

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2071/2023

Abdus Sattar DM GHS Batai District Buner

Appellant

V/S

1. Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. District Education Officer District Buner

Respondents

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DEPONENT

CNIC No 15101-0882586-3

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 2071/2023

Diary No. 9291

Abdus Sattar DM GHS Batai District Buner

Dated 21/11/23

Appellant

V/S

1. Govt: of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. District Education Officer District Buner

Respondents

Written Reply/Para wise Comments for & on behalf of Respondents No. 1, 2 & 3

Respectfully Sheweth

Preliminary Objections

1. That the appellant did not file departmental appeal at all. The documents annexed with memo of appeal is annexure J page 53 to 58 is just a formality.
2. That the service appeal is also badly barred by time and hit by the doctrine of laches, hence not maintainable.
3. That the service appeal is wholly incompetent, misconceived and untenable.
4. That the service appeal is wrong, baseless and not maintainable, it shows no strong cause to be taken for adjudication, therefore, the same service appeal is liable to be rejected/ dismissed.
5. That the service appeal is unjustifiable, baseless, false, frivolous and vexatious Hence the same is liable to be dismissed with the order of special compensatory cost in favour of respondents.
6. That no constitutional or legal right of the appellant has been violated, therefore, the appellant is not entitled to invoke the constitutional jurisdiction of this honourable Service Tribunal under Article 212 of the constitution of Pakistan.
7. That the appellant has not come to the Court/Tribunal with clean hands.
8. That the appellant has concealed the material facts from this Honourable Tribunal.
9. That the appeal is bad for misjoinder and non-joinder of the necessary party.
10. That the appellant has filed the instant appeal just to pressurize the respondents.
11. That the appellant has no cause of action to file the instant appeal.
12. That the appeal is not maintainable in the eye of law.
13. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.

FACTS:

1. That the appellant misconceives the matter. The appellant was appointed in compliance of court judgment vide office endorsement No. 5369-78 dated 26-11-2018. The appellant took over charge happily without any hesitation. "Laws

(2)

evolved by judiciary could not be applied retrospectively, more particularly so in already settled issues." Same is reported in 2001 PLC (C. S) 184. It is settled by now that appointments are always prospective in nature. The competent authority, DEO (M) Buner has prepared seniority list in accordance with **Section- 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with rules 17(1)(a) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.** The documents annexed as J at page 53 to 58, with memo of appeal, he claims departmental representation but he did not submit it to the appellate authority. It is not a departmental representation at all. The service appeal without departmental appeal has no legal back up. The service appeal is wholly incompetent. Furthermore, the service appeal is also barred by time and hit by the doctrine of laches.

2. That respondent No. 3 advertised various district cadre posts including drawing master BPS-15 posts. Due to lacking of one year DM certificate from the recognized institution, the appellant was rightly not appointed. Only eligible candidates can compete in selection process. The petitioner was ineligible, therefore, could not compete in the selection process.
3. That the scrutiny committee checked all the documents of candidate and found the appellant along with some other similarly placed persons ineligible for appointment against the DM post because of not having one year Drawing master certificate. They had Integrated Drawing Examination (IGDE) certificate. The certificate of the appellant was sent to DCTE for guidance. The directorate of DCTE conveyed the guidance to the competent authority vide letter No 4310/DD(TRG) Abbottabad dated 22-04-2014, stating that the same certificate is not equivalent of the certificate mentioned in the advertisement, therefore, declared the appellant ineligible for recruitment to the post of DM. **(The guidance of the Director DCTE is Annexed as A)**
4. That the writ petition was disposed with the following concluding para; **"before parting with this judgment, it would not be out of place to mention here that the respondents are directed to redress grievances of all these petitioners with regard to their appointments against the post of DM immediately without further waste of time as they have been languishing before different courts of law for their lawful entitlements since long."**

A review of the said judgment was filed which was disposed with the following observations; **"the learned AAG present in the court has no objection. So, this review petition is allowed and the respondents are directed to prepare joint seniority lists in this regard according to law, rules and procedure. This amendment may be read as part and parcel of the order of this court dated 30-05-2018 passed in w.p No. 284-M of 2015."**

In COC No. 103-M/2018 dated 16-12-2019 dismissed with COC with observations that all the petitioners have been appointed, thus the orders of this court had duly been complied with. The respondents have prepared seniority list strictly in

in accordance with **Section- 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with rules 17(1)(a) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.** thus matter has already been settled by the respondents. Hence the instant service appeal is hit by doctrine of res-judicata. **(Judgment in review petition is annexed as B)**

5. That the respondent in compliance with judgment of honourable High Court Mingora bench issued appointment order of fourteen candidates including the appellant vide DEO (M) Buner order endorsement No. 5369-78 dated 26-11-2018. However, it is pertinent to mention here that in response to the advertised DM post in the year 2014 thirty seven candidates had already been appointed vide DEO (M) order endorsement No. 8812-19 dated 27-11-2015. The respondents filed a CPLA No. 73-P/2020 against the judgment of the high court which was never dismissed by the Apex Court of Pakistan but disposed of with the directions, **"In any event, the matter lies with the petitioner authorities to apply the relevant rules and regulations in order to assess the qualification of the respondents to be appointed as Drawing Master."** The courts judgments have been complied with. Therefore, the instant service appeal is hit by the principle of res- judicata, hence may please be dismissed with special compensatory cost in favour of the respondents. **"Repetitive, frivolous and fraudulent litigation after final adjudication of matter is duty of court to take effective measures against obstinate litigants and their lawyers in such cases."** Reliance is placed on 2011 SCMR 27. **(Appointment orders and C. A. 73-P/2020 annexed as C, D and E)**

6. That the appointments are always made prospectively,. There are a plethora of judgments of the higher/ apex court, wherein it is held that notification and/ or executive order can operate prospectively and not retrospectively. Reliance is placed on civil appeal No. 511/2021 in w. p No. 3111-P/2020 Peshawar High Court Peshawar. **"If statutes or rules, which gives right to the citizens, always operates retrospectively is accepted, it would tantamount to opening a flood gate for all other similarly placed persons."** Same is reported in 2021 SCM 1246 and PLD 1997 SC 315. The matter of seniority has already been resolved accordingly.

7. That the appellant had filed an appeal No. 3302/2020 which was disposed of on 27-02-2023. In the light of the judgment, the department issued joint seniority list strictly in accordance with section 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants Rules, 1989. The prepared seniority list has been communicated to the appellant accordingly. There is no departmental appeal filed by the appellant. The service appeal is also barred by time and hit by the principle of laches. **"Limitation would run even against a void order and an aggrieved party must approach the competent forum for redressal of his grievance within the period of limitation provided by law."** Same is reported in 2023 SCMR 866. The stance/ plea of the appellant is

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frivolous, surmise, vexatious, contemptuous, concocted and ludicrous. (Civil servants Act 1973 and APT Rules 1989 annexed as F and G)

8. That the appellant himself confesses that the seniority list was communicated to him. The seniority list has been prepared strictly in accordance with **Section- 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with rules 17(1)(a) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989**. How ludicrous is that a candidate appointed in the year 2018 would be considered as senior than the candidates appointed in the year 2015. The appellant is not aggrieved person at all. Therefore, he has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed on the above facts and circumstances.

