

248/12

1

04.3.2016

Counsel for the appellant and Mr. Muhammad Jan, Government Pleader for the respondents present.

2. At the outset, the question of lack of jurisdiction of this Tribunal was raised by the Government Pleader on the ground that the issue involved in this appeal is that of "upgradation" which does not fall in ambit of terms & conditions of service of a civil servant which has been so held by the Larger Bench of the august Supreme Court of Pakistan in its recent latest judgment dated 17.2.2016 in Civil Appeals No. 101 & 102-P/2011, titled "Regional Commissioner Income Tax, Northern Region, Islamabad etc. Versus Syed Manawar Ali and others".

3. It was not disputed on behalf of the appellant that the issue involved is that of upgradation of the appellants. With the assistance of the learned Government Pleader, we would like to reproduce relevant portion from the said judgment:-

"The aforesaid definition of the expression "Upgradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. In fact, this Court in the judgment titled as Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) and an unreported judgment of this Court passed in the case of Chief Commissioner Inland Revenue and another vs. Muhammad Afzal Khan (Civil Appeal No. 992 of 2014) has held that the issue relating to upgradation of civil servants can be decided by a High Court in exercise of its

constitutional jurisdiction and bar contained under Article 212 (3) of the Constitution would not be attracted. The policy of upgradation, notified by the Government, in no way, amends the terms and conditions of service of the civil servant or the Civil Servants Act and or the Rules framed there-under. The Service Tribunals have no jurisdiction to entertain any appeal involving the issue of upgradation, as it does not form part of the terms and conditions of service of the civil servants. The question in hand has already been answered by the aforesaid two judgments of this court.”

4. In the light of the foregoing brief discussion, this Tribunal is of the view that since it lacks jurisdiction to adjudicate upon this appeal, therefore, the same is directed to be returned to the appellant, after retaining its copy, for presentation before the competent/proper forum, if so advised.

ANNOUNCED

04.03.2016


MEMBER


MEMBER

01.4.2014 vide order sheet dated 27.9.2013, in connected appeal No.246/
2012 this appeal is adjourned to 26.8.2014.

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to 29-1-14.

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to 15-6-15.

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____.

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____.

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____.

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____.

READER

Vide order sheet dated 19.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____.

READER

07.05.2013

No one is present on behalf of the appellant: Mr. Khurshid Khan, SO with Muhammad Jan, GP for the respondents present. Notices be issued to the appellant and his counsel. To come up for rejoinder on 04.07.2013.

MEMBER

MEMBER

4.7.2013

Counsel for the appellant and Mr. Muhammad Jan, GP with for the respondents present. The Tribunal is incomplete; therefore, case to come up for the same on 27.9.2013.

READER

27.9.2013

Vide order sheet dated 27.9.2013 in connected appeal No. 223/2012, this appeal is adjourned to 18.11.2013.

READER

Vide order sheet dated 27.9.2013 in connected appeal No. 223/2012, this appeal is adjourned to 27-12-13.

READER

Vide order sheet dated 27.9.2013 in connected appeal No. 223/2012, this appeal is adjourned to 17-2-14.

READER

Vide order sheet dated 27.9.2013 in connected appeal No. 223/2012, this appeal is adjourned to 1-11-14.

READER

4.9.2012.

Clerk to counsel for the appellant and Mr. Sherafgan Khattak, AAG for the respondents present. Mr. Mosam Khanm also appeared and stated that copy of appeal has not been provided to them. A copy provided to him by Moharrir of the court to-day. To come up for written reply positively on 23.11.2012.


MEMBER


MEMBER

27.11.2012

Junior to counsel for the appellant and Mr. Sherafgan Khattak, AAG with Abbas Ali, S.O for the respondent present and requested for further time. To come up for written reply on 31.12.2012.


MEMBER


MEMBER

31.12.2012

Counsel for the appellant and AAG with Khursheed Ali, SO for the respondents present. Reply filed. Copy handed over to counsel for the appellant. To come up for rejoinder on 12.3.2013.


MEMBER


MEMBER

12.3.2013

Counsel for the appellant and AAG with Khursheed Ali S.O for the respondent present. None for the appellant present. Notices be issued to appellant and his counsel. To come up for rejoinder on 7.5.2013.


MEMBER

9.4.2012.

Counsel for the appellant present. He contended that the benefits of upgradation given to other colleagues of the appellant. As per 1996-SCMR-1185, the appellant is entitled to the same treatment. He further contended that the earlier notification do not include the restriction of one time and personal and were effective from the date of completion of 10 years service inclusion of (one time and personal) and with immediate effect is contradictory to the earlier notification. Points raised need consideration. The appeal is admitted to regular hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply on 7.6.2012.


MEMBER

9.4.2012

This case be put up before the Final Bench II for further proceedings.


CHAIRMAN

7.6.2012.

Counsel for the appellant and Mr. Arshad Alam, AGP with Mashal Khan, Litigation Officer for the respondent present and requested for further time. To come up for written reply on 4.9.2012.


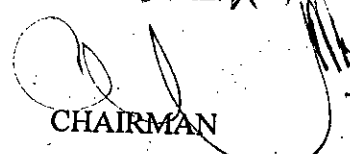


Member


Member

Form- A
FORM OF ORDER SHEET

Court of -----

Case No. 248/12

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20/02/2012	<p>The appeal of Mr. <u>Fazal Ghani</u> <u>SET</u> submitted today by Mr. <u>Amjid Ali</u> Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p align="right"> REGISTRAR</p>
2	<u>21-2-2012</u>	<p>This case is entrusted to Primary Bench for Preliminary Hearing to be put up there on <u>22-3-2012</u>.</p> <p align="right"> CHAIRMAN</p>
	<u>22-3-2012</u>	<p><i>Counsel for appellant present. Request for adjournment. To come up for P.H on <u>3-4-2012</u>.</i></p> <p align="right"> Member</p>



Before the Khyber pakhtoon khwa Service Tribunal Peshawar

Service Appeal No. 248 of 2011

Fazal Ghani SET

(Appellant)

Versus

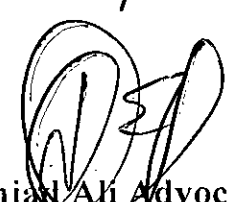
1. Gov't of K.P.K through secretary Education, Peshawar
..... (Respondent)

INDEX

S.No.	Description of documents	Annexure	Page No.
1	Copy of service appeal with affidavit		1 - 3
2	Copy of appointment order in BPS-15	"A"	4-6
3	Copy of notification dated 26/01 /2007	"B"	7-8
4	Copy of notification dated 26/01/2008	"C"	9
5	Copy of notification dated 25/05/2010	"D"	10-13
6	Copy of judgment dated 03/07/2009	"E"	14-16
7	Copy of judgment dated 23/02/2010	"F"	17-21
8	Copy of notification dated 03/11/2010	"G"	22
9	Copy of departmental appeal	"H"	23
10	Copy of notification dated 19/10/2009	"I"	24
11	Wakalat Nama		

Appellant 

Through:


Amjad Ali Advocate
Supreme court of Pakistan
At Mardan

Cel No. 0321 988 2434

Before the Khyber pakhtoon khwa Service Tribunal Peshawar

Service Appeal No 248 of 2012

Fazal Ghani SET Govt High School Topi Dist Swabi
(Appellant)

Versus

1. Gov't of K.P.K through secretary Education, Peshawar
..... (Respondent)

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974

Sir,

The appellant humbly submits as under:-

1. That appellant was appointed as a SET Teacher on 12.7.99 and placed in BPS-16
(Copy of appointment order in BPS-15 is annexure "A")
2. That respondent (Finance department Gov't of K.P.K issued notification dated 06/00/2007 for up-gradation of post.
(Copy of notification dated 06/00/2007 is annexure "B")
3. that respondent issued notification dated 26/01/2008
(Copy of notification dated 26/01/2008 is annexure "C")
4. that vide notification dated 25/05/2010 appellant's post is upgraded to BPS17.
(Copy of notification dated 25/05/2010 is annexure "D").
5. That in consequence of said notification, appellant is allowed up-gradation of posts with immediate effect instead of date of completion of 10 years service vide notification dated 25/05/2010.
6. That appellant is equipped with the requisite qualification as envisaged in the notification for up-gradation of posts.
7. That as per judgment dated 03/07/2009 of this Hon'able tribunal in numerous appeals up-gradation has been granted w.e.f 01/10/2007.
(Copy of judgment is annexure "E".
8. That vide judgment dated 23/02/2010 this Hon'able court has accepted identical cases and implemented by the department.
(Copy of judgment dated 23/02/2010 is annexure "F") and (notification dated 03/11/2010 as annexure "G").

