

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

**SERVICE APPEAL NO.1174/2023**

Muhammad Rafiq

VS

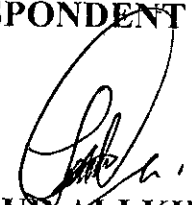
M&M Department

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**INDEX**  
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S.No.	Documents	Annexure	P. No.
1	Memo of reply	-----	01-04
2	<del>.....</del>	-----	
3	Copies of notification dated 18.05.2022 and notification dated 30.10.2013	A&B	05-06
4	Copy of final seniority list	C	07
5	Copy of rules	D	08-10

**RESPONDENT NO.5**

THROUGH:

  
**TAIMUR ALI KHAN**  
**(ADVOCATE HIGH COURT)**  
Cell# 0333-9390916

①

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

**SERVICE APPEAL NO. 1174/2023**

Khyber Pakhtunkhwa  
Service Tribunal

Date: 22/11/23

Date: 22/11/23

Muhammad Rafiq, Assistant Director (BPS-17),  
Mines & Mineral Department, Peshawar, Khyber Pakhtunkhwa.

**APPELLANT**

**VERSUS**

1. Government of Khyber Pakhtunkhwa, through Chief Secretary at Civil Secretariat, Peshawar.
2. Secretary, Mines & Minerals Department, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
3. Director General, Mines & Minerals Department, Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
4. Secretary Finance, Government of Khyber Pakhtunkhwa at Civil Secretariat, Peshawar.
5. Mr. Muhammad Farooq, Chief Draftsman, Miners & Minerals Department Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

**RESPONDENTS**

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**PARA-WISE REPLY ON BEHALF OF RESPONDENTS NO.5**  
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**RESPECTFULLY SHEWETH: -**

**Preliminary Objections:**

1. That the appellant has got no cause of action to file the instant appeal.
2. That the instant appeal is not maintainable in its present form.
3. That no vested right of the appellant has been infringed as such the appeal is liable to be dismissed on merit.
4. That the appellant has got no locus standi to file this appeal.

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5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appeal is not tenable and is liable to be dismissed.
7. That the appellant is estopped from filing the instant appeal. That the appeal in its present form is bad, defective hence liable to be dismissed.
8. That the appellant is barred by law and limitation.

### REPLY TO FACTS.

1. Pertains to record.
2. Admitted correct that the appellant was promoted from Surveyor (BS-11) to Survey & Drawing Officer (BS-16) on 04.12.2013, while the respondent No.5 was promoted from Draftsman (BS-11) to the post of Chief Draftsman (BPS-17) vide notification dated 30.10.2013.
3. Pertain to record. However, it is quite clear that the appellant was promoted from BPS-16 to BPS-17 as Assistant Director Survey & Drawing vide notification dated 18.05.2022, whereas respondent No.5 was promoted to the post of Chief Draftsman (BPS-17) vide notification dated 30.10.2013. **(Copies of notification dated 18.05.2022 and notification dated 30.10.2013 are attached as Annexure-A&B)**
4. Incorrect. The appellant concealed facts from this Honorable Tribunal. According to section 8 (5) of the Civil Servant Act 1973, the seniority list prepared under section (1) shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January. Accordingly, after fulfilment of all codal formalities and approval of competent authority, final seniority list of Chief Draftsman and Assistant Director (S&D) (BS-17) of Mines & Mineral Department issued on 07.02.2022 stood on 30.11.2021. it is pertinent to mentioned here that at the time of final seniority list the appellant was serving in BS-16 as S&D Officer. **(Copy of final seniority list is attached as Annexure-C)**
5. Incorrect. The promotion of respondent No.5 was processed on notified/final seniority list and after proper recommendation of PSB and approval of competent authority the promotion notification dated 13.12.2022 respondent No.5 as Deputy Director (BS-18) was issued as he has completed the required length of 05 service and also covered the efficiency index required for promotion to BS-18).
6. Incorrect. Respondent No.5 was promoted to the post of Deputy Director BS-18 by respondent department after fulfilling the required criteria.