GROUND:

- A. Incorrect hence denied. Respondents have treated appellant in accordance with law, rules and policy and as such the violation of any article of the Constitution of Islamic Republic of Pakistan 1973, cannot arise. Furthermore, the joint seniority is just, fair and in accordance with law, rules and policies, hence is sustainable in the eye of law.
- B. Incorrect, hence strongly denied. The private respondents from serial No. 4 to 38 were eligible for appointment against the DM post on 27-11-2015 while the appellant was not eligible that time. The appellant gained his eligibility on 30-05-2018 through court interference. The appellant took over charge happily without any hesitation. Thus, his appointment became past and close transaction. **"Laws evolved by judiciary could not be applied retrospectively, more particularly so in already settled issues."** Same is reported in 2001 PLC (C. S) 184. It is settled by now that appointments are always prospective in nature. The judgment he (appellant) refers has no relevancy with the matter in hand.
- C. Incorrect, hence strongly denied. The appointments made in the year 2015 gained finality. There rights were created in the year 2015 while the appellant right was created through judiciary in the year 2018, therefore, the appellant cannot compete with the candidates appointed in the year 2015. Thus the seniority list is rightly prepared strictly in accordance with **Section- 8 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 17(1)(a) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989**, therefore, need to be kept intact.
- D. Incorrect, hence denied. The judgment, he refers to, has no relevancy to the instant matter. **"Eligibility/ qualification mentioned in advertisement for post, candidates were required to meet the criteria mentioned in the advertisement on the date of submission of their applications. Respondent who was selected for the post, did not possess the requisite qualification on the said date and as such was not qualified to be considered for appointment."** Same is reported in 2020 SCMR 568. In the advertisement the criteria for DM recruitment was Bachelor degree with one year DM certificate from a recognized institution, but

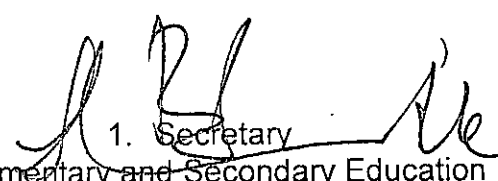
the DM certificate of the appellant was not of one year duration. Therefore, the appellant did not meet the criteria mentioned in the advertisement, hence he was ineligible that time for recruitment.

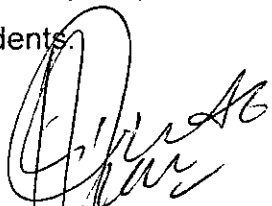
E. Incorrect, hence denied. The seniority list is prepared in accordance with law, rules and policy in field and as such the violation of any article of the Constitution of Islamic Republic of Pakistan 1973, cannot arise.

F. Incorrect, hence denied. The respondent department has issued the seniority list in accordance with law, rules and policy and the appellant was placed at his right place in the seniority list. He was lacking the eligibility criteria for appointment in the year 2015, therefore, he was not appointed. The delay was on part of the appellant because he did not meet the criteria mentioned in the advertisement.

G. That the respondents seek permission of Honourable service tribunal to raise/ argue other points/ grounds on the day of hearing the case.

It is earnestly requested that the appeal in hand may very graciously be dismissed with special compensatory cost in favour of respondents.

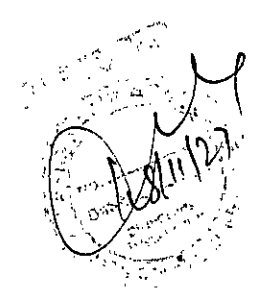
(

1. Secretary
Elementary and Secondary Education
Khyber Pakhtunkhwa

(

DR. IQBAL KHAN)
2. Director
Elementary and Secondary Education
Khyber Pakhtunkhwa

(

(Iftikhar ul Ghani)


3. District Education Officer
Male Buner



Affidavit

I Iftikhar ul Ghani DEO Male Buner do hereby solemnly affirm and declare on oath that the contents of the comments submitted by respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

It is further stated on oath that in this appeal the answering respondents have neither been placed ex-parte nor has their defence been struck off.

(

(Iftikhar ul Ghani)
District Education Officer
Male Buner

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2071/2023

Abdus Sattar DM GHS Batai District Buner

Appellant

V/S

1. Govt: of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar
3. District Education Officer District Buner

Respondents

AFFIDAVIT

I, Ubaid ur Rahman, Superintendent BPS-17, office of the District Education (Male) Buner, do hereby solemnly affirms and state on oath that the whole contents of the reply are true and correct to the best of my knowledge and belief & nothing has been concealed from this Hon'ble Tribunal.



Deponent

15101-0882586-3

Annexure II A

7

The District Education Officer (Male) Bunair
Khyber Pakhtunkhwa:

Subject:

DM: Course outline of Khyber Pakhtunkhwa

Memo:

Reference your office Memo No: 1115 dated 18/04/2014 on the subject cited above.

The scheme of studies approved as declared by Directorate of Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad is as under.

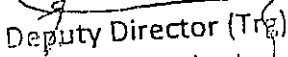
1. Duration of Drawing Master course is one year.
2. There are 10 compulsory subjects taught in Drawing Master course, i.e.
 1. Scale Technical and Geometrical Drawing Free Hand Sketching.
 2. Modal Drawing
 3. Natural Study
 4. Black Board Sketching
 5. Craft
 6. Islamiyat
 7. History of Art
 8. Expressional Drawing
 9. Physical Education
 10. Design

3. Total marks of DM examination is 1200.

4. Registrar Departmental examination Khyber Pakhtunkhwa Peshawar is the authority to conduct the Pre-service courses (PTC, CT, DM, PET) examinations while in IGD there is no third party validation of examination.

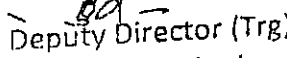
5. Teaching practice / practicum is compulsory in DM course.

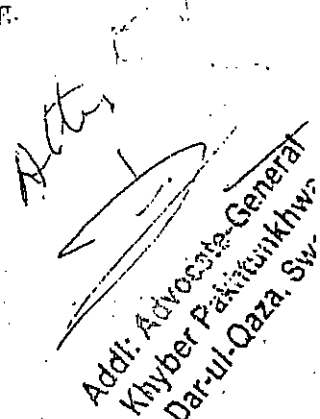
Keeping in view the above grounds the IGD certificate issued by Inspector of Drawing Hyderabad Sindh is not equivalent to DM one year certificate issued by the Registrar Departmental Examination Khyber Pakhtunkhwa.


Deputy Director (Trg)
DCTE Abbottabad

Endst: No. _____/DD(Trg)

- Copy for Information and immediate action to the :-
1. Director E&SE Govt of Khyber Pakhtunkhwa Peshawar.


Deputy Director (Trg)
DCTE Abbottabad


Advocate General
Khyber Pakhtunkhwa
Dar-ul-Qaza, Swat

(Better Copy)

Page No. 5

DIRECTORATE OF CURRICULUM AND TEACHER EDUCATION KHYBER PAKHTUNKHWA, ABBOTTABAD

Phone # 0992-382634, Email dcte-kpk@hotmail.com

No. 4310/DD/(Trg)

Dated: 22/04/2014

To

The District Education Officer (Male) Bunair
Khyber Pakhtunkhwa.

SUBJECT: DM Course Outline of Khyber Pakhtunkhwa

Memo:

Reference your office memo No. 1115 dated 18/04/2014 on the subject cited above.

The scheme of studies approved as declared by directorate of Curriculum and teacher education Khyber Pakhtunkhwa Abbottabad is as under.

1. Duration of Drawing master course is one year.
2. There are 10 compulsory subjects taught in Drawing Master course, i.e.
 1. Scale Technical and Geometrical Drawing Free Hand Sketching.
 2. Modal Drawing.
 3. Natural Study.
 4. Black Board Sketching.
 5. Craft
 6. Islamiyat.
 7. History of Art.
 8. Expressional Drawing.
 9. Physical Education.
 10. Design.
3. Total marks of DM examination is 1200.
4. Register department examination Khyber Pakhtunkhwa Peshawar is the authority to conduct the pre service courses (PTC, CT, DM, PET) examination while in IGD there is no third party validation of examination.
5. Teaching practice/ practicum is compulsory in DM course.

