

12/9/2017

Counsel for the appellant and Muhammad Adeel Butt, AAG alongwith Hameed-ur-Rehman, AD for the respondents present. The learned counsel for the appellant argued the case at some length, but when this Tribunal referred to a recent judgment of the august Supreme of Pakistan 2017 SCMR 890 the learned counsel sought some time. Granted. To come up for further arguments before this DB on 11/10/2017.


MEMBER

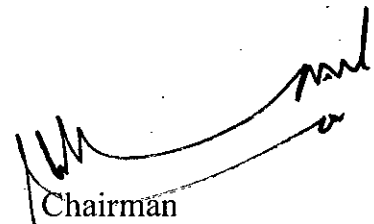

CHAIRMAN

11.10.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. Advocate General for the respondents present. Arguments heard and record perused.

This appeal is dismissed as per our detailed judgment of today in connected service appeal No. 984/2015 entitled "Badshah Islam Vs. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others". Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
11.10.2017

A 501



24.11.2016 Counsel for the appellant and Assistant AG for respondents present. Rejoinder submitted which is placed on file. To come up for arguments on 01.03.2017.



(ABDUL LATIF)
MEMBER



(MUHAMMAD AAMIR NAZIR)
MEMBER

01.03.2017

Appellant with counsel and Mr. Muhammad Adeel Butt, Additional AG for respondents present. Learned counsel for appellant requested that 15 cases of same nature are pending in which most of the cases are fixed on 18.05.2017 and further requested that instant service appeal may be clubbed with other similar nature appeals which are fixed on 18.05.2017. The office is directed to do the needful and fixed all the service appeal on 18.05.2017 for arguments before D.B.



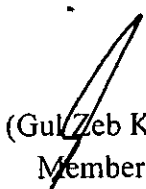
(AHMAD HASSAN)
MEMBER



(ASHFAQUE TAJ)
MEMBER

18.05.2017

Clerk of the counsel for appellant and Mr. Muhammad Adeel Butt Additional AG for the respondents present. Clerk of the counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 12.09.2017 before D.B.



(Gul Zeb Khan)
Member



(Muhammad Amin Khan Kundi)
Member

31.03.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is serving as DPE (BPS-17). That the post of DPE was up-graded vide notification dated 13.11.2007 and appellant was promoted against the same vide order dated 15.6.2009 with immediate effect though he was entitled to the same retrospective effect. That the appellant preferred departmental appeal on 16.11.2015 which was not answered and hence the instant service appeal on 08.3.2016.

Appellant Deposited Security Access Fee

That the appellant is entitled to promotion to the said post with retrospective effect and from the date when he become eligible for promotion.

Points urged Counsel for the appellant and M/S Khurshood Khan, SO and Hameedur Rahman, AD along with Addl. AG for the respondents for written reply/comments on 24.05.2016 before S.B.

24.05.2016

Agent of counsel for the appellant, M/S. Khurshood Khan, SO and Hameedur Rahman, AD along with Addl. AG for the respondents present. Requested for adjournment. Requested for adjournment opportunity granted. To come up for written reply/comments on 26.07.2016 before S.B.

Chairman

26.7.2016

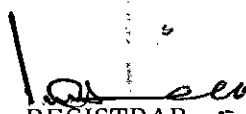


Counsel for the appellant and M/S Khurshood Khan, SO and Hameedur Rahman, AD alongwith Addl. AG for the respondents resent. Written reply submitted by respondents No. 1 to 4 submitted. Learned Addl. AG relies on the same on behalf of respondent No. 5. The appeal is assigned to D.B for rejoinder and final hearing for 24.11.2016.

Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 245/2016


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	16.03.2016	<p>The appeal of Mr. Muhammad Hashim resubmitted today by Syed Younas Jan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	21-03-2016	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>24.3.16</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	24.03.2016	<p>Counsel for the appellant present. Learned counsel for the appellant seeks adjournment. Adjourned for preliminary hearing before S.B to 31.3.2016.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Muhammad Hashim DPE GHSS No.2 Peshawar Cantt. received to-day i.e. on 08.03.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Approved file cover is not used.
- 2- Annexures of the appeal may be flagged.
- 3- Annexure-F (Page 16 & 17) of the appeal are illegible which may be replaced by legible/better one.

No. 395 /S.T,

Dt. 08/03 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Syed Younas Jan Adv. Peshawar.

*Need full as above done and re-submitted Sir,
today on 16.3.2016.*



SYED YOUNUS JAN
B.A.B.B. B.Ed. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

BEFORE THE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal NO 245 /2016

Muhammad HashimAPPELLANT.

VERSUS

The Govt:of KPK through its Chief Secretary and others.

.....Respondents.

I N D E X.

Sr NO.	Description of documents.	Annex:	Page.	
			From	TO
1.	Grounds of appeal.		01	05
2.	Affidavit.		06	
3.	Addresses of Parties.		07	
4.	Copy of Departmental appeal <i>with Post office receipt.</i>	"A"	8	
5.	Copy of Order/notification dated <u>15.6.2009</u>	"B"	9-10	
6.	Letter/Notification dated 13.11.2007.	"C"	11-12	
7.	Copy of Certificate.	"D"	13	
8.	Copy of appointment order. <i>with better copy-</i>	"E"	14-17	
9.	Copy of order of EPS 17 Personal.	"F"	17A	
10.	Application for condonation of Delay with affidavit.		18-20	
11.	<u>Wakalatnama</u>			21

Dated: / 03 /2016

Appellant _____

Through



(SYED YOUNUS JAN)

Advocate Peshawar High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal NO. 245 of 2016

Muhammad Hashim,
Director, Physical Education (D.P.E)
Government Higher Secondary School No. 2,
Peshawar Cantt..... APPELLANT.

K.W.P. Province
Service Tribunal
Diary No. 187
Dated 08-3-2016

VERSUS.

1. The Govt: of K.P.K. through its Chief Secretary
2. The Secretary elementary and Secondary Education Khyber Pakhtoonkhwa Peshawar.
3. The Director Elementary and Secondary Education Khyber Pakhtoon Khawa Peshawar.
4. The Secretary Establishment Department Khyber Pakhtoonkhwa Peshawar.
5. The Secretary Finance Department Khyber Pakhtoonkhwa Peshawar.

APPEAL U/S 4 OF KHYBER PAKHTOONKHWA SERVICE TRIBUNAL ACT 1974 ACCORDING TO THE DEPARTMENTAL APPEAL OF THE APPELLANT WHICH IS STILL PENDING BEFORE THE RESPONDENT NO. AND AFTER LAPSE OF THE STATUTRY PERIOD NO ORDER BE COMMUNITION HAS BEEN MADE ON THE SAME SO FAR.

