

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeals No. 1215/2023

Diary No. 9305

Dated 22/11/23

Mr. Mujahid Ali, Additional Assistant Commissioner (Revenue), Charsadda.....Appellant


VERSUS

Chief Secretary, Khyber Pakhtunkhwa & Others Respondents

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Dated: 20.11.2023


Deponent

CNIC No: 17301-6272682-3

Contact No: 0315-5737137

24-11-23

Peshawar

2

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No.1215/2023

Mr. Mujahid Ali, Additional Assistant Commissioner (Revenue), Charsadda(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 2. The Secretary, Establishment Department Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
 3. The Senior Member Board of Revenue, Khyber Pakhtunkhwa, Peshawar
-(Respondents)

JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 to 3

Respectfully Sheweth,

PRELIMINARY OBJECTIONS:

1. That the appeal is not maintainable being hit by the well-settled Principle of res judicata. As admitted vide Para-5 & 7 of the "FACTS" of the instant Appeal, the question of law involved in the instant appeal has already been decided by the Hon'ble Peshawar High Court in Writ Petition No.1861-P/2020 and as admitted vide Para-8 of the "FACTS", the Hon'ble Service Tribunal vide judgment dated 25.02.2021 in Service Appeal No.12885/2020, dismissed the appellant's appeal being hit by Section 4 (b) (i) of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974.
2. That the matter/question of law has already gained finality/ adjudicated upon by the competent courts (the Hon'ble Peshawar High Court, Peshawar and the Hon'ble Service Tribunal Peshawar), therefore, the appellant by filing instant appeal cannot agitate the same question of law being barred by Section 23 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 which stipulates "No entertainment of appeal in certain cases:-The Tribunal shall not entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction."
3. That the official record transpires that no departmental appeal as claimed vide Para-9 of the Appeal was received neither within statutory period nor time barred. The departmental appeal annexed therewith Service Appeal does not bear diary No. or any proof of the receipt of the appeal in question in the office of Chief Secretary, Khyber Pakhtunkhwa.
4. The appeal is barred by law/limitation under Section 4 (a) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 which states
"Where an appeal, review or representation to a departmental authority is provided under the [Khyber Pakhtunkhwa]Civil Servants Act, 1973, or any rules against any such order, no appeal shall lie to a Tribunal unless the aggrieved civil servant has preferred an appeal or application for review or representation to such departmental authority and a period of ninety days has elapsed from the date on which such appeal, application or representation was preferred."
5. That the appellant has got no cause of action/locus standi to file the instant appeal against the respondents.
6. That the appeal is not maintainable.
7. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
8. That the appeal is not within statutory period.

9. That this Honourable Tribunal lacks jurisdiction in the matter under Section 4(b)(i) of the Service Tribunal Act, 1974.
10. That the appellant has suppressed material facts from the Tribunal.
11. That the appellant is estopped to file the instant appeal due to his own conduct.
12. That the appeal is bad for mis /non-joinder of necessary parties.
13. That the instant appeal is hit by Section 4 (b) (i) of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974.
14. That the appeal is hit by laches.

REPLY TO FACTS:

1. **No Comment.**
2. Correct to the extent that the appellant was reflected at Serial No.38 in the penal of Tehsildar (BS-16) by the Board of Revenue, Revenue & Estate Department for consideration of the Provincial Selection Board in its meeting on 09.06.2020. However, as is evident from the minutes of the Provincial Selection Board, the Board in view of his general reputation of being corrupt, incompetent and indifferent to his official responsibilities as reported by the District Collector, during his posting as Settlement Tehsildar Nowshera, did not consider him for promotion and decided to keep him under watch for a period of one year (**Annex-I**).
3. **Correct** to the extent that the PSB was scheduled on 20.02.2020 but was postponed due to the judgment passed by Peshawar High Court Peshawar dated: 19.02.2020 in writ petition No.5673-P/2019. Resultantly, a considerable number of officers included in the panel of PSB got retired as they attained age of superannuation i.e. 60 years in the light of the said judgment. Consequently, the Provincial Government decided the retirement cases in light of circular letter No: SO(Policy)E&AD/1-13/2019 dated: 16.03.2020 and fresh working papers had to be prepared. Working out the new panels and the corresponding quotas of promotion due to retirements turned out to be a voluminous task. PSB was not scheduled again till 09.06.2020 as the Government of Khyber Pakhtunkhwa declared emergency in the wake of the escalation in the transmission of COVID-19 and ordered closure of all departments except a few essential ones. These departments, being closed could not prepare the working papers. However, the process of recruitment of PMS Officer (BS-17) through Khyber Pakhtunkhwa Public Service Commission was initiated on 20.10.2017 with the placement of requisition to Khyber Pakhtunkhwa Public Service Commission and after completion of the whole recruitment process by the Commission; Establishment Department issued appointment notification dated: 29.05.2020 in respect of the recommended candidates. Meanwhile, promotion process continued unabated and various PSB meetings were held on 08.11.2017, 28.12.2017, 03.05.2018, 17.09.2018, 26.12.2018, 19.04.2019, 23.09.2019 and 09.06.2020 which clearly indicate that no parallel can be drawn between initial recruitment and promotion of the applicants.
4. Subject to proof. As admitted by the appellant vide Para-3 of the "FACTS" that Respondent Department convened PSB meeting on 20.02.2020 vide letter dated 18.02.2020 while the appellant and his colleagues had filed an application on 14.02.2020 for holding PSB meeting as soon as possible which is denied to the extent of receipt. The rest as explained in Para-3 above.

