

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

Service Appeal No: 7117/2021


Muhammad Ashraf Senior Clerk (BPS-14) Shangla.....Appellant.

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.....Respondents

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

BEFORE THE HONORABLE KHYBER PAKHATUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 7117/2021

Khyber Pakhtunkhwa Service Tribunal

Diary No. 8880

Dated 6-11-2023

Muhammad Ashraf Senior Clerk (BPS-14) Shangla.....Appellant.

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.....Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-4.

Respectfully Sheweth :-

The Respondents No.1-4 submit as under: -

Preliminary objections

- 1) That the appeal is not maintainable and incompetent in the eyes of Law in the present form.
- 2) That the appellant is estopped due to his own conduct to file this appeal.
- 3) That the appellant has got no cause of action and locus standi to file instant appeal.
- 4) That the appellant has not come to the Tribunal with clean hands and has suppressed all relevant facts.
- 5) That the appeal is bad for mis-joinder and non-joinder of necessary and proper parties.
- 6) That the Honorable Service Tribunal has no jurisdiction to entertain the instant appeal.
- 7) That the appeal has been mis-oriented, mis-constructed and mistakenly drawn and is incompetent in its present frame and context, and is liable for Rejection.
- 8) That the appeal is barred by Law.

Para-Wise Reply on facts:-

- 1) Pertains to record.

2) Incorrect / not admitted, strongly denied. The appellant was not appointed in the respondent department as Class-IV in the year 1996. The appellant was appointed by the then District Coordination Officer now Deputy Commission Shangla in his office on temporary basis. It is clear from the annexure A, page 13 of the writ petition that the appellant was employee of the then District Coordination Officer Shangla. Appellant took charge of his post in the office of the District Coordination Officer Shangla and performed duty in his office. The appellant was not appointed by the any officer of the respondents in E&SE department. Hence the claim of the appellant is totally against the law. It is further added that the District Coordination Officer Shangla is not respondent in the present service appeal; hence present service appeal is not maintainable due to mis-joinder and non-joinder of the necessary and proper parties, hence liable to be dismissed with cost.**(Copy of the appointment order is Annexure-A).**

3) Incorrect / not admitted. The appellant was declared as surplus pool employee vide order dated 29.08.2001 and appellant was posted as N/Qasid in the office of the District Planning Officer (P&DD). It is also clear that appellant was placed in the surplus pool employee in the year 2001. It is further added that the appellant was employee of the then District Coordination Officer till Aug 2001. In 2001 the services of the appellant was placed at the office of the District Planning Officer (P&DD) Shangla. The appellant was not employee of the respondent department till Aug 2001 and he did not work a single day in the Respondent Department.

It is, further added that in Oct 2001, the appellant was transferred to the office of the then Deputy District Officer (F) Primary now SDEO (F) Shangla by the then District Coordination Officer now Deputy Commissioner Shangla. That an May 20, 2004, the appellant along with other incumbents were promoted to the post of Junior Clerk BS-11 on the basis of 33% quota by the then District Coordination Officer Shangla. This promotion order reflects that the appellant was the employee of the District Coordination Officer Office Shangla **(Annexure-B)**. This promotion order reflects that the appellant was employee of the District Coordination Officer office Shangla, appellant was not employees of the respondent department (E&SE Department) till his promotion to the post of Junior Clerk.

4) Incorrect / not admitted. The appellant was employee of the Deputy Commissioner Office Shangla and appellant was posted in the respondent department being surplus pool employee for the purpose of salary, hence appellant is not entitled for any kind of promotion in the E & S E Department. The name of the appellant was mistakenly

entered in the seniority list of E & S E employee (Junior Clerks). Appeal against the appellant was received and then department checked the record of the appellant service, in the process of scrutiny of the record, it was clear that the appellant was the employee of the then District Coordination Officer now Deputy Commissioner.