COPY OF THE DEPARTMENTAL APPEAL ANNEXURE "A").

PRAYER IN APPEAL.

Filed to-day
Registrar
8/3/16

That on acceptance of this appeal the order/ notification dated 15-06-09 may kindly be varied/modifide to the extent that the same may kindly be made effective

from 7-05-2001 or 13.11.2007 and a such the department and filed.

may kindly be directed to consider the promotion of the appellant to BS 17 regular from 7-05-2001 or 13.11.2007 instead of immediate effect with all other Service benefit. Any other remedy/ relief available in the circumstances of the case may also kindly be granted to the appellant.

(Order/notification dated ~~15-06-09~~ is Annexure "B".
and dated 13.11.2007 is Annexure "C".

Respectfully submitted:-

BRIEF FACTS GIVING RISE TO THIS APPEAL ARE:-

1. That the qualification of the appellant is M.A/MS.c. in health and Physical Education whose ~~result~~ was declared ~~on~~ passed in July, 89 exam. (Copy of Certificate is Annexure "D").

2. That on the recommendation of the KPK Public Service Commission the appellant was appointed as Director Physical Education in EPS 16 and then on the basis of Court decision EPS 17 Personnal was awarded to the appellant vide order dated 7-05-01 with full benefits attached EPS 17.

(Appointment order and Order dated 10-02-1991 & 7-5-2001 are Annexure "E" & "F".

...3...

3. That the Govt: of KPK on 13.11.2007 issued a letter/notification vide which the posts of DPEs and Librarianians were upgraded to regular BPS 17 for the existing incumbents who hold Master degrees in relevant subjects i.e. MA/MS.c in health and Physical Education in case of the appellant .(The said notification is Annexure "C" above).

4. That as the appellant is /was highly qualified, fit and thus was fully eligible for award of regular BPS 17 in light of the above referred notification/letter so he agitated the matter with the authority but of no use, so he filed departmental appeal/representation before the respondent NO.1 which is still pending in after lapses of statutory period no order/communication has been made on the same so far, hence this appeal on the following amongst other grounds.

G R O U N D S:-

A. That the act and omission of the respondents is illegal, unconstitutional against facts and material on the record, therefore is not tenable and need the interference of this Honourable Tribunal

- A. That act and omission of the respondents is not only factually incorrect and legally untenable but also is based on their malafide intention and is also against the well established Principle of Natural justice and is discriminatory in nature.
- C. That the act and omission of the respondents is also against the laws /rules /policies/notification of the Provincial Govt: especially against the notification dated 13.11.2007.
- D. That the case of the appellant is very much similar and identical with those numerous cases in which the higher/superior Courts and Tribunal as well as this Honourable Tribunal has given a similar relief to other colleagues of the appellant and the appellant is also intitled to the same relief /treatment .
- E. That the department has also given a similar relief to other colleagues of the appellant including his Junior so on this score also the appellant is also entitled to the same relief.
- F. That the appellant was well qualifide ,fit and thus was quite eligible for the award of regular EPS 17 at the time of and in light of the letter

dated 13.11.2007. So the impugned notification dated 15-06-2009 vide which the promotion of the appellant to regular EPS 17 has been made with immediate effect is neither legal, nor justifiable.

G. That the appellant is/was a Govt./Civil Servant and legal and constitutional guarantee is/was available to him to be treated equally and in accordance with law. He however has not been treated as such.

It is therefore prayed that on acceptance of this appeal the order/notification dated 15-06-2009 may kindly be varied/modified to the extent that the same may kindly be made effective from 7-05-01 or 13.11.2007 and as such the department may kindly be directed to consider the promotion of the appellant to EPS 17 regular from 7-05-01 or 13.11.2007 instead of immediate effect with all other service benefits. Any other remedy/relief available in the circumstances of the case may also kindly be granted to the appellant.

Dated 10/3 /2016

Appellant
Through:

(SYED YOUNUS JAN)
Advocate Peshawar High Court
Peshawar.

BEFORE THE KHYBER PAKHTOONKHWA SERVICE TRIBUNAL PESHAWAR.

Appeal NO.

of 2016

6

Muhammad HashimAPPELLANT

VERSUS.

The Govt. of KPK through its Chief Secretary and others.

...Respondents.


AFFIDAVIT.

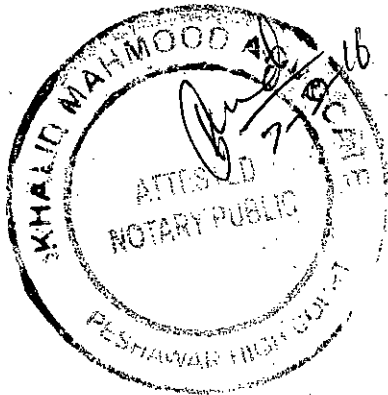
I, **Muhammad Hashim, DPE** (appellant) do hereby solemnly
on oath
affirm and declare that the contents of the appeal are
true and correct to the best of my knowledge and belief
and nothing has been concealed from this Honourable
Tribunal.

Dated

103 / 2016

Deponent





BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ / 2016

Muhammad Hashim APPELLANT

VERSUS

Government of KPK and others RESPONDENTS.

ADDRESSES OF THE PARTIES.

Appellant.

Muhammad Hashim, Director Physical Education(D.P.E)
Government Higher Secondary School No.2,
Peshawar Cantt.

Respondents.

1. The Govt:of Khyber Pakhtoonkhwa through its Chief Secretary Civil Seretriate Peshawar.
2. Secretary Elementary and Secondary'Khyber Pakhtoonkhwa Civil Secretriate Peshawar. Education
3. The Director Elementary and Scondary Education Khyber Pakhtoonkhwa near Govt: Higher Secondary School Peshawar City GT Road Peshawar.
4. The ~~Secretary~~ Establishment. Department Khyber Pakhtoonkhwa Civil Secretriate Peshawar.
5. The Secretary Finance Department Khyber Pakhtoonkhwa Civil Secretriate Peshawar.

Dated: 103/2016

Appellant _____

Through:

(SYED YOUNUS JAN)
Advocate Peshawar High Cout
Peshawar.

