

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 1174/2023

Muhammad Rafiq..... Appellant

Versus

Government of Khyber Pakhtunkhwa, Peshawar & others..... Respondents

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Assistant Director (Admin)
For Director General

23-1-2024

Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 1174/2023

Muhammad Rafiq.....

**Khyber Pakhtunkhwa
Service Tribunal..... Appellant**

Versus

Diary No. 10627

Dated 18-1-2024

1. Chief Secretary Khyber Pakhtunkhwa, Peshawar.
2. Secretary Mines and Minerals Department Civil Secretariat Khyber Pakhtunkhwa, Peshawar.
3. Director General Mines and Minerals, Khyber Pakhtunkhwa, Peshawar.
4. Secretary Finance Civil Secretariat KHYBER PAKHTUNKHWA, Peshawar..... Respondents

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 TO 04.

RESPECTFULLY SHEWETH: -

Preliminary Objection:

1. That the appellant has got no cause of action to file the instant appeal.
2. That the instant appeal is not maintainable in its present form.
3. That no vested right of the appellant has been infringed as such the appeal is liable to be dismissed on merit.
4. That the appellant has got no locus standi to file this appeal.
5. That the appellant has not come to this Honorable Tribunal with clean hands.
6. That the appeal is not tenable and is liable to be dismissed.
7. That the appellant is estopped from filing the instant appeal. That the appeal in its present form is bad, defective hence liable to be dismissed.
8. That the appellant is barred by law and limitation.

REPLY TO FACTS.

1. Pertains to record.
2. Admitted correct that the appellant was promoted from the post of Surveyor (BS-11) to Survey & Drawing Officer (BS-16) on 04.12.2013, while the respondent No.5 was promoted from Draftsman (BS-11) to the post of Chief Draftsman (BPS-17) vide Notification dated 30.10.2013.

- 2
3. Pertain to record. However, it is quite clear that the appellant was promoted from BPS-16 to BPS-17 as Assistant Director Survey & Drawing vide Notification dated 18.05.2022, whereas respondent NO.5 Muhammad Farooq was promoted to the post of Chief Draftsman (BS-17) vide notification dated 30.10.2013. **(Copy of notification dated 18.05.2022 and dated 30.10.2013 are attached as Annexure-A&B).**
 4. Incorrect. The appellant concealed facts from this Honorable Tribunal. According to section 8(5) of the Civil Servant Act 1973, the seniority list prepared under section (I) shall be revised and notified in the official Gazette at least once in a calendar year, preferably in month of January, accordingly after fulfilment of all codal formalities and approval of Competent Authority. Final seniority list of Chief Draftsman and Assistant Director (S&D) (BS-17) of Mines & Minerals Department issued on 07.02.2022 stood on 30.11.2021. It is pertinent to mention here that at the time of final seniority list the appellant was serving in BS-16 as S&D Officer. **(Copy of final seniority list is attached as Annexure-C).**
 5. Incorrect. The promotion of respondent No.5 was processed on notified/final seniority list and after proper recommendation of PSB and approval of Competent Authority the promotion Notification dated 13.12.2022 in respect of respondent No.5 (Muhammad Farooq) as Deputy Director (BS-18) was issued as he has completed the required length of 05 years' service and also covered the efficiency index required for promotion to (BS-18).
 6. Incorrect, Respondent No.5 (Muhammad Farooq) was promoted to the post of Deputy Director (BS-18) by respondent department after fulfilling the required criteria.
 7. Pertain to record.
 8. Pertain to record, however, it is necessary to mention here that the respondent No.5 (Muhammad Farooq) was promoted on notified/finals seniority list.
 9. Incorrect. Final seniority list of Chief Draftsman and Assistant Director (S&D) BS-17 of Mines & Minerals Department was issued on 07.02.2022 stood on 30.11.2021 and as respondent No.5 (Muhammad Farooq) was promoted to (BS-17) in the year 2013 and the appellant was promoted to BS-17 in the year 2022 and undisputedly the respondent No.5 (Muhammad Farooq) is senior than the appellant and the appellant has no cause of action to file the instant appeal.