- 5. Correct to the extent that upon the recommendation of the Commission, the Respondent Department after completion of due process, issued appointment order dated 29.05.2020 of the PMS (BS-17) Officers against initial quota.
- 6. As admitted by the appellant PSB meeting was held on 09.06.2020 and a number of Tehsildars, eligible in all respect, were promoted as PMS (BS-17). However, as far as appellant is concerned, as is evident from the minutes of the Provincial Selection Board, the Board in view of his general reputation of being corrupt, incompetent and indifferent to his official responsibilities as reported by the District Collector, during his posting as Settlement Tehsildar Nowshera, did not consider him for promotion and decided to keep him under watch for a period of one year.
- 7. **Correct** to the extent that the appellant filed departmental appeal before competent authority for consideration of his promotion to PMS BS-17 w.e.f 20.02.2020. The appeal was processed and after due consideration of all the points raised in the appeal and record, rules / policies in vogue, the competent authority found no reason to accept the request of the applicant, therefore, regretted the appeal being devoid of merit (**Annex-II**). The Hon'ble Tribunal also dismissed **Service Appeal No.12885/2020** being hit by Section 4 (b) (i) of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 vide judgment dated 25.02.2021 (**Annex-III**). The Hon'ble Tribunal held: "Without touching the facts, circumstances and merits of the case the question of jurisdiction comes in the way of adjudication under Section-4 (b)(i) which stipulates:-

(b) "no appeal shall lie to a tribunal against an order or decision of a departmental authority determining-----(i) the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade".

We understand that the Provincial Selection Board met on 09.06.2020 to determine the fitness or otherwise of the officers on penal for consideration to be promoted to next higher scale i.e from BS-16 to BS-17 and scrutiny of the documents/service record was the prime and sole criteria before the PSB which the forum did take into consideration before making its recommendation to the competent authority for approval. **As this Tribunal is hit by the above mentioned provision of law, the service appeal in hand is therefore, dismissed."**

- 8. As admitted by the appellant in Para-7 of the appeal that he filed departmental appeal against the notification dated 02.07.2020 which was rejected by the competent authority vide order dated 22.09.2020. Service Appeal No.12885/2020 arising from the said rejection order was also dismissed due to lack of jurisdiction by the Hon'ble Tribunal vide judgment dated 25.02.2021. Hence, the matter/question of law has already gained finality/ adjudicated upon by the competent courts (the Hon'ble Peshawar High Court, Peshawar and the Hon'ble Service Tribunal Peshawar), therefore, the appellant by filing instant appeal cannot agitate the same question of law being barred by Section 23 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 which stipulates **"No entertainment of appeal in certain cases:-The Tribunal shall not**

entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction."

- 9. Incorrect and misleading thus, denied. The official record transpires that no departmental appeal so claimed was received neither within statutory period nor time barred. The departmental appeal annexed therewith Service Appeal does not bear diary No. or any proof of the receipt of the appeal in question in the office of Chief Secretary, Khyber Pakhtunkhwa. Moreover, the signature of the appellant affixed on dubious Departmental Appeal also seems bogus/fake as they do not match with his genuine signatures on official record.
- 10. The appellant is not aggrieved person in true sense, therefore, has got no valid locus standi and thus is not entitled for any relief. The instant appeal, being devoid of merit, is liable to be dismissed in limine.

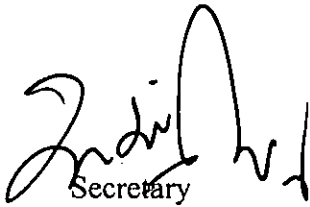
REPLY TO GROUNDS:

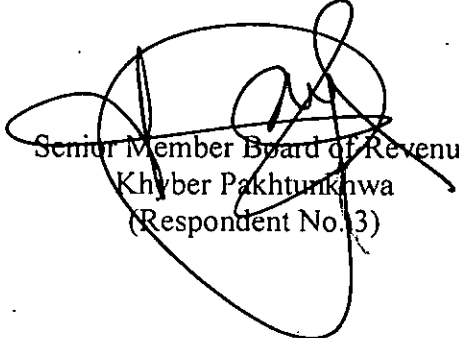
- A. **Incorrect, misperceived and misinterpreted.** The appellant has been treated in accordance with law rules and policy on subject. The appellant has been treated under the Khyber Pakhtunkhwa Civil Servants Promotion Policy 2009 which its Part-V (Deferment of Promotion) clearly says that *the promotion of a civil servant will be deferred, if the PER dossier is incomplete or any other document/ information required by the PSB / DPC for determining his suitability for promotion is not available for reasons beyond his control.* As clarified vide Para-6 of the "FACTS", in the instant case, PSB being the competent forum decided to keep him under watch for a period of one year.
- B. **Incorrect, misperceived as misinterpreted.** As envisaged in Article 4 of the Constitution of Islamic Republic of Pakistan, 1973, all citizens are equal before law and entitled to equal protection of law. Likewise, Article 25 of the Constitutions, ensures equality amongst equal, however, the appellant has been treated in accordance with prevailing Policy/Rules, therefore, reference made to Articles 4 & 25 of the Constitution of the Islamic Republic of Pakistan is totally irrelevant.
- C. **Incorrect as laid.** PSB in its minutes of the meeting, held on 09:06.2020, has recorded logical reasons as to why the appellant could not be promoted; perusal of the minutes of the said PSB meeting reveals that the Board, in view of his general reputation of being corrupt, incompetent and indifferent to his official responsibilities as reported by the District Collector, during his posting as Settlement Tehsildar Nowshera, did not consider him for promotion and decided to keep him under watch for a period of one year.
- D. **Incorrect, misleading and contrary to the facts.** The rest as clarified vide Para-3, 6, 7 & 8.
- E. **Incorrect, misleading and contrary to the facts.** The rest as clarified vide Para-3, 6, 7 & 8.
- F. **Incorrect, misperceived and misinterpreted.** As per said Promotion Policy, "*Promotion will always be notified with immediate effect.*"
- G. Incorrect and misleading. The rest as clarified vide Para-3, 6, 7 & 8.

