

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1805 of 2022

Munir Ahmad-----Appellant

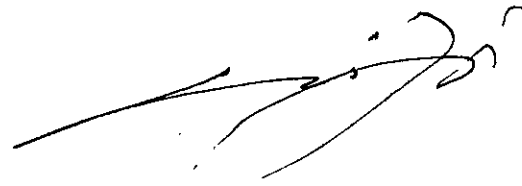
Versus

Govt of KPK through its Chief KPK Peshawar and others-----Respondents

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Dated: 22 / 11 / 2023


Saiyullah Wazir
DEO (M) Bannu

Service Appeal No: 1805 of 2022

Munir Ahmad----- Appellant

Khyber Pakhtunkhwa
Service Tribunal

Versus

Diary No. 9624

Dated 20-11-23

Govt of KPK through its Chief KPK Peshawar and others-----Respondents

Joint Comments on behalf of Respondents No: ~~143~~-4

Preliminary Objections

1. That the Appellant has no cause of action, locusstandi to file the instant Appeal.
2. That the appellant has concealed material facts from the Honorable Tribunal.
3. That the matter is badly barred by law and limitation.
4. That the conduct of the Appellant stopped himself to bring this instant appeal.
5. That the appeal bad for misjoind and non joind of necassery parties.

On the facts.

- 1- pertains to the personal record of the appellant.
- 2- It is correct to extend of advertisement the rest of Para is pertaining to the administrative position of the both FRs I.e. FR Bannu and FR Lakki.
- 3- It is Correct but this office FR Bannu is not bound to other Agencies like Bajur and Orakzai as the appellant mentioned in the Para. As this office has its own procedure to follow. The real facts of delaying the order of the appellant due to F.R Lakki are mentioned as following:
 - i. some candidates belonging to F.R Bannu were filled a writ petition No:32-B/2013 Titled Atta Ullah and Others Vs Govt of KPK and the honorable Peshawar high court bannu bench granted a status quo therefore the appointments of F.R Bannu was Stoped. **(Copy of status quo is attached as a annexure -A).**
 - ii. In the meanwhile the federal Govt had imposed ban on all sorts of recruitments during the status Quo. **(Copy of ban letter is attached as a annexure -B).**

iii. After lifting the ban on the recruitments dated 25/9/2014, the respondent No-4 forwarded a letter to the respondent No-3 regarding the guidance for appointment. Hence, the respondent No-3, in response to the letter to respondent No-4 to stop the instant recruitment due to badly time barred as per rule and policy. **(Copy of Guidance letter is attached as an annexure –C).**

iv. Three candidates filed a writ petition in high court Bannu Bench vide writ 70B/2015 titled Muhammad Shoaib vs ACS FATA. The Honorable high courts delivered a verdict in favor of these three candidates and were appointed by the respondent No 4. Later on, the left over candidates filed a writ petition vide No: 320-B/2015 titled Ashraf ullah Khan vs ACS FATA. The judgment of the high court in favor of the left over candidates was forwarded by the respondent No-4 to the respondent No-3 for guidance. In response, the respondent No 3 vide letter No: 7966-67 dated 6/8/2015 granted approval for appointment. The respondent No-4 appointed more than 67 candidates on PST, CT, PET,DM and Qari dated 17/8/2015. **(Copy of Approval Letter is attached as an annexure –D).**

v. The case of was forwarded to Deputy Commissioner (according to his competency) by the respondent no-4 for approval. The Deputy commissioner returned the case with the direction to verify documents, sands, from the board and university concerned before their appointment order.

vi. An anonymous complaint was made to respondent No-3 regarding the above mentioned recruitment. Taking action on the complaint the respondent No-3 declared all the appointment null and void vide letter No: 1152 dated 1/2/2016. **(Copy of letter No: 1152 is attached as an annexure –E).**

vii. The effected teachers filed different writ petitions vide No: 100-B/2016 Titled Hakimullah vs ACS FATA, writ petition No: 126-B/2016 Titled Khalid Usman vs ACS FATA. The high court Bannu bench reinstated all the effected teachers.