GROUND.

- A. Incorrect and denied, final seniority list of Chief Draftsman and Assistant Director (S&D) BS-17 of Mines & Minerals Department issued on 07.02.2022 stood on 30.11.2021 and the respondent No.5 being senior to the appellant was promoted to the post of Deputy Director (BS-18).
- af*

B. It is correct that the appellant was appointed in (BPS-11) as surveyor in the year 1986, whereas the respondent No.5 was appointed as draftsman (BS-11) in the year 19991, but the appellant was promoted from the post of Surveyor (BS-11) to the post of Survey and Drawing Officer (BS-16) on 04.12.2013 and then promoted to Assistant Director(S&D)(BS-17)on 18.05.2022, whereas the respondent No.5 (Muhammad Farooq) was directly promoted from draftsman (BPS-11) to Chief Draftsman (BS-17) on 30.10.2013 as promotion criteria to BS-17 of both Surveyor and Draftsman is different. Moreover, according to rule 17(3) of APT Rules 1989 seniority in various cadre of civil servant appointed by initial recruitments vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre read with sub-section (4) of section of KP Civil Servant Act 1973 seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to the post. Thus the appellant was promoted to BS-17 as Assistant Director (S&D) on 18.05.2022 while the respondent No.5(Muhammad Farooq) was promoted to BS-17 as Chief Draftsman (BS-17) on 30.10.2013, which means that respondent No.5(Muhammad Farooq) was promoted earlier than the appellant in BS-17 and became senior to the appellant. (Copy of rules are attached as Annexure-D).

C. Incorrect, the appellant was treated in accordance with law and no fundamental rights of the appellant was violated by the respondent department.

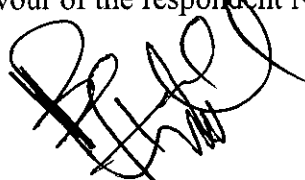
D. Incorrect. The respondent department has issued the final seniority list by following the law, rules & regulations.

E. Incorrect. As explained in para-B above.

F. The respondent No.5 (Muhammad Farooq) also seeks permission of this Honorable tribunal to advance other grounds and proof at the time of hearing.

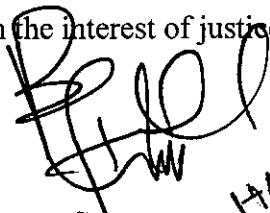
Prayer:

In view of the above stated position, it is therefore, most humbly prayed that the Honorable Tribunal may very graciously be pleased to dismiss the instant service appeal with cost in favour of the respondent No.5(Muhammad Farooq) in the interest of justice.



Chief Secretary
Khyber Pakhtunkhwa, Peshawar,
(Respondent No. 1)

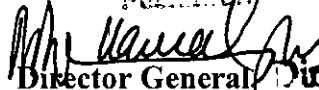
NAQEM ASLAM CHAUDHARY



HAMEED ULLAH SHAH

Secretary
Minerals Development Department
Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 2)

Govt. of Khyber Pakhtunkhwa
Minerals Development Department
Peshawar



Director General
Mines & Minerals
Khyber Pakhtunkhwa
(Respondent No. 4)



Amer Sultan Tareen
Secretary Finance

Department, Khyber Pakhtunkhwa
✓ (Respondent No. 3)

SECRETARY
Govt. of Khyber Pakhtunkhwa
Finance Department

MUSTAFA KAMAL SHAH

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

SERVICE APPEAL NO. 1174/2023


Muhammad Rafiq..... Appellant

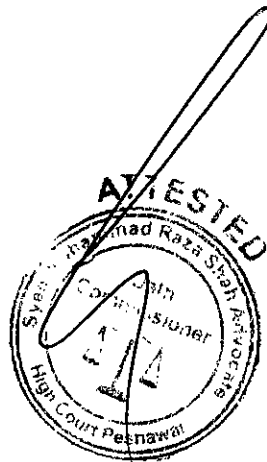
Versus

Government of Khyber Pakhtunkhwa, Peshawar & others..... Respondents

A F F I D A V I T

I, Mr. Mustafa Kamal Sha Director General Mines and Minerals Khyber Pakhtunkhwa (BS-20) do hereby solemnly affirm and declare that the contents of the accompanying para-wise reply is true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honorable Tribunal. It is further stated on oath that in this appeal, the answering respondents have neither been placed ex-parte nor their defense have been struck off.