- 7. Pertain to record.
- 8. Pertain to record, however, it is necessary to mention here that the respondent No.5 was promoted on notified/finals seniority list.
- 9. Incorrect. Final seniority list of Chief Draftsman and Assistant Director (S&D) BS-17 of Mines & Mineral Department was issued on 07.02.2022 stood on 30.11.2021 and as respondent No.5 was promoted to BS-17 in the year 2013 and the appellant was promoted to BS-17 in the year 2022 and undisputedly the respondent No.5 is senior than the appellant and the appellant has no cause of action to file the instant appeal.

**GROUND.**

- A. Incorrect and denied, final seniority list of Chief Draftsman and Assistant Director (S&D) BS-17 of Mines & Mineral Department issued on 07.02.2022 stood on 30.11.2021 and the respondent No.5 being senior to the appellant was promoted to the post of Deputy Director (BS-18).
- B. It is correct that the appellant was appointed in BPS-11 as surveyor in the year 1986, whereas the respondent No.5 was appointed as draftsman (BS-11) in the year 1991, but the appellant was promoted from the post of Surveyor (B S-11) to the post of Survey and Drawing officer (BS-16) on 04.12.2013 and then promoted to Assistant Director (S&D) (BS-17) on 18.05.2022, whereas the respondent No.5 was directly promoted from Draftsman (BS-11) to Chief Draftsman (BS-17) on 30.10.2013 as promotion criteria to BS-17 of both Surveyor and Draftsman is different. Moreover, according to rule 17 (2) of APT Rules 1989 seniority in various cadre of civil servant appointed by initial recruitments vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre read with of sub section (4) of section of KP Civil Servant Act 1973 seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to the post. Thus the appellant was promoted to BS -17 as Assistant Director (S&D) on 18.05.2022 while the respondent No.5 was promoted to BS-17 as Chief Draftsman (BS-17) on 30.10.2013, which means that respondent No.5 was promoted earlier than the appellant in BS-17 and became senior to the appellant. **(Copy of rules are attached as Annexure-D)**
- C. Incorrect. the appellant was treated in accordance with law and no fundamental right of the appellant was violated by the respondent department.

E. Incorrect. As explained in para B above.

F. The respondent No.5 also seeks permission of this Honorable Tribunal to advance other grounds and proof at the time of hearing.

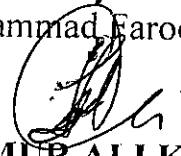
In view of the above submission, it is therefore, most humbly prayed that the Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favour of the respondent No.5 in the interest of justice.



**RESPONDENT NO.5**

Muhammad Farooq

THROUGH:

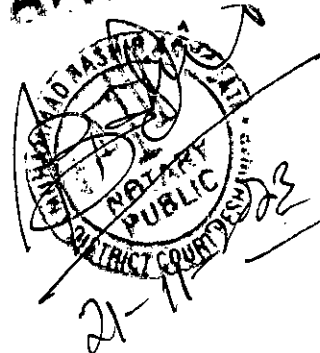


**TAIMUR ALI KHAN  
ADVOCATE HIGH COURT**

**AFFIDAVIT**

It is solemnly affirmed and declared that the content of this reply are true and correct and nothing has been concealed from this Honorable Tribunal.

**ATTESTED**



**DEPONENT**

5  
Annex-A  
Annex-A



Government of  
Khyber Pakhtunkhwa  
Minerals Development Department

Dated Peshawar, 18<sup>th</sup> May, 2022

**NOTIFICATION**

No.SOE(MDD)/2-4/2022: The Competent Authority on the recommendations of the Departmental Promotion Committee is pleased to promote Muhammad Rafique, Survey & Drawing Officer (BS-16) to the post of Assistant Director (Survey & Drawing) BS-17 in the Directorate General, Mines & Minerals, Khyber Pakhtunkhwa, on regular basis, with immediate effect.

