

| Sr. No | Date of order/proceedings | Order or other proceedings with signature of Judge or Magistrate |
|--------|---------------------------|--|
| 1 | 2 | 3 |
| | 10.03.202 | <p align="center"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p align="center">Service Appeal No. 520/2019</p> <p align="center">Date of Institution 23.04.2019 Date of Decision 10.03.2020</p> <p>Mohammad Arshad-II Additional Secretary Inter Provincial Coordination Department, Civil Secretariat Peshawar.</p> <p align="right">Appellant</p> <p align="center">Versus</p> <ol style="list-style-type: none"> 1. The Provincial Selection Board through its Chairman, the Chief Secretary, Khyber Pakhtunkhwa. 2. The Government of Khyber Pakhtunkhwa through Chief Secretary. 3. The Secretary Establishment Department/Secretary of PSB. 4. Mr. Imtiaz Ayub presently posted as Secretary Administration Department Khyber Pakhtunkhwa Peshawar. 5. Mr. Muhammad Israr Secretary to Government of Khyber Pakhtunkhwa Agriculture, Livestock and Cooperation Department Peshawar. <p align="right">Respondents</p> <p>Mr. Muhammad Hamid Mughal-----Member(J) Mr. Mian Muhammad-----Member(E)</p> <p><u>JUDGMENT</u> <u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> -Appellant in person and Mr. Zia Ullah learned Deputy District Attorney for respondents present.</p> |

10.3.2020

2. The appellant has filed the present service appeal with the following prayer:

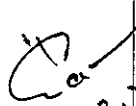
“The recommendations of the PSB may be set-aside and directed to consider the appellant’s case along with others afresh as per law/rules from the date i.e. 17.09.2018 for promotion from BS-19 to BS-20 and award of pay benefits of BPS-20 from the back date i.e. 17.09.2018.”

3. Appellant argued that while considering his case the Provincial Selection Board (PSB) did not find him fit for promotion for the following reasons as noted in his SMC report

- Limited understanding of public policy and his promotion potential was found limited.
- His comprehension of interplay of the internal and external dynamics of Pakistan was sketchy and lacked profundity.
- His analytical and synthesizing capacity was some but deficient and could barely address complex issues.
- He was rated very low as a leader, friend and professional by his peers.

Appellant further argued that the PSB has wrongly recommended his supersession as the criteria for promotion to BS-20 was considered in violation of Section-09 of the Khyber Pakhtunkhwa Civil Servants Act, 1973. Further argued that he has not been treated in accordance with law and the adverse action of the PSB against him is in violation of fundamental rights and due process.

4. As against that learned DDA argued that after SMC appellant’s promotion case was placed before the PSB in its meeting held on 17.09.2018 and the PSB thoroughly discussed


10.3.2020

his service record and did not find him fit for promotion due to the reasons as mentioned in his SMC report and recommended his supersession. Learned DDA mainly argued that under the provisio (b)(i) to Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 no appeal shall lie to a tribunal against an order or decision of a departmental authority determining the fitness to be promoted to a higher post or grade and therefore this Tribunal has got no jurisdiction to entertain the present service appeal.

5. Arguments heard. File perused.

6. The Provincial Selection Board while considering the SMC report of the appellant gave him 07 marks out of 15 and declared that he could not achieve the required threshold for promotion. The board did not find the appellant fit for promotion and recommended his supersession.

7. Provisio (b)(i) to Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 clearly envisages that no appeal shall lie to a tribunal against an order or decision of a departmental authority determining the fitness or otherwise of a person to be appointed to or hold a particular post or to be promoted to a higher post or grade.

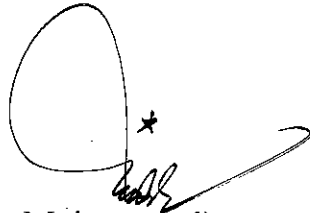
8. Since in the present service appeal the appellant has challenged the recommendations of the PSB regarding his fitness for promotion to the next higher post of BS-20, we are of the considered opinion that the present service appeal is not

10-3-2010

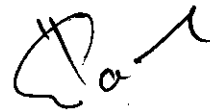
maintainable in view of bar contained in proviso (b)(i) to Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and when there is no case of the appellant that the recommendations of the PSB are actuated with malice, based on sheer discrimination or that malafide is floating on the surface.