Annex "A"

8

To

The Chief Secretary,
Government of K.P.K. Peshawar

Through: PROPER CHANNEL

Subject:- DEPARTMENTAL APPEAL/REPRESENTATION

Sir,

1. That the applicant/appellant is M.A/M.Sc. in Health and Physical Education, who passed the prescribed examination held in July, 1989 and his result was declared on 31-12-1989.
2. That the applicant/appellant was appointed/promoted on the recommendation of P.S.C. vide order dated 10-02-1991 and then BS-17 (personal) was awarded to him vide order dated 7-05-2001.
3. That the Government of K.P.K. issued a letter/Notification on 13-11-2007 vide which the posts of D.P.Es. were upgraded from BS-16 to BS-17 (regular) for the existing incumbents who hold Master Degrees in relevant subjects i.e. M.A/M.Sc. in Health and Physical Education in case of the appellant/applicant.
4. That in light of the above referred letter the applicant was highly qualified, fit and thus was fully eligible for BS-17 (regular) from 13-11-2007 but he has illegally, un-constitutionally and malafidely ignored.
5. That the appellant/applicant has been promoted to BS-17 (regular) vide order dated 15-06-09 but with immediate effect instead of 13-11-07.
6. That the applicant agitated the matters with the authorities but of no use, hence this appeal.

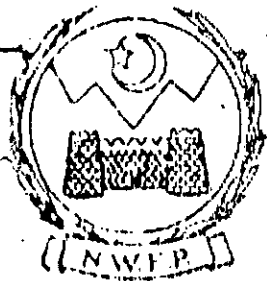
Your goodself is therefore, requested sir, that the letter/Notification dated 15-06-09 may kindly be made effective from 13-11-07 instead of immediate effect with all other service benefits.

Dated 16-11-2015

Appellant/Applicant

Muhammad Hashim,
D.P.E. GHSS No.2,
Peshawar Cantt.

Attested
[Signature]
SYED YOUNUS IAN
M.A.L.L.B. B. Ed. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.



(1)
GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Annex "B"
9

Dated Peshawar the 15-6-2009.

NOTIFICATION

NO.SO(PE)2-6/E&SE/DPCMEETING/LIB/09: Consequent upon recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Twenty Three (23 Male) & Thirteen (13 Female) DPEs from BS-16 to BS-17 according to their seniority on regular basis with immediate effect:-

MALE DPEs

S.No	Name & Designation of Officers	Place of Posting	Remarks
1.	Mr. Abdul Hameed ADO's (sports) O/O EDO E&SE Lakki	GHSS Langarjal Abbottabad.	Against Vacant Post
2.	Mr. Amanullah Khan DPE GHSS Tajazai Lakki	GHSS Tajazai Lakki	Already occupied by him
3.	Q.S. Mohibullah Shah DPE GHSS Karak	GHSS Karak	-do-
4.	Muhammad Aslam DPE GHSS Abdul Khel Lakki	GHSS Abdul Khel Lakki	-do-
5.	Mr. Sardar Ali DPE GHSS Ghani Dehri Malakand Dargai	GHSS Ghani Dehri Malakand Dargai	-do-
6.	Muhammad Hashim DPE GHSS No. 3 Peshawar City	GHSS No.3 Peshawar City	-do-
7.	Muhammad Saeed ADO (Sports) EDO E&SE Swabi	GHSS Rhich Bhan Abbottabad	Against Vacant Post
8.	Muhammad Ibrahim ud Din DPE GCPE (M) Karak	GHSS Boi Abbottabad	-do-
9.	MY Doedar Khan DPE GHSS Chamkani Peshawar	GHSS Chamkani Peshawar	Already occupied by him
10.	Mr. Abdul Sattar DPE GHSS, Gul Imam Tank	GHSS Gul Imam Tank	-do-
11.	Muhammad Saeed Shah DPE GHSS Kawiu Mansehra	GHSS Kawiu Mansehra	-do-
12.	Mr. Khaki Rehman DPE GEC (M) Mir Ali NWA	GEC (M) Mir Ali NWA	-do-
13.	Mr. Habib Ullah DPE GHSS Dargai Charsadda	GHSS Dargai Charsadda	-do-
14.	Mr. Habibullah DPE GHSS Mamash Khel Bannu	GHSS Mamash Khel Bannu	-do-
15.	Mr. Zahoor Ahmad DPE GHSS Manki Sharif Nowshera	GHSS Manki Sharif Nowshera	-do-
16.	Mr. Lal Bacha DPE GHSS Mansabdar Swabi	GHSS Mansabdar Swabi	-do-
17.	Abdur Rauf DPE GHSS Wadpaga Peshawar	GHSS Wadpaga Peshawar	-do-
18.	Mr. Fakhr Zaman Shah DPE, GHSS Dhand Saghri, Kohat	GHSS Dhand Saghri, Kohat	-do-
19.	Mr. Wali-ur-Rehman DPE, GCPE Karak	GCPE Karak	-do-
20.	Mr. Kamran Ali, DPE GHSS, Nagri Bunair	GHSS Nagri Bunair	Already occupied by him
21.	Mr. Muhammad Iqbal, DPE GHSS Tehkal Bala Pesh:	GHSS Tehkal Bala Pesh:	-do-
22.	Muhammad Arif DPE, GHSS Bam Khel Swabi	GHSS Bam Khel Swabi	-do-
23.	Mr. Zard Ali Khan DPE GHSS Urmay payan Peshawar	GHSS Urmay payan Peshawar	-do-

M. Talib Muhammad/Kaleem Khan Mahsood/Final Notification/09

(P.T.O.)

Attested
BYED YOUNUS JAN
B.A.L.B. U Ed. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

FEMALE DPEs

S.No	Name & Designation of Officers	Place of Posting	Remarks
1.	Mst. Samina Habib DPE RITE(F) Kohat.	RITE(F) Kohat.	Already occupied by her
2.	Mst. Gul Nar DPE GGHSS Comp: Abbottabad.	GGHSS Comp: Abbottabad.	-do-
3.	Mst. Abida Parveen DPE GGHSS Malakpura Abbottabad	GGHSS Malakpura Abbottabad	-do-
4.	Mst. Robina Shaheen DPE GGHSS S.K.Bala Bannu.	GGHSS S.K.Bala Bannu.	-do-
5.	Mst. Sughra Afandi DPE GGHSS Gujrat Mardan.	GGHSS Gujrat Mardan.	-do-
6.	Mst. Sujhaat Begum DPE GGHSS Takhtbhai Mardan	GGHSS Takhtbhai Mardan	-do-
7.	Mst. Saima Gul DPE GGHSS Topi Swabi	GGHSS Topi Swabi	-do-
8.	Mst. Sadia Hazrat DPE GGHSS Kopar Malakand	GGHSS Kopar Malakand	-do-
9.	Mst. Saira Illaf DPE GGHSS Abbottabad	GGHSS Abbottabad	-do-
10.	Mst. Dil Afroz DPE GGHSS Utmanzai Charsadda	GGHSS Utmanzai Charsadda	-do-
11.	Mst. Robina Shaheen DPE GGHSS Katlang Mardan.	GGHSS Katlang Mardan.	-do-
12.	Mst. Riffat Shaheen DPE GGHSS Garhi Habibullah Mansehra	GGHSS Garhi Habibullah Mansehra	-do-
13.	Mst. Arifa Saleem DPE GGHSS Khairabad Nowshera	GGHSS Khairabad Nowshera	-do-