viii. While the fate of AT and TT was still undecided. So the respondent No- 4 forwarded a letter to respondent no 3 for approval. The respondent no 3 granted approval letter vide No:1119 dated 22/6/2017. Consequent upon the approval by the respondent No-4 appointed AT and TT candidates in September 2017 and the appellant is among these appointed teachers.**(Copy of Approval Letter is attached as an annexure –F)**

4- It is incorrect the appellant has no right for seniority because seniority and back benefits can be claimed from the date of taking over charge after appointment under E & D rule 2011. Therefore, their seniority and back benefits shall be considered from the date of taking over charge. Furthermore, He claim the seniority from F.R Lakki appointment order of the same advertisement dated 22/04/2013 while F.R lakki has been bifurcated after the merger of FATA into KP. As F.R lakki is lying under the jurisdiction of District Lakki and FR Bannu is lying under the jurisdiction of district Bannu after merger. Therefore, both districts have separate seniority/promotion quota which are not dependable on each other. It is also important to mention that no recruitment had taken place during 2012 to 2018 except the same advertisement. So the seniority of F.R Bannu candidates are in sequence and the same merit shall be applied for their promotion quotas.

5- It is correct but the case was dismissed on merit.

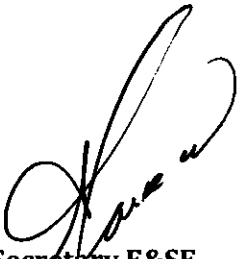
6- It is incorrect; the appellant has no right to file an instant appeal in this honorable service tribunal.


On Grounds:

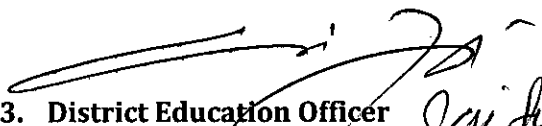
- A. It is incorrect the appellant has no right to claim seniority and back benefits.
- B. In correct, both districts have separate seniority quota and the appellant does not affect from the seniority of F.R Lakki.
- C. Incorrect, the respondent no 4 was an appointment authority at the time therefore, the respondent no 4 scheduled test and interview on the same day. Moreover, F.R Lakki recruitment process was completed on time 22/4/2013 whereas F.R Bannu recruitment delayed due to tussle among candidates by approaching High courts and resorting to other delaying tactics.
- D. It is incorrect, all the evidence detail regarding their delay in appointment order are mentioned in the above Para.
- E. It is incorrect, reply of this Para is explained on detailed on Para No: 3 on fact.
- F. In correct, as explained in the above Para in detail.
- G. The respondents may also be allowed to add additional supporting documents at the time arguments.

Pray

In the light of the above stated facts, it is humbly prayed that appeal of the appellant having no valid legal grounds may very graciously be dismissed with heavy cost.


1. Secretary E&SE
Khyber Pakhtunkhwa. *Naveedullah Shah*


2. Director E&SE
Khyber Pakhtunkhwa *Abdus Samad*


3. District Education Officer
Sub Division Wazir Bannu *Saifullah Wazir*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1805 of 2022

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Munir Ahmad----- Appellant

Versus

Govt of KPK through its Chief KPK Peshawar and others----- Respondents

AFFIDAVIT

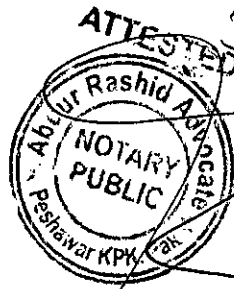
I, Mr.Saif Ullah Khan Wazir District Education Officer sub division wazir Bannu, do hereby solemnly affirms and declare on oath that accompanying written reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Services Tribunal.

Dated: 22 / 11 / 2023

DEPONENT

Saifullah wazir
DEO (m) Bannu

CNIC-11101-1482418-5



22 NOV 2023



Office of the

District EDUCATION OFFICER, SUB DIVISION WAZIR BANNU


Near Bannu Township Bezen Khel road, Bannu
Ph: 0928-633255, Fax: 0928-633255

No. / -

Dated: / / 2023

Authority Letter

It is stated that Mr *Muhammad Asim SIO Nazir Khan RIO Bannu* C.N.I.C No *11101-1496204-5* has been authorized to submit comments in Honourable Khyber Pakhtunkhwa Service Tribunal in Services Appeal No: No:1805, Titled *Munir Ahmad Vs Govt of KPK etc* on behalf of District Education Officer Sub Division Wazir Bannu.