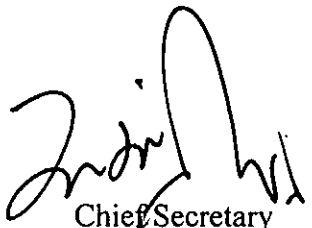
H. Incorrect, misperceived and misinterpreted. Article 38(e) of the Constitution speaks of the collective responsibility of the state towards the people with regard to promotion of their social and economic well-being, and providing equal social protection to all citizens. Hence, reference made to Articles 38(e) of the Constitution is totally irrelevant.

I. That the matter/question of law has already gained finality/ adjudicated upon by the competent courts (the Hon'ble Peshawar High Court, Peshawar and the Hon'ble Service Tribunal Peshawar), therefore, the appellant by filing instant appeal cannot agitating the same question of law being barred by Section 23 of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974 which stipulates "No entertainment of appeal in certain cases:-The Tribunal shall not entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a Court or a Tribunal of competent jurisdiction."

It is, therefore, most humbly prayed that on acceptance of the Preliminary Objections and Parawise Comments, the instant Appeal may very graciously be dismissed with costs.


Secretary
Establishment Department
Khyber Pakhtunkhwa
(Respondent No. 2)
(Zubair Ahmad)


Senior Member Board of Revenue
Khyber Pakhtunkhwa
(Respondent No. 3)


Chief Secretary
Khyber Pakhtunkhwa
(Respondent No.1)
(Zubair Ahmad)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Service Appeal: 1215/2023

Mr. Mujahid Ali, Additional Assistant Commissioner (Revenue), Charsadda.....**Appellant**

VERSUS

Chief Secretary Khyber Pakhtunkhwa & Others**Respondents**

AFFIDAVIT

I, Zubair Ahmad, Special Secretary Establishment Department do hereby solemnly affirm and declare on that oath contents of the accompanying parawise comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

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



DEPONENT

Zubair Ahmad

Zubair Ahmad
Special Secretary Establishment
Contact: 0332-4545054

Annex-ICONFIDENTIAL

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

NO. SO(PSB)ED/1-1/2020/P-532
Dated Peshawar, the 26.06.2020

To

The Section Officer (E- II),
Establishment Department

SUBJECT: - MINUTES OF THE MEETING OF PROVINCIAL SELECTION BOARD HELD ON
09.06.2020.

PROMOTION OF TEHSILDARS TO THE POST OF PMS BS-17

I am directed to refer to Establishment Department letter No. SOE-II(ED)2(192)2020 dated 09.06.2020 on the subject and to forward herewith an extract of **Item No (3)** of the minutes/recommendations of the meeting of Provincial Selection Board held on **09.06.2020** as well as copy of approved summary wherein the Chief Minister being competent authority in terms of Rule 4 (1) (a) of the Khyber Pakhtunkhwa (Appointment, Promotion & Transfer) Rules, 1989 has approved the recommendation of the PSB, for further necessary action.

Encl: As Above

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MV
Superintendent
Govt. of KPK
Estab: Deptt;

26/6/2020
SECTION OFFICER (PSB)

ITEM NO (03)

3-2017 Finance
3-2017 Finance

ESTABLISHMENT DEPARTMENT

Meeting of PSB held on 09.06.2020)

SUBJECT: -PROMOTION OF TEHSILDARS BS-16 TO THE POST OF PMS BS-17

Secretary Establishment apprised the Board that number of posts falling to the share of Tehsildar to PMS BS-17 is 153 where 98 officers are already working. Hence 55 posts of PMS BS-17 are lying vacant. The Board considered promotion against 53 posts by excluding 02 posts vacated due to conditional retirement of the officers in wake of Peshawar High Court judgment dated 19.02.2020.

2. According to the Provincial Management Service Rules, 2007, the posts of PMS in BS-17 falling in the share of Tehsildars are required to be filled as under:-

"Twenty percent from amongst Tehsildars who are graduates, on the basis of seniority cum fitness having three years service as Tehsildar/ Naib Tehsildar and have undergone a training course of 9 weeks at the Pakistan Provincial Services Academy or Provincial Staff Training Institute".