- 5) Incorrect / not admitted. The name of the appellant was mistakenly entered in the seniority list of Junior Clerks of E&SE Department. As mentioned above that the appellant was not employee of the E&SE Department, therefore, appellant is not entitled for promotion in the E&SE Department. As per surplus pool policy section 5 C (IV), the appellant may seek promotion from his parent department. **(Surplus pool policy is annexed as annexure C).**
- 6) Incorrect / not admitted. The appeal against appellant was received, the appellant was mistakenly promoted to the post of Senior Clerk BS-14 as reflects in the promotion order dated 15.02.2021. As and when the respondent department comes to know that the appellant was surplus pool employee and appellant was adjusted in the respondent department for the purpose of salary. The respondent No. 2 immediately withdrawn the promotion order of the appellant. The withdrawal of promotion order was according to law, rule and policy of the Government. **(Copy of withdrawal of promotion order is Annexure-D).**
- 7) This para is related to the adjustment of appellant in the respondent department, hence pertains to record. Detail reply is given in paras ibid.
- 8) Incorrect / not admitted. Detail reply is given in Para 5 & 6 above.
- 9) The appellant is surplus pool employee; the surplus pool employee can claim all kinds of promotion / benefits from his parent department. Hence the promotion of appellant to the post of Senior Clerk was against the law, rule and polices of the government. Therefore, respondent No. 2 withdrawn the promotion order and the respondent department had adjusted the salary of appellant to the post of Junior Clerk BS-11 as per law.
- 10) Incorrect / not admitted. The respondent department did not have authority to give promotion to the surplus pool employee. The appellant is not entitled to claim seniority in the respondent department. Appellant can claim seniority and other benefits from his parent department, the appellant did not make respondent to his parent department. Therefore, present service appeal is not maintainable in eye of law and liable to be dismissed with cost.

11) Incorrect / not admitted. The appeal of the appellant was rejected by the respondent No. 2. (Annexure-E).

12) Incorrect / not admitted. Appellant is not an aggrieved person. The service appeal of the appellant is not maintainable and is only exercise in futility. Further proceeding in this regard would bear no fruit. It is, therefore, requested to this Honorable Tribunal to dismiss the Service Appeal of the appellant with cost.

Objections on Grounds:-

- A. Incorrect / not admitted. The order dated 24.02.2021 passed by the respondent No. 2 is according to law. The act of the respondent No. 2 was according to law, rules and based upon the principles of natural justice.
- B. Incorrect and not admitted, strongly denied. The appellant was mistakenly promoted to the post of Senior Clerk BS-14. Appellant is not permanent employee of the respondent department, therefore, respondent department cannot give him promotion to the post of higher scale. The withdrawal of promotion order of the appellant was in the light of rule and surplus pool policy of the government.
- C. Incorrect / not admitted, strongly denied. The respondents department treated the appellant according to law, rule and policies of the government. The appellant was given all kinds of financial benefits according to law, no discrimination had been made with the present appellant. Therefore, the present service appeal is liable to be dismissed with cost. The stance of the appellant is having no truth and is totally false and fictitious. The act of the respondents cannot be declared against the law on any ground whatsoever but the straight away rejection of Service Appeal of appellant.
- D. Incorrect / not admitted. The appellant did not have right of seniority in the respondent department being employee of the Deputy Commissioner Office Shangla. The Deputy Commissioner Shangla is not respondent in present service appeal; hence service appeal is liable to be dismissed with cost.
- E. The respondents may kindly be allowed to raise additional grounds at the time of arguments.

In view of the above made submissions, it is most humbly requested that this Honorable Tribunal may very graciously be pleased to dismiss the instant Service Appeal in favor of the Respondents in the interest of justice.

Dated ___/___/2022

[Signature]
DIRECTOR

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 2-4)

[Signature]
SECRETARY

E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1)

AFFIDAVIT

L. Dr. Hayat Khan Assistant Director (Litigation-II) E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant Para Wise Comments are true & correct to the best of my knowledge & belief.

[Signature]
Deponent

ATTESTE

AZMAT AIL AADVADEE
Notary Public
Medical Complex Peshawar
04-2023

(13)

A

Annex "A"

OFFICE OF THE DEPT. OF HEALTH SERVICES, SHANGLA.
No. 2311 / 2/3 - accounts dated Alpurai t.d. 11/7/1998.