**SECRETARY TO GOVT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Endst: of even no. & date:

Copy is forwarded to:-

- 1) Secretary to Govt of NWFP, Establishment Department, Peshawar.
- 2) Special Secretary (Regulation), Establishment Department, Govt of NWFP Peshawar.
- 3) Secretary to Govt. of NWFP, Finance Department, Peshawar.
- 4) Director (E&SE) NWFP Peshawar.
- 5) Executive District Officer (E & SE) concerned.
- 6) The Accountant General NWFP.
- 7) District Accounts Officer concerned.
- 8) Deputy Database Administrator (EMIS) Elementary & Secondary Education Peshawar.
- 9) PA to Secretary Elementary & Secondary Edu: Department
- 10) Officer concerned
- 11) Master file

Attested
[Signature]

SYED YOUNUS JAN

**B.A., B.L.B., B.Ed. Certificate Sharna Law
Advocate High Court Peshawar
Federal Shariat Court**

[Signature]
**(ARIF JAMIL)
SECTION OFFICER
(PRIMARY)**

GOVERNMENT OF N.W.F.P.
SCHOOLS & LITERACY DEPARTMENT
Dated, Peshawar the 13/11/2007.

NOTIFICATION.

No. SOG/S&L/1-69/06/Vol-1/DPE/LIB: Sanction of the competent authority is hereby accorded to the upgradation of the posts of Librarians and Directors Physical Education (D.P.Es) from BS-16 to BS-17 (Regular) for the existing incumbents who hold Master Degree in the relevant subject in the Schools & Literacy Department NWFP with immediate effect as per following details:-

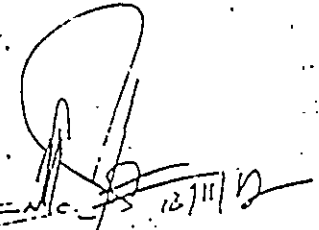
- 1) Promotion against the upgraded posts (from BS-16 to BS-17) shall be made in the prescribed manner and in accordance with the service rules to be framed as per relevant provisions of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules 1989 read with the NWFP Civil Servants Act, 1973.
- 2) The Librarians and D.P.Es who hold the diploma in the relevant subject will stay in BS-16 till such time, they acquire Master degree in the respective subject. On acquiring Master Degree in the relevant subject, their posts will be upgraded on case to case basis from BS-16 to BS-17 (Regular) and promotion (from BS-16 to BS-17) would be given as per laid down procedure and in accordance with the service rules to be framed. However their existing seniority will remain intact.
- 3) All the vacant posts of Librarians and D.P.Es in Schools & literacy department in BS-16 are hereby upgraded to BS-17, appointments against which would be made from amongst the persons who hold Master degree in the relevant subject, in the prescribed manner.
- 4) In future Librarians and D.P.Es will initially be recruited on the basis of Master degree in the relevant subject in BS-17 (Regular).
- 5) Henceforth no appointment of Librarians and D.P.Es in BS-16 shall be made on the basis of diploma, being declared as "Dying Cadre".

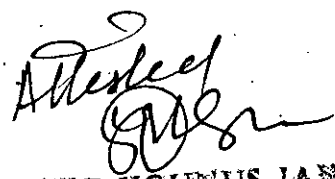
Sd/-

SECRETARY TO GOVERNMENT OF NWFP
SCHOOLS & LITERACY DEPARTMENT.

Endst: No. FD (SOSR-II) 10-7 / 03 / VOL - 41 Dated, Peshawar the, 13/11/2007
Copy is forwarded for information and necessary action to :-

- 1) The Accountant General, NWFP, Peshawar.
- 2) All District Accounts Officers in NWFP.
- 3) All Agency Accounts Officers in NWFP.


(MUNAWAR KHAN)
SECTION OFFICER (SR-11)
FINANCE DEPARTMENT
GOVERNMENT OF NWFP.


SYED YOUNUS JAN
B.A., B.L.B. & Ed. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

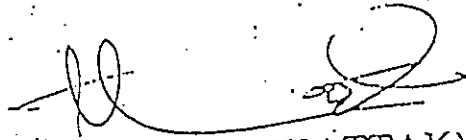
(P.T.O.)

(12)

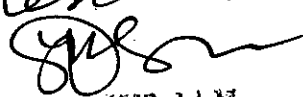
Endst:No. & Date Even.

Copy is forwarded to:-

- 1) Secretary to Government of NWFP, Establishment Department.
- 2) Secretary to Government of NWFP, Finance Department.
- 3) P.S to Chief Minister NWFP, Peshawar.
- 4) P.S to Chief Secretary NWFP, Peshawar.
- 5) Director Schools & Literacy, NWFP, Peshawar.
- 6) Director, Curr; & Teachers Edu; NWFP, Mandian Abbottabad.
- 7) Director of Education FATA NWFP, Peshawar.
- 8) P.S to Minister of Education, NWFP, Peshawar.
- 9) P.S to Secretary Schools & Literacy NWFP, Peshawar.
- 10) Office File.



(FARID AHMAD KHATTAK)
SECTION OFFICER (GENERAL)
SCHOOLS & LITERACY DEPARTMENT
GOVERNMENT OF NWFP.

Attested


SYED YOUNUS JAN
B.A.L.L.B. & Ed. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

Serial No. CU 01262

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Annex "D"

(13)

GOMAL UNIVERSITY

DERA ISMAIL KHAN



VERIFIED

Controller of Examinations
Gomal University,
Dera Ismail Khan

19/11/09

(Session 1987-88)

MOHAMMAD HASHIM SON of SAMAR KHAN and

a student of the DEPARTMENT OF HEALTH & PHYSICAL EDUCATION, GOMAL UNIVERSITY

having passed the prescribed examination in JULY 1989

is this day admitted by the Gomal University to the DEGREE of

MASTER OF SCIENCE

in the SECOND Class

The subject of examination being HEALTH & PHYSICAL EDUCATION

The Examination was taken as a whole/~~in parts~~

Registered No. 458-L-80

Roll No. 3500

31st DECEMBER, 1989.

Countersigned

Controller of Examinations

Vice-Chancellor

Attested

SYED YOUNUS JAN
M.A.B.L.D. B Ed. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

OFFICE OF THE DIRECTOR(SCHOOLS) N.W.F.P. PESHAWAR.

