

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. 9928

Dated 15-12-2023

SUBJECT: **ADDITIONAL WRITTEN ARGUMENTS IN SA
NO. 7436/21 AND OTHERS IN CONTINUATION TO
THE ARGUMENTS ALREADY SUBMITTED ON
13/12/2023.**

The dispute is in respect of posting against the post of
Director Library and Research.

Incumbent Respondent No 7 has been a senior
Research Officer.

Respectfully Sheweth

The object of submitting the Additional Arguments is to bring into the notice of this Honourable Tribunal certain important principles laid down by the Superior Judiciary in cases where FITNESS of a Civil Servant is decided by a Departmental Committee.

2023 PLC (CS) 1131 Peshawar High Court Peshawar

Here in the Judgment under reference it was categorically held that the Authority of the Selection Committee cannot be challenged or questioned because of the fact that, it is the best judge at the given time to form an opinion and take decision after judging the ability of candidates. It was further held that Court cannot enter into the domain of Appointing Authority or Selection Committee to judge the potential of a candidate.

2021 PLC (CS) 1383 Supreme Court

In the Judgment under reference the Supreme Court of Pakistan had held that, it is exclusively the prerogative of Special Selection Committee to consider the competence of the Officer for the grant of

promotion and that it is not the vested right of the Civil Servant.

The service record of the Appellant alongwith the private respondent No. 07 of Service Appeal No. 7436/21 was placed before the Departmental Committee who after going through the entire record and considering all eligible candidates have declared the private respondent fit for the post of Director.

None challenging of the name of private respondent No. 07 by Appellant

It is pertinent to highlight here that, the Appellant of Service Appeal No. 7436/21 had not objected the inclusion of the private respondent for consideration for the post of Director; it was only when the Departmental Committee came up with the decision the Appellant submitted his representation.

Similarly, the Service Rules on the strength of which the claim of the Appellant lies are sub-judice before this Honourable Tribunal; without deciding that issue, how the matter in issue can be decided.

Accruing of Vested Rights

After assuming the charge of the post of Director the potential service rights of the private respondent No. 07 have accrued which cannot be taken back through legislative process as on one hand the inclusion of the private respondent in the selection process was never objected by the Appellant and on the other, the private respondent No. 07 was selected/appointed as Director by the Committee having mandate to make such selection/appointment.

The Appellant of Service Appeal No. 7436/21 have throughout attempted to complicate the issue by keeping eyes closed upon the potential point of Law that whether the fitness of the Civil Servant to a post can be decided by Service Tribunal or it falls within the exclusive domain of the Departmental Authority. Similarly, the matter that the Service Rules upon which the Appellant is relying are already sub-judice before this Honourable Tribunal so in case of an adverse decision in that case, what will be the status of the Service Appeal No. 7436/21.

2022 SCMR 797 Supreme Court OF PAKISTAN

The Apex Court have explained in the Judgment eligibility and fitness of a candidate in terms that eligibility employees a qualification to be appointed or promoted whereas, fitness encompasses a persons capacity to be chosen or selected for appointment or promotion subject to the availability of post on which the credentials and antecedents of person could be examined.

Here too, the Departmental Committee has taken into consideration all these factors before issuing the order so impugned by the Appellant.

CP Nos 2347 TO 2360 of 2022 Supreme Court of Pakistan Dated 24/11/2022

The Apex Court have held that it is the settled law that there is no vested right in promotion nor the Rules which determine the eligibility criteria for promotion. It is within the exclusive domain of the Competent Authority to make Rules in order to raise efficiency of the employees in particular and the service in general.

What we can derive from the Judgment of the Apex Court is that the Departmental Authority is the sole body to determine the fitness of an employee for a particular post or otherwise. Merely Rules cannot be the basis for promotion or posting or appointment to a post rather there are many other factors involved therein which includes fitness of the Officer, eligibility, antecedents and many other aspects are required to be taken into account by the Committee before making the decision which was prudently done by the Departmental Committee in the case in hand.

It is further added that, no Government Authority, Court, Tribunal etc can deviate from the settled principles as laid down by the Superior Judiciary as the same are having Constitutional Guarantee as envisaged under Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973.

Naveedah Asim
Naveedah Asim
Respondent No 7
15/12