OFFICE ORDER.

Mr. [Name] resident of village [Name] Shangla is hereby [Name] against the vacant post in this office, subject to the following:

1. His application in pursuance of temporary basis subject to regularization by the Departmental Selection/Promotion Commission.
2. Health and age certificate from the Medical Superintendent of the Hospital.
3. Domicile Certificate.

DEPUTY COMMISSIONER,
SHANGLA.

Encls: No. 23/2-1/3

Copy [unclear]

1. The District Accounts Officer, Shangla.
2. The District [unclear] of this office.
3. The Bill Clerk of this office.
4. The Official concerned for compliance.
5. The Personal file of the official.

~~File Attached~~

~~Amir~~

DEPUTY COMMISSIONER,
SHANGLA.

A

(Annex-A)

OFFICE OF THE DISTRICT COORDINATION OFFICER DISTRICT SHANGLA

Office order / Appointment.

Consequent upon the recommendation / approval by the District Selection Board Shangla in its meeting held on 12/05/2004 and in relaxation of ban / provision of NOC by the concerned authorities, the District Coordination Officer District Shangla / Chairman DSB Shangla has been pleased to appoint the following candidates as Junior Clerks (Contract / Permanent in case of under service) in BPS-05 (Rs.2100-100-5100) with usual allowances in schools / office noted against each from the date of taking over charge in the interest of public service.

S. #	Name with Father's Name	Residence	Merit Position	Schools / Station where posted	Remarks
1	Abdus Salam s/o Muhammad Younas	Lilownai	46.77	O/O EDO (S&L)	Deceased Teacher Son
2	Gauhar Iqbal s/o Talat Iqbal	Lilownai	43.90	O/O sports Officer	Deceased Teacher Son
3	Ikramul Haq s/o Muhammad Farza	Shahpur	42.91	GHSS Shahpur	Deceased Teacher Son
4	Said Tariq Shah s/o Afra Siyab	Chakisar	40.87	GHS Chakisar	Deceased Teacher Son
5	Himayatullah s/o Gul Pervez	Lilownai	53.45	O/O DDO (M)	C-IV 33% Quota
6	Sarbali Kahn s/o Bakht Buland	Pagoraj	48.45	GHSS Shahpur	C-IV 33% Quota
7	Amir Zada s/o Yarab	Chakisar	47.56	GHSS Butyai	C-IV 33% Quota
8	Abdul Qadoos s/o Anbaras Kahn	Ajmair	40.56	GHSS Olandar	C-IV 33% Quota
9	Muhammad Ashraf s/o Muhammad Akram Jan	Lilownai	35.97	O/O EDO (S&L)	C-IV 33% Quota
10	Bakhtawar Khan s/o Dilbar Mian	Lilownai	19.20	O/O EDO (S&L)	C-IV 33% Quota
11	Rahmat Ali s/o Gul Zamin	Kass Lilownai	58.94	GHS Kass Lilownai	Open Merit
12	Muhammad Arif s/o Mir Hasan	Alpurai	58.06	GHS Kotkay	Open Merit
13	Said Saad s/o Shah Zaman	Lilownai	57.35	O/O DDO (M)	Open Merit
14	Hayat Ali Shah s/o Abbar Khan	Lilownai	55.73	CGMHS Alpurai	Open Merit
15	Muhammad Sultan s/o Muhammad Anwar	Zara	54.54	GHS Kuz Kani	Open Merit
16	Zahoorullah s/o Khalilur Rahman	Sanila	54.36	GHS Ntwalan	Open Merit
17	Hazrat Usman s/o Nisar Muhammad	Lilownai	54.19	O/O DDO (M)	Open Merit

Terms & Conditions:

- 1) The Appointment is purely on contract basis against BPS-09 plus usual allowances as admissible under the rules except in service candidates.
- 2) The initial period of appointment shall be three years, after which the contract will be renewed or otherwise by the appointing authority keeping in view the performance of the concerned fresh candidates.
- 3) The appointment of the above candidates subject to the verification of their domicile of district Shangla.
- 4) The service of the above candidates will be liable to termination at any time without assigning any notice / reason. In case of resignation without notice, one month pay and allowances if any shall be forfeited to Govt. treasury.
- 5) The candidates should join their posts within fifteen days of the issue of their orders. The Principal / Head Master / Head Mistress / DDO concerned should furnish a certificate