9. that there are no promotion prospects of appellant i.e SET teacher whereas 93% quota for grade-18 and 19 is allotted to subject specialist and quota of set is only one percent and that too after 28/30 years and 91% set teachers stand retired in the same grade. Thus appellant is discriminated and no regular promotion is granted to appellant.
10. That as per rules/ practice of department appellant is entitled for one premature increment but the same has no been granted to appellant.
11. That appellant filed departmental appeal, but remained unresponded even after lapse of 90 x days.
(copy of the departmental appeal as annexure "H and Notification dated 19/10/2009 is annexure "I").
12. That as per 4 tire formula for promotion 50 posts in 17 then 34 posts in 18 then 15 posts in 19 and one post in 20, which means deprivation of promotion to appellant in reality/ practical sense i.e 1-15-34-50 formula.
13. That thus this up-gradation to BPS-17 is needed to be treated as regular promotion for the purpose of BPS-18,19 , 20 and not treatment of the same as selection grade for financial benefits only.
14. That as per policy appellant is entitled for the advance premature increment.
15. That non-grant of up gradation to PBS-17 w.e.f date of completion of 10 years services per judgment of service tribunal dated 03/07/2009 and dated 23/02/2010 and non-deleting condition of one time and personal only inspite of notification dated 19/10/2009, non-grant of advance premature increment on promotion/ up-gradation and non-treating instant up-gradation as regular promotion for BPS-18,19,20 are illegal, against law and facts on following grounds:-

GROUND:

- A. Because earlier notification do not include the restriction of one time and personal and were effective from date of completion of 10 years service inclusion of (one time and personal) and with immediate effect is contradictory to the earlier notification/ judgments.
- B. Because up-gradation of posts is given effect and not up-gradation of civil servants.
- C. Because principles of promissory estoppel and locus poenitentiae are applicable to the case of appellant with all force.
- D. Because valuable rights has accrued to appellant and the same cannot be snatched.
- E. Because neither the competent authority nor departmental promotion committee can cross the parameters of notification issued by the Gov't and finance department.

- Because there is no need of even D.P.C as it is up-gradation.
- G. Because premature advance increment is right of appellant which has been withheld for no good reason.
- H. Because instant up-gradation is in fact promotion to BPS-17 for all practical purposes i.e promotion to BPS-18,19, and 20.
- I. Because as per judgment of this Hon'able tribunal the benefit of giving effect to up-gradation from 01/10/2007 i.e dated of notification cannot be snatched from appellant as appellant is similarly placed to judgment holders, reliance is placed on 1996 SCMR 1185, SCMR 2009 page-1

It is therefore, humbly prayed that order/notification dated 25/05/2010 may please be modified by treating same w.e.f dated of completion of ten years service and omitting one time and personal from the same. Instant up-gradation/promotion may please be treated as regular promotion for the purpose of BPS-18,19 and 20. Appellant be granted premature advance annual increment on promotion/ up-gradation.

Any other relief deemed fit, which is not specifically asked for may also be graciously granted.

Dated: 20/05/2011

Appellant

Through:

Amjad Ali Advocate
Supreme court of Pakistan
At Mardan

AFFIDAVIE

I, do hereby solemnly affirm and declare on oath that the contents of appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able tribunal.

Deponent



in No. 46 (Rs. 2536-1)
under the same with instructions
and conditions:-

TERMS & CONDITIONS.


1. They will be governed by such rules and regulations prescribed from time to time by the Govt. for the category Govt. servants to which they belong.
2. Their services will be liable to termination on one month's notice from either side. In case of resignation without notice one month's pay will be forfeited in lieu thereof.
3. They should join the post within one month from the issuance of these orders.
4. Their inter-se-seniority will be determined in accordance with the merit fixed by the Departmental Selection Committee.
5. They shall be on probation for a period of two years.
6. They shall be required to furnish copies of all their certificates/degrees alongwith the original receipts and photo copies thereof pertaining to the verification fee of the concerned examining body (Board/University) to the DWOs/AEOs concerned. The latter shall arrange verification of all the certificates/degrees of the appointees of their respective Districts/agencies and will issue a certificate to each appointee for the release of his/her name.
7. Fresh candidates are required to produce Health & age certificate from the Medical Authority concerned before taking over charge. The Service Books of the inservice teachers must be checked by the Heads of the Institution before handing over charge to them.
8. Complete information on the prescribed proforma be submitted to the Director within a month.
9. Prescribed age limit for fresh candidates is 21-35 years.

AMJAD ALI
Advocate
SUPREME COURT

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

(6)

1. Accountant General, NWFP, Peshawar with the remarks as per Sr.No.5 below.
2. Director Primary Education, NWFP, Peshawar.
3. Director of Education, P.A.C.I., NWFP, Peshawar.
4. All the Distt. Education Officers (M/F) concerned.
5. All the Distt. Accounts Officers concerned with the request that pay of the above appointees may not be released until and unless they produce a clearance certificate from their DEOs concerned regarding their verification of certificates/degrees as mentioned at Sr.No.6 of the terms and conditions.
6. All the Principals/Headmasters/Headmistresses concerned.
7. Private Secretary to Honourable Minister for Education, NWFP.
8. Private Secretary to Secretary Education, NWFP, Peshawar.
9. Officials concerned.
10. P.A to Director Secy. Education, NWFP, Peshawar.
11. P/Files.


DEPUTY DIRECTOR
FOR DIRECTOR SECONDARY EDUCATION
N.W.F.P. PESHAWAR.

12/7/99

M. Ishfaq/

Ana B

Attention: Abh. Te. Ali Shah.

Government of N.W.F.P.
Finance Department
No. SO(FIC) 10-22(B)/2005
Dated. 01-10-2007

(7)

To: The Secretary, to, Govt. of NWFP
Schools & Literacy Department

Subject: UP-GRADATION OF VARIOUS POSTS OF
TEACHERS/CAREER STRUCTURE IN SCHOOLS &
LITERACY DEPARTMENT GOVERNMENT OF N.W.F.P.

Sir,

I am directed to refer to your letter No. SO(G)S&L/1-47/2007 dated 01-10-2007 on the subject noted above and to inform that the Chief Minister NWFP has been pleased to up-grade various posts of teachers in Schools & Literacy Department, N.W.F.P. as per details given below in respect of those incumbents who acquire or possess the qualification and experience mentioned against each with immediate effect.