Director General
Mines & Minerals
Khyber Pakhtunkhwa
(Respondent NO.4)



12 / 1 / 2024

Annex-A

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**Government of
Khyber Pakhtunkhwa
Minerals Development Department**

Dated Peshawar, 18th May, 2022

NOTIFICATION

No.SO(E)/MDD/2-4/2022: The Competent Authority on the recommendations of the Departmental Promotion Committee is pleased to promote **Muhammed Rafique**, Survey & Drawing Officer (BS-16) to the post of Assistant Director (Survey & Drawing) BS-17 in the Directorate General Mines & Minerals, Khyber Pakhtunkhwa, on regular basis, with immediate effect.

2. On his promotion, the above named Assistant Director (Survey & Drawing) BS-17 will remain on probation for a period of one year extendable for another one year in terms of Section 6 (2) of Khyber Pakhtunkhwa Civil Servants, Act, 1973 read with Rule 15 (1) of Khyber Pakhtunkhwa Civil servant (Appointment, Promotion and Transfer) Rules, 1989.

3. Consequent upon the above promoted officer is allowed to actualize his promotion against the post of Assistant Director (Survey & Drawing) BS-17 in the Directorate General of Mines & Minerals, Khyber Pakhtunkhwa, being single cadre post.

-Sd-

Secretary to Govt: of Khyber Pakhtunkhwa,
Minerals Dev: Department

No.SO(E)/MDD/2-4/2022

18554-62

Dated Peshawar, 18th May, 2022

Copy forwarded to:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. The Directorate General of Mines, Khyber Pakhtunkhwa, Peshawar.
3. PS to Advisor to Chief Minister for Mines & Minerals, Khyber Pakhtunkhwa.
4. PS to Secretary Establishment Department Khyber Pakhtunkhwa, Peshawar.
5. PS to Secretary Minerals Dev: Department Khyber Pakhtunkhwa, Peshawar
6. Officer Concerned
7. Personal File.
8. Office order file.
9. Master File

(Masiz Abdul-Jalil)
Section Officer (Estt.)
Ph# 091-9223559

DIRECTOR
General (Minerals)
D.G. Mines & Minerals
Khyber Pakhtunkhwa, Peshawar

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Annex-B
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GOVERNMENT OF
KHYBER PAKHTUNKHWA
MINERALS DEVELOPMENT DEPARTMENT

Dated Peshawar, the 30th October, 2013

NOTIFICATION

No.SO-Admn(MD)1-6/91/Vol-XV.- The Competent Authority, on the recommendation of Departmental Promotion Committee, is pleased to promote Mr. Muhammad Farooq, Draftsman (BPS-11) to the post of Chief Draftsman (BPS-17) in the Directorate General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar on regular basis with immediate effect.

2. The officer, on promotion will remain for a period of one year in terms of section-6 (2) of Khyber Pakhtunkhwa, Civil Servants Act, 1973 read with rule-15 (1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989.

3. Consequent upon the above, Mr. Muhammad Farooq, on promotion to BPS-17 as Chief Draftsman is hereby transferred from the office of Assistant Director Mineral Development, Abbottabad and posted as Chief Draftsman (BPS-17) in Headquarter's Office, Directorate General, Mines & Minerals, Khyber Pakhtunkhwa Peshawar against the vacant post with immediate effect.