Keeping in view the above grounds the IGD certificate issued by Inspector Drawing Hyderabad Sindh is not equivalent to DM one-year certificate issued by the registrar Departmental Examination Khyber Pakhtunkhwa.

sd
Deputy Director (Trg)
DCTE Abbottabad\

Endst: No. _____/DD(Trg)

Copy for information and immediate action to the:-

1. Director E&SE Govt of Khyber Pakhtunkhwa Peshawar.

sd
Deputy Director (Trg)
DCTE Abbottabad

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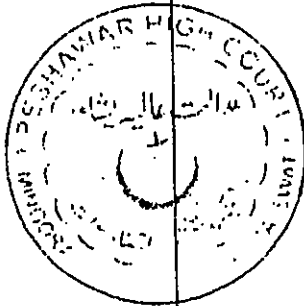
8

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PESHAWAR HIGH COURT, MINGORA BENCH (DAR-UL-QAZA), SWAT
FORM OF ORDER SHEET

Court of

Case No. of

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary.
<p>26-09-2018</p>  <p>ATTESTED Examiner Peshawar High Court Bench Mingora Dar-ul-Qaza, Swat</p>	<p><u>Rev. Pett: No. 34-M/2018</u> <u>In W.P No. 284-M/2015</u> Present: <i>Mr. Shams-ul-Hadi, Advocate for the petitioners.</i> <i>Malik Akhtar Hussain Awan, A.A.G for the official respondents.</i> ***** <u>MUHAMMAD GHAZANFAR KHAN, J.-</u> Through this Review Petition, learned counsel for the Petitioners seeks insertion of <u>"issuance of direction to the respondents to prepare a joint seniority list in this regard according to law, rules and procedure"</u> in the order of this Court dated 30.05.2018 passed in Writ Petition No. 284-M of 2015. The learned A.A.G present in the Court has got no objection. So, this Review Petition is allowed and the respondents are directed to prepare a joint seniority list in this regard according to law, rules and procedure. This amendment may be read part & parcel of the order of this Court dated 30.05.2018 passed in W.P No. 284-M of 2015. <u>C.M. No. 1172-M/2018</u> Through this C.M, learned counsel for the petitioners seeks impleadment to array the applicant</p>

9 31



namely Sardar Ali s/o. Ambali Jan r/o Village Baidamai Tehshil Wari District Dir Upper as petitioner and DEO (M) Dir Upper as respondent in the titled Review Petition.

As the reasons advanced in the application seem to be genuine, therefore this application is allowed and the office is directed to implead the above names in their respective panels with red ink.

Announced
Dt: 26.09.2018

JUDGE
[Signature]
SIR

Certified to be true copy

[Signature]
17-02-2020
EXAMINER

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 47 of Chnoon-e-Shahadat Oder.16

JUDGE

S.No 08
Name of Applicant Muhammad Khan
Date of Presentation of Applicant 17-02-2020
Date of Completion of Copies do
No of Copies 08-1
Urgent Fee -
Fee Charged 16/-
Date of Delivery of Copies 17-02-2020
[Signature]

	30062	FAZLI REHMAN	MANI RAHMAN	PACHA KALAY	GMS BALO KHAN
27	1430005	IHSANUL HAQ	ABDUL WAHID	AGARAI	GHS GHAZIKHANAY
28	1430080	SYED ULLAH	BAKHT ZARIN SHAH	KHAISTA BABA	GMS BAZARKOT
29	1430095	BAKHTAJ MEHMOOD	FAQIR MAHMOOD	AGARAI	GMS KANGALAI
30	1430020	AZIZ UL HASSAN	AFZAL KHAN	CHINGLAI	GMS DANDIKOT
31	1430086	NIZAR ALI	GHANI MUHAMMAD	REGA	GMS KUZ SHAMNAL
32	1430098	JAN ALI	SALARZAY	KULYARI	GMS JABA CHOWAN
33	1430042	FAZ UL HAQ	SHAMBUL QAMAR	BAGRA	GMS SHANAI (TORWARSAK)
34	1430120	ALI GUL	JUMA GUL	CHANAR	GMS ASHEZO MAIRA (NAWAKALAY)
35	1430010	SAEED UR RAHMAN	INAYATUL HAQ	DIWANA BABA	GHS PANDER
36	1430082	SHER WADOOD	ABDUL WADOOD	KHAISTA BABA	GMS CHALANDRAI
37	1430077	BAKHT SAID	GUL ZARIN	BAZARKOT	GMS SHANGRA

TERMS & CONDITION.

1. NO TADA etc is allowed.
2. Charge reports should be submitted to all concerned in duplicate.
3. Appointment is purely on temporary/adhoc / contract basis initially for a period of one year.
4. They should not be handed over charge if their age exceeds 35 years or below 18 years.
5. Appointment is subject to the condition that the certificate/documents must be verified from the concerned authorities by the office of DEO, if any one found producing bogus/forge/fake Certificates/Degrees will be reported to the law enforcing agencies for further action.
6. Their services are liable to termination on one month's prior notice from either side. In case of resignation without notice their one-month pay/allowances will be forfeited to the Government.
7. Pay will not be drawn until and unless a certificate to this effect is issued by DEO, that their certificates/Degrees are verified.
8. They should join their post within 15 days of the issuance of this notification. In case of failure to join their post within 15 days of the issuance of this notification, their appointment will expire automatically and no subsequent appeal etc shall be entertained.
9. Health and Age Certificate should be produced from the Medical Superintendent concerned before taking over charge.
10. Before handing over charge, they will sign an agreement with the department, otherwise this order will not be valid.
11. They will be governed by such rules and regulations as may be issued from time to time by the Govt.
12. Their services will be terminated at any time, in case their performance is found unsatisfactory during their contract period. In case of misconduct, they will be proceeded under the rules framed from time to time.
13. Their appointment is made on School based, They will have to serve at the place of posting, and their service is

NON-TRANSFERABLE to any other station/school.

14. Before handing over charge Principals/Head Masters concerned will check their documents, if they have not the required qualifications, they may not be handed over charge.

(HANIFUR REHMAN)
DISTRICT EDUCATION OFFICER (M)
DISTRICT BUNER.

Endst: No. 8812-19 / Dated 27-11-2015.

Copy forwarded for information and necessary action to the:-

1. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
2. Additional Advocate General High Court Darul Qaza Banch Mingora Swat.
3. Registrar Peshawar High Court Darul Qaza Mingora Banch Swat.
4. Deputy Commissioner Buner.
5. District Accounts Officer Buner.
6. Medical Superintendent DHQ Hospital Buner.
7. Principals / Head Masters Concerned.
8. Officials Concerned.

(11) 27/11/15
DISTRICT EDUCATION OFFICER (M)
DISTRICT BUNER

Amjad Ali

121 Amjad Ali

OFFICE OF THE DISTRICT EDUCATION OFFICER
(MALE) DISTRICT BUNER
PHONE & FAX NO. 0939-510468
EMAIL: edobuner@gmail.com

OFFICE ORDER.

In the light of the judgement passed by Peshawar High Court Mingora Bench Darul Qaza Swat in writ petition No. 284-M/2015 of Gul Rahim Shah & others dated 30-05-2018 vs Secretary Elementary & Secondary Education & Others. The following candidates are hereby appointed against the vacant post of Drawing Masters BPS-15 Rs. (16120-1330-56020) plus usual allowances as admissible under the rules on regular basis under the existing policy of the Provincial Government, in Teaching Cadre, on the terms and condition given below, with effect from the date of taking over charge in the best interest of public service.

