list stood on 31-07-2022.
3. Pertains to record. However again stated that the same is a past and closed transaction. Detail is given in the above para.
4. Para No. 04 as stated is incorrect. As per seniority list 01-01-2019 PSB was held on 17-05-2019 in which all the 105 Officers who was recommended for promotion was checked thoroughly at the first round some 44 Officer were considered fit for promotion who were promoted accordingly by PSB.

5. Para No 05 is again stated incorrect. The department/respondent has acted in accordance with law and forwarded the case of promotion of different Officers to PSB who returned the same for updating and revising the seniority list.
6. Pertains to record
7. Pertains to record.
8. Pertains to record.
9. In response of Para-09, it is stated that on the direction of Honorable Supreme Court of Pakistan a final seniority list of SS/HM (BPS-17) was prepared and placed before PSB which was considered for promotion on 13-12-2022.
10. Pertains to record, however the claim of the appellant alleging his promotion & back benefits from 28-05-2019 is against the law and facts. Therefore not permissible by law.
11. Incorrect, as replied above.
12. Para-12 alongwith grounds of appeal is incorrect, hence denied. The appellant has got no cause of action to file instant appeal.

On Grounds:

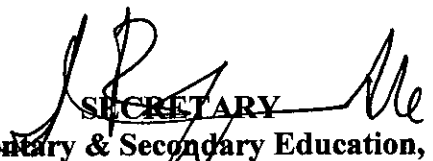
- A. Incorrect hence denied. The appellant is legally and rightly promoted on 13-12-2022 on the availability of vacant post in light of the seniority list stood on 31-07-2022.
- B. Incorrect hence denied. The seniority list issued by the E&SE Department on 01-01-2019 was revised and updated seniority list of SS/HM (BPS-17) Male which was at the then prepared with full caution care and responsibility. It is now not an issue nor has been challenged before this Honorable Tribunal in the present appeal in hand. This issue has become a past and closed transaction. The only prayed for modification of notification 13-12-2022 wherein he illegally demanding promotion from 17-05-2019 alongwith back benefit. The appellant is not entitled for any relief being not an aggrieved person is junior in seniority list at the then. The notification dated 13-12-2022 is in accordance with law and in light of seniority list stood on 31-07-2022. As per seniority list of 01-01-2019 PSB was held on 17-05-2019 in which 105 Officers were recommended out of which 44 Officers were found fit for promotion and they were right promoted. Thereafter as per direction of the August Supreme Court of Pakistan a final seniority list were prepare on 13-12-2022 and placed before PSB.
- C. Incorrect as per seniority list on 01-01-2019 PSB was held on 17-05-2019 in which all the 105 Officers who was recommended for promotion was thoroughly checked and the first round some 44 Officers were considered fit for promotion by PSB.
- D. Incorrect hence denied. The appellant was much junior in the seniority list dated 01-01-2019. The detail reply with explanation is given above.
- E. Incorrect hence denied. The appellant is not an aggrieved person. In fact the appellant was very much junior in the seniority list and he is not entitled for any promotion from 28-05-2019. The appellant was rightly promoted on 13-12-2022 on availability of post.
- F. Incorrect and just repetition of wrong facts by appellant which is denied and fully replied in the above para's.

- G. Incorrect hence denied. The appellant is not entitled to any relief he has claimed in the appeal.
- H. Incorrect and denied. The detail reply has been given in the above para's. The appeal in hand is liable to be dismissed summarily.
- I. Para-I is incorrect, hence denied. The appellant is not entitled for any relief what so ever claim in the appeal.
- J. Incorrect, there is no irreparable loss to appellant. The appellant is just wasting the precious time of this Honorable Tribunal and pressurizing the respondents for illegal service benefits.
- K. In response of Para-K the respondents seeks for permission to advance other facts and material before the tribunal at the time of arguments.

It is therefore, most humbly requested that the appeal in hands being devoids of any merits may kindly be dismissed with heavy cost.



DIRECTOR
Elementary & Secondary Education,
(Respondent No.3)



SECRETARY
Elementary & Secondary Education,
Department (Respondent No. 1 & 2)