Secretary to Govt. of Khyber Pakhtunkhwa,
Minerals Development Department

Ends: No.SO-Admn(MD)1-6/91/Vol-XV

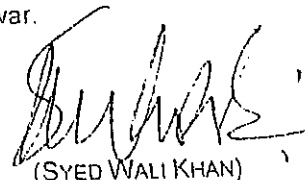
1263-68
Dated Peshawar the, 30th October, 20


Copy is forwarded to: -

1. ✓ The Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officer, Abbottabad.
4. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Minerals Development Department.
5. The officer concerned.
6. The Manager, Govt. Printing Press, Peshawar.

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(SYED WALI KHAN)
Section Officer (Establishment)

A.D.A.

ASSISTANT DIRECTOR
(Administration)
D.G. Mines and Minerals
Khyber Pakhtunkhwa, Peshawar

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Government of Pakhtunkhwa Khyber
Mineral Development Department

Dated Peshawar, the 07th February, 2022

NOTIFICATION

No. SO (E)/MDD/2-3/2021

1893-98

In pursuance of section 8(1) of the Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rules-17 Civil Servant (Appointment, Promotion and Transfer) Rules, 1989, the competent Authority is please to notify/circulate final seniority list of Chief Draftsman (BS17) & Assistant Director (Survey & Drawing) BS-17, in Directorate General of Mines & Minerals, Khyber Pakhtunkhwa, (as it stood on 30.11.2021) for general information.

S. No	Name of Officer	Qualification	Date of Birth With Domicile	Date of 1 st entry into Government Service	Regular appointment /promotion to the present post			Present place and date of posting Director Licensing
					Date	BPS	Method of Rec./Appt	
1.	Muhammad Farooq Chief Draftsman	DAE Civil	16.01.1971 Manshera	04.02.1991	01.11.2013	17	By Promotion	Office of ADM Abbottabad
2.	Mr. Shahid Farooq Assistant Director (S&D)	Matric	11.02.1962 Peshawar	05.10.1982	17.01.2019	17	By Promotion	H/Q Office Peshawar 16.10.2016


No. SO (E)/MDD/2-3/2021:/

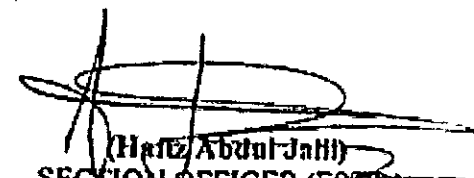
Copy forwarded to:

1. Director General, Mines & Minerals, Khyber Pakhtunkhwa, Peshawar.
2. Private Secretary to Secretary Minerals Development Department, Khyber Pakhtunkhwa, Peshawar.
3. The Manager, Government Printing & Stationary Department, Khyber Pakhtunkhwa, Peshawar.
4. Officers Concerned.

SECRETARY MINERAL DEVELOPMENT DEPARTMENT
KHYBER PAKHTUNKHWA

Dated Peshawar, 07.02.2022


ASSISTANT DIRECTOR
(Administration)
D.G Mines and Minerals
Khyber Pakhtunkhwa, Peshawar


(Hafiz Abdul Jallo)
SECTION OFFICER (ESTT.)
07/02/20

Amended

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cases such

(3) Seniority on initial appointment to a service, ⁷[cadre] or post shall be determined as may be prescribed.

⁸(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

⁹(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

9. Promotion:-(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a ¹⁰[higher] post for the time being reserved under the rule for departmental promotion in ¹¹[] the service or cadre to which he belongs.

(2) A post referred to in sub-section (1) may either be a selection post or a non selection post to which promotion shall be made as may be prescribed:

- (a) in the case of a selection post, on the basis of selection on merit; and
- (b) in the case of non-selection post, on the basis of seniority-cum-fitness.