S.#	Name	Father Name	D.O.B	Score	School where Posted	Remarks
1	Khan Nawab	Abdul Wakil Khan	01/02/1982	132.09	GMS Karorai	A.V.P
2	Said Naseeb Zar	Mian Bakht Zar	22/03/1979	121.23	GHS Elai	A.V.P
3	Gul Rahim Shah	Hussain Shah	10/07/1983	110.86	GMS Shargashay	A.V.P
4	Farooq Ali	Miran Said	03/04/1985	106.23	GHSS Batara	A.V.P
5	Amjad Ali	Said Qamar	13/04/1985	102.85	GHS Nawakalay	A.V.P
6	Haji Muhammad	Nazir	28/08/1982	97.2	GMS Wakil Abad	A.V.P
7	Faiz Muhammad	Said Muhammad Khan	04/04/1979	96.97	GMS Bangiray	A.V.P
8	Muhammad Israr	Gul Zarin Shah	10/05/1982	93.91	GMS Wach Khuwar Kawga	A.V.P
9	Abdus Salam	Shah Karim Khan	03/04/1982	92.54	GMS Damnair	A.V.P
10	Abdus Satar	Abdul Manan	04/02/1979	87.85	GHS Batai	A.V.P
11	Said Bahar	Said Khushal	22/04/1991	86.63	GMS Baimpur	A.V.P
12	Nasib Zada	Amir Said	16/04/1988	86.08	GHSS Bagh	A.V.P
13	Bakht Wali Khan	Yaqoob Khan	04/03/1980	81.63	GHS Jaba Amazi.	A.V.P
14	Muhammad Zaman	Sher Aman	05/04/1984	80.68	GMS Batkanai.	A.V.P

ATTESTED TO BE TRUE COPY

TERMS & CONDITIONS.

13

CRB

1. NO TA/DA etc is allowed.
2. Charge reports should be submitted to all concerned in duplicate.
3. Their services will be considered on regular basis but they will be on probation for a period of one year extendable to another year.
4. They should not be handed over charge if their age exceeds 35 years with 3 years automatic relaxation from Malakand Division or below 18 years of age.
5. Appointment is subject to the condition that the certificates, Degree Documents must be verified from the concerned authorities by the office of DEO, if any one found producing bogus/ forged/ fake Certificates/Degrees will be reported to the law enforcing agencies for further action.
6. Their services are liable to termination on one month's prior notice from either side. In case of resignation without notice their one-month pay/allowances will be forfeited to the Government.
7. Pay will not be drawn until and unless a certificate to this effect is issued by DEO, that their certificates/Degrees are verified.
8. They should join their post within 30 days of the issuance of this notification. In case of failure to join their post within 30 days of the issuance of this notification their appointment will expire automatically and no subsequent appeal etc shall be entertained.
9. Health and Age Certificate should be produced from the Medical Superintendent concerned before taking over charge.
10. Before handing over charge, they will sign an agreement with the department, otherwise this order will not be valid.
11. Their appointment is subject to the condition of final judgement of the Supreme Court of Pakistan where CPLA has already been lodged.
12. They will be governed by such rules and regulations as may be issued from time to time by the Govt.
13. Their services will be terminated at any time, in case their performance is found unsatisfactory during their contract period. In case of misconduct, they will be proceeded under the rules framed from time to time.
14. Before handing over charge Principals/Head Masters concerned will check their documents, if they have not acquired the required qualifications, they may not be handed over charge.

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Page 2 of 3

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- 15. Medical Certificate should be signed positively by District Education Officer (M) Buner.
- 16. Errors and omissions will be acceptable with in the specified period.

(BAKHT ZADA)
 DISTRICT EDUCATION OFFICER (M)
 DISTRICT BUNER.

Endst: No. 5369-78 / Dated 26/11/2018

- Copy forwarded for information and necessary action to the:
- 1. Registrar Peshawar High Court Mingora Bench Darul Qaza Swat.
 - 2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
 - 3. Deputy Commissioner Buner.
 - 4. District Nazim Buner.
 - 5. District Monitoring officer Buner.
 - 6. District Accounts Officer Buner.
 - 7. Medical Superintendent DHQ Hospital Buner.
 - 8. Deputy District Education officer Male Buner.
 - 9. Principals / Head Masters Concerned.
 - 10. Officials Concerned.

[Handwritten Signature]
 DISTRICT EDUCATION OFFICER (M)
 DISTRICT BUNER

Rizwanullah s/o

[Handwritten Signature]
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8

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE MUHAMMAD ALI MAZHAR
MRS. JUSTICE AYESHA A. MALIK

C.A.69-P TO 73-P/2020 AND C.A.180-P/2020

(Against the judgment/order dated 30.05.2018, 19.06.2018 and 26.09.2018 of the Peshawar High Court, Mingora Bench (Dar-ul Qazi) Smt passed in WP No.193-M/2017, 284-M/2013, 171-M/2016, 102-M/2018 and Review Petition No.34-M/2018, 17.09.2014 in Review Petition No.9-M/2014 in WP No.641/2010)

- 1 C.A.69-P/2020 District Education Officer (Male) Malakand & others v. Jan Muhammad Khan
- 2 C.A.70-P/2020 Govt of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar & others v. Gul Rahim Shah & others
- 3 C.A.71-P/2020 Govt of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Peshawar & others v. Subhanullah & others
- 4 C.A.72-P/2020 Govt of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs Peshawar & others v. Mushtaq Ahmad and others
- 5 C.A.73-P/2020 Govt of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education Peshawar & others v. Gul Rahim Shah & others
- 6 C.A.180-P/2020 Kalim Ullah and another v. Executive District Officer Elementary Education, Dir Upper and others

For the Appellant(s) : Mr. Shumail Aziz Addl. AO KPK in CA No.69-P to 73-P of 2020 alongwith Mr. Muzhar ur Ehsan DEO Male Bunir Mr. Navced Aldurr ASC in CA No.180-P of 2020

For the Respondent(s) : Mr. Zia-ur-Rahman Tajik, -ASC in CA No.69-P and 71-P of 2020 Muhammad Isa Khan, ASC in CA No.70-P and 73-P of 2020

Date of Hearing : 14.06.2022

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16/8/22
Senior Court Associate
Supreme Court of Pakistan
Islamabad

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ORDER

UMAR ATA BANDIAL, CJ:

C.A.69-P TO 73-P/2020: We are informed by the learned Addl. AG KPK that during pendency of these appeals, certain developments have taken place. Some of the respondents in these connected petitions have qualified for appointment and have been issued letters in this behalf. With respect to the remaining respondents, we note from the Paragraph-8 of the judgment dated 30.05.2018 passed in Writ Petition No.213-M/2014 titled as "Mrs. Bibi Fatima versus Government of KPK" and in other connected matters, that a consensus was arrived between the learned AAO appearing on behalf of the official respondents and DEO concerned and the private parties. Pursuant to the said consensus, the petitioner authorities were directed as under:

"To consider the respondents for appointment against the post of Drawing Master being similarly placed person subject to their eligibility qua merit position strictly within the legal parameters and in view of the rules and regulations governing the subject matter therein".

2. In view of the above said observations, it is clear that the order has been passed by consent. In any event, the matter lies with the petitioner authorities to apply the relevant rules and regulations in order to assess the qualification of the respondents to be appointed as Drawing Master.

3. C.A.180-P/2020: The learned Addl. AG KPK submits that the petitioner authorities shall be willing to consider the appellants on the same terms as the respondents in the afore-

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Supreme Court of Pakistan
Islamabad

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noted appeals filed by the Provincial Government on merit strictly in accordance with law.