On his promotion, the above named Assistant Director (Survey & Drawing) BS-17 will remain on probation for a period of one year extendable for another one year in terms of Section 6(2) of Khyber Pakhtunkhwa, Civil Servants, Act, 1973 read with Rule-15 (1) of Khyber Pakhtunkhwa Civil servant (Appointment, Promotion and Transfer) Rules, 1989.

Consequent upon the above promoted officer is allowed to actualize his promotion against the post of Assistant Director (Survey & Drawing) BS-17 in the Directorate General of Mines & Minerals, Khyber Pakhtunkhwa, being single cadre post.

-Sd-  
Secretary to Govt. of Khyber Pakhtunkhwa,  
Minerals Dev. Department

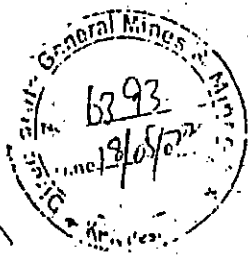
No.SOE(MDD)/2-4/2022 / 8554-62 Dated Peshawar, 18<sup>th</sup> May, 2022

Copy forwarded to:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. The Directorate General of Mines, Khyber Pakhtunkhwa, Peshawar.
3. PS to Advisor to Chief Minister for Mines & Minerals, Khyber Pakhtunkhwa.
4. PS to Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar.
5. PS to Secretary Minerals Dev. Department Khyber Pakhtunkhwa, Peshawar
6. Officer Concerned
7. Personal File.
8. Office order file.
9. Master File

(Hafiz Abdul Jalil)  
Section Officer (Estt.)  
Ph# 091-9221559

Place the copy of this  
in the concerned  
office  
Date 18/05/2022  
M. J. Khan



Ji

⑥ Annex-B

112-  
~~112~~



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
MINERALS DEVELOPMENT DEPARTMENT

Dated Peshawar, the 30<sup>th</sup> October, 2013

NOTIFICATION

No. SO-Admin(MD)1-6/91/Vol-XV.- The Competent Authority, on the recommendation of Departmental Promotion Committee, is pleased to promote Mr. Muhammad Farooq, Draftsman (BPS-11) to the post of Chief Draftsman (BPS-17) in the Directorate General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar on regular basis with immediate effect.

2. The officer, on promotion will remain for a period of one year in terms of section-6 (2) of Khyber Pakhtunkhwa, Civil Servants Act, 1973 read with rule-15 (1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989.

3. Consequent upon the above, Mr. Muhammad Farooq, on promotion to BPS-17 as Chief Draftsman is hereby transferred from the office of Assistant Director Mineral Development, Abbottabad and posted as Chief Draftsman (BPS-17) in Headquarter's Office, Directorate General, Mines & Minerals, Khyber Pakhtunkhwa Peshawar against the vacant post with immediate effect.

Secretary to Govt. of Khyber Pakhtunkhwa,  
Minerals Development Department

Ends: No. SO-Admin(MD)1-6/91/Vol-XV  
Copy is forwarded to: -

1263-68

Dated Peshawar the, 30<sup>th</sup> October, 20

1. ✓ The Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officer, Abbottabad.
4. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department.
5. The officer concerned.
6. The Manager, Govt. Printing Press, Peshawar.

325

11-10-13

MDA  
31-10-13

(SYED WALI KHAN)

Section Officer (Establishment)

*Amended - C*

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Government of Pakhtunhwa Khyber  
Mineral Development Department

Dated Peshawar, the 07<sup>th</sup> February, 2022

**NOTIFICATION**

**No. SQ (MMD) 32021** In pursuance of section 41(1) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Part I of Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, the competent Authority is pleased to notify circulate final notification of Chief Draftsman (BS17) & Assistant Director (Survey & Drawing) (S&D) is Directorate General of Mines & Minerals, Khyber Pakhtunkhwa, as it stand on 30.11.2021 for general information.