10. Posting and Transfer:- Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. Termination of service:- (1) The service of a civil servant may be terminated without notice-

- (i) During the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [service], cadre or post to another [service], cadre or post, his service shall not be so terminated so long as he

7 The word "grade" substituted by NWFP Ordinance No. IV of 1985.
 8 Sub section (4) of Sec-8 substituted by NWFP Ordinance No. IV of 1985.
 9 Sub section (5) of Sec-8 added by NWFP Act No. I of 1989
 10 The word "higher" inserted by NWFP Ordinance No. IV of 1985.
 11 The words "the higher grade of" omitted by NWFP Ordinance No. IV of 1985.

(Signature)
ASSISTANT DIRECTOR
 (Administration)
 D.G. Works and Minerals
 Higher Peshawar

civil servant or ⁶[cadre]

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 Annex E

(f) For promotion & promotion posts, the officer on the panel securing maximum marks will be recommended for promotion. Thirty marks placed at the disposal of the Provincial Selection Board in such cases shall be awarded for technical qualification, experience and accomplishments (research publications relevant to the field of specialism).

(g) Since three of the aspects of performance i.e. moral integrity, intellectual integrity, quality and output of work do not figure in the existing PER forms, the grades secured and marks scored by the officer in overall assessment shall be notionally repeated for the other complementary evaluative aspects and form the basis of quantification.

(h) The performance of officers shall be evaluated in terms of the following grades and scores:

		<u>Upto 11th June, 2008</u>	<u>From 12th June, 2008</u>
1.	Outstanding	-	10 Marks
2.	Very Good	10 marks	8 marks
3.	Good	7 marks	7 marks
4.	Average	5 marks	5 marks
5.	Below Average	1 mark	1 mark

(i) The outstanding grading shall be awarded to officers showing exceptional performance but in no case should exceed 10% of the officers reported on. The grading is not to be printed in the PER form but the reporting officer while rating an officer as "outstanding" may draw another box in his own hand in the form, initial it and write outstanding on the descriptive side. Convincing justification for the award shall be recorded by the reporting /countersigning officer. The discretion of awarding "outstanding" is to be exercised extremely sparingly and the award must be merited.

(j) The quantification formula and instructions for working out quantified score are annexed.

Annex E ✓ IV.

Promotion of officers who are on deputation, long leave, foreign training:

a) The civil servants who are on long leave i.e. one year or more, whether within or outside Pakistan, may be considered for promotion on their return from leave after earning one calendar PER. Their seniority shall, however, remain intact.


ASSISTANT DIRECTOR
 (Administration)
 D.G. (M) in charge
 Khyber Pakhtunkhwa, Peshawar

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- b) The civil servants who are on deputation abroad or working with international agencies within Pakistan or abroad, will be asked to return before their cases come up for consideration. If they fail to return, they will not be considered for promotion. They will be considered for promotion after earning one calendar PER and their seniority shall remain intact.
- c) In case of projects partially or fully funded by the Federal or Provincial Government, where PERs are written by officers of Provincial Government, the condition of earning one calendar PER shall not be applicable to officer on deputation and the officer on return to his/her cadre shall be considered for promotion.
- d) The civil servants on deputation to Federal Government, Provincial Government, autonomous/semi-autonomous organization shall be considered for promotion and informed to actualize their promotion within their cadres. They shall have to stay and not be allowed to go back immediately after promotion. Such stay shall be not less than a minimum of two years. If he/she declines his/her actual promotion will take place only when he/she returns to his/her parent cadre. His/her seniority in the higher post shall, however, stand protected.
- e) The cases of promotion of civil servants who have not successfully completed the prescribed mandatory training (MCMC, SMC & NMC) or have not passed the departmental examination for reasons beyond control, shall be deferred.
- f) Promotion of officers still on probation after their promotion in their existing Basic Scales shall not be considered.
- g) A civil servant initially appointed to a post in a Government Department but retaining lien in a department shall not be considered for promotion in his parent department. However, in case he returns to parent department, he would be considered for promotion only after he earns PER for one calendar year.
- h) A civil servant who has resigned shall not be considered for promotion no matter the resignation has yet to be accepted.

V. Deferment of Promotion:

- (a) Promotion of a civil servant will be deferred, in addition to reasons given in para-IV, if
 - (i) His inter-se-seniority is disputed/sub-judice.