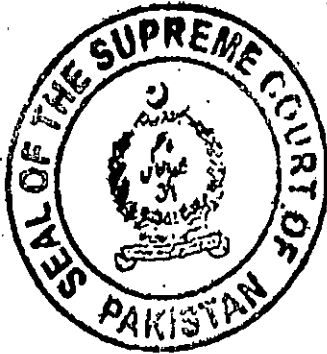
4. In the above circumstances, we find no reason to interfere with the impugned judgments, therefore, these appeals are disposed of in the above terms.

Sd/-CJ
Sd/-J
Sd/-J

Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

Islamabad
14.06.2022
Punish/
Not approved for reporting



16436/2022

GR No: _____ Civil/Criminal

Date of Presentation: 15.9.2022

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Court: 16.08

Date of: 16/9/22

Date of Debit: 16-9-22

Compared by/Prepared by: 9

Received by: Syed Rafiqat Hussain Shah

Attested
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THE ¹[KHYBER PAKHTUNKHWA] CIVIL SERVANTS ACT, 1973.

²[KHYBER PAKHTUNKHWA] ACT NO. XVIII OF 1973.

[11th November, 1973].

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¹ Substituted vide Khyber Pakhtunkhwa Act. IV of 2011.

² Substituted vide Khyber Pakhtunkhwa Act. IV of 2011.

³ Inserted vide Khyber Pakhtunkhwa Ordinance No. VI of 2001.

⁴ Inserted vide Khyber Pakhtunkhwa Act No. XXXVIII of 2015.

the recommendation of, or in consultation with which any appointment or promotion, as may be prescribed, is made;

(k) "temporary post" means a post other than a permanent post.

2. For the purpose of this Act, an appointment, whether by promotion or otherwise shall be deemed to have been made on regular basis if it is made in the prescribed manner.

CHAPTER —II.

TERMS AND CONDITIONS OF SERVICE OF SERVANTS.

3. The terms and conditions of service of a civil servant shall be as provided in this Act and the rules. Terms & conditions.
4. Every civil servant shall hold office during the pleasure of the Governor. Tenure of office of civil servants.
5. Appointments to a civil service of the Province or to a civil post in connection with affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorized by the Governor in that behalf. Appointment.
6. (1) An initial appointment to a service or post referred to in section 5, not being an *ad hoc* appointment, shall be on probation as may be prescribed. Probation.
- (2) Any appointment of a civil servant by promotion or transfer to a service or post may also be made on probation as may be prescribed.
- (3) Where, in respect of any service or post, the satisfactory completion of probation includes the passing of a prescribed examination test or course or successful completion of any training, a person appointed on probation to such service or post who, before the expiry of the original or extended period of his probation has failed to pass such examination or test or to successfully complete course or the training shall, except as may be prescribed otherwise.—
- (a) if he was appointed to such service or post by initial recruitment be discharged; or
- (b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged :

Provided that in the case of initial appointment to a service or post a civil servant shall not be deemed to have completed his period of probation satisfactorily

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until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

7. (1) A person appointed on probation shall on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed. Confirmation.

(2) A civil servant promoted to a post ¹[* * *] on regular basis shall be eligible for confirmation, after rendering satisfactory service for the period prescribed for confirmation therein.

(3) There shall be no confirmation against any temporary post.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing therefrom.

(5) Confirmation of civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

8. (1) For proper administration of a service, cadre or ²[post] the appointing authority shall cause a seniority list of the members for the time being of such service cadre or ³[post] to be prepared but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or ⁴[post] as the case may be. Seniority.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or ⁵[cadre] whether serving in the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, ⁶[Cadre] or post shall be determined as may be prescribed.

⁷[(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post :

¹ The word "or grade" omitted by Khyber Pakhtunkhwa Ord. No. IV of 1985 Section 2.
² The word "Grade" substituted by Khyber Pakhtunkhwa Ord. No. IV of 1985 Section 3.
³ The word "Grade" substituted by Khyber Pakhtunkhwa Ord. No. IV of 1985 Section 3.
⁴ The word "Grade" substituted by Khyber Pakhtunkhwa Ord. No. IV of 1985 Section 3.
⁵ The word "Grade" substituted by Khyber Pakhtunkhwa Ord. No. IV of 1985 Section 3.
⁶ The word "Grade" substituted by Khyber Pakhtunkhwa Ord. No. IV of 1985 Section 3.
⁷ Substituted vide Khyber Pakhtunkhwa ordinance No. IV of 1985 Section 3.

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Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their *inter se* seniority as in the lower post.”]

¹[(5)] The seniority lists prepared under sub-section (1) shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.]

9. (1) A civil servant possessing such minimum qualification as may be prescribed shall be eligible for promotion to a ²[higher] post for the time being reserved under the rules for departmental promotion in ³[* * *] the service or cadre to which he belongs. Promotion.

(2) A post referred to in sub-section (1) may either be a selection post or a non-selection post to which promotion shall be made as may be prescribed —

- (a) in the case of a selection post, on the basis of selection on merit; and
- (b) in the case of a non-selection post, on the basis of seniority-cum-fitness.

10. Every civil servant shall be liable to serve anywhere within or outside the Province in any post under the Federal Government, or any Provincial Government or local authority, or a corporation or body set up or established by any such Government: Posting and transfers.

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region :

Provided further that where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. (1) The service of a civil servant may be terminated without notice,— Termination of services.

- (i) during the initial or extended period of his probation :

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one ⁴[service] cadre or post to

¹ Added vide Khyber Pakhtunkhwa Act No. 1 of 1989.

² The word "higher" inserted vide Khyber Pakhtunkhwa Ord. No. V of 1985 Section 4.

³ The words "the higher grade of" omitted by Khyber Pakhtunkhwa Ord. No. IV of 1985 Section 4.

⁴ The word "Grade", substituted by Khyber Pakhtunkhwa Ord. No. IV of 1985.

another ¹[service] as he holds a lien against his former post in such ²[service] or cadre but he shall be reverted to his former ³[service] cadre or post, as the case may be;

- (ii) on the expiry of the initial or extended period of his employment; or
- (iii) if the appointment is made *ad hoc* terminable on the appointment of a person on the recommendation of the selection authority, on the appointment of such person.

(2) Where, on the abolition of a post or reduction in the number of post in a cadre or grade, the services of a civil servant are required to be terminated, the person whose services are terminated shall ordinarily be the one who is the most junior in such cadre or grade.

(3) Notwithstanding the provisions of sub-section (1), but subject to the provisions of sub-section (2) the service of a civil servant in temporary employment or appointed *ad hoc* shall be liable to termination on fourteen days notice or pay in lieu thereof.

⁴[11A. Absorption of civil servants rendered surplus.—Notwithstanding anything contained in this Act, the rules made thereunder, any agreement, contract or the terms and conditions of service, a civil servant who is rendered surplus as a result of re-organization or abolition of a department, office or abolition of a post in pursuance of any Government decision may be appointed to a post, carrying basic pay scale equal to the post held by him before such appointment, if he possesses the qualifications and fulfills other conditions applicable to that post:

Provided that where no equivalent post is available, he 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 higher post immediately preceding his appointment to a lower post shall remain protected.]

⁵[11B. Absorption or appointment of Federal employees.--- (1) Notwithstanding anything contained in this Act, all those employees of the Federal Government, who are holding various posts in Federal Government entities on regular basis, before the commencement of the Constitution (Eighteenth Amendment) Act, 2010 (X of 2010) and the said entities being devolved to Province in pursuance of aforesaid amendment, shall be deemed

¹The word "Grade", substituted by Khyber Pakhtunkhwa Ord. No. IV of 1985.

² The word "Grade", substituted by Khyber Pakhtunkhwa Ord. No. IV of 1985.

³ The word "Grade", substituted by Khyber Pakhtunkhwa Ord. No. IV of 1985.