NOTIFICATION

Consequent upon the recommendation of N.W.F.P. Public Service Commission, Peshawar the Director of Education(Schools) N.W.F.P. Peshawar is pleased to appoint the following (Male) candidates as D.P.E/A.D.E.Os (Phy: Edu) in Basic Pay Scale-16 at the School/ Offices mentioned against each from the date of their taking over charge subject to the condition mentioned below :-

<u>No.</u>	<u>Name & Address</u>	<u>Posted at</u>	<u>Remarks</u>
1.	Muhammad Hashim Khan S/O Sarwar Khan, P.E.T. GHS. Kot Kashmir Distt: Bannu	GHSS Chamkani Peshawar	Against vacant post
2.	Gul Aslam Khan S/O Shah Nawaz Khan, P.E.T. GHS Nurar, Bannu Village & P.O. Aba Khel, Bannu	ADEO(Phy:) Office of DEO (M) Sec:Abbottabad	-do-
3.	Muhammad Saeed S/O Obaid Khan Phy:Sup:Office of the Agency Education Officer,Khyber Agency	D.P.E. at GEC(M) Thana Mkd:Agency	-do-
4.	Said Nawaz S/O Jan Baz Khan,PET GHS Ahmadi Banda Karak C/O Jan Chaman Gul General Store,Takht-e-Nasrati, Karak.	ADEO(Phy:) O/O the DEO(M) Secondary Mansehra	-do-
5.	Abdul Sarwar S/O Khan Sarwar Khan, PTC Vill:& P.O. District Bannu.	ADEO(Phy:) O/O the DEO(M) Malakand Agency	-do-

TERMS AND CONDITIONS

1. The Seniority of the candidates recommended by the Commission will be determined by the N.W.F.P. Public Service Commission in accordance with the order of merit.
2. Their services will be liable to termination on one month notice from either side. In case of resignation without notice their one month pay and allowances if any, will be forfeited to Govt.
3. Charge report will be submitted to all concerned.
4. They will get no T.A/D.A. and transfer grant on account of their appointment.
5. The Principals/D.E.Os. concerned should check the original certificates/degrees of the candidates before handing over charge.

Attested
[Signature]
Syed Younus Jinnah Advocate

15

- 6. Their appointment is also subject to the condition that they are domicile of N.W.F.P.
- 7. They will be governed by such Rules & Regulations framed by the Government for the category of Government Servants to which they belong from time to time.
- 8. They are directed to report for their duties within fifteen days positively.

(MUHAMMAD RAFIQ KHAN JADOON)
 DIRECTOR OF EDUCATION (SCHOOLS)
 N.W.F.P. PESHAWAR.

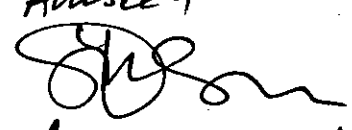
Endst:No. 9032-75/A-14/DPE-RECT: Dated Pesh: the 10-02-1991

Copy forwarded for information and n/action to the :-

1 to 14.

Sd/-

DEPUTY DIRECTOR (SCHOOLS)
 FOR DIRECTOR OF EDUCATION (S
 (SCHOOLS) N.W.F. PROVINCE, PESH.

Attested

 Syed Younis for Advocate

Michael

pon:tion p:nc - 2

(RICHARDSON LEE SMITH) (SECRET)
DIVISION OF PROSECUTION (SPO) (S)

1. The majority of the...
 2. The... will be liable to termination on one month...
 3. Charge reports should be submitted to all...
 4. They will get no... and transfer grant an account...
 5. The... should check the original...
 6. Their... is also subject to the condition that...
 7. They will be... by the...
 8. They are directed to report...

...	...
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...	...
...	...

Consequent upon the recommendation of the...
 the Director of Education...
 is hereby directed to report the following...
 to the... on or before...
 the... of the...

AmexE (16) 272
 10/29/91
 2

17

Encl: No. 9032-75/14/1991 - 14/1991 - Recd: Dated Pesh: the 10/2/1991.

Copy forwarded for information & n/action to the:-

1. Director Bureau of Cur; Dev: Edu: Extension Services
W-7, P.P., Abbottabad.
2. Director of Educatio. (FATA) NWFP, Peshawar.
3. Civil Directors of ... on (S) concerned.
4. Agency Education ... Hyderabad Agency.
5. Dist: Education Officers (M.D.) Concerned.
6. Principal Govt: El Military College (M) ... Agency.
7. Principal/Commandant ... S/ONS concerned.
8. Secretary NWFP Public Service Commission Peshawar.
9. Section Officer (Schools) Govt: of NWFP Education
Department Peshawar.
10. Manager Govt: Print. Press Peshawar.
11. Candidates concerned.
12. Accountant General NWFP Peshawar.
13. Dist: Accounts Offi ... concerned.
14. P. ... to Director ... Peshawar.

10/2/91

Deputy Director (Schools)
For/Director of Education (Schools)
Peshawar.

/Tahir Iqbal/
07-2-1991.

A. M. J. Khan

SYED YOUSUF JANI
Adv. ... Court Peshawar
Federal ... Court

Dated Peshawar, the 07-05-2001.

Annex
"F"
17A

NOTIFICATION.

NO. SO(E-III)2-1/DPEs. The Competent authority is pleased to accord sanction to the award of BPS-17 to Mohammad Hashim Khan Director Physical Education, (BPS-16) Government Higher Secondary School No.1, Peshawar Cantt: with effect from 10 February, 1991 on the basis of Master Degree in Physical Education, possessing at the time of his appointment in 1991 i.e prior to the date of issuance of Notification No. FD(SR-I) 6-36/93, dated 3rd August 1993, where by the benefit of grant of B-17 to DPE, on the basis of Master Degree in Physical Education was withdrawn.

SECRETARY TO GOVT: OF NWFP,
EDUCATION DEPARTMENT

Endst. No. FD(SR-I)6-36/2000/Vol-II

Copy forwarded to the Accountant General, NWFP, Peshawar.

Dated Peshawar 7/5/2001

SECTION OFFICER (SR-I)
FINANCE DEPARTMENT
7/5/2001

Endst: No. & date even.

Copy forwarded for information and necessary action to:-

1. The Director Education (Secondary), NWFP, Peshawar.
2. The Section Officer (SR-I), Govt: of NWFP, Finance Department, Peshawar w/r to his letter No. FD (SR-I) 6-36/2000/Vol-II, Dated 12-03-2001.
3. The Section Officer (Schools), Govt: of NWFP, Edu: Deptt: Peshawar.
4. The District Education Officer (Male) Secondary, Peshawar.
5. Principal GHSS, No.1, Peshawar Cantt:
6. The Officer concerned.

Manzoor Hussain
(MANZOOR HUSSAIN).
SECTION OFFICER(E-III)

Attested
Younus Jan
BYED YOUNUS JAN
B.A.B.E.B. B Ed. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In : Service Appeal No. _____ / 2016

Muhammad HashimAPPELLANT

VERSUS

Govt. of KPK and othersRESPONDENTS.