S./#	Designation/Existing Pay Scale	Qualification	Revised Pay Scale
1.	Primary School Teacher (PST) BPS-07	F.A/F.Sc. at least 2 nd Division with PTC/Diploma in Education	09
2.	PST with requisite experience renamed as Head Teacher/Head Mistress of Primary School BPS-07	On the basis of 10 years service/experience as Primary School Teacher in BPS-09	12
3.	C.T BPS-09	B.A/B.Sc. at least 2 nd Division with Diploma in Education/CT	15
4.	AW/CT (Technical)/Industrial Arts/Home Economics BPS-09	B.A/B.Sc. at least 2 nd Division with Diploma in Education/ Certificate from Directorate of Curriculum & Teachers Education NWFP Abbottabad in Agro. Tech./ Industrial Arts/Home Economics	15
5.	D.M. BPS-09	D.A/D.Sc. at least 2 nd Division with Drawing Master Course	15
6.	PET BPS-09	B.A/B.Sc. at least 2 nd Division with JDPE	15
7.	Qari/Qaria BPS-07	Hafiz-e-Quran with SSC at least 2 nd Division and Sanad in Qir'ul	12
8.	SSTs/SST Tech./Agri; with requisite experience renamed as Sr. SST/Sr. SST Tech/Sr. SST Agri; BPS-16	M.A/M.Sc. at least 2 nd Division with B.Ed./M.Ed./MA Edu, or equivalent qualification	17
9.	DPE BPS-16	M.Sc. at least 2 nd Division in (HPE)	17
10.	Librarian BPS-16	Master degree in Library Science at least 2 nd Division	17

2. The Promotion/Direct Recruitment against the upgraded posts shall be made as per laid down procedure and in accordance with the Service Rules to be framed pursuant to the relevant provisions of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules-1989 read with the NWFP Civil Servants Act, 1973 in the light of the

AMJAD ALI
Advocate
SUPREME COURT

(8)

meeting held on 26-09-2007 of the committee constituted vide Schools & Literacy Department Notification No.SO(G)/S&L/1-47/2007 dated 01-08-2007.

Audit copy may please be prepared and sent to this Department for authentication/signature.

[Signature]
Section Officer (FR)

Encls: of even No. & Date

Copy for information & necessary action to:

1. Accountant General NWFP
2. Director Schools & Literacy NWFP Peshawar
3. Director of Education FATA NWFP Peshawar
4. PSO to Chief Minister NWFP
5. PSO to Chief Secretary NWFP
6. PS to Secretary Finance Department NWFP
7. All District/Agency Accounts Officers in NWFP

[Signature]
Section Officer (FR)



GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

Dated Peshawar, the 26th January, 2008.

انکس
شیر خان خان
شہد ظہیر اہل سنت
ممبر ایسود
صلح مردان

9

NOTIFICATION

NO.FD/SO(FR)10-22/2007. In supersession of this Department's letter No.SO(FR)10-22(B)/2005 dated 01-10-2007 and in pursuance of the decisions of the meeting held under the Chairmanship of Secretary Establishment on 2-1-2008, the Competent Authority is pleased to allow upgradation for the incumbents of the posts as per details given below w.e.f. 1-10-2007:-

S.NO	Existing Designation and Pay Scale	Qualification	Upgraded Scale
1	Primary School Teacher (PST) (BPS-07).	FA/FSc and are trained teachers	BPS-09 (one time only)
2	Primary School Teacher (PST) with requisite experience renamed as Head Teacher/Head Mistress of Primary Schools (BPS-07).	Having 10 years service	BPS-12 (one time only)
3	CT (BPS-09).	BA/BSc and are trained teachers	BPS-15 (one time only)
4	SET (BPS-16)	With at least ten years service. Upgradation to the post shall be made through DPC as per laid down procedure	BPS-17
5	Hafiz Qur'an (BPS-07)	Hafiz Qur'an with SSC	BPS-12

SECRETARY TO GOVT. OF NWFP
FINANCE DEPARTMENT

Encl. No. _____ Date given _____

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

- 1) All the Secretaries in NWFP, Peshawar.
- 2) All the DCOs/EDOs Schools & Literacy Department, NWFP.
- 3) Accountant General, NWFP, Peshawar.
- 4) Director Schools & Literacy NWFP, Peshawar.
- 5) Director of Education FATA NWFP, Peshawar.
- 6) PSO to Chief Minister, NWFP.
- 7) PSO to Chief Secretary, NWFP.
- 8) PS to Secretary Finance Department, NWFP.
- 9) All District/Agency Accounts Officers in NWFP.

AMJAD ALI
Advocate
SUPREME COURT

(NAIB KHAN)
SECTION OFFICER (FR)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar 25-05-2010

Ana D
(10)

NOTIFICATION

NO.SO(PE)2-6/E&SED/DPCMTG/UPGRADATION/10: The Competent Authority on the recommendation of the Departmental Promotion Committee and in consultation with Finance department is pleased to allow up gradation from BS-16 to BS-17 (Personal) to the following 1013 Male SETs, 347 Female SETs and 1 Male SET (Tech) with immediate effect subject to the condition that the post of SET shall be downgraded from BS-17 to BS-16 as and when vacated by the incumbents:

1013 MALE SET (GEN)

S.No	Seniority List No.	Name of Officer	Date of Appointment as Regular SET	Present Place of Posting
1.	1286(A)	Nazir ud din	12.6.88	SET GHSS Shamozaï Swat
2.	1756	Mohammad Khalid	09-10-89	SET GHS Kholian bala Haripur
3.	1964(A)	Muhammad-Naeem Shah	7.4.98	SET GHS Naryab Hango
4.	2274 A	Syed Jamil Ahmad Shah	11-1-91	SET GHS Ghora Bazran A.Abad
5.	2330-b	Muhammad Zaman	27-07-91	SET GHS Khragi FR-Tank
6.	2337(B)	Malik Jan	11.8.91	SET GHS Dara Adam khel FR Kohat
7.	2337(D)	Muhammad Rizq	15-04-93	SET GHSS Jamrud
8.	2337(27)	Ahmad Khan	29-04-93	SET GMHS Sadda Kurram Agy
9.	2337(30)	Ghulam Habib	29-04-93	SET GHS Ashkar Kot SWA
10.	2337(86)	Taj Mohammad Khan	5-3-94	SET GHSS Kot Najeeb ullah Haripur
11.	2628	Muhammad Farooq Khan	10-11-94	ADO (AEO) Fata
12.	2708(10)	Faqir Mohammad	21-05-95	SET GHSS Tarnaab Charsadda
13.	2717	Mr. Fazli Khaliq	23-5-95	SET GHS Mullazai Tank
14.	3489-a	Akbar Ali	10-02-96	SET GHS Hisara Bara Khyber Agency
15.	3489-b	Kamil Khan	10-02-96	SET GHS Sani khel, FR Kohat
16.	3530	Mulazim Hussain	25-3-96	GHS No.2 Paharpur DIK
17.	3714	Mr.Rafiq ul Ahmad	25-3-96	SET GCMS Chitral
18.	4025(1)	Noorullah Jan	6-5-96	SET GHS Shagai, Khyber
19.	4025(19)	Sultan Farooq	8-3-90	SET GEC Mir Ali NWA
20.	4025(20)	Saad Ullah Khan	18-11-97	SET GMS Palangzai NWA
21.	4027	Mr. Zia Ahmed	15-1-98	SET GHS Dheri khattak khel NSR
22.	4030	Mr. Abdullah	15-1-98	GHS Batakara Swabi ✓
23.	4032	Mr. Masoodur Rehman	15-1-98	SETGHS Kanjoram SWA
24.	4033	Mr. Mazhar Munir	15-1-98	GHSS No.4 DIKhan
25.	4034	Mr.Mutahir shah	15-1-98	SET GHS Tor Landi Swabi ✓
26.	4036	Mr.Munawwar Hussain	15-1-98	SET GHSS Abu khel Lakki
27.	4039	Mr. Shamsur Rehman	15-1-98	SET GHS No.3 Kohat
28.	4042	Mr. Gulzar Khan	15-1-98	SET GHS Mail Khel Bala Nowshera
29.	4043	Mr. Jehangir Khan	15-1-98	SETGHS No.1 Charsadda