3. The service record of the officers included in the panel were discussed as follows:-

S#	NAME OF OFFICER	RECOMMENDATIONS OF THE BOARD
1.	Mr. Muhammad Ikramullah.	His date of birth is 9.3.1965. He joined government service on 1.7.1995. He was promoted as Tehsildar BS-16 on 6.9.2008. The Board was informed that a case is pending against him in Anti Corruption Court. Besides his PER for the year 2015 to 2019 are also not available. The Board recommended to defer his promotion.
2.	Mr. Kiramatullah. <i>Kiramat</i>	His date of birth is 20.1.1961. He joined government service on 8.1.1981. He was promoted as Tehsildar BS-16 on 6.9.2008. The Board was informed that he opted to forego his promotion twice, once on 02.01.2012 and again on 14.11.2017. His case was considered in terms of Rule 7(5) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 which provides that if a civil servant declines to avail the benefit of promotion for

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M.V.

		<p>the second time, then he shall stand superseded permanently for such promotion.</p> <p>The Board, therefore, recommended his supersession.</p>
3.	Mr. Abdul Ghafar.	<p>His date of birth is 15.12.1974. He joined government service on 14.02.2004. He was promoted as Tehsildar BS-16 on 04.06.2013. The Board was informed that he opted to forego his promotion on 07.09.2016. As per provision contained in Rule 7(5) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 he shall not be considered for promotion for the next four years from the date on which he opted to forego promotion.</p> <p>The Board did not consider his promotion.</p>
4.	Mr. Hidayatullah.	<p>His date of birth is 28.04.1962. He joined government service on 13.03.1991. He was promoted as Tehsildar BS-16 on 04.06.2013. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
5.	Mr. AbdurRehman Shah.	<p>His date of birth is 15.02.1985. He joined government service on 23.01.2007. He was promoted from NaibTehsildar as Tehsildar BS-16 on 10.02.2015. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
6.	Mr. Waheed Ahmad.	<p>His date of birth is 01.01.1967. He joined government service on 29.01.1986 and was promoted from Sub Registrar as Tehsildar BS-16 on 10.02.2015. He has completed prescribed length of service for promotion. The Board was informed that disciplinary proceedings were</p>

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M/S
Superintendent
Govt. of K.P.K
Estab: Deptt:

		pending against him. The Board, therefore, recommended to defer his promotion.
7.	Mr. Syed Mir Laiq.	His date of birth is 27.04.1963. He joined government service on 08.07.1983 and was promoted as Tehsildar BS-16 on 10.02.2015. He has undergone training mandatory for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good. The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.
8.	Mr. Muhammad Junaid.	His date of birth is 10.02.1988. He joined government service on 01.02.2016 as Tehsildar BS-16. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good. The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.
9.	Mr. Shah Behram. <i>Attested</i>	His date of birth is 20.11.1973. He joined government service on 28.06.1997. He was promoted from District Kanongo as Tehsildar BS-16 on 15.12.2016. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good. The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.
10.	Faiz Ahmad Qureshi. <i>Attested</i>	His date of birth is 12.04.1962. He joined government service on 15.08.1982. He was promoted from Assistant as Tehsildar BS-16 on 15.12.2016. He has undergone mandatory training for promotion. He has completed

		<p>prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
11.	Mr. Abdul Muqsit.	<p>His date of birth is 20.01.1965. He joined government service on 28.08.1988. He was promoted from Assistant as Tehsildar BS-16 on 15.12.2016. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
12.	Mr. Jehan Said.	<p>His date of birth is 10.01.1964. He joined government service on 28.08.1988. He was promoted from Assistant as Tehsildar BS-16 on 15.12.2016. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
13.	Mr. Sahib Zada.	<p>His date of birth is 10.11.1961. He joined government service on 04.09.1988. He was promoted from Assistant as Tehsildar BS-16 on 15.12.2016. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p>

Abdul Muqsit
 Superintendent
 Govt. of F.P.K
 Estab: Deptt;

		The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.
14.	Mr. Zahid Kamal.	<p>His date of birth is 18.05.1964. He joined government service on 01.03.1990. He was promoted from Assistant as Tehsildar BS-16 on 15.12.2016. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
15.	Mr. Habib Ahmad Jan.	<p>His date of birth is 01.03.1963. He joined government service on 02.07.1987. He was promoted from Assistant as Tehsildar BS-16 on 15.12.2016. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
16.	Mr. Tahir Ashraf.	<p>His date of birth is 24.01.1970. He joined government service on 28.02.1988. He was promoted from Assistant as Tehsildar BS-16 on 16.11.2017. He has undergone mandatory training for promotion. He has not completed the prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for appointment to BS-17 on acting charge basis.</p>
17.	Mr. Afsar Khan.	His date of birth is 10.04.1964. He joined government service on 04.12.1989. He was promoted from Sub Registrar as Tehsildar BS-16 on 06.04.2018. He has not completed the prescribed length of service for promotion

Attested
[Signature]
 Superintendent
 Govt. of FPK
 Ex. Deptt.