Name of Officer	Qualification	Date of Birth With Domicile	Date of 1 <sup>st</sup> entry into Government Service	Regular appointment/promotion to the present post		Present place and date of posting Director Licensing
				Date	HPS & Method of Recr/ Appt	
Muhammad Farooq Chief Draftsman	DAE CIVIL	16-01-1971 Manshera	01-02-1991	01.11.2013	17 By Promotion	Office of ADM Abbottabad
Mr. Shahid Farooq Assistant Director (S&D)	Matric	11-02-1982 Peshawar	05-10-1982	17-01-2019	17 By Promotion	HQ Office Peshawar 16.10.2016

*Matric Retired from Service*

SECRETARY MINERAL DEVELOPMENT DEPARTMENT  
KHYBER PAKHTUNKHWA

Dated Peshawar, 07.02.2022

**No. SQ (MMD) 32021**

Copy forwarded to:

- 1. Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
- 2. Private Secretary to Secretary Minerals Development Department, Khyber Pakhtunkhwa, Peshawar.
- 3. The Manager, Government Printing & Stationary Department, Khyber Pakhtunkhwa, Peshawar.
- 4. Officer Concerned.

*(Hafiz Abdul Jalil)*  
SECTION OFFICER (ESTT.)  
07/02/22

*B*



Better copy

Annexure C

Government of Khyber Pakhtunkhwa  
Mineral Development Department

Dated Peshawar the

NOTIFICATION

No. SO (EMDD/2-3/2021). In pursuance of the Khyber Pakhtunkhwa Civil Servant appointment Transfer Rules 1989 the competent authority is please to Chief draftsman BPS-17 and Assistant Director Survey and Drawing BS 17 in Directorate General Mines and Mineral Khyber Pakhtunkhwa on 30.11.2020.

S No	Name of officer	Qualification	Date of birth with domicile	Date of 1 <sup>st</sup> entry into Government service	Regular appointment promotion to the post	Present place and date of posting director licensing
1	Muhammad Farooq Chief Draftsman	DAE Civil	16.01.1971 Mansehra	04.02.1991	01.11.2013	17 By promotion
2.	Mr Shahid Farooq Assistant (S&D)	Matric	11.02.1982	05.10.1982	By promotion	HQ Office Peshawar 16.10.2016

NO SO E (MD) 1-3/2021

Copy forwarded to the

1. Director General Mines and Mineral Khyber Pakhtunkhwa Peshawar.
2. Province Secretary Mines Development Khyber Pakhtunkhwa Peshawar.
3. The Manager Government Printing and Statutory Department Khyber Pakhtunkhwa Peshawar.
4. Official concerned.

(Hafiz Abdul Jalil)  
SECTION OFFICER (ESTAB)

ATTACHED

EXTRAORDINARY  
GOVERNMENT



REGISTERED NO. P.III

GAZETTE

# KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 9<sup>TH</sup> SEPTEMBER, 2016

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMN: DEPARTMENT  
(REGULATION WING)

## NOTIFICATION

Dated Peshawar, the 17<sup>th</sup> October, 2010

No. SO-Admn (MD) 1-6/88 Vol-V. - In pursuance of the provisions contained in sub-rule (2) of rule-3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules 1989, and in supersession of all Notifications issued in this behalf, the Minerals Development Department, in consultation with the Establishment Department and the Finance Department, hereby lay down the method of recruitment, qualifications and other conditions specified in column No.3 to 5 of the Appendix to this Notification which shall be applicable to the posts borne in the Directorate General Mines & Minerals, Khyber Pakhtunkhwa specified in Column No.2 of the said Appendix.