District Education Officer
Sub Division Wazir Bannu.

Saifullah wazir

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IN THE PESHAWAR HIGH COURT, BANNU BENCH

Writ Petition No. 32-B of 2013

1. Attaulah Khan s/o ^{Amir} Mir Azad Khan
R/O: Saifal Khel, F.R. Bannu

KNO-296-B/13

2. Tahir Azam Khan s/o Muhammad Azam Khan
R/O: Adam Kala, F.R. Bannu

3. Laiq Zaman s/o Raufullah Khan
R/O: Agra Kala, F.R. Bannu

4. Zer Amanullah s/o Mir Banuth Khan
R/O: Adam Kala, F.R. Bannu

5. Barkatullah s/o Khushmir Jan
R/O: Madhi Khel, F.R. Bannu

6. Muhammad Noor s/o Janan Khan
R/O: Dhandi Kala, F.R. Bannu

7. Abdul Saood s/o Noor Ali Khan
R/O: Adam Kala, F.R. Bannu

8. Qudratullah s/o Latifullah
R/O: Saifal Khel, F.R. Bannu

9. Muhammad Ashraf s/o Muhammad Ayaz Khan
R/O: Auodin Kala, F.R. Bannu

10. Arshad Ali s/o Khan Wali Khan
R/O: Saifal Khel, F.R. Bannu

11. Azimullah s/o Raees Khan
R/O: Topan Kala, F.R. Bannu

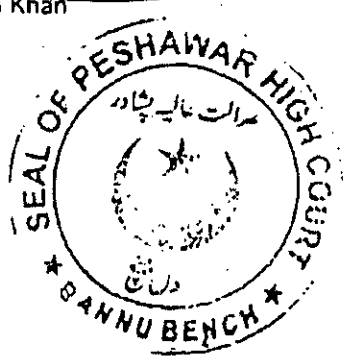
12. Qayyum Asif s/o Aziz Khan
R/O: Chaltia Khel, F.R. Bannu

13. Manzoorullah s/o Mir Haider
R/O: Auodin Kala, F.R. Bannu

14. Mufti Saeedullah s/o Shah Naraz
R/O: Mama Khel Laprhi Kala, F.R. Bannu

15. Asif Khan s/o Ismail Khan
R/O: Haji Gulan Kala, F.R. Bannu

16. Gohar Rehman s/o Mir Qad Ayaz
R/O: Mawazi Kala, F.R. Bannu



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ATTESTED
EXAMINER
Peshawar High Court
Bannu Bench

oday
P
Registrar
-13

-----PETITIONERS

VERSUS

The Govt of Khyber Pakhtunkhwa, through:-

Contd - P/20
Adv. for Petition

(8)

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(2)

1. The Agency Education Officer
F.R. Bannu, Taziri Chowk,
Kohat Road, Bannu
2. The Director Education (FATA),
FATA Secretariat, Peshawar
3. APA, F.R. Bannu
4. The Additional Chief Secretary (FATA)
Govt of K.P.K., FATA Secretariat,
Peshawar

-----RESPONDENTS

⑤ *Implementation of My/سازمان*

**WRIT PETITION UNDER ARTICLE: 199(1)(a)&(c) OF
THE CONSTITUTION OF PAKISTAN-1973**

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Being aggrieved by and dissatisfied with the discriminatory and illegal sub-division of F.R. Bannu for the purpose of appointment of School Teachers in the Frontier Region Bannu otherwise than in accordance with law by the Respondent No. 1, the Petitioners abovenamed prefers this writ petition for the enforcement of their inalienable constitutional and fundamental rights, inter alia, on the following facts and grounds: -

FACTS

1. That, the Competent Authority i.e. the Governor NWFP (now KPK) has in exercise of his powers conferred on him under Article: 241 of the Constitution of Pakistan-1973 has for the purpose of initial recruitment to any service of the province, divided the entire province and the adjoining Frontier Regions/Tribal Agencies into five (05) Zones for ensuring proper representation of the peoples of each and every part of the province and its adjoining Frontier Regions/Tribal Agencies, vide Appendix to the then Govt of NWFP(Now KPK) S&GAD Notification No. SOS.III(S&GAD)/3-39/70 dated 02-10-1973, according to which all the adjoining Tribal Agencies as well as Frontier Regions have been compacted into only one zone i.e. Zone No.1. It is pertinent to mention that this Notification is existing in force as it has been given effect through Rule: 12 of the NWFP Civil Servants (Appointments, Promotion and Transfer) Rules-1989 and Regulation: 3(a) and Part-XI of the NWFP Public Service Commission Regulations-2003.