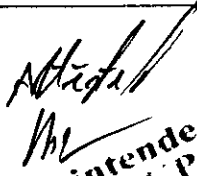
		and has not undergone training mandatory for promotion. His PER for the year 2016 (P) and 2017 to 2019 are also not available. The Board recommended to defer his promotion.
18.	Mr. Abdul Qayum.	His date of birth is 20.02.1965. He joined government service on 20.03.1988. He was promoted from Sub Registrar as Tehsildar BS-16 on 16.11.2017. He has not completed the prescribed length of service for promotion and has not undergone training mandatory for promotion. His PER for the year 2018 and 2019 are not available. The Board recommended to defer his promotion.
19.	Mr. WaheedUllah.	His date of birth is 10.02.1973. He joined government service on 20.09.1995. He was promoted from Sub Registrar as Tehsildar BS-16 on 16.11.2017. He has undergone mandatory training for promotion. He has not completed the prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good. The Board recommended the officer for appointment to PMS BS-17 on acting charge basis.
20.	Mr. Muhammad Rafiq.	His date of birth is 01.03.1964. He joined government service on 06.03.1988. He was promoted from District Kanongo as Tehsildar on 04.07.2019. He has not completed prescribed probation period and has not undergone mandatory training for promotion. The Board did not consider his promotion.
21.	Mr. Gohar Ali.	His date of birth is 20.02.1964. He joined government service on 19.02.1985. He was promoted from District Kanongo as Tehsildar on 04.07.2019. He has not yet completed probation period. He has not undergone mandatory training for promotion and his PER for the year 2019 is also not available. The Board did not consider his promotion.
22.	Mr. Ajam Khan.	His date of birth is 15.06.1963. He joined government service on 07.10.1987. He was promoted from District

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Superintendent
Govt. of F.P.K
Estab: Deptt:

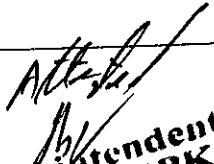
		<p>Knanongo as Tehsildar BS-16 on 16.11.2017. He has undergone mandatory training for promotion. He has not completed the prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for appointment to PMS BS-17 on acting charge basis.</p>
23.	Mr. Muhammad Javed.	<p>His date of birth is 22.04.1966. He joined government service on 25.09.1990. He was promoted from District Kanongo as Tehsildar BS-16 on 16.11.2017. He has undergone mandatory training for promotion. He has not completed the prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for appointment to PMS BS-17 on acting charge basis.</p>
24.	Mr. Shah Nadeem.	<p>His date of birth is 02.04.1983. He joined government service on 09.08.2004. He was promoted from District Kanongo as Tehsildar BS-16 on 16.11.2017. He has undergone mandatory training for promotion. He has not completed the prescribed length of service for promotion. No enquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for appointment to PMS BS-17 on acting charge basis.</p>
25.	Mr. Arshad Mehmood.	<p>His date of birth is 04.02.1967. He joined government service on 17.09.1991. He was promoted from Assistant as Tehsildar on 16.11.2017. He has not completed the prescribed length of service and has not undergone mandatory training for promotion. His PER for year 2019 is also not available.</p> <p>The Board recommended to defer his promotion</p>
26.	Mr. Muhammad Hasrat Khan.	<p>His date of birth is 15.04.1968. He joined government service on 17.09.1991. He was promoted from Assistant as</p>

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		<p>Tehsildar on 16.11.2017. He has not completed the prescribed length of service and has not undergone mandatory training for promotion.</p> <p>The Board recommended to defer his promotion</p>
27.	Mr. Naimatullah Kundi	<p>His date of birth is 22.09.1965. He joined government service on 09.01.1992. He was promoted from Assistant as Tehsildar on 16.11.2017. He has not completed the prescribed length of service and has not undergone mandatory training for promotion. His PERs for the year 2018 and 2019 are also not available.</p> <p>The Board recommended to defer his promotion.</p>
28.	Mr. Raja Tasawar Khan.	<p>His date of birth is 15.04.1968. He joined government service on 05.03.1992. He was promoted from Assistant as Tehsildar on 16.11.2017. He has not completed the prescribed length of service and has not undergone mandatory training for promotion. His PERs for the year 2018 and 2019 are also not available.</p> <p>The Board recommended to defer his promotion.</p>
29.	Mr. Ishaq Ali Khan.	<p>His date of birth is 14.10.1963. He joined government service on 13.09.1982. He was promoted from Assistant as Tehsildar on 16.11.2017. He has not completed the prescribed length of service and has not undergone mandatory training for promotion.</p> <p>The Board recommended to defer his promotion.</p>
30.	Mr. Muhammad Zaman.	<p>His date of birth is 04.01.1968. He joined government service on 25.10.1992. He was promoted from Assistant as Tehsildar on 16.11.2017. He has not completed the prescribed length of service and has not undergone mandatory training for promotion.</p> <p>The Board recommended to defer his promotion.</p>
31.	Mr. Muhammad	<p>His date of birth is 05.05.1979. He joined government</p>