MUHAMMAD ALI
Advocate
SUPREME COURT

11

684	4951	Mr. Mir Ahsan	12.7.99	SET GCMHS, Chitral
685	4952	Mr. Muhammad Ratiq	12.7.99	SET GHS Swabi
686	4953	Mr. Umara Khan	12.7.99	SET GHS, Malak abad Gadoon Swabi
687	4954	Mr. Khurshid Ahmad	12.7.99	SET GMS, Landi Mardan
688	4955	Mr. Dayyar Khan	12.7.99	SET GHS Drozo Chitral
689	4957	Mr. Dayyar Khan	12.7.99	SET GHS, Urmal dheri, Swabi. ✓
690	4959	Mr. Muhammad Zarif Khan	13.7.99	SET GHS Kuguzi Chitral
691	4960	Mr. Fazal Ghani	12.7.99	SET GHS, Topi, Swabi. ✓
692	4961	Mr. Umar Wahid	12.7.99	SET GHS, Shalband, Swat
693	4962	Mr. Mir Wazir Shah	12.7.99	SET GMS Warimoon Chitral
694	4964	Mr. Saeedur Rehman	12.7.99	SET GHS, Gumbat Mardan
695	4966	Mr. Pervaz	12.7.99	SET GHS, Bakki, Mansehra
696	4967	Mr. Shad Zamin Khan	12.7.99	SET ADO Swabi. ✓
697	4968	Mr. Khan Afzal	12.7.99	SET GMS, Dazargal, Swabi. ✓
698	4969	Mr. Masood Khan	12.7.99	SET GHSS, Takht bhal Mardan
699	4972	Mr. Alta Muhammad	12.7.99	SET GMS, Salak Mardan
700	4973	Mr. Sarwar Khan	12.7.99	SET GHS, Maneri payan, Swabi. ✓
701	4975	Mr. Aurangzeb	12.7.99	SET GMS, Khazana dhari Mardan
702	4976	Mr. Muhammad Junaid	12.7.99	SET GHS, Jahangira, Nowshera
703	4977	Mr. Gul Nabi	12.7.99	SET GMS, Jamal Abad Swabi. ✓
704	4978	Mr. Aziz Faraz	12.7.99	SET GMS, Shongnush, Chitral
705	4979	Mr. Muhammad Zada	12.7.99	SET GMSS, Ghari kapora Mardan
706	4980	Mr. Fazal Rehman	12.7.99	SET GMS, Mahal zarin abad Mardan
707	4981	Mr. Pir Ahmad Shah	12.7.99	SET GHS, Sheikh Jana, Swabi. ✓
708	4982	Mr. Muhammad Razaq	12.7.99	SET GHS, No.2 Shkakat MKD.
709	4983	Mr. Hidayatullah	12.7.99	SET GMS, Kotha Swabi. ✓
710	4984	Mr. Fazie Rehman	12.7.99	SET GHS, Barkot Haripur
711	4985	S. Tariq Ahmad	12.7.99	SET GHS, Kotha, Swabi. ✓
712	4986	Mr. Muhammad Zarin	12.7.99	SET GHS, No.1 Mingora, Swat
713	4987	Mr. Pervaz Khan	12.7.99	SET GHSS, Gujar ghari Mardan
714	4988	Mr. Muhammad Ikram	12.7.99	SET GHS Ghari daultatol Mardan
715	4989	Mr. Mir Akbar	12.7.99	SET GHSS No.1 Pesh Cantt
716	4990	Mr. Shahid Muhammad	12.7.99	SET GMS, Bandal goloo, Haripur
717	4991	Mr. Abdul Ghalifar	12.7.99	SET ADO, Swabi
718	4992	Mr. Haroonur Roshid	12.7.99	SET GHS, Ghora Ghund, Swabi
719	4993	Mr. Azizur Rehman	12.7.99	SET GHSS, Dhari ikpuri Mardan
720	4994	Mr. Ashiq Nabi	12.7.99	SET ADO Swabi
721	4995	Mr. Akhtar Ali	12.7.99	SET GMS, Faran Swat
722	4998	Mr. Kifayatullah	12.7.99	SET GHS, Charsadda Khas
723	5000	Mr. Ahmad Sultan	12.7.99	SET GHS No.1 Saleem Khan Swabi
724	5001	Mr. Niaz Muhammad	12.7.99	SET GMS, Gulu dhari Swabi. ✓
725	5002	Mr. Munir Ahmad	12.7.99	SET GMS, Gahirat, Chitral
726	5003	Mr. Sartaj Khan	12.7.99	SET GHS, No.2 Yar Hussain, Swabi
727	5004	Mr. Wisal Muhammad	12.7.99	SET GHS, Bakhshtali Mardan
728	5005	Mr. Samiur Rehman	12.7.99	SET GMS, Dag Ismail, Khel, Nowshera
729	5006	Mr. Muhammad Ibrahim	12.7.99	SET GMS, Khat kale Charsadda
730	5007	Mr. Sirajul Haq	12.7.99	SET GMS Mardan
731	5008	Mr. Mumtaz Ahmad	12.7.99	SET GHS, Dhaq, Swabi
732	5009	Mr. Amjad Ali	12.7.99	SET GMS, Husai umar abad Mardan
733	5010	Mr. Ghulam Ismail	12.7.99	SET GHS, Sheoni, Chitral
734	5011	Mr. Rustom	12.7.99	SET GHS, Doga, Mansehra
735	5012	Mr. Shaakar Ali	12.7.99	SET GHS, Sikandri, Swabi. ✓

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316.	1731	Azra Yasmin,	12.7.99	SET GGMS, Pishtrakhar Payan Pesh.
317.	1732	Riyasal,	12.7.99	SET GGHS, Panr Swat
318.	1733	Humaira Naz,	12.7.99	SET GGMS, Zoormandi hero shah Malakand
319.	1734	Ghazala Shabnam,	12.7.99	SET GGHS, Lund khwar, Mardan
320.	1735	Ruqia,	12.7.99	SET GGHS, Tour dher Swabi
321.	1737	Sajida Nuzhal,	12.7.99	SET GGHS Mingo, Swat
322.	1738	Nizakat Ambar,	12.7.99	SET ADO Swat
323.	1740	Falak Naz	12.7.99	SET GGHS, Shahbaz Ghari Mardan
324.	1741	Salma Begum	12.7.99	SET GGHS Shaheen Camp Peshawar
325.	1742	Nighat Seema,	12.7.99	SET GHS, Fata Directorate
326.	1743	Hayat Begum,	12.7.99	SET GGHS, Odigram swat
327.	1744	Naila Perveen,	12.7.99	SET GGHS, Malta Swat
328.	1745	Shakila Naz	13.7.99	SET GGHS Skhakot Malakand
329.	1746	Almas Begum,	12.7.99	SET GGHS, Charbagh Swat
330.	1748	Naila Perveen,	12.7.99	SET GGHS, Bara Durash Khel Swat
331.	1749	Razia Taj.	12.7.99	SET GGHS, Hathian Mardan
332.	1751	Yasmin Bibi,	12.7.99	SET GGHS, Miana Malakand
333.	1753	Nasim Akhtar,	12.7.99	SET GGMS, Surok Toor Chappar Fata
334.	1754	Samina Yousaf,	12.7.99	SET GGHS, Suban Khawar Moh: Agy
335.	1755	Gul Pari.	12.7.99	SET GGMS, Wali Khel, Fata
336.	1757	Nabila Naz,	12.7.99	SET GGHS Karigar ghari Kh. Agy
337.	1758	Lubna Begum,	12.7.99	SET GGMS, Haryana Bala Pesh
338.	1760	Syeda Rozina Kauser	12.7.99	SET GGHS Landi Arbab Pesh
339.	1765	Amina Wazeer	12.7.99	SET GGMS, Jamu shahi Khel FR Kohat
340.	1767	Khalida Jan,	12.7.99	SET AAEO, Mohd Agency
341.	1772	Wahida Khan,	12.7.99	SET AAEO, Khyber Jamrud
342.	1774	Zahida Bibi	12.7.99	SET GGMS, Kohi bahara FR DIK
343.	1776	Anila Zaheer	12.7.99	SET GGMS SRD M. Agy.
344.	1780	Noor Rabia	12.7.99	SET GGHS, Subhan Khwar Moh. Agy
345.	1781	Farihat Amir	12.7.99	SET GGMS, Baz Mohd kor M. Agy
346.	1782(A)	Nosheena Aziz	12.7.99	SET GGHS Chamkani Pesh
347.	1782(B)	Nur Jabeen	12.7.99	SET GGMS Sragala Kurram Agency FATA