APPLICATION FOR CONDONATION OF DELAY (IF ANY).

Respectfully submitted:

The applicant/appellant submits as under:-

That firstly the act and omission of the respondents /department is illegal, unconstititutional and void and secondly as financial matter is involved in the matter and the cause of action is the running cause of action, therefore, no limitation runs against the appellant/applicant, but even if this Honourable Tribunal considers the departmental appeal time barred then this application for dondonation of delay if any on the following amongst other grounds:-

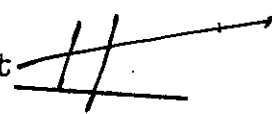
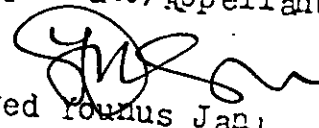
GROUNDS:

1. That in the matter in hand the cause of action is continuous cause of action and the impugned act and omission of the respondents come in the purview of the definition of continous wrong, therefore, in the matter the cause of action starts on first date and ends on the last date of every months/every year, therefore, no question of delay arises in the matter.
2. That the law requires that the matters should/must be decided on merits rather than on technical grounds including the limitation.

3. That the appellant/applicant has got a very good case in his favour therefore, technicalities including the point of limitation (The delay if any) are ignorable.
4. That the appeal of the appellant before this Honourable Tribunal is well within time and strictly in accordance with law contained in Section 4 of the NWFP now Khyber Pakhtunkhwa Service Tribunal Act 1974,
5. That if the delay if any is not condoned the applicant/appellant will suffer an irreparable loss to his seniority, promotion and all other service benefits.
6. That the delay if any has been caused by the delaying tactics of respondents/department and the appellant cannot be held responsible for the same. Specially in the presence of the principles of legitimate expectancy.
7. That in so many similar and identical cases this Honourable Tribunal has ignored the point of limitation and in so many cases has condoned the delay, therefore, in this case also the same point is ignorable/condonable.

It is, therefore, respectfully prayed that on acceptance of this application in the best interest of justice the delay if any in filing departmental appeal may kindly be condoned/ignored and the appeal of the appellant/applicant may kindly be decided on merits. Any other remedy/relief available in the circumstances of the case may also kindly be granted to the applicant/appellant.

Dated 13/2016

Applicant/Appellant 
Through 
(Syed Younus Jan)
Advocate Peshawar High Court
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ / 2015

Muhammad HashimAPPLICANT/APPELLANT

VERSUS

Govt. of KPK and othersRESPONDENTS.

AFFIDAVIT.

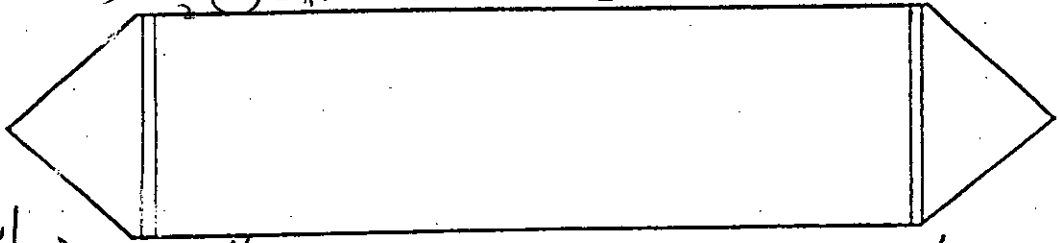
I, Muhammad Hashim, DPE (appellant) do hereby solemnly affirm and declare on Oath that the contents of the attach application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal

Dated 103 / 2016

Deponent H



بعدالت حیدر کھنوی اسروس ٹریبیونل ایسٹ



۲۰۱۶ء پنجاب محمد یاسم ایسٹ

بنام حکومت حیدر کھنوی گواہ ویدہ

رہبانہ ایسٹ

محمد یاسم

ایسٹ

موزخہ 07/31/2016

مقدمہ

دعویٰ میر طہار ایسٹ

جزم 2016

باعث تحریر آنک

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیردی وجواب وہی دکل کاروائی متعلقہ
 آن مقام کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار دیا گیا۔ نیز
 وکیل صاحب کو راضی نامہ کرنے و تقرر ثالثہ فیصلہ بر حلف دیئے جواب وہی اور اقبال دعویٰ اور
 بسورت ڈگری کرنے اجراء اور صولی چیک درو پیسہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
 زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
 نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
 کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
 ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
 پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جانبہ 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 پیردی
 مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سندر ہے۔

المرقوم 07 مارچ 2016

گواہ

بمقام حیدر کھنوی اسروس ٹریبیونل ایسٹ کے لئے منظور

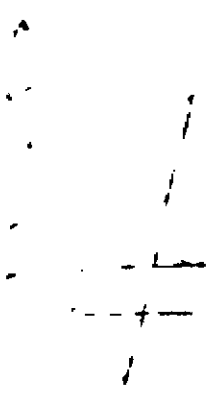
Attested & Accepted
Syed Yousuf Jan
Advocate Peshawar

محمد یاسم ایسٹ

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80
1

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 245/2016

Muhammad Hashim DPE GHSS No: 2 Peshawar Cantt:Appellant.

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-5.

Respectfully Sheweth:-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action / locus standi.
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal, hence liable to be dismissed on this score.
- 4 That the Appellant has filed the instant appeal on malafide motives.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant Appeal is based on malafide intentions just to put extra pressure on the Respondents for gaining illegal service benefits.
- 9 That this Honorable Tribunal has got no jurisdiction to adjudicate upon the present service appeal.
- 10 That the appeal is not maintainable in its present form & circumstances of the case.
- 11 That the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 12 That the instant Appeal is barred by law.

ON FACTS.

- 1 That Para-I, needs no comments being pertains to the academic & professional qualification of the appellant.
- 2 That Para-2, is correct to the extent that the appellant has been promoted against the DPE in BPS-16 post vide the Notification dated 15/6/2009 in terms of Para-2 of the Notification of the Respondent No: 5 & consequent upon the approval of the DPC meeting / minutes held on 26-12-2002 issued by the Respondent No: 3 in favour of the appellant (Copies of both the Notifications are annexed as (Annexures A)

- 3 That Para-3 is correct to the extent that the post of DPE has been upgraded from BPS-16 to 17 for existing incumbents having MA in the relevant subject in the E&SE Department with immediate effect. Similarly the DPEs in (BPS-17) shall be recruited a fresh on the basis of having MA at least in 2nd Division from duly recognized University in the relevant subject by declaring the post of DPEs (BPS-16) as Dying Cadre vide Notification dated 15/6/2009 issued by the Respondent No: 5
- 4 That Para-4 is correct to the extent that the appellant has been promoted against the DPE (BPS-17) post (Regular) vide Notification dated 15/6/2009, in terms of the Notification dated 15/6/2009 issued by the Respondent No: 5 and in accordance with the Appointments, Promotion & Transfer Rules 1989 read with Civil Servants Act 1973 issued by the Respondent No: 2 in the interest of public service & with immediate effect
- 5 That Para-5 is also incorrect & denied. No Departmental Appeal has been filed by the appellant against the impugned Notification dated 15/6/2009. Hence the appeal of the appellant is liable to be dismissed on the following grounds inter alia :-

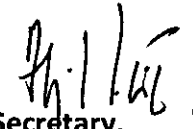
GROUND.