⁴ Inserted vide Khyber Pakhtunkhwa Ordinance No. VI of 2001.

⁵ Inserted vide Khyber Pakhtunkhwa Act No. XXXVIII of 2015.

Amendment

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1

**THE ¹KHYBER PAKHTUNKHWA CIVIL SERVANTS
(APPOINTMENT, PROMOTION & TRANSFER) RULES, 1989**

PART-I

GENERAL

1. **Short title and commencement:** - (1) These rules may be called the ²[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

(2) They shall come into force at once.

2. **Definitions:**-(1) In these rules, unless the context otherwise requires:-

(a) "Appointing Authority" in relation to a post, means the persons authorized under rule 4 to make appointment to that post;

(b) "Basic Pay Scale" means the Basic Pay Scale for the time being sanctioned by Government, in which a post or a group of posts is placed;

(c) "Commission" means the ³[Khyber Pakhtunkhwa] Public Service Commission;

⁴(d) "Departmental Promotion Committee" means a committee constituted for making selection for promotion or transfer to such posts under a Department, or offices of Government, which do not fall within the purview of the Provincial Selection Board;

⁵(dd) "Departmental Selection Board" means a Board constituted for the purpose of making selection for initial recruitment /appointment to posts under a Department or office of Government in Basic Pay Scale 17 not falling within the purview of the Commission:

Provided that more than one such committees may be constituted for civil servants holding different scales of pay".

(e) "Departmental Selection Committee" means a committee constituted for the purpose of making selection for initial appointment to posts under a department, or office of Government [in Basic Pay Scale 17 and below not falling within the purview of the Commission];

(f) "Post" means a post sanctioned in connection with the affairs of the Province, but not

¹ For the words "NWFP" or "North-West Frontier Province", wherever occurred, the words "Khyber Pakhtunkhwa" substituted by the Khyber Pakhtunkhwa Laws (Amendment) Act, 2011 (Khyber Pakhtunkhwa Act No. IV of 2011) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 2nd April, 2011

² Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

³ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁴ Substituted by Clause (d) of sub-rule (1) of Rule 2 vide Notification No. SOR-I (S&GAD) 4-1/80 (Vol-II) dated 14-01-92.

⁵ Clause (dd) added by Notification No. SOR-III (S&GAD) 2-7/86, dated 8-12-1994

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allocated to all Pakistan Unified Grades ; and

⁶(g) "Provincial Selection Board" means the Board constituted by Government for the purpose of selection of civil servants for promotion or transfer to posts in respect whereof the appointing authority under rule 4 is the Chief Minister and shall consist of such persons as may be appointed to it by Government from time to time.

(2) Words and expressions used but not defined in these rules shall have the same meanings as are assigned to them in the ⁷[Khyber Pakhtunkhwa] Civil Servants Act, 1973 (⁸[Khyber Pakhtunkhwa] Act XVIII of 1973) or any other statutory order or rules of Government for the time being in force.

3. **Method of Appointment:-** (1) Appointment to posts shall be made by any of the following methods, namely:-

- (a) by promotion or transfer in accordance with the provisions contained in Part-II of these rules; and
- (b) by initial recruitment in accordance with the provisions contained in Part-III of these rules.

(2) The method of appointment, qualifications and other conditions applicable to a post shall be such as laid down by the Department concerned in consultation with the ⁹Establishment and Administration Department and the Finance Department.

4. **Appointing Authority:-** The authorities competent to make appointment to posts in various basic pay scales shall be as follows:-

S.No. !	Posts !	Appointing Authority
¹⁰ 1. (a)	Posts in Basic Pay Scale 18 and above including posts in Basic Pay Scale 17 borne on any of the following services; (i) Former Provincial Civil Service (Executive Branch); (ii) Former Provincial Civil Service (Judicial Branch); and	Chief Minister

⁶ Clause (g) substituted by Notification No. SOR-I(S&GAD) 4-1/80/II, dated 14-01-1992.

⁷ Subs.by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁸ Subs.by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁹ For the words "Services and General Administration" wherever occurred, substituted with the words "Establishment and Administration" by Notification No. SO(O&M) E&AD/8-6/2001 dated 30-05-2001.

¹⁰ Substituted by Notification No. SOR-I(S&GAD)4-1/75/Vol-I, dated 22-08-1991.

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(iii) Provincial Civil Secretariat Service.

¹¹(b) Posts in Basic Pay Scale 17 other than those covered by (a) above and the post of Deputy Superintendent of Police; and Chief Secretary

¹²(c) Posts of Deputy Superintendents of Police. Provincial Police Officer/ Inspector General of Police.

2. Posts in Basic Pay Scale 16. (a) In the case of Secretariat of the Government of ¹³[Khyber Pakhtunkhwa], the Chief Secretary.

¹¹ Substituted by Notification No. SOR-III(E&AD)2(144)03 dated 16-09-2003.

¹² Inserted by Notification No. SOR-III(E&AD)2(144)03 dated 16-09-2003.

¹³ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

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(b) In case of High Court, the Chief Justice; and

(c) In the case of Attached Department:

(i) the Head of Attached Department concerned; and

(ii) In any other case the Secretary of the Department concerned.

3. Posts in Basic Pay Scales ¹⁴[6 to 15].

(a) In the case of civil Servants borne on ministerial establishment of Civil Courts subordinate to High Court, the officer authorized as such by the Chief Justice; and

(b) In other cases

¹⁴ Substituted by Notification No. SO(R-VI)E&AD/1-3/2015, dated April 19, 2016.

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- (i) an officer declared under the relevant Delegation of Powers Rules, which shall to this extent be deemed as operative; or
- (ii) Where no such appointing authority has been declared, the Secretary to Government or the Head of an Attached Department/ Office, as the case may be.

4. posts in Basic pay Scale ¹⁵ [3 and 5].	Deputy Secretary incharge of Administration or office, , as the care may be
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5. ¹⁶Departmental Promotion & Selection Committee/Board- (1) In each Department or office of Government there shall be one or more Departmental Promotion Committee and Departmental Selection Committee ¹⁷(or, as the case may be, Departmental Selection Board), the composition of which shall be determined by the Establishment and Administration Department or the Department in consultation with the Establishment and Administration Department.

(2) Each such Committee (or the Board, as the case may be), shall consist of at least three members, one of whom shall be appointed as Chairman.

¹⁵ Substituted by Notification No. SO(R-VI)E&AD/1-3/2015, dated April 19, 2016.

¹⁶ The heading of rule 5 substituted by Notification No. SOR-I(S&GAD)2-7/86, dated 8-12-1994.

¹⁷ The words inserted by Notification No. SOR-III(S&GAD)2-7/86, dated 8-12-1994

¹⁸6. **Procedure when recommendation is not accepted:-** When an appointing authority for Basic Pay Scale 17 or below does not accept the recommendation of a Departmental Promotion or Selection Committee, or the Departmental Selection Board, as the case may be, it shall record its reasons and obtain order of the next higher authority.

PART-II

APPOINTMENT BY PROMOTION OR TRANSFER

7. **Appointment by Promotion or Transfer.** ¹⁹(1) Except as otherwise provided in any service rules for the time being in force, appointment by promotion or transfer to posts in respect whereof the appointing authority under rule 4 is the Chief Minister shall ordinarily be made on the recommendation of the Provincial Selection Board and promotion and transfer to posts other than those falling within the purview of the Provincial Selection Board shall ordinarily be made on the recommendation of appropriate Departmental Promotion Committee".

(2) Appointment by transfer shall be made from amongst the persons holding appointment on regular basis in the same basic pay scale, in which the posts to be filled, exist.

(3) Persons possessing such qualifications and fulfilling such conditions as laid down for the purpose of promotion or transfer to a post shall be considered by the Departmental Promotion Committee or the Provincial Selection Board for promotion or transfer, as the case may be.