1 MALE SET (TECH)

S.No	Sonlority List No.	Name of Officer	Date of Appointment as Regular SET.	Present Place of Posting
1	115 C	Mumtaz Khan	17-12-02	SET (TECH)-GHS Latamber Kurak

SECRETARY TO GOVT OF KHYBER
PAKHTUNKHWA
ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT

Endst; of even no. & date:

Copy is forwarded to:-

- 1) Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
- 2) Special Secretary (Regulation), Establishment Department, Govt of Khyber Pakhtunkhwa Peshawar.
- 3) Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Peshawar.
- 4) Secretary to Chief Minister Khyber Pakhtunkhwa.
- 5) PS to Chief Secretary Khyber Pakhtunkhwa.

(13)

- 6) All Directors in Elementary & Secondary Education Department Khyber Pakhtunkhwa.
- 7) Executive District Officers Elementary & Secondary Education concerned.
- 8) The Accountant General Khyber Pakhtunkhwa.
- 9) All District Accounts Officers / Agency Accounts Officers concerned
- 10) PS to Minister for Elementary & Secondary Department Khyber Pakhtunkhwa.
- 11) PS to Secretary / Special Secretary / Additional Secretary E&S Edu: Deptt Govt of Khyber Pakhtunkhwa.
- 12) PA to Deputy Secretary (Admn) Elementary & Secondary Edu: Department Govt of Khyber Pakhtunkhwa.
- 13) Officers concerned
- 14) Master file



(ARIF JAMIL)
SECTION OFFICER (PRIMARY)

Aux E

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 266 of 2009

Date of Institution. ... 18.02.2009
Date of Decision ... 03.07.2009.

(14)

Haroonur Rashid S/O Ghulam Sarwar near Bilal Masjid Mohallah Ram Bagh Mardan
(SET Government Cenital Model High School Bank Road, Mardan). (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education Department Government of NWFP, Peshawar.
2. The Chief Secretary, Government of NWFP Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE NWFP SERVICE TRIBUNAL ACT, 1974, TO THE EFFECT THAT NOTIFICATION NO. SO(PE)2-6/E&S/UPGRADATION/SET DATED 27.9.2008 TO THE EXTENT OF ALLOWING ONE TIME UPGRADATION FROM B-16 TO BPS-17 TO THE SETS INCLUDING APPELLANT WITH IMMEDIATE EFFECT I.E. 27.9.2008 INSTEAD OF 01.10.2007.

MR., ADAM KHAN,
Advocate.

For appellant.

MR. JAMAL ABDUL NASIR,
Addl. Government Pleader,

For respondents.

MR. JUSTICE (R) SALIM KHAN,
MR. ABDUL JALIL KHAN,

CHAIRMAN
MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.- The legal issues in Service Appeals Nos. 266 to 282 of 2009 (17 cases), in Service Appeals Nos. 213 to 219 and 429 to 431 of 2009 (10 cases) as well as in Service Appeal No. 200 of 2009, are similar, and need discussion and disposal at the same time. The learned counsel for the appellants in the first set of 17 cases, the learned counsel for the appellants in second set of 10 cases and the special attorney of the appellant in single case No. 200 of 2009 and the A.G.P explained the cases.

AMJAD ALI
Advocate
SUPREME COURT

2. Haroon Rashid, appellant contended that he was SET BPS-16. The Finance Department issued the Notification No. FD/SO(FR)10-22(B)/2005, dated 26.1.2008, vide which upgradation of various posts of teachers in the Education Department was ordered. It included the incumbents of posts of S.E.T with atleast 10 years service, subject to the recommendations of the Departmental Promotion

Committee. Vide order dated 27.9.2008, upgradation was allowed to the appellant with immediate effect instead of 1.10.2007. The cases of the other appellants are almost the same, though the cases in the second set also contained the contention that imposition of restriction of one time and personal was illegal, against law and facts. The appellant of Service Appeal No. 200 of 2009 contended that she was posted as SET (BPS-17) but grant of upgradation was delayed upto 27.9.2008, and it was granted to her with immediate effect, instead of the due date. (15)

3. The respondents contested the appeal. They submitted that the grant of upgradation was for one time only with atleast 10 years service, and the condition of processing the cases through the Departmental Promotion Committee was part and parcel of the notification, vide which the appellants claimed the facility.

4. We heard the arguments and perused the record as aforementioned.

5. The notification dated 26.1.2008 clearly shows that the Authority was pleased to allow upgradation for the incumbents of the posts w.e.f. 01.10.2007. Vide order dated 27.9.2008, certain persons were granted upgradation, but with immediate effect and subject to the condition that these upgradations were personal, and the posts shall be degraded from BPS-17 to BPS-16 when these are vacated by the present incumbents.

It was the prerogative of the Government to grant upgradation for one time only, though to all civil servants of the Education Department who had the requisite qualification on the date of issue of the above mentioned notification dated 26.1.2008. It was also the prerogative of the Provincial Government to withdraw the said order on the same date for the purposes of all those persons who were not qualified for upgradation of their posts on 26.1.2008. The Government had the power to declare that the posts shall stand upgraded for the purposes of their incumbents only, and not perpetually.

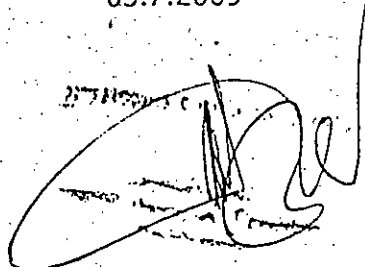
7. The above mentioned notification had clearly declared that the upgradation would be effected from 01.10.2007. The Departmental Promotion Committee had to take time in processing the cases of incumbents of the posts in order to check whether they had the required length of service, and they were otherwise eligible for upgradation through their service record. But it did not mean

that the Departmental Promotion Committee could change the contents of the notification itself, specially with respect to its effectiveness. It is not the job of the Departmental Promotion Committee to fix the date of promotion/upgradation prospectively, when the notification had declared the date of effectiveness from a previous certain date, or when a vacancy was available for a certain civil servant from a previous date. It was the authority of the Appointing Authority to antedate the upgradation ~~as~~, as the case may be, to the respective date mentioned by the notification, or availability of the vacancy. That date is 01.10.2007 in the present cases, which could not be changed by the D.P.C, or, even, by the Appointing Authority.