- A Incorrect & denied. The act of the Respondents with regard to the impugned Notification dated 15/6/2009 is in accordance with law, Rules & Policy. Hence needs no interference of this Honorable Tribunal.
- B Incorrect & denied. The act of the Respondents is based on facts & law. Hence the plea of the appellant is liable to be dismissed.
- C Incorrect & denied. The impugned promotion order dated 15/6/2009, is within legal sphere & is liable to be maintained in favour of the Respondents in the interest of justice.
- D Incorrect & denied. The stand of the appellant is baseless & against the factual position & even based on presumption. Hence liable to be rejected.
- E Incorrect & denied. The appellant has been found fit & eligible for promotion against the DPE BPS-17 (Regular) post w.e.f the date of the impugned Notification dated 15/6/2009, which is not only legal but is also liable to be maintained of being based on natural justice.
- F Incorrect & denied. The appellant has been treated as per rules & Policy in the instant case vide impugned Notification dated 15/6/2009, by the Respondents. Hence the plea of the appellant is liable to be struck down.
- G Incorrect & denied. The statement of the appellant is based on presumption as no cogent evidence / proof has been annexed by the appellant in support of his plea regarding similarly placed person. Hence he has made entitled for promotion wef 15/6/2009, by the Respondents.


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Prayer

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


Secretary,
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1&2)

Secretary,
(Finance) Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 5)


Director,
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 3).


Secretary,
(Estab:) Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 4)



(1)
GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

10

Dated Peshawar the 15-6-2009.

Annex 'A' B

NOTIFICATION

NO.S0(PE)2-6/E&SE/DPCMEETING/LIB/09: Consequent upon recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Twenty Three (23 Male) & Thirteen (13 Female) DPEs from BS-16 to BS-17 according to their seniority on regular basis with immediate effect:-

MALE DPEs

S.No	Name & Designation of Officers	Place of Posting	Remarks
1.	Mr. Abdul Hameed ADO's (sports) O/O EDO E&SE Lakki	GHSS Langaral Abbottabad.	Against Vacant Post
2.	Mr. Amanullah Khan DPE GHSS Tajazai Lakki	GHSS Tajazai Lakki	Already occupied by him
3.	Q.S. Mohibullah Shah DPE GHSS Karak	GHSS Karak	-do-
4.	Muhammad Aslam DPE GHSS Abdul Khel Lakki	GHSS Abdul Khel Lakki	-do-
5.	Mr. Sardar Ali DPE GHSS Ghani Dehri Malakand Dargai	GHSS Ghani Dehri Malakand Dargai	-do-
6.	Muhammad Hashim DPE GHSS No. 3 Peshawar City	GHSS No.3 Peshawar City	-do-
7.	Muhammad Saeed ADO (Sports) EDO E&SE Swabi	GHSS Rhich Bhan Abbottabad	Against Vacant Post
8.	Muhammad Ibrahim ud Din DPE GCPE (M) Karak	GHSS Boi Abbottabad	-do-
9.	Mr. Dinakar Khan DPE GHSS Chanikani Peshawar	GHSS Chanikani Peshawar	Already occupied by him
10.	Mr. Abdul Sattar DPE GHSS, Gul Imam Tank	GHSS Gul Imam Tank	-do-
11.	Muhammad Saeed Shah DPE GHSS Kawi Mansehra	GHSS Kawi Mansehra	-do-
12.	Mr. Khaki Rehman DPE GEC (M) Mir Ali NWA	GEC (M) Mir Ali NWA	-do-
13.	Mr. Habib Ullah DPE GHSS Dargai Charsadda	GHSS Dargai Charsadda	-do-
14.	Mr. Habibullah DPE GHSS Mamash Khel Bannu	GHSS Mamash Khel Bannu	-do-
15.	Mr. Zahoor Ahmad DPE GHSS Manki Sharif Nowshera	GHSS Manki Sharif Nowshera	-do-
16.	Mr. Lal Bacha DPE GHSS Mansabdar Swabi	GHSS Mansabdar Swabi	-do-
17.	Abdur Rauf DPE GHSS Wadpaga Peshawar	GHSS Wadpaga Peshawar	-do-
18.	Mr. Fakhr Zaman Shah DPE, GHSS Dhand Saghri, Kohat	GHSS Dhand Saghri, Kohat	-do-
19.	Mr. Wali-ur-Rehman DPE, GCPE Karak	GCPE Karak	-do-
20.	Mr. Kamran Ali, DPE GHSS, Nagri Bunair	GHSS Nagri Bunair	Already occupied by him
21.	Mr. Muhammad Iqbal, DPE GHSS Tehkal Bala Pesh.	GHSS Tehkal Bala Pesh.	-do-
22.	Muhammad Arif DPE GHSS Bam Khel Swabi	GHSS Bam Khel Swabi	-do-
23.	Mr. Zard Ali Khan DPE GHSS Umar payan Peshawar	GHSS Umar payan Peshawar	-do-

Attested by: Muhammad Kaleem Khan Malikood/Final Notification/09

(P.T.O.)