(4) No promotion on regular basis shall be made to posts in Basic Pay Scale 18 to 21 unless the officer concerned has completed such minimum length of service as may be specified from time to time.

²⁰(5) If on an order of promotion or before promotion any civil servant declines in writing, to accept promotion, such civil servant shall not be considered for such promotion for the next four years following order.

Provided that if he declines to avail the benefit of promotion for the second time, then he shall stand superseded permanently for such promotion.

8. **Inter-Provincial Transfer:-**(1) Persons holding appointment in BPS 1 to 15 under Federal Government and other Provincial Government may, in deserving cases, be transferred to equivalent posts under these rules:-

Provided that:-

(i) the Federal Government or the Government of the Province concerned, as the case may be, has no objection to such a transfer;

¹⁸ Rule-6 substituted by Notification No. SOR-III(S&GAD)2-7/86, dated 8-12-1994

¹⁹ Sub rule (1) substituted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 14-01-1992.

²⁰ Sub rule (5) inserted by Notification No. SOR-VI(E&AD)1-3/2009/Vol-VIII, dated 22-10-2011.

- (ii) the person seeking transfer possesses the requisite qualification and experience and the post to which his transfer is intended can, under the rules, be filled by transfer;
- (iii) the person concerned holds appointment to the post in his parent Department on regular basis;
- (iv) the person concerned is a bona fide resident of the ²¹[Khyber Pakhtunkhwa].
- (v) a vacancy exists to accommodate the request for such a transfer; and:
- (vi) Provided further that in most deserving cases, the merit of which shall be determined on case to case basis and the decision of the Competent Authority in that behalf shall be final, Government may allow transfer of a civil servant in BPS-16 and above, subject to the aforesaid conditions.

(2) A person so transferred shall be placed at the bottom of the cadre strength which he joins for the purpose of determining his seniority vis-à-vis other members borne on the cadre.

(3) It will be the sole discretion of the appointing authority to accept or refuse a request for transfer under this rule and any decision made in this behalf shall be final and shall not be quoted as precedence in any other case.

9. Appointment on Acting Charge or current Charge Basis. (1) Where the appointing authority considered it to be in the public interest to fill a post reserved under the rules for departmental promotion and the most senior civil servant belonging to the cadre or service concerned, who is otherwise eligible for promotion, does not possess the specified length of service the authority may appoint him to that post on acting charge basis;

²²Provided that no such appointment shall be made, if the prescribed length of service is short by more than ²³[three years].

²⁴[(2)].

(3) In the case of a post in Basic Pay Scale 17 and above, reserved under the rules to be filled in by initial recruitment, where the appointing authority is satisfied that no suitable officer drawing pay in the basic scale in which the post exists is available in that category to fill the post and it is expedient to fill the post, it may appoint to that post on acting charge basis the most senior officer otherwise eligible for promotion in the organization, cadre or service, as the case may be, in excess of the promotion quota.

(4) Acting charge appointment shall be made against posts which are likely to fall vacant for period of six months or more. Against vacancies occurring for less than six months, current charge appointment may be made according to the orders issued from time to time.

(5) Appointment on acting charge basis shall be made on the recommendations of the Departmental Promotion Committee or the Provincial Selection Board, as the case may be.

²¹ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

²² Full stop at the end of Rule 9 (1) replaced with colon and proviso added by Notification No. SOR-I (S&GAD)4-1/80/Vol-II, dated 20-10-1993.

²³ The words one year substituted by Notification No. SOR-I(S&GAD)4-1/80/III, dated 14.3.96.

²⁴ Sub rule (2) of rule-9 deleted vide by Notification No. SOR-VI(E&AD)1-3/2009/Vol-VIII, dated 22-10-2011.

(6) Acting charge appointment shall not confer any vested right for regular promotion to the post held on acting charge basis.

PART-III

INITIAL APPOINTMENT

10. **Appointment by Initial Recruitment :-**(1) Initial appointment to posts ²⁵[in various basic pay scales] shall be made-

- (a) if the post falls within the purview of the Commission, on the basis of Examination or test to be conducted by the Commission; or
- (b) if the post does not fall within the purview of the Commission, in the manner as may be determined by Government.

²⁶(2) Initial recruitment to posts which do not fall within the purview of the Commission shall be made on the recommendation of the Departmental Selection Committee, after vacancies have been advertised in newspapers.

²⁷Provided that nothing contained in this sub-rule shall apply to the household staff of the Chief Minister House Peshawar, ²⁸[Khyber Pakhtunkhwa] House Islamabad, ²⁹[Khyber Pakhtunkhwa] Rest Houses Bannu, Swat and Abbottabad, ³⁰[Khyber Pakhtunkhwa] House Nathia Galli and Shahi Mehman Khana, Peshawar and any other House to be established by the Government:

³¹Provided further that the appointment in Basic Pay Scale-³²[3 to 5] shall be made on the recommendations of the Departmental Selection Committee through the District Employment Exchange concerned, ³³[or, where in a District, the office of the Employment Exchange does not exist, after advertising the posts in the leading newspapers] ³⁴[]

²⁵ The words in basic pay scale-16 to 21 substituted by Notification No. SOR-I(S&GAD)1-117/91 (C), dated 12-10-1993.

²⁶ Sub rule (2) of Rule-10 substituted by Notification No. SOR-I(S&GAD) 1-117/91 (C), dated 12-10-1993.

²⁷ Proviso added vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 03-07-2003.

²⁸ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

²⁹ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

³⁰ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

³¹ Proviso added vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 16-03-2004

³² Substituted by Notification No. SO(R-VI)E&AD/1-3/2015, dated April 19, 2016.

³³ Sentence added in the Proviso vide Notification No. SOR-VI(E&AD)1-3/2003 (VI) dated 23-01-2006.

³⁴ 2nd Proviso in sub- rule (2) of Rule 10 was deleted vide Notification No. SOR-VI(E&AD)1-3/2008 dated 09-05-2008 and added again vide Notification No. SOR-VI(E&AD)1-3/2008 dated 03-11-2008.

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(3) A candidate for initial appointment to a post must possess the educational qualification or technical qualifications and experience and except as provided in the rules framed for the purpose of relaxation of age limit, must be within the age limit as laid down for the post, provided that-

- (i) ³⁵where recruitment is to be made on the basis of written examination, then, notwithstanding anything to the contrary contained in any other rules for the time being in force, age shall be reckoned on 1st January of the year in which the examination is proposed to be held;
- (ii) in other cases as on the last date fixed for submission of applications for appointment.

³⁶[4 Where a civil servant dies or is rendered incapacitated or invalidated permanently during service or retired on medical board, notwithstanding the procedure provided for in sub-rule (2), the appointing authority may appoint one of the children of such civil servant or if the child has not attained the age prescribed for appointment in Government service, the widow or wife as the case may be, of such civil servant, to a posts in any of the basic pay scales 3 to 11 in Provincial cadre post and basic pay scales 3 to 12 in District cadre posts:

Provided that the child or the widow or wife, as the case may be, possesses the minimum qualification prescribed for appointment to the post:

Provided further that if there are two widows or wives of the deceased civil servant, as the case may be, preference shall be given to the elder widow or wife:

Provided also that appointment under this sub-rule is subject to availability of a vacancy and if more than one vacancies, in different pay scales, are available at a time and the child or the widow or wife, as the case may be, possesses the qualifications eligible for appointment in more than one post, such child or the widow or wife, as the case may be, shall ordinarily be appointed to the post carrying higher pay scale:

Provided also that the provision of this sub-rule shall not be applicable to posts falling within the purview of the Commission.]