11:15. Copy of the Notification is filed herewith and marked as Annex "A"

*Contd - P/3 Q
Adv for Petition*

ATTESTED

**EXAMINER
Peshawar High Court
Bannu Bench**

2. That, the Respondent No. 1 has invited applications for appointment to various vacant post of teaching staff in the Schools of F.R. Bannu through his advertisement published in the Daily MASHRIQ (Peshawar) dated 23-10-2012 and the Petitioners above named feeling themselves fully qualified for appointment against the advertised vacant posts have applied to the Respondent No.1, through the prescribed application formatted by the Respondent No. 1, in which item No.4 has been bifurcated for indicating (a) Name of the Agency/F.R. of Domicile and (b) Name of the Sub-Tehsil of the Agency/F.R.

Copies of the advertisement and the format of the prescribed application form for the teaching posts are filed herewith and marked as Annex "B/1&2", respectively.

3. That it is reliably learnt that the Respondent No.1 has introduced name of the Sub-Tehsil in the application form with a view to facilitate favouritism/nepotism and appoint those candidates whose merit is low but who are ready to please the incumbent of the office of the Respondent No.1 and thus sabotage the merit and may discriminate candidates with higher merits in the garb of technicality unless and otherwise all the low and high merit candidates belong to one and the same Frontier Region, which is being administered through one and the same APA i.e. the Respondent No.3. Therefore, with a view to block the ways of inter-play of technicalities by the Respondent No.1, the elders and Teachers Association of F.R. Bannu requested the Respondents No. 1,2,3 and other administrative authorities of F.R. Bannu; vide their applications (1) dated 26-10-2012 and (2) dated 20-11-2012; for preparation of one joint merit list of the entire F.R. Bannu in accordance with law and to make appointments to the vacant posts accordingly but the authorities have paid no heed to their request.

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Copies of the Elders and Teacher Association's applications (1) dated 26-10-2012 and (2) dated 20-11-2012 are filed herewith and marked as Annex "C/1&2", respectively.

5. That in the above circumstances, the Petitioners see no remedy except to beseech before this Hon'ble High Court by way of the instant Writ Petition under Article: 199(1)(a)&(c) of the Constitution of Pakistan-1973, for the enforcement of their inalienable constitutional and fundamental rights conferred on them under Articles: 4, 25 & 27 of the Constitution of Pakistan-1973, amongst others, on the following grounds:-

GROUND

(A) That, the Petitioners have no other alternate and efficacious remedy for the enforcement of their inalienable constitutional and fundamental rights, except through this Petition.

*Contd - P/4 D
Adv for Pettr*

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Court

(B). That although Rule 12(2) of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules-1989 requires that initial recruitment in Basic Pay Scales No. 3 to 15 borne on district cadre shall be made from amongst bonafide residents of the district concerned and does not allow further bifurcation of the District cadre into Tehsil or Sub-Tehsil basis as yet the Respondents are stubborn to bifurcate the District/Agency/F.R. cadre into Tehsil or Sub-Tehsil basis, which is ultra virus, null and void ab-initio, more particularly when it gives way to favouritism/nepotism and parochial, racial, tribal and sectarian prejudices which is strictly prohibited under Article: 34 of the Constitution of Pakistan-1973. As such the Petitioners are being treated otherwise than in accordance with the law/rules existing in force. Therefore, the instant Petition is lawfully maintainable.

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(C). That such bifurcation does not exist in any other Agency or Frontier Region, therefore, the Petitioners are right to claim that they have been discriminated against in violation of Articles: 25&27 of the Constitution of Pakistan-1973. As such the instant Writ Petition is lawfully maintainable, under Article: 199 of the constitution of Pakistan-1973.