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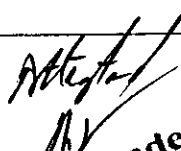
	Imran Zaman.	<p>service on 23.04.2008. He was promoted from Assistant as Tehsildar on 16.11.2017. He has not completed the prescribed length of service and has not undergone mandatory training for promotion. His PERs for the year 2018 and 2019 are also not available.</p> <p>The Board recommended to defer his promotion</p>
32.	Mr. Khalid Mansoor.	<p>His date of birth is 10.03.1974. He joined government service on 12.08.2008. He was promoted from Assistant as Tehsildar on 16.11.2017. He has not completed the prescribed length of service and has not undergone mandatory training for promotion. His PERs for the year 2018 and 2019 are also not available.</p> <p>The Board recommended to defer his promotion</p>
33.	Mr. YadUllah Khan.	<p>His date of birth is 23.05.1979. He joined government service on 02.02.2009. He was promoted from Naib Tehsildar as Tehsildar on 17.01.2019. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. The Board was informed that an investigation by NAB against him alongwith others regarding misuse of authority by selling 291 kanal land of Sarfaraz Khan District Hospital charity Fund Mardan (MES#114636) vide NAB letter No.1/681/IW-11/NAB(KP)143046 dated 15.02.2019 is under process.</p> <p>His case was discussed in the Board in light of the provision of promotion policy regarding NAB cases, "If there are any NAB investigations being conducted against an officer, the fact of such investigation needs to be placed before the relevant promotion fora which may take a considered decision on merits of the case".</p> <p>The Board, therefore, decided to keep the officer under watch for a period of one year.</p>
34.	Mr. Ahmad Hashmi.	<p>His date of birth is 02.04.1983. He joined government service on 02.02.2009. He was promoted from Naib Tehsildar as Tehsildar on 06.04.2018. He has undergone mandatory training for promotion. The Department informed the Board that he had limited capacity and shied away from responsibilities. This was corroborated by his current Supervisory Officer.</p>


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		The Board, therefore, decided to keep the officer under watch for a period of one year.
35.	Mr. Muhammad Yar.	<p>His date of birth is 02.02.1979. He joined government service on 02.02.2009. He was promoted from <u>Naib Tehsildar</u> as Tehsildar on 17.01.2019. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No inquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on <u>regular basis</u>. He will be on probation for a period of one year.</p>
36.	Mr. Mujahid Ali.	<p>His date of birth is 19.04.1974. He joined government service on 02.02.2009. He was promoted from <u>Naib Tehsildar</u> as Tehsildar on 06.04.2018. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. The Board took notice of his general reputation of being corrupt, incompetent and indifferent to his official responsibilities as reported by the District Collector, during his posting as Settlement Tehsildar Nowshera.</p> <p>The Board, therefore, decided to keep the officer under watch for a period of one year.</p>
37.	Mr. Syed Abdul Akbar Shah.	<p>His date of birth is 11.04.1981. He joined government service on 02.02.2009. He was promoted from <u>Naib Tehsildar</u> as Tehsildar on 06.04.2018. He has not undergone mandatory training for promotion. His PER for the year 2018 and 2019 are not available.</p> <p>The Board recommended to defer his promotion.</p>
38.	Mr. Rahim Shah.	His date of birth is 13.01.1969. He joined government

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		<p>service on 03.09.1990. He was promoted from Assistant as Tehsildar on 06.04.2018. He has not completed the prescribed length of service and has not undergone mandatory training for promotion. His PER for the year 2019 is also not available.</p> <p>The Board recommended to defer his promotion.</p>
39.	Mr. Muhammad Nawaz.	<p>His date of birth is 25.12.1961. He joined government service on 09.10.1980. He was promoted from Assistant as Tehsildar on 06.04.2018. He has not completed the prescribed length of service and has not undergone mandatory training. His PER for the year 2018 and 2019 are also not available.</p> <p>The Board recommended to defer his promotion</p>
40.	Mr. Farooq Shah.	<p>His date of birth is 04.01.1961. He joined government service on 01.12.1984. He was promoted from Assistant as Tehsildar on 06.04.2018. He has not completed the prescribed length of service and has not undergone mandatory training. His PER for the year 2018 and 2019 are also not available.</p> <p>The Board recommended to defer his promotion.</p>
41.	Mr. Muhammad Ayaz.	<p>His date of birth is 20.02.1983. He joined government service on 30.04.2009. He was promoted from Assistant as Tehsildar on 17.01.201. He has not completed the prescribed length of service and has not undergone mandatory training for promotion. His PER for the year 2018 and 2019 are also not available.</p> <p>The Board recommended to defer his promotion</p>
42.	Mr. Syed Sultan Haider Shah.	<p>His date of birth is 18.12.1972. He joined government service on 02.02.2009. He was promoted from Naib Tehsildar as Tehsildar on 17.01.2019. He has undergone mandatory training for promotion. He has completed</p>


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		<p>prescribed length of service for promotion. No inquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
43.	Mr. Aftab Ahmed.	<p>His date of birth is 08.12.1982. He joined government service on 02.02.2009. He was promoted from Naib Tehsildar as Tehsildar on 17.01.2019. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No inquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
44.	Mr. Dil Nawaz Khan.	<p>His date of birth is 22.03.1979. He joined government service on 02.02.2009. He was promoted from Naib Tehsildar as Tehsildar on 17.01.2019. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No inquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
45.	Mr. KifayatUllah.	<p>His date of birth is 09.01.1977. He joined government service on 02.02.2009. He was promoted from Naib Tehsildar as Tehsildar on 17.01.2019. The Board was informed that he was removed from service in a disciplinary proceedings and on acceptance his appeal by Service Tribunal, he was conditionally reinstated into services as Niab Tehsildar subject to the final decision of pending CPLA in the Supreme Court of Pakistan. Similarly his promotion as Tehsildar on 17.01.2019 was also conditional subject to the said CPLA.</p>