[Signature]
Approved

157 (8)

- the candidates have joined the posts with an stipulated period of time failing which their appointment will be automatically treated as cancelled.
- 6) The fresh candidates will not be handed over charge if their age exceeded 38 or below years.
 - 7) The appointment is subject to the production of health & age certificate from the medical Superintendent concerned.
 - 8) The Principal / H/M / DDC concerned should check their original Certificates / documents before handing over charge and attested copy of the agreement signed on both sides obtained for further verification of certificates / Degrees from concerned Institutions.
 - 9) Charge report should be submitted in duplicate to all concerned.
 - 10) No TA/DA is allowed being fresh appointment.
 - 11) The candidate will be governed by the terms and conditions of service mentioned in agreement / enforced.
 - 12) They will not claim seniority.
 - 13) The Principal / H/M / DDC concerned should obtain Surety Bond as well as agreement to obey the contract policy and will have no right to challenge the contract policy in Court of Law.
 - 14) The fresh appointees will liable to be transferred to the schools for whom aspirants for transfer exist as and when the ban is lifted.

(Signature)
 DISTRICT COORDINATION OFFICER
 CHAIRMAN DBB
 DISTRICT SHANGLA
 Dated: 29/5/2004

Endost No: 7363-84
 Copy to:

- 1) The District Schools & Literacy Department N.W.F.P, Peshawar
- 2) The District Schools & Literacy N.W.F.P, Peshawar
- 3) The District Accounts Officer Shangla
- 4) The Principal / H/M / Mistress GHSS / GHS / GGHS / GMS / GGMS DDC Concerned
- 5) The Candidates concerned.

(Signature)
 Attested

(Signature)
 DISTRICT COORDINATION OFFICER
 CHAIRMAN DBB
 DISTRICT SHANGLA

Annex - B
100
Annex - C
9

Surplus Pool Policy

Policy for declaring government servants as surplus and their subsequent absorption/ adjustment.

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc.

1. POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS.

The Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

2. CREATION OF SURPLUS POOL

There will be a surplus pools cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

3. IMPLEMENTATION/MONITORING CELL

For the purpose of coordination and to ensure proper and expeditious adjustment/ absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:-

- a. Additional Secretary(Establishment) E&AD.....Chairman.
- b. Deputy Secretary LG&RD Department.....Member
- c. Deputy Secretary Finance Department.....Member
- d. Deputy Secretary(Establishment) E&AD.....Secretary

4. CRITERIA FOR DECLARING A GOVERNMENT SERVANT AS SURPLUS AS A RESULT OF ABOLITION OF POST.

Consequent upon the abolition of a post in a particular cadre of a department, the junior most employee in that cadre would be declared as surplus. Such posts should be abolished in the respective departments and created in the surplus pool as indicated in para 2 above for the purpose of drawl of pay and allowances and also for consideration for subsequent adjustment.

5. PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:-

- (a) Before transferring an employee to the surplus pool, he should be given option by the concerned department.

Attended

(i) to proceed on retirement with normal retiring benefits under the existing rules;

OR

(ii) to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.

(b) Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise seniority list will be caused in the surplus pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustments shall be on seniority-cum-fitness basis. For this purpose, the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.

(c) Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner:-

(i) In case of occurrence of vacancies in their corresponding posts in any Government Department/ Organization, the senior most employee in the surplus pool should be adjusted first.

(ii) In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.

(iii) If an employee possesses the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post subject to imparting the requisite training.

(iv) (a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.

OR

(b) Where no equivalent post is available the civil servant may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the post immediately preceding his appointment to a lower post shall remain protected.

(v) ⁸⁴In case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.

(vi) ⁸⁵ Surplus employees, who voluntarily opt, may be allowed adjustment in Autonomous/Semi-autonomous bodies with the concurrence of these bodies, where the job is pensionable. The Government will pay pension contribution for the period they rendered regular service under the Government.