16

8. In the light of the above, we accept all the above mentioned appeals to the extent that the upgradation of their respective posts and their appointment to those posts shall be declared effective from 01.10.2007, though such upgradation and posting shall be one time only and shall be personal to the appellants, and their similarly placed colleagues, as per the contents of the notification quoted above. Parties are left to bear their own costs.

ANNOUNCED:
03.7.2009



Dr. J. S. Jaiswal Chairman
Dr. Abdul Jabbar Member

Date of Birth	3-9-09
Duration of Service	1200
Number of Posts	8
Number of Vacancies	2
Number of Candidates	10
Date of Appointment	3-9-09
Signature of Appointing Authority	3-9-09

Before the N.W.F.P. Service Tribunal, Peshawar

S.A. No. 41 of 2010.

Hukum Khan, SET, GHS Dagai, Swabi

(Appellant)

Versus

1. Govt. of NWFP through Secretary Education, Peshawar.
2. Chief Secretary, Govt. of NWFP, Peshawar.

(Respondents)

N.W.F.P. Provincial
Service Tribunal

Diary No. 11/2010

Dated 12/11/2010

17

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974

Sir,

The appellant humbly submits as under: -

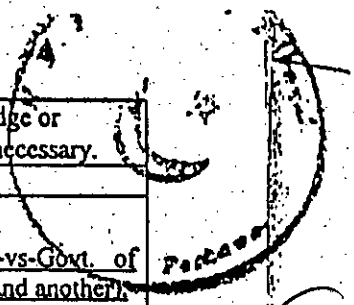
1. That appellant was appointed as a SET Teacher on 23/5/95 and placed in BPS-16.
(Copy of appointment order in BPS-15 is annexure "A")
2. That respondent (Finance Department Govt. of NWFP) issued notification dated 26/01/2007 for up-gradation of post.
(Copy of Notification dated 01/10/2007 is annexure "B")
3. That respondent issued Notification dated 26/01/2008.
(Copy of Notification dated 26/01/2008 is annexure "C")
4. That vide Notification dated 21/04/2008, appellant's post is upgraded to BPS-17 but with addition of one time only.
(Copy of Notification dated 21/04/2008 is annexure "D")
5. That in consequence of said Notification, appellant is allowed up-gradation of posts with immediate effect instead of 01/10/2007 vide notification dated 27/09/2008.
(Copy of Notification dated 27/09/2008 is annexure "E").
6. That appellant is equipped with the requisite qualification as envisaged in the Notification for up-gradation of posts.
7. That as per judgment dated 03/07/2009 of this Hon'able Tribunal in numerous appeals up-gradation has been granted w.e.f. 01/10/2007.
(Copy of judgment is annexure "F").

10-2010
2/11/2010

ATTESTED
SECRETARY
N.W.F.P. Service Tribunal
Peshawar

AMJAD ALI
Advocate
SUPREME COURT

No. of Order or proceedings	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																																																																																										
04	23.02.2010	<p style="text-align: center;"><u>Appeal No. 41/2010 (Hukum Khan-vs-Govt. of NWFP through Secretary Education, Peshawar and another)</u></p> <p style="text-align: center;">Appellant with counsel present and heard.</p> <p>Though the appeal was argued at the preliminary stage, yet in the light of decision of this Tribunal dated 3.7.2009 in Appeal No.266/2009 titled 'Haroon-ur-Rashid-vs-Secretary Elementary & Secondary Education Department, Government of NWFP, Peshawar and another; and in view of consistent view of the august Supreme Court of Pakistan as reflected in the case reported as 2005 SCMR 499 (Supreme Court of Pakistan) and other reported cases, it is proposed to dispose of this appeal as well as similar nature appeals, listed below, vide this single order:-</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">S.No.</th> <th style="text-align: left;">Appeal No.</th> <th style="text-align: left;">Name of appellant</th> </tr> </thead> <tbody> <tr><td>1.</td><td>42/2010</td><td>Muhammad Irshad ✓</td></tr> <tr><td>2.</td><td>43/2010</td><td>Abdul Waheed ✓</td></tr> <tr><td>3.</td><td>44/2010</td><td>Muhammad Farid</td></tr> <tr><td>4.</td><td>45/2010</td><td>Muhammad Saeed</td></tr> <tr><td>5.</td><td>46/2010</td><td>Muhammad Saleem</td></tr> <tr><td>6.</td><td>47/2010</td><td>Muhammad Tanvir</td></tr> <tr><td>7.</td><td>48/2010</td><td>Khalid Mehmood</td></tr> <tr><td>8.</td><td>49/2010</td><td>Muhammad Riaz</td></tr> <tr><td>9.</td><td>50/2010</td><td>Syed Amjad Ali Shah</td></tr> <tr><td>10.</td><td>51/2010</td><td>Gulab Shah ✓</td></tr> <tr><td>11.</td><td>52/2010</td><td>Rahimullah ✓</td></tr> <tr><td>12.</td><td>53/2010</td><td>Said Zada ✓</td></tr> <tr><td>13.</td><td>54/2010</td><td>Muhammad Saeed ✓</td></tr> <tr><td>14.</td><td>55/2010</td><td>Bakht Sher Hussain ✓</td></tr> <tr><td>15.</td><td>56/2010</td><td>Mujahid Hussain</td></tr> <tr><td>16.</td><td>57/2010</td><td>Abdur Rashid ✓</td></tr> <tr><td>17.</td><td>58/2010</td><td>Attaullah ✓</td></tr> <tr><td>18.</td><td>59/2010</td><td>Amir Rehman ✓</td></tr> <tr><td>19.</td><td>60/2010</td><td>Salih Muhammad ✓</td></tr> <tr><td>20.</td><td>61/2010</td><td>Muhammad Tahir ✓</td></tr> <tr><td>21.</td><td>62/2010</td><td>Johar Ali ✓</td></tr> <tr><td>22.</td><td>63/2010</td><td>Wahitab Gul ✓</td></tr> <tr><td>23.</td><td>64/2010</td><td>Bakht Nawab ✓</td></tr> <tr><td>24.</td><td>65/2010</td><td>Qabil Shah ✓</td></tr> <tr><td>25.</td><td>66/2010</td><td>Waheed-uz-Zaman</td></tr> <tr><td>26.</td><td>67/2010</td><td>Muhammad Usman</td></tr> <tr><td>27.</td><td>68/2010</td><td>Muhammad Hanif</td></tr> <tr><td>28.</td><td>69/2010</td><td>Muhammad Sarfraz</td></tr> <tr><td>29.</td><td>70/2010</td><td>Nacemul Hassan</td></tr> </tbody> </table>	S.No.	Appeal No.	Name of appellant	1.	42/2010	Muhammad Irshad ✓	2.	43/2010	Abdul Waheed ✓	3.	44/2010	Muhammad Farid	4.	45/2010	Muhammad Saeed	5.	46/2010	Muhammad Saleem	6.	47/2010	Muhammad Tanvir	7.	48/2010	Khalid Mehmood	8.	49/2010	Muhammad Riaz	9.	50/2010	Syed Amjad Ali Shah	10.	51/2010	Gulab Shah ✓	11.	52/2010	Rahimullah ✓	12.	53/2010	Said Zada ✓	13.	54/2010	Muhammad Saeed ✓	14.	55/2010	Bakht Sher Hussain ✓	15.	56/2010	Mujahid Hussain	16.	57/2010	Abdur Rashid ✓	17.	58/2010	Attaullah ✓	18.	59/2010	Amir Rehman ✓	19.	60/2010	Salih Muhammad ✓	20.	61/2010	Muhammad Tahir ✓	21.	62/2010	Johar Ali ✓	22.	63/2010	Wahitab Gul ✓	23.	64/2010	Bakht Nawab ✓	24.	65/2010	Qabil Shah ✓	25.	66/2010	Waheed-uz-Zaman	26.	67/2010	Muhammad Usman	27.	68/2010	Muhammad Hanif	28.	69/2010	Muhammad Sarfraz	29.	70/2010	Nacemul Hassan
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 MUHAMMAD...
 PESHAWAR TRIBUNAL