³⁷(5) Notwithstanding anything contained in any rule for the time being in force, two percent of all posts in each basic pay scale to be filled in by initial recruitment shall be reserved for disabled candidates and ten percent of all posts meant for initial recruitment shall be reserved for female candidates:

Explanation-I---For the purpose of reservation under this sub-rule "disability" does not include such disability which hampers in the smooth performance of the duties required of a disabled candidate.

³⁵ Clause (i) substituted vide Notification No. SOR-I(S&GAD)4-1/80, dated 17-5-1989.

³⁶ Substituted by Notification No. SO(R-VI)E&AD/1-3/2015, dated April 19, 2016.

³⁷ Sub rule (5) substituted vide Notification No. SOR-VI (E&AD)1-10/03 (VI), dated 04-12-2007.

Explanation-II---Ten per cent quota reserved above shall be in addition to the posts exclusively reserved for female candidates.

³⁸(6) Notwithstanding anything contained in any rule for the time being in force, five per cent of all posts in each basic pay scale to be filled in by initial recruitment shall be reserved for candidates hailing from earthquake affected areas of District Mansehra, Battgram, Shangla, Kohistan and Abbottabad (Calamity hit area) for a period of three years commencing from 1st February, 2006.

³⁹(7) Notwithstanding anything contained in any rule for the time being in force, ⁴⁰[three] percent of all the posts in each basic pay scale to be filled in by initial recruitment shall be reserved for candidates belonging to minorities in addition to their participation in the open merit:

Provided that, the reservation shall not apply to—

- (i) the percentage of vacancies reserved for recruitment on merit;
- (ii) short term vacancies likely to last for less than one year; and
- (iii) isolated posts in which vacancies occur only occasionally.

11. **Eligibility.** (1) A candidate for appointment shall be a citizen of Pakistan and bona fide resident of the ⁴¹[Khyber Pakhtunkhwa].

Provided that for reasons to be recorded in writing, Government may, in a particular case, relax this restriction.

⁴²[(2)]

(3) No person, not already in Government service, shall be appointed to a post unless he produces a certificate of character from the principal, academic officer of the academic institution last attended and also certificates of character from two responsible persons, not being his relatives, who are well acquainted with his character and antecedents.

(4) Notwithstanding anything contained in sub-rule (3), an appointment by initial recruitment shall be subject to the verification of character and antecedents of the candidate or the person appointed, to the satisfaction of appointing authority.

(5) No candidate shall be appointed to a post unless he is found, after such medical examination as Government may prescribe, to be in good mental and bodily health and free from physical defect likely to interfere in the efficient discharge of his duties.

³⁸ Sub rule (6) inserted vide Notification No. SOR-VI(E&AD)1-3/03 (VI), dated 01-02-2006

³⁹ Sub rule (7) added vide Notification No. SOR-VI(E&AD)1-3/08, dated 06-01-2009

⁴⁰ Subs. vide Notification No. SORIV/E&AD/1-10(Minority)/2008, dated 08.01.2014.

⁴¹ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁴² Sub rule (2) of rule-11 deleted vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-06-2008

12. **Zonal and Divisional representation:** - (1) Except as otherwise specifically provided in any rule for the time being in force, initial recruitment to posts in Basic Pay Scales 16 and 17 and other posts in Basic Pay Scales 3 to 15 borne on Provincial cadre shall be made in accordance with the Zonal quota specified by Government from time to time:

⁴³ Provided that initial recruitment to the post of Civil Judge/Judicial Magistrate/Allaqa Qazi (BPS-18) shall also be made in accordance with the zonal quota specified by the Government from time to time.

(2) Initial recruitment to posts in Basic Pay Scales 3 to 15 borne on divisional or district cadre shall be made from amongst bona fide residents of the division or district concerned, as the case may be.

(3) Initial recruitment to posts in Basic Pay Scales ⁴⁴[3 and 5] or equivalent shall ordinarily be made on local basis.

PART-IV

AD HOC APPOINTMENT

13. **Requisition to Commission:**-When under any rule for the time being in force, a post is required to be filled in through the Commission, the appointing authority shall forward a requisition on the prescribed form to the Commission immediately after it is decided to fill in the post, or if that is not practicable and the post is filled on ad hoc basis as provided in rule 14, within two months of the filling of the post.

14. **Ad hoc Appointment:**-(1) When the appointing authority considers it to be in the public interest to fill in a post falling within the purview of the Commission urgently, it may, pending nomination of a candidate by the Commission, proceed to fill in such post on ad hoc basis for a period not exceeding ⁴⁵[one year] by advertising the same in accordance with the procedure laid down for initial appointment in Part-III of these rules.

(2) Short term vacancies in the posts falling within the purview of the Commission and vacancies occurring as a result of creation of temporary posts for a period not exceeding ⁴⁶[one year], may be filled in by appointing authority otherwise than through the Commission on a purely temporary basis after advertising the vacancy.

PART-V

⁴³ Proviso to rule-12 added vide Notification No. SOR-VI(E&AD)1-27/08, dated 03-07-2008

⁴⁴ Substituted by Notification No. SO(R-VI)E&AD/1-3/2015, dated April 19, 2016.

⁴⁵ The words six months replaced with the words one year vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-01-2009.

⁴⁶ The words six months replaced with the words one year vide Notification No. SOR-VI(E&AD)1-3/08, dated 17-01-2009.

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PROBATION AND CONFIRMATION

⁴⁷15. **Probation.** ----- (i) Persons appointed to posts by initial recruitment, promotion or transfer shall be on probation for a period of one year.

(2) The appointing authority, if considers necessary, may extend the probation period for one year as may be specified at the time of appointment.

⁴⁸(3) On the successful completion of probation period, the appointing authority shall, by specific order terminate the probation of the officer or official concerned within two months after the expiry of probation period prescribed in sub-rule(1):

Provided that if no specific order regarding termination of the probation period of the official or officer concerned is issued within two months, the period of probation shall be deemed to have been extended under sub-rule (2):

Provided further that if no specific order is issued on the expiry of the extended period of probation, the period of probation shall be deemed to have been successfully completed."

16. **Confirmation:**-After satisfactory completion of the probationary period, a civil servant shall be confirmed; provided that he holds a substantive post, provided further that a civil servant shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course or has failed to complete successfully a training prescribed within the meaning of sub-section (3) of Section 6 of the ⁴⁹[Khyber Pakhtunkhwa] Civil Servants Act, 1973.

PART-VI

SENIORITY

17. **Seniority :-**(1) the seniority inter se of civil servants ⁵⁰(appointed to a service, cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission ⁵¹[or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post,

⁴⁷ Rule-15 substituted vide Notification No. SOR-VI/E&AD/1-3/2009/Vol-VIII dated 16-2-2010.

⁴⁸ Sub rule (3) substituted vide Notification No. SOR-VI (E&AD)1-3/2012 dated 28-12-2012.

⁴⁹ Subs.by the Khyber Pakhtunkhwa Act No. IV of 2011.

⁵⁰ Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80, dated 17-05-1989.

⁵¹ The words inserted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 04-02-1996.

retain their inter se seniority as in the lower post.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

⁵²(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

⁵³(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the lower post is the same, the civil servant older in age, shall be treated senior.

18. General Rules: - In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

19. Repeal:- The ⁵⁴[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

(Authority; No. SORI(S&GAD)4-1/80, dated 13th May, 1989)

⁵² Sub-rule (3) of Rule 17 added vide Notification No. SOR-I(E&AD)4-1/80/IV, dated 28-5-2002.

⁵³ Sub-rule (4) of Rule 17 added vide Notification No. SOR-VI (E&AD) 1-3/2008 dated 19-11- 2009.

⁵⁴ Subs. by the Khyber Pakhtunkhwa Act No. IV of 2011.