9. This may also be observed that the appellant has not challenged the promotion order followed by the recommendations of the Provincial Selection Board, similarly the appellant has arrayed private respondents in the present service appeal but without challenging the recommendations of the PSB in relation to them.

10. As a sequel to above, the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Mian Muhammad)
Member



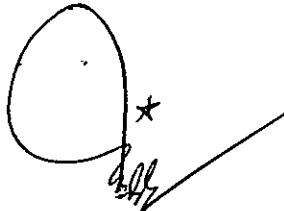
(Muhammad Hamid Mughal)
Member

ANNOUNCED


10.03.2020

19.02.2019

Appellant present. Mr. Zia Ullah learned Deputy District Attorney for official respondents present. Nadir Khan (Superintendent) for private respondent No.5 present. Arguments heard. Representative of private respondent No.5 stated that private respondent No.5 relies upon the arguments of learned DDA. To come up for order on 10.03.2020 before D.B. During the course of arguments it was brought to the notice of this Tribunal that the appellant has now been promoted to BS-20. Representative of respondent department is directed to furnish copy of order of promotion of the appellant to BS-20 alongwith relevant minutes of PSB.



Member

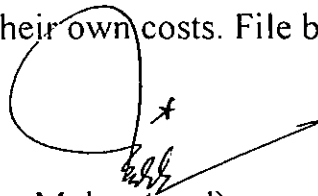


Member

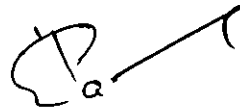
10.03.2019

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney present.

Vide separate judgment of today of this Tribunal placed on file, the present service appeal is dismissed. Parties are left to bear their own costs. File be consigned to the record room.



(Mian Muhammad)
Member



(Muhammad Hamid Mughal)
Member

ANNOUNCED.

10.03.2020

13.02.2020

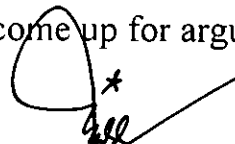
Appellant in person and Mr. Ziaullah, Deputy District Attorney alongwith Mr. Sultan Shah, Assistant on behalf of official respondents No. 1 to 3 present. None present on behalf of private respondents No. 4 & 5, therefore, notices be issued to them for attendance and arguments for 17.02.2020 before D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

17.02.2020

Appellant in person present. Nadir Khan (Superintendent) present on behalf of private respondent No.5. None present on behalf of private respondent No.4. As such private respondent No.4 is placed ex-parte. Adjourned. To come up for arguments on 19.02.2020 before D.B.


Member


Member

06.11.2019

Appellant alongwith counsel, Addl. AG for respondents No. 1 to 3, Abdul Zaman, P.S for respondent No. 4 and Nadar Khan, Superintendent for respondent No. 5 present.

Respondents No. 4 & 5 have furnished their respective parawise comments. The same are placed on record. The appeal is assigned to D.B for arguments on 08.01.2020. The appellant may submit rejoinder, within a fortnight, if so advised.

Chairman

08.01.2020

Appellant in person present. Mr. Muhammad Jan learned Deputy District Attorney present. Appellant submitted rejoinders, placed on file. None present on behalf of private respondents No.4 & 5. Fresh notice be issued to private respondents for 20.01.2020. Adjourn. To come up for arguments on 20.01.2020 before D.B.

Member

Member

20.01.2020

Appellant in person present. Mr. Kabirullah Khattak learned Additional Advocate General for the official respondents No. 1 to 3 present. On the previous date notice was ordered to be issued against Private respondents No. 4 & 5, but the office has not issued notice to them, therefore, fresh notice be issued to Private respondents No. 4 & 5. Adjourned. To come up for attendance of respondents No. 4 & 5 and arguments on 13.02.2020 before D.B.

(Hussain Shah)
Member

(M. Amin Khan Kundi)
Member

31.07.2019

Appellant in person and Mr. Usman Ghani, District Attorney alongwith Mr. Naqibullah, Stenographer for respondents present.