Secretary to Govt. of Khyber Pakhtunkhwa  
Mineral Development Department

14/10/10

**APPENDIX**  
**DIRECTORATE GENERAL MINES AND MINERALS**

S.No.	Nomenclature of the Post	Minimum Qualification Prescribed for Appointment By Initial Recruitment.	Age Limit	Method of Recruitment
1	2	3	4	5
1.	Director General Mines and Minerals (BPS-20)		---	(a) By promotion, on the basis of selection on merit, from amongst the Director. Exploration (Minerals), Director Licensing, Chief Inspector of Mines and Commissioner Mines Labour Welfare, having at least seventeen years service in BPS-17 and above, and in case of persons initially appointed in BS-18, the length of service for promotion to the post shall be twelve years in BPS-18 and above; or, (b) By transfer from the provincial Government Department.
<b>EXPLORATION PROMOTION DIVISION</b>				
2.	Director Exploration (Minerals) (BPS-19)	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy Directors (Exploration) with at least twelve years service in BPS-17 and above.
3.	Deputy Director (Exploration) (BPS-18)	---	---	By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Geologists) and Assistant Directors (Mining Engineer) with at least five years service as such.
4.	Manager Geographical Information System (GIS) (BPS-18)	(a) Master's Degree in Geographical Information System (GIS) or Computer Science or equivalent qualification from recognized University; and (b) Minimum of five years Geo-graphical Information System related experience from a reputed Organization.	25 to 45 years	By initial recruitment.
5.	Assistant Director (Geologist) (BPS-17)	Master's Degree in Geology from a recognized University.	21 to 30 years	(a) By initial recruitment; or (b) if no suitable candidate is available for initial recruitment, then by transfer from amongst the Assistant Directors (Geologists).

15.	Deputy Director (Technical) (BPS-18)		---	By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Directors (Technical) (Mining Engineer)/ Geologists/ Assistant Directors (Royalty), with at least five years service as such.
16.	Assistant Director Technical (Mining Engineer) (BPS-17)	Bachelor's Degree in Mining Engineering from a recognized University.	21 to 30 years	(a) Thirty-five per cent by promotion, on the basis of seniority-cum-fitness from amongst the Mineral Development Officers (Technical) with at least five years service as such; (b) Fifteen per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Mineral Development Officers (Non-Technical) with at least five years service as such; and (c) Fifty per cent by initial recruitment.
17.	Geologist (BPS-17)	Master's Degree in Geology from a recognized University <i>Geology</i>	21 to 30 years	(a) Fifty per cent by initial recruitment; and (b) Fifty per cent by promotion, on the basis of seniority-cum-fitness from amongst the Mineral Development Officers (Technical) with at least five years service as such
18.	Assistant Director (Royalty) (BPS-17)		---	By promotion, on the basis of seniority-cum-fitness, from amongst the Mineral Development Officers (Non-technical) with at least five years service as such.
19.	Assistant Director (Survey and Drawing) (BPS-17)		---	By promotion, on the basis of seniority-cum-fitness, from amongst the Survey and Drawing Officers with at least five years service as such.
20.	Chief Draftsman (BPS-17)		---	By promotion, on the basis of seniority-cum-fitness, from amongst the Draftsmen with at least five years service as such.
21.	Mineral Development Officer (Technical) (BPS-16)	Bachelor's Degree in Mining Engineering or Master's Degree in Geology from a recognized University.	21 to 30 years	By initial recruitment.
22.	Mineral Development Officer (Non-Technical) (BPS-16)		---	By promotion, on the basis of seniority-cum-fitness, from amongst the post of the Royalty Inspectors with at least 10 years service as such.
23.	Survey and Drawing Officer (BPS-16)	(i) Intermediate from a recognized board. (ii) Surveyor Certificate from a recognized Institute; and (iii) Mine Surveyor Certificate granted under the Mines Act, 1923 and three years' experience in mine survey	21 to 30 years	(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Surveyors with at least five years service as such; and (b) Fifty per cent by initial recruitment.