⁸⁴ Sub para c (v) added to para 5 vide circular letter No.SORVI(E&AD)5-1/2005, dated 15.2.2006.

⁸⁵ Sub para c (vi) added to para 5 vide circular letter No.SORVI(E&AD)5-1/2005, dated 31.5.2006.

Attested



Amex-D (11)

OFFICE ORDER

The promotion Order occurring at S.No.311 in r/o Mr. Muhammad Ashraf Junior Clerk BS-11 to the post of S/Clerk issued vide this office Endst: No. 921290-931370/A-23/MS/Promotion IC to SC/2021. Dated 15/03/2021 is hereby **Withdrawn**.

DIRECTOR
Elementary & Secondary Education,
Khyber Pakhtunkhwa, Peshawar

Endst: No. 1769-74 /F.No. /A-23/MS/Appeal against M. Ashraf Shangla

Dated Peshawar the 24 / 3 / 2021

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

1. District Education Officer (Male/Female) Shangla.
2. District Account Officer Shangla
3. Principal/HM Concerned.
4. Official concerned.
5. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

[Signature]
Additional Director (PE&S)
Directorate E& Secondary Education
Khyber Pakhtunkhwa, Peshawar

24/02/02 *[Signature]*

[Signature]
Attest

G1

(Annex-G)

خدمت جناب ڈائریکٹر ایگزیکیوٹو ایڈمنسٹریشن
 خیبر پختونخواہ پشاور
 عنوان - اپیل بابت جوئیئر ملز کی پروہوشن

جناب عالی! (Annex-E)

گزارش کیجانی کہ حالیہ جوئیئر ملز کی پروہوشن آرڈر ترمیمی نمبر
 مورخہ 21/10/2004 کا مورچہ ہے جو چکا ہے جس میں ہمارے نام شامل نہیں ہے۔ لیکن یہ حکم 2004
 جعفری مشورہ جوئیئر ملز میں جبکہ ہمارا ایک ساتھی سرگودھا پور میں ہے اس لیے اس
 کی کاپی ہمیں بھی شامل ہوں تو یہ ہمارے بھی حقوق بنانا ہے۔ یہ حکم سرگودھا
 محمد اشرف زکریا میں اکرم جان جو مرقی پاپو کا ہے جو ایک حمایتی ادارہ ہے جس کی
 میں اس وقت 20/5/2004 کو ہمارے ترقی یافتہ جوئیئر ملز کی پروہوشن آرڈر
 کاپی لے رہا ہے۔

ایذا در خواست پیش خدمت ہے کہ آراء و صلاحات سے
 خفا رہا کرتا ہوں۔ پروہوشن ممکن ہو کر یہ لپٹو دیگر ضروری تصدیق کی جائے۔
 نو جہتی ہوگی۔

الحاضری

- 1- کوہ اقبال 2- بختر خان 3- حمایتی ادارہ
- 4- عبدالغنی 5- عبدالغلام 6- انور خان
- 7- عبدالغنی 8- عبدالغلام 9- عبدالغنی

نوٹ - 1- ترقی پانے والا ترمیم
 نمبر 311 پر موجود ہے جو 20/5/2004
 میں درج ہے۔ ہمارے جوئیئر ملز
 نمبر 333 کو بھی ترقی پانے کا
 حکم ملنا چاہیے۔

مخلص شاہ
 Consideration please.
 Consideration please.
 Attested




**DIRECTORATE ELEMENTARY & SECONDARY
EDUCATION KHYBER PAKHTUNKHWA, PESHAWAR.**

AUTHORITY LETTER

I Director, Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar do hereby authorize Mr. M. Tufail Assistant (Litigation) of this Directorate of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar to attend the Khyber Pakhtunkhwa Service Tribunal in connection with filing of para wise comments in Service Appeal No. 7117/2021 Titled M. Asbraf VS Government of Khyber Pakhtunkhwa Elementary & Secondary Education Department.

Dated 6 / 11 / 2023


Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.