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		The Board therefore, decided to wait for the outcome of CPLA and keep him under watch till then.
46.	Mr. Faqir Hussain.	<p>His date of birth is 10.10.1983. He joined government service on 02.02.2009. He was promoted from Naib Tehsildar as Tehsildar on 17.01.2019. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No inquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
47.	Mr. Zulfiqar Khan.	<p>His date of birth is 15.04.1983. He joined government service on 02.02.2009. He was promoted from Naib Tehsildar as Tehsildar on 17.01.2019. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No inquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>
48.	Mr. Waqar Ahmad.	<p>His date of birth is 24.04.1980. He joined government service on 02.02.2009. He was promoted from Naib Tehsildar as Tehsildar on 17.01.2019. He has undergone mandatory training for promotion. He has completed prescribed length of service for promotion. No inquiry is pending against him. His PER dossier is complete. His service record upto 2019 is generally good.</p> <p>The Board recommended the officer for promotion to PMS BS-17 on regular basis. He will be on probation for a period of one year.</p>

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Govt. of KPK
Estab: Deptt:



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

22
Annex-II

No. SOE-II(ED)2(192)2021
Dated Peshawar the October 06, 2021

To

Mr. Mujahid Ali,
Tehsildar,
Board of Revenue, Peshawar

Subject: PROMOTION TO THE POST OF PMS (BS-17).

I am directed to refer to your application dated Nil on the subject noted above and to state that the case has been processed and regretted being not genuine.

M. Irfan Usman
(MUHAMMAD IRFAN USMAN)
SECTION OFFICER (E-II)

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Copy forwarded to the:-

1. PS to Secretary, Establishment Department Khyber Pakhtunkhwa.
2. PS to Special Secretary (Estt), Establishment Department Khyber Pakhtunkhwa.
3. P.A to Addl: Secretary (Estt), Establishment Department.

M. Irfan Usman
Superintendent
Govt. of K.PK
Estab: Deptt:

M. Irfan Usman
SECTION OFFICER (E-II)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 12885/2020

Date of Institution 21.10.2020

Date of Decision 25.02.2021



Mr. Mujahid Ali, Additional Assistant Commissioner, Hangu at Tall. (Appellant)

VERSUS

The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and two others. (Respondents)

Present:

MR. KHALID REHMAN, Advocate --- For Appellant.

MR. MUHAMMAD RASHEED, Deputy District Attorney --- For respondents.

MR. MIAN MUHAMMAD MR. HAMID FAROOQ DURRANI, --- MEMBER (Executive) CHAIRMAN

JUDGEMENT.

MIAN MUHAMMAD, MEMBER(E):- Notification dated 02.07.2020 and appellate order dated 30.09.2020 on the appeal of appellant have been assailed and impugned under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974.

FACTS.

Brief facts, as per memorandum of appeal, are that the appellant was inducted in service as Naib Tehsildar (BS-14) in 2009 and subsequently promoted as Tehsildar (BS-16) on 06.04.2018. The Provincial Selection Board in its meeting dated 09.06.2020 deferred his promotion on the ground of general reputation of corrupt, incompetent and indifferent to his official responsibilities.

Superintendent
Govt. of K.P.S.
Estab: Deptt:

Recommendations of the PSB in respect of clear cases were notified on 02.07.2020 which was represented by the appellant through a departmental appeal but the competent authority rejected the same on 30.09.2020, hence the instant service appeal on 21.10.2020.

03. We have heard the parties through their authorized legal counsels and gone through the available record minutely and detailed.

ARGUMENTS.

04. Learned counsel for the appellant argued that the PSB could not convene its scheduled meeting on 20.02.2020 when the appellant was on the panel of officers for consideration to be promoted to BS-17 in Provincial Management Service. It was therefore not his fault and as such was eligible for promotion from that date due to availability of vacancy falling in quota reserved for promotion at that very point of time. As a result of not convening meeting of the PSB, 123 direct recruits in BS-17 (PMS) recommended by the Public Service Commission were notified on 29.05.2020 rendering the appellant to become junior to them. He pleaded that as per principle vacancy in a cadre or service group will have to be filled from promotion quota first and then in direct or initial quota. He quoted Section-9 of the Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-7(3) of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989 as well as para-V(a) of the Promotion Policy and submitted that deferment is recommended when inter-se-seniority is disputed/subjudice, disciplinary/departmental proceedings are pending or PER dossier of an officer is incomplete. The appellant was not hit by any of the category of deficiency and as such he was by all means eligible for promotion to BS-17. It was further contended that the appellant has been condemned unheard because no formal enquiry has been

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conducted against him on the allegation/remarks recorded by the PSB in its minutes of the meeting dated 09.06.2020. The general reputation of being a corrupt officer is unfound and evasive term because there is no evidence in support of the claim against the appellant. His ACR's throughout his service career have no negative or adverse entry and even his reporting officer (Settlement Officer Nowshera) has given him good ACR's for 2018. To strengthen his arguments the learned counsel for the appellant placed reliance on order No. XX of Supreme Court Rules 1980, 1993 SCMR 2258, 2003 PLC (CS)503, 2006 SCMR 1938 and 2010 PLC (C.S) 760.