30.	71/2010	Bashir Ahmad
31.	72/2010	Muhammad Naeem
32.	73/2010	Wali Dad.
33.	74/2010	Muhammad Nazir
34.	75/2010	Javed Iqbal
35.	76/2010	Rustam Khan
36.	77/2010	Muhammad Javed
37.	78/2010	Nisar Ahmad Lodhi
38.	79/2010	Ali Mullah Hiran ✓
39.	80/2010	Abdur Rauf ✓
40.	81/2010	Dohramand ✓
41.	82/2010	Fazli Raziq
42.	83/2010	Muhammad Zubair
43.	84/2010	Abdul Wahced
44.	85/2010	Noor-ul-Jamil ✓
45.	86/2010	Muhammad Nisar ✓
46.	87/2010	Shamsur Riaz ✓
47.	88/2010	Muhammad Parvez
48.	89/2010	Zahoor Akhtar
49.	90/2010	Shah Jehan ✓
50.	91/2010	Muhammad Karim ✓
51.	92/2010	Abdullah ✓
52.	93/2010	Majid Ghufraan

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The appellant, who was appointed as SET in BPS-16 is seeking upgradation to BPS-17 w.e.f. 01.10.2007, in the light of Notification dated 26.01.2008, instead of upgradation with immediate effect vide Notification dated 27.9.2008. The appellant has further assailed the impugned Notification dated 27.9.2008 on the ground of one time upgradation and that, too, personal to the appellant. The appellant has further prayed for one advance increment on account of upgradation and treating the upgradation as regular promotion for the purpose of further promotion to BPS-18, 19 and 20.

So far upgradation with effect from 01.10.2007 in the light of Notification dated 26.1.2008 is concerned, the matter stands resolved through the above referred decision of the Tribunal dated 3.7.2009 in Appeal No. 266/2009, whereby, similar nature appeals were disposed of with the following order:-

"In the light of the above, we accept all the above mentioned appeals to the extent that the

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ATTESTED
 EXAMINER
 PASTOR
 PASTOR

(20)

upgradation of their respective posts and their appointment to those posts shall be declared effective from 01.10.2007, though such upgradation and posting shall be one time only and shall be personal to the appellants, and their similarly placed colleagues, as per contents of the notification quoted above. Parties are left to bear their own costs".

It would be seen from the perusal of the above reproduced order of the Tribunal that the issues of one time upgradation and the upgradation personal to the appellants was also resolved; but the appellant has placed on file Notification dated 19.10.2009, which has obviously been issued after the above referred decision, showing the withdrawal of the condition of 'one time only' from the Notification dated 21.4.2008. As regards the grant of premature advance annual increment on promotion/upgradation, suffice it to say that the department will have no other option but to grant premature advance annual increment if admissible under the rules on upgradation of the appellants. So far treating the upgradation as regular promotion, the learned counsel for the appellants would not press this issue in view of the prevailing legal position.

In view of the above, when the Tribunal had already resolved the issue of declaring the upgradation effective from 01.10.2007 and had directed the department to also grant the upgradation from that particular date to the similarly placed colleagues of the appellants, the department should have acted accordingly and should have extended the benefit to the appellant, and appellants in the connected appeals, instead of forcing them to move the appeals for the rights already adjudicated in their favour by the Tribunal. In such like situations, it has been the consistent view of the august Supreme Court of Pakistan that:

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ATTESTED
NWA
F. S. A. S. R. & Co.
Advocates
Lahore

(21)

"When Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covered not only the case of civil servants who litigated, but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the decision be extended to other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other legal forum." (2005 SCMR 499-Supreme Court of Pakistan).

Consequently, the appeal, and all the above listed appeals, are accepted in limine, with direction to the respondent-department to immediately, without further loss of time, declare the upgradation of the respective posts of the appellants and their appointment to those posts effective from 01.10.2007 with all consequential benefits in accordance with the decision of the Tribunal dated 3.7.2009, relevant rules and Notifications, including Notification of the Finance Department dated 19.10.2009. No order as to costs.

ANNOUNCED
23.02.2010

(QALANDAR ALI KHAN)
CHAIRMAN

NOTIFIED TO ALL CONCERNED
OFFICE OF THE
SECRETARY
PUBLIC SERVICE COMMISSION
ISLAMABAD

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Date of completion 1-3-2010
Date of delivery of copy 1-3-2010



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
Dated Peshawar the 03-11-2010.

Anx G

(20)

NOTIFICATION.

No.SO(PE)2-6/OPC/Up-Gradation SETs BS-16 to BS-17. In pursuance of Judgement of Khyber Pakhtunkhwa, Services Tribunal Peshawar, the Competent Authority is pleased to upgrade 2804 posts of SETs in E&SE Department KPK from BPS-16 to BPS-17 as personal to the incumbents with effect from 01-10-2007 subject to the condition that the posts shall automatically be downgraded as and when vacated by the incumbents under the following break-up:-

S.No.	Posts	Total No. of Posts.
1	SETs (Male)	2333
2	SETs (Female)	446
3	SETs (Technical/Commerce)	25
	Total:-	2804

SECRETARY TO GOVT. OF
KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT

Endst No. SO(FR)/FD/10-22(B)/2007/Vol.II Dated Peshawar the, 03-11-2010

1. Copy forwarded to the Accountant General, Khyber Pakhtunkhwa, Peshawar for information & necessary action.

And
SECTION OFFICER (FR)
FINANCE DEPARTMENT.

Endst. No. & Date as above.

Copy forwarded to:-

1. The Secretary to Governor, Governor's Secretariat (FATA) Khyber Pakhtunkhwa
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment & Admn. Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department w/r to his letter No.SO(FR)/FD/10-22(B)/2007/Vol-II dated 14-10-2010.
4. All Directors of Education (E&SE) in Khyber Pakhtunkhwa including Director (FATA).
5. All Executive District Officers Elementary & Secondary Education in Khyber Pakhtunkhwa.
6. All Agency Education Officers in Khyber Pakhtunkhwa.
7. All District Accounts Officers, in Khyber Pakhtunkhwa
8. All Agency Accounts Officers in Khyber Pakhtunkhwa
9. Section Officer (FR) Finance Department w/r to his letter No. SO(FR)/FD/10-22(B)/2007/Vol.II dated 14-10-2010.
10. P.S to Secretary E&SE Department.
11. P.S to Additional Secretary E&SE Department.
12. P.A to Deputy Secretary E&SE Department.

Mujeeb-ur-Rahman
(MUJEEB-UR-RAHMAN)
SECTION OFFICER (PRIMARY)

AWAD ALI
Advocate
SUPREME COURT

To

The Secretary to Govt of KPK,
Elementary & Secondary Education
Department, Peshawar.

Abulhasnat
25.5.2012
27
AixH

SOE 688

(23)

Subject : Appeal for grant of BPS-17. on Completing 10 years service as SET.