(D). That the Petitioners are sure to the effect that in case joint merit list is prepared on the basis of the Agency/F.R. then because of their higher merit they will surely succeed in proving their worthiness for appointment on merit but because of the parochial tendency for making the merit list on basis of Tehsil/Sub-Tehsil then they may be looser and will be discriminated against despite their higher academic merit as compared to that of candidates belonging to Bakka Khel or Jani Khel etc Sub-Tehsils. Therefore, this Petition is lawfully maintainable.

(E) That, Advocate for the Petitioner craves leave of this Hon'ble High Court to urge more grounds at the time of hearing of this Petition.

PRAYERS

6. In view of the above humble submissions, it is earnestly prayed that this Hon'ble High Court may graciously be pleased to:-

(a). Declare that the Respondent No.1 has illegally and unwarranted— prepared the separate Tehsil/Sub-Tehsil wise merit lists which tend to give way to parochial/racial/tribal prejudices: and

ED
10/11/77

Contd — P/S *AD*
Adv for Peti
[Signature]

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(b) Issue a writ of mandamus to the Respondents in general and to the Respondent No.1 in particular to prepare one joint seniority list on the basis entire F.R. Bannu and make appointment to the vacant posts accordingly.

(c) That as an INTERIM RELIEF, this Hon'ble Court may graciously be pleased to restrain the Respondent No.1 from making appointments against the separate Tehsil/Sub-Tehsil wise merits lists till disposal of the instant petition unless and otherwise the Petitioners shall fall prey to multiple litigation with the prospective employees also.

(d) Any other relief which this Hon'ble High Court may deem fit and necessary in circumstances of the case.

15

Prayed accordingly in the interest of justice.

Attended
PETITIONERS

Through:-

Bannu
Dated:- 23-1-2013

[Signature]
(SHER MUHAMMAD KHAN)
Advocate High Court, at Bannu
I.D. No. BC-09-2433

LAW BOOKS

1. The Constitution of Pakistan-1973.
2. The NWFP Civil Servants (A,P&T) Rules-1989.
3. The NWFP PUBLIC Service Commission Regulations-2003.
4. The President's Order No. 13 of 1972 namely "the Centrally Administered Tribal Areas (Employee's Status) Order-1972"

CERTIFICATE

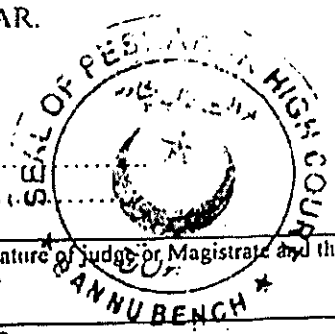
It is certified that no such like Writ Petition has earlier been filed in this Hon'ble Court as per information furnished to me by the Petitioners.

[Signature]
Advocate for the Petitioner

REGISTERED
[Signature]
Advocate High Court
Bannu

PESHAWAR HIGH COURT PESHAWAR.
FORM "A"
FORM OF ORDER SHEET

Court of
Case No.



Serial No of order or proceeding	Date of Order or Proceeding	Order or other proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
	6.5.2013.	<p><u>W.P.No.32/2013.</u></p> <p>Present:- Mr.Sher Muhammad Khan Advocate for the petitioners.</p> <p>====</p> <p>Ms.Neelam A.Khan A.A.G. for the present in Court accepts notice of this petition on behalf of the respondents and seeks time to prepare the case. Adjourned to 16.5.2013.</p> <p><u>C.M.No.329/2013.</u></p> <p>Notice for 16.5.2013. In the meanwhile the respondents shall continue their process but no final order should be passed till the date fixed.</p> <p>CERTIFIED TO BE TRUE COPY</p> <p><i>[Signature]</i> Examiner Peshawar High Court Bannu Bench Authorised Under Article 87 of The Qanun-e-Shahadat Ordinance 1984</p> <p><i>[Signature]</i> JUDGE</p> <p><i>[Signature]</i> JUDGE</p>

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715/13

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Accepted
[Signature]

Government of Pakistan
Cabinet Secretariat
Establishment Division

F.No. 193-R-1

Established: 20th June, 2013

OFFICE MEMORANDUM

20-6-2013

Subject: BAN ON RECRUITMENT PROCESS IN FEDERAL MINISTRIES
DIVISIONS/AUTONOMOUS BODIES/CORPORATIONS.