ASSISTANT DIRECTOR
(Administration)
D.G. Muzes and Pensions
Khyber Pakhtunkhwa, Peshawar

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Annex "E"

- Mid-Career Management Course at Institute of Management (NIM) for promotion to BS-19
- Senior Management Course at National Management College, Lahore for promotion to BS-20
- National Management Course at National Management College, Lahore for promotion to BS-21

(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of specialization as envisaged in the existing Promotion Policy.

(c) The qualifying thresholds of quantification of PERs for nomination to these trainings are as under:

MCMC	60
SMC	70
NMC	75

(d) There will be no exemptions from mandatory trainings. An officer may, however, request for temporary exemption in a particular moment in time but grant of such exemption would be at the discretion of the competent authority. No such request with regard to an officer would be made by the Government Departments concerned.

(e) Three officers shall be nominated for each slot of promotion on the basis of their seniority. Those unwilling to attend will be dropped at their own expense without prejudice to the rights of others and without thwarting or minimizing the chance of improving the quality of service.

(f) Officers failing to undergo mandatory training in spite of two time nominations for a training shall stand superseded if such failure was not for the reasons beyond the control of the officers concerned.

III. **Development of Comprehensive Efficiency Index (CEI) for promotion:**

(a) The Comprehensive Efficiency Index to be maintained for the purpose of promotion is clarified as under:

(i) The minimum of aggregate marks for promotion to various grades shall be as follows:

Basic Scale	Aggregate marks of Efficiency Index
18	50
19	60
20	70
21	75

(Signature)
 ASSISTANT DIRECTOR
 (Administration)
 D.G. Muzes and Buildings
 Ministry of Information, Peshawar

Section-3

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Government Servants Appeals Rules

THE NORTH WEST FRONTIER
PROVINCE CIVIL SERVANTS
(APPEAL) RULES, 1986.

Statutory provision

S.No.1

Section 22 of the NWFP Civil Servants Act, 1973

Right of Appeal or Representation:- (1) Where a right to prefer an appeal or apply for review in respect of any order relating to the terms and conditions of his service is provided to a civil servant under any rules applicable to him, such appeal or application shall, except as may be otherwise prescribed be made within thirty days of the date of such order.

(2) Where no provision for appeal or review exists under the rules in respect of any order or class of orders, a civil servant aggrieved by any such order may, within thirty days of the communication to him of such order, make a representation against it to the authority next above the authority which made the order:

✓ Provided that no representation shall lie on matters relating to the determination of fitness of a person to hold a particular post or to be promoted to a higher post or grade.

S.No.2

1. Short title, commencement and application:- (1) These Rules may be called the North-West Frontier Province Civil Servants (Appeal) Rules, 1986.

(2) They shall come into force at once and shall apply to every person who is a member of the civil service of the Province or is the holder of a civil post in connection with the affairs of the Province and shall also apply to or in relation to a person in temporary employment in the civil service in connection with the affairs of the Province.

Published in the NWFP Government Gazette, Extraordinary, dated 2.6.1986 at Pages 1290-93

ASSISTANT DIRECTOR
(Admin. Services)
D.G. Mines and Minerals
Khyber Pakhtunkhwa, Peshawar


**DIRECTORATE GENERAL, MINES & MINERALS PESHAWAR**

Attached Department near Judicial Complex, Khyber Road, Peshawar Cantt

PHONE NO. 091-9210275-9211140 FAX NO. 9210236

AUTHORITY LETTER

Mr. Said Muhammad Superintendent (Litigation) BS-17 of Directorate General Mines & Minerals is hereby authorized to submit affidavit to the Honorable Service Tribunal Peshawar, in Case Titled **Muhammad Rafiq "V/S" Government of Khyber Pakhtunkhwa & others** on behalf of Government.


Director General Mines & Mineral
Khyber Pakhtunkhwa
Director General,
Mines and Minerals
Khyber Pakhtunkhwa