R/Sir,

With due reverence & respect, it is stated that 2804 SETs were upgraded from BPS-16 to BPS-17 wef 01-10-2007 in the light of the judgement of Khyber Pukhtoonkhwa Services Tribunal Peshawar vide Endst No. SO(FR)FD/10-22(B)/2007/Vol II, dated: 03-11-2010. As I have been working as SET in Education Department since 12-7-1999. MY 10 years Service as SET completed on 12-7-2009.

So, your honourable authority is humbly requested that I may also please be awarded BPS-17 from the date of my completing 10 years service as SET.

I shall be much obliged.

Dated: 29-10-2011

Yours Obediently,

Sign: Fazal Ghani

Name: Fazal Ghani

G. H. S. Topi

AMJAD ALI
Advocate
SUPREME COURT

Annex 1
24

Annex
[Signature]
[Signature]

GOVERNMENT OF NWFP
FINANCE DEPARTMENT
(REGULATION WING)

NO.FD/SO(FR)/10-22(B)/2007/Vol-II
Dated Peshawar, the 19-10-2009

To

All Secretaries to the Govt: of NWFP.

Subject:- NOTIFICATION.

Dear Sir,

I am directed to refer to this Department's Notification bearing No.FD/SO(FR)10-22/2007, dated 21-04-2008, and to state that the competent authority has been pleased to withdraw the condition of "one time only" as was mentioned under last column against serial No. 4 in the aforementioned letter. The same may thus be kindly read as under: -

S.NO	Existing Designation and Pay Scale	Qualification	Upgraded Scale
4	SETs (BPS-16)	With at least ten years service. Upgradation to the post shall be made through DPC as per laid down procedure.	BPS-17

Yours faithfully,

(SHAUKAT ULLAH)
SECTION OFFICER (FR)

ENDST: NO & DATE EVEN:

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

1. All the DCOs/EDOs Schools & Literacy Department, NWFP.
2. Accountant General, NWFP, Peshawar.
3. Director Schools & Literacy NWFP, Peshawar.
4. Director of Education FATA NWFP, Peshawar.
5. PSO to Chief Minister, NWFP.
6. PSO to Chief Secretary, NWFP.
7. PS to Secretary to Govt: of NWFP Finance Department.
8. All District/Agency Accounts Officers in NWFP.

[Signature]
AMJAD ALI
Advocate
SUPREME COURT

[Signature]
SECTION OFFICER (FR)

بعدالت سروس ٹریبونل لٹنڈور ٹیبرے ٹیٹونٹونوا

۲۰۱۲ء منجانب ایپرائیٹ

20/2/2012

مورخہ:

مقدمہ:

دعویٰ:

جرم:

ایجوکیشن / حکومت

بنام:

معد علی

سروس ایپل

باجت نھر بر آفند

مقدمہ مندرجہ عنوان بالا اپنی طرف سے واسطے بیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام لٹنڈور کیلئے امجد علی ایڈوکیٹ سپریم کورٹ آف پاکستان

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے و تقریر ثالث و فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء وصولی چیک و روپیہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زاریں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم بیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و بیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختیار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ بیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند رہے۔

۲۰۱۲ء

زوری

۲۰

المرقوم:

العبد

گواہ

العبد

بمقام لٹنڈور کے لیے منظور ہے۔

Attested and Accepted

AMJAD ALI Advocate SUPREME COURT

[Signature]

امجد علی ایڈوکیٹ سپریم کورٹ آف پاکستان، ڈسٹرکٹ کورٹس، مردان

0321-9882434 0321-9870175

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 248/2012.

Mr. *Fazal Ghani, SET*

.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education
Peshawar & others..... Respondents

Written reply/ Para wise comments for & on behalf of Respondents.

Respectfully Sheweth,

Preliminary Objections:-

1. That the appeal is badly time barred.
2. That the appeal is bad for non joinder/ mis-joinder for necessary party.
3. That the appellant has not come to this Honourable Court with clean hand.
4. That the appeal is not maintainable in its present form.
5. That the appellant has concealed important material facts from this Honourable Court.
6. That the appellant has been estopped by his own conduct to file the instant appeal.
7. That the appellant has no cause of action.
8. That the Rule 3(2) of the Khyber Civil Servant (Appointment, Promotion & Transfer) Rules 1989, authorized the Department to lay down method of appointment qualification and other condition applicable to the post in consultation with the Establishment & Administration Department and Finance Department. Hence the present appeal is liable to be dismissed.
9. That the present appeal does not come within the ambit of the Section-4 of the Service Tribunal Act 1973.

FACTS.

1. This para pertains to court record, hence no comments.
2. The mentioned Notification was issued by the competent authority. However, it remain no more in the field as superseded by Notification dated 26-01-2008 (Annexure-C of the appeal).
3. That the mentioned Notification was issued in accordance with law & rules.
4. The mentioned Notification was issued in accordance with law and rules and policy, by the competent authority, through Departmental Promotion Committee.
5. Incorrect. the promotion/ up-gradation, as according to rules, always granted with immediate effect.
6. This parka pertains to appellant academic record, hence no comments.

7. This para pertains to the record of the Tribunal, hence no comments.
8. Replied in para-6 above.
9. Incorrect and denied, the claim of the appellant is against the prevailing rules and policy. However, it is pertinent to mention here that the appellant has not claimed and regular promotion in departmental appeal in (Annexure-H at Page-29 of the appeal), hence the present appeal is not maintainable and tenable according to law.
10. Incorrect. The appellant did not adduce any legal proof/ law in support of his claim. Hence the appellant is not entitled for any promotion and advance increment. The appellant also did not mention this claim in is time barred departmental appeal dated 29-10-2011, hence the present appeal is liable to be dismissed.
11. The mentioned departmental appeal is annexed a page-22 is badly time barred.
12. Incorrect and denied.
13. As replied in foregoing para-6
14. As replied in forgoing para-9.
15. Incorrect and not admitted. The claims of the appellant mentioned in this para are illegal, without any legal proof, against the prevailing law, rules, policy and facts, hence the present appeal is liable to be dismissed inter alia on the following grounds:-

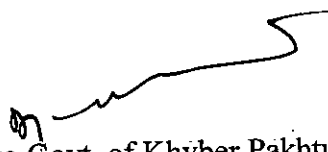
ON GROUNDS.

- A. Incorrect and not admitted. There is no contradiction as mentioned by the appellant. All the Notification mentioned herein are in accordance to law, rules and policy and issued by the competent authorities.
- B. Incorrect. The statement of the appellant in this para is not related to claim of the appellant as mentioned in is time barred departmental appeal.
- C. Incorrect and not admitted. The Principle mentioned in this para is not applicable to the case of the appellant.
- D. Incorrect. The appellant claim in this para is against the law and rules, without proof and based on malafide motives.
- E. Incorrect. All Notification mentioned in this para were issued in consultation with Establishment and Administration Department and Finance Department, hence denied.
- F. Incorrect and not admitted. The statement of the appellant in this para is against the Notification dated 08-01-2008 S# 4 column of qualification (Annexure-C of the appeal at page-9).
- G. Incorrect and not admitted. The statement of the appellant is not supported by any rules and law, nor the same was prayed in he departmental appeal dated 29-10-2011 by the appellant denied.

H. Incorrect. The appellant misread and mis-apprehend the mentioned up-gradation and attempted to misguide this Honourable Court. Hence the present appeal is liable to be dismissed being against law, rules, policy and facts.

I. This para pertains to the record of the courts, hence no comments. However, the respondents seek the permission of this Honourable Tribunal to adduce more grounds and proofs at the time of arguments.

In view of the above made submissions, it is humbly requested that this Honourable Tribunal may very graciously be pleased to dismiss the instant appeal with cost in favour of the Respondents.


Secretary to Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department.

19/12/12