The undersigned is directed to refer to the subject cited above and to state that Federal Government has been pleased to impose an immediate ban on all recruitments in Federal Ministries/Divisions/Autonomous Bodies/Corporations.

2. The following information may be supplied to MS Wing of Establishment Division latest by 25th June, 2013 positively:-

- i. All recruitments made from 1st January, 2013 till todate;
- ii. Details of all appointments during the last five years where any of the guiding principles laid down regarding employment in public sector through judgments of the superior courts have not been complied, and
- iii. Number of vacancies in all Ministries/Divisions/Autonomous Bodies/Corporations existing as on 20th June, 2013 alongwith specific details of Grade, eligibility criteria and mode of employment.

3. All Ministries/Divisions are requested to bring the above decision of the Federal Government to the notice of the Departments/Organizations under their administrative control for strict compliance.

Attended
[Signature]

[Signature]
(Zulfiqar Ali Shah)
Deputy Secretary

All Ministries/Divisions
Islamabad/Rawalpindi

(14)

DIRECTORATE OF EDUCATION
WARSAK ROAD PUNJAWAR, PAKISTAN

7966-67
6/8
مقامی ڈائریکشن ایجوکیشن
ڈائریکٹر ایجوکیشن

- 1. The Agency Education Officer
FR Bannu
- 2. The Agency Education Officer
FR Kohat

Subject: APPEAL/GUIDANCE
Memo.

I am directed to refer to your letter No.1697 dated 16-3-2015 and letter No 5193 dated 23-6-2015 on the above cited subject

You are directed to implement the Court decision for filling of various posts for all categories amongst the candidates who were on merit against the vacant posts which were available lying vacant at the time when an appointment was lifted according to appointment policy in vogue

However preference in filling of vacant PST posts may be given to existing communal teachers in light of Governors directive.

Encl: AA

[Signature]
Deputy Directress (Estab)

Encl: No _____
Copy to the

- 1. PS to Secretary SSD FATA.
- 2. P.A to Director Education. FATA

[Signature]
[Signature]

[Signature]
Deputy Directress (Estab)



(11)

FATA SECRETARIAT
DIRECTORATE OF EDUCATION
WARSAK ROAD PESHAWAR, PAKISTAN
PHONE: 091-9210166 FAX 091-9210216

NO. 1152
DATED 1/2 /2016 E-6 GENERAL FR BANNU

To
The Agency Education Officer
FR Bannu

Subject: ANNULMENT OF APPOINTMENT ORDERS MADE ON
THE BASIS OF TWO TEHSILS

I am directed to refer to the subject noted above and to state that as recommended by the Inquiry Officer the appointment/recruitment may be made as per one merit list for both Ahmadzai and Utmanazi areas of FR Bannu (Inquiry report enclosed). FR Bannu consists of single Tehsil like other five FRs, therefore, the appointment orders issued by your office based on two separate merit lists of Ahmadzai and Utmanzai areas are declared null and void, one consolidated merit list may be prepared for appointment under intimation to this Office.

Assistant Director (Estab)

Endst.No. _____ /dt: 1 /2016.
Copy to;

- 1. Deputy Commissioner Banuu.
- 2. Assistant political Agent FR Bannu.
- 3. PS to Additional Chief Secretary FATA.
- 4. PS to Secretary SSD FATA.
- 5. PS to Secretary AI&C FATA.
- 6. P.A to Director Education, FATA.

Attested

Assistant Director (Estab)

FATA SECRETARIAT
DIRECTORATE OF EDUCATION
No. 1117
E-6/Misc.

The Agency Education Officer
F.R. Bannu.

Subject: APPOINTMENT OF AT/TT ON THE BASIS OF 75% TEHSILWISE MERIT.

Memo: In continuation of this office letter No. 14152 dated 08/05/2017 on the subject above and to state that decide the issue of the remaining AT/TT as per remaining CT/PT already appointed in FR Bannu.

Deputy Director
Directorate of Education

Copy to the
P.S to Director Education FATA