

IN THE NAME OF ALLAH THE MOST MERCIFUL AND BENEFICANT  
**BEFORE THE KP SERVICE TRIBUNAL PESHAWAR**

In Service Appeal No 7436/21  
Niaz Gul VS Govt of KP

In Service Appeal No 1370/23  
Naveelah Asim Vs Govt of KP

In Service Appeal No 1303/23  
Niaz Gul Vs Govt of KP

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 9914

Dated 14-12-2023

SUBJECT: APPLICATION FOR GRANT OF FURTHER TIME  
FOR PRODUCTION OF JUDGMENTS OF  
HONORABLE SUPERIOR COURTS.

Respectfully Sheweth

1. That the subject appeals are fixed for hearing before this Honorable Tribunal for today.
2. That in the subject appeals the applicant was directed to submit written arguments, which are being filed today.
3. That the stance of applicant is further supported by judgments of superior courts on the point, which will be submitted before this honorable within a week.
4. That since the counsel of the applicant is busy before honorable Federal Services Tribunal Islamabad and is unable to attend the honorable court and to submit the judgments as referred above.

It is therefore humbly requested that one week time may kindly be granted to applicant for submission of judgments and ensuring the availability of her counsel.

*Naveelah Asim*  
13/12  
Naveelah Asim  
Respondent No 7

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SUBJECT: WRITTEN ARGUMENTS IN SA NO 7436/21 WITH  
PERMISSION TO ELABORATE THE SAME IN THE  
LIGHT OF JUDGEMENTS OF SUPERIOR COURTS  
DURING ORAL ARGUMENTS

Respectfully Sheweth

Before discussion on the facts and merits of the case it is pertinent to bring into notice of this honorable tribunal certain patent facts for consideration, please.

- A. Whether this tribunal owes jurisdiction to adjudicate upon the matter of fitness of a civil servant to a particular post who has been promoted / selected for a particular position by a competent forum the illegibility or competence of the same has not been confronted or challenged.
- B. That whether the tribunal can decide matter wherein a civil servant has been declared fit by a committee constituted under the legislative rule (s); which (rules) have not been challenged or questioned. In this case whether the Tribunal can decide the legality or illegality or those actions by the committee declaring a Civil Servant fit for certain post.
- C. That whether the claim of the appellant of Service Appeal No 7436/21 thereby, challenging the fitness of a civil servant for a post falls within the domain of this Honorable Tribunal or otherwise.

- D. That whether; for the sake of arguments or otherwise, deciding the Service Appeal No 7436/21 without adjudicating upon Service Appeal No 1370/2023 wherein, the Service Rules have been challenged by the private Respondent of Service Appeal No 7436/21 will fulfill the ends of Justice.
- E. Whether the APEX Court has not held in its repeated judgments that fitness of an officer to the post falls within the domain of the Departmental Committee? (The Respondent No 7 on her representative will explain those judgments in the next date of hearing)

#### ON FACTS / LEGAL

1. The Respondent No 7 of Service Appeal No 7436 / 2021 was considered along with other appellant for the post of Director by a Committee having legal and legislative support to declare an officer fit for a post or otherwise.
2. That the service record and other criteria of the Appellant of this Service Appeal No 7436/21 and private Respondent No 7 was considered by the same Committee and have made decision accordingly regarding the fitness of the officer for the post of Director.
3. That fitness or non-fitness of an individual for the post does fall within the ambit of Terms and Conditions of Service? At the most the same can be assailed in Writ Jurisdiction. However, it is pertinent to highlight here that, such litigations have also been discouraged by superior Judiciary. (The wisdom and the judgment in this respect will be provided to explain at the time of oral arguments which are indeed most necessary for private Respondent to explain her case.

4. That since the private Respondent of Service Appeal No 7436/21 have already assailed the Service Rules, before this Tribunal which have not been yet decided, so in the absence of that decision, even otherwise, deciding Service Appeal No 7436/2021 may create further complications.
5. That last but not the least, the wisdom derived from the Judgements of the APEX Court are binding upon all Courts and Tribunals in view of Article 189 of Constitution of 1973 of Islamic Republic of Pakistan, the Respondent NO 7 of SA No 7436/21 will bring those into the notice of this Honorable tribunal during arguments

For ready reference the Article is reproduced here under;

*Art: 189 Decision of Supreme Court binding on other courts.- Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan.*

Keeping in view all above, the private respondent of Service Appeal No 7436/21 seeks permission for arguing the matter and explaining her stance with the support of the Judgments of the Superior Courts in the next date of hearing please.

*Naveelah Asim*  
13/12  
Naveelah Asim  
Respondent No 7