Amir
[Signature]
BYED YOUSUF JAR
B.A.S.L.B. & P.J. Peshawar
Advocate
Peshawar

FEMALE DPEs

11

S.No	Name & Designation of Officers	Place of Posting	Remarks
1.	Mst. Samina Habib DPE RITE(F) Kohat.	RITE(F) Kohat.	
2.	Mst. Gul Nar DPE GGHSS Comp: Abbottabad.	GGHSS Comp: Abbottabad.	Already occupied by her
3.	Mst. Abida Parveen DPE GGHSS Malakpura Abbottabad	GGHSS Malakpura Abbottabad	-do-
4.	Mst. Robina Shaheen DPE GGHSS S.K.Bala Bannu.	GGHSS S.K.Bala Bannu.	-do-
5.	Mst. Sughra Afandi DPE GGHSS Gujrat Mardan.	GGHSS Gujrat Mardan.	-do-
6.	Mst. Sujhaat Begum DPE GGHSS Takhtbhai Mardan	GGHSS Takhtbhai Mardan	-do-
7.	Mst. Saima Gul DPE GGHSS Topi Swabi	GGHSS Topi Swabi	-do-
8.	Mst. Sadia Hazrat DPE GGHSS Kopar Malakand	GGHSS Kopar Malakand	-do-
9.	Mst. Saira Ilaf DPE GGHSS Abbottabad	GGHSS Abbottabad	-do-
10.	Mst. Dil Afroz DPE GGHSS Utmanzai Charsadda	GGHSS Utmanzai Charsadda	-do-
11.	Mst. Robina Shaheen DPE GGHSS Kallang Mardan.	GGHSS Kallang Mardan.	-do-
12.	Mst. Riffat Shaheen DPE GGHSS Garhi Habibullah Mansehra	GGHSS Garhi Habibullah Mansehra	-do-
13.	Mst. Arifa Saleem DPE GGHSS Khairabad Nowshera	GGHSS Khairabad Nowshera	-do-

SECRETARY TO GOVT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Endst; of even no. & date:

Copy is forwarded to:-

- 1) Secretary to Govt of NWFP, Establishment Department, Peshawar.
- 2) Special Secretary (Regulation), Establishment Department, Govt of NWFP Peshawar.
- 3) Secretary to Govt. of NWFP, Finance Department, Peshawar.
- 4) Director (E&SE) NWFP Peshawar.
- 5) Executive District Officer (E & SE) concerned.
- 6) The Accountant General NWFP.
- 7) District Accounts Officer concerned.
- 8) Deputy Database Administrator (EMIS) Elementary & Secondary Education Peshawar.
- 9) PA to Secretary Elementary & Secondary Edu: Department
- 10) Officer concerned
- 11) Master file

Attested
[Signature]

SYED YOUSUF JAN

B.A.E.I. Ed. Certificate
Adv. High Court Peshawar
Federal District Council

[Signature]
(ARIF JAMIL)
SECTION OFFICER
(PRIMARY)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

In re:- Service Appeal No. 245 / 2016

Mohammad HashimAppellant

Versus

The Government of K.P.K. and othersRespondents.

REPLICATION ON BEHALF OF APPELLANT TO THE JOINT
PARA-WISE COMMENTS OF RESPONDENTS NO.1 - 5

Respectfully submitted:

Replication to the preliminary objections

1-12) The preliminary objections raised by the respondents in these paras are incorrect, false, misconceived and are based on no evidence, hence denied. Moreover, it is submitted that the appellant has got a valid cause of action/locus standi to challenge the illegal acts and omissions of the respondents. The appeal is well within time, no facts have been concealed from this Hon'ble Tribunal and no dirty hands have been shown or proved each and every facts has been narrated by the appellant in his appeal and all the necessary parties have been arrayed by him in his appeal, no misjoinder or non-joinder has been shown or proved by the respondents. No malafide on the part of the appellant has been shown or proved while the same is proved on the part of the respondents. The appeal is maintainable in its present form and in the present circumstances and there could be no other form but in which it has been submitted and the same is not barred by any law but has been submitted strictly in accordance with laws/Rules. Moreover, being a matter of terms and conditions of service this Hon'ble Tribunal has got a valid jurisdiction.

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Replication to the facts.

- 1) Needs no replication.
- 3&4) In these paras the contents of the appeal have been admitted as correct, therefore, need no replication.
- 2&5) The contents of these paras of the reply are incorrect, false and misconceived, hence denied while the contents of these paras of the appeal are correct, true and clear crystal. Moreover, it is submitted that as the matter of non-filing of a departmental appeal is concerned in this regard, it is submitted that firstly this Hon'ble Tribunal may kindly see that whether in light of the law laid down by the august Supreme Court in cases of Hameed Akhtar Niazi Versus The Secretary Establishment Division, Govt. of Pakistan and others reported in 1996 SCMR page 1185 and Tara Chand and others Versus Karachi Water & Sewerage Board Karachi & others in light of the law laid down in these judgments the respondents were legally bound/required to grant the relief to the appellant being a similarly placed person but by not doing so the respondents have not only committed the contempt of court but have also disregard the judgments passed by this Hon'ble Tribunal and therefore have rendered themselves to bear its consequences, secondly as compelled by the Department, the appellant has properly filed a departmental appeal and then this appeal., and even the fact of filing departmental appeal has been stated by the appellant on affidavit and the strong legal presumption would be that the copy of the departmental appeal attached to the instant appeal is sent to the respondents (competent authority) very before and after lapse of a considerable period what action has been taken on the same.

Replication to the grounds

- A-G) The contents of these paras of the reply are incorrect, false, misconceived and without proof, hence denied, moreover, it is submitted that as the appellant was highly qualified, fit and thus was fully eligible for award of BPS-17 as ^{regular} ~~personal~~ grade at the

time and in light of para-1 of the letter/Notification dated 13-11-2007, so the impugned act and omissions of the department/respondents is not only factually incorrect and legally untenable but also is based on the malafide intention of the respondents and is against the principles of natural justice and is neither in accordance with law nor is based on facts or law. The stand of the appellant is neither baseless nor is against the factual position but the act and omission of the respondents is not in legal sphere and even the appellant has not been treated in accordance with laws/Rules and the appellant has got cogent proof/evidence in his favour which he will produce before the Hon'ble Tribunal at the time of arguments.

It is, therefore, prayed that on acceptance of the above and facts narrated and grounds mentioned in the appeal, the appeal of the appellant may kindly be accepted and the relief claimed in the appeal may kindly be granted to the appellant.


Appellant

through



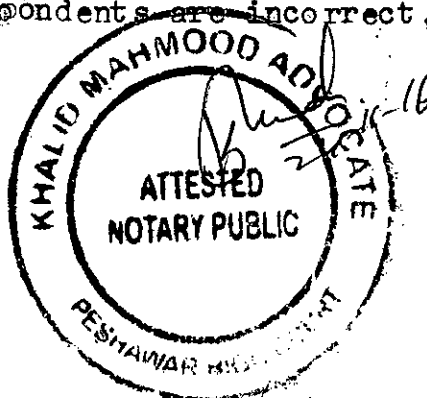
(Syed Younas Jan)
Advocate, Peshawar

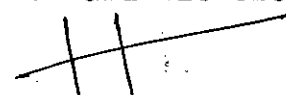
PESHAWAR

23-11-2016

AFFIDAVIT/COUNTER AFFIDAVIT

I, Muhammad Hashim, D.P.E. (the appellant) do hereby solemnly affirm and declare on oath that the contents of this replication are true, correct and clear crystal and nothing has been concealed from this Hon'ble Tribunal while the contents of the reply of respondents are incorrect, false and misconceived.




Deponent