05. Learned Deputy District Attorney contradicted the arguments of learned counsel for the appellant and raised preliminary objection on maintainability of the service appeal under Section-4 (b)(i) that determining the suitability of an officer for a particular post falls in the domain of DPC/PSB and as such the Services Tribunal has no jurisdiction on such issues to be adjudicated upon. Reliance was placed on case law reported as 2005 SCMR 1742, PLD 2008 Supreme Court 769. .

CONCLUSION.

06. It is observed that ACR or performance evaluation report is an authentic service document reflecting on the performance of an officer keeping in view objectivity and not subjectivity by the Reporting Officer in such annual reports. In case, there were instances of inefficiency, misconduct or corruption, the same must have been put in black and white and communicated to the officer reported upon as per procedure and instructions contained in para-4.1 and 4.2 on "Instructions on Performance Evaluation Report 2006". In the instant case the officer has been deferred for promotion to BS-17 on the ground of "his general reputation of being corrupt, incompetent and indifferent to his official responsibilities, as reported by the District Collector Nowshera during his posting as Settlement Tehsildar

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 Deputy District Attorney
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 Settlement Tribunal
 Eschab: Deptt.

Nowshera". However, the officer was working under the direct supervision of Settlement Officer Nowshera who in ACR for the period 01.01.2016 to 30.03.2017 has termed him "a trust worthy officer who knows his job". The remarks of PSB are adverse in nature but neither substantiated with valid documents nor duly communicated to the appellant. The general reputation of officer being corrupt is therefore not based on some credible documentary evidence and as such has no ground to be maintained.

7. Without touching the facts, circumstances and merits of the case the question of jurisdiction comes in the way of adjudication under Section-4 (b)(i) which stipulates that:-

(b) "no appeal shall lie to a Tribunal against an order or decision of a departmental authority determining---
(i) the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade.

We understand that the Provincial Selection Board met on 09.06.2020 to determine the fitness or otherwise of the officers on penal for consideration to be promoted to next higher scale i.e from BS-16 to BS-17 and scrutiny of the documents/service record was the prime and sole criteria before the PSB which the forum did take into consideration before making its recommendations to the competent Authority for approval. As this Tribunal is hit by the above mentioned provision of law, the service Appeal in hand is therefore, dismissed. Parties are left to bear their respective costs. File be consigned to the record room.

ANNOUNCED
25/02.2021

ed to by true copy

EXAMINEE IN
the Pakistan
Service Tribunal
Peshawar

(HAMID FAROOQ DURRANI)
CHAIRMAN

Attache
Superintendent
Govt. of KPK
Estab: Deptt:

Date of Present

Cost
Urgent
Total
Name

(MIAN MUHAMMAD)
MEMBER(E)

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25-2-2021

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8-2-2021

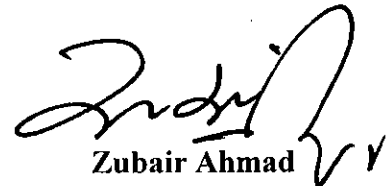


27

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Judicial Wing)**

AUTHORITY LETTER

Mr. Riaz Khan, Superintendent (Litigation-III Section) Establishment Department is hereby authorized to submit Affidavit to The Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1215/2023 titled as "**MUJAHID ALI VS GOVERNMENT OF KHYBER PAKHTUNKHWA & OTHERS**" on behalf of The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa being (Respondents No.01)


**Zubair Ahmad
Special Secretary
Establishment**



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

No. SO(Policy)/E&AD/Misc/2020
Dated Peshawar, the December 24, 2020

28

To

1. The Director STI, E&A Department.
2. All Additional Secretaries in E&AD.
3. All Deputy Secretaries in E&AD.
4. All Section Officers in E&AD.
5. The Estate Officer/Programme Officer (Computer Cell) in E&AD.

Subject: SIGNING OF PARAWISE COMMENTS ETC IN SERVICE APPEALS.

Dear Sir,

I am directed to refer to this Department letter No. SOR-VI/E&AD/1-23/2005 dated 12-01-2008 (copy enclosed) on the subject, the Competent Authority has been pleased to authorize the Special Secretary (Establishment) Establishment Department to sign the para-wise comments in cases of service appeals filed by the Civil Servants before the Khyber Pakhtunkhwa Service Tribunal on behalf of Chief Secretary, Khyber Pakhtunkhwa and Secretary, Establishment Khyber Pakhtunkhwa.

Yours faithfully,

SECTION OFFICER (POLICY)

ENDST: NO. & DATE EVEN

Copy forwarded to:

1. Secretary to Govt. of Khyber Pakhtunkhwa, Law Department
2. Registrar Peshawar High Court Peshawar.
3. Advocate General Khyber Pakhtunkhwa, Peshawar.
4. Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
5. PS to Chief Secretary, Khyber Pakhtunkhwa
6. PS to Secretary Establishment, Khyber Pakhtunkhwa
7. PS to Special Secretary (Establishment) Establishment Department
8. PS to Special Secretary (Reg). Establishment Department.

SECTION OFFICER (POLICY)

*Attested
S. Hashmatullah 20/11/23
Suptd. Lit-II Section
P.D.*