The representative of the respondents requests for further time to submit the reply/comments.

Adjourned to 18.09.2019 before S.B.


Chairman

18.09.2019

Appellant in person and Addl. AG alongwith Naqibullah, Stenographer for respondents No. 1 to 3 present. Nemo for respondents No. 4 & 5.

Parawise comments on behalf of respondents No. 1 to 3 have been furnished which are placed on record. Fresh notices be issued to respondents No. 4 & 5 for submission of requisite reply/comments on 07.10.2019 before S.B.


Chairman

07.10.2019

Appellant in person and Addl. AG alongwith Naheed Gul Assistant for respondents No. 1 to 3 present. Nemo for respondents No. 4 & 5.

Parawise comments on behalf of respondents No. 1 to 3 have already been furnished. Fresh notices be issued to respondents No. 4 & 5 by ^{way} of last chance for submission of requisite reply/comments on 06.11.2019 before S.B.


Chairman

19.06.2019

Appellant Mohammad Arshad in person present. Preliminary arguments heard. It was contended by the appellant that Provincial Selection Board (PSB) was constituted for promotion from BPS-19 to BPS-20 in the Establishment Department. It was further contended that as per Provincial Selection Board meeting, he was shown at serial No. 2 whereas private respondents No. 4 & 5 are shown at serial No. 3 & 4 of the P.S.B. It was further contended by the appellant that that as per seniority list he was most senior than the private respondents but the respondent-department have superseded him from promotion form BPS-19 to BPS-20 on the ground mentioned in the Provincial Selection Board meeting. It was further contended that the ground mentioned for supersession of his promotion from BPS-19 to BPS-20 is not mandatory and the respondent-department has ignored his seniority therefore, he was entitled for promotion from BPS-19 to BPS-20 but the respondent-department has illegally ignored him and promoted the private respondents therefore, the respondent-department is bound to promote him from BPS-19 to BPS-20.

The contentions raised by the appellant need consideration. The appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notice be issued to the respondents for written reply/comments for 31.07.2019 before S.B.

Appellant Deposited
Security & Process Fee


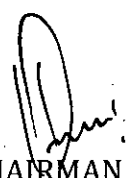

19/6/19


(Muhammad Amin Khan Kundi)
Member

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 520/2019

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1- | 23/04/2019 | <p>The appeal of Mr. Muhammad Arshad-II presented today by him 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 - 23/4/19.</p> |
| 2- | 24/04/19 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>30/04/19</u></p> <p style="text-align: right;"> CHAIRMAN</p> |
| | 30.04.2019 | <p>Nemo for appellant.</p> <p>Notice be issued to appellant for 19.06.2019 for preliminary hearing before S.B.</p> <p style="text-align: right;"> Chairman</p> |

1722

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR.**

Service Appeal No.---S20--- of 2019

Mohammad Arshad-II, presently posted as Additional Secretary, Inter-Provincial Coordination Department, Civil Secretariat, Peshawar. **Appellant.**

Versus

1. The Provincial Selection Board through its Chairman, the Chief Secretary, Khyber Pakhtunkhwa.
2. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department/Secretary of PSB.
4. Mr. Imtiaz Ayub, presently posted as Secretary, Administration Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. Mr. Muhammad Israr, Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock and Cooperation Department, Civil Secretariat, Peshawar. ----- **Respondents.**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 (KHYBER PAKHTUNKHWA ACT NO. 1 OF 1974) AGAINST RECOMMENDATIONS OF THE PROVINCIAL SELECTION BOARD (PSB) IN CASE OF CONSIDERATION OF PROMOTION CASE OF PCS (SG) OFFICERS FROM BPS-19 TO BPS-20, CONTAINED IN THE MINUTES OF ITS MEETING HELD ON 17.09.2018.


Prayer: i. The recommendations of the PSB may be set-aside and directed to consider the appellant's case along with others afresh as per law/rules from the date i.e. 17.09.2018 for promotion from BPS-19 to BPS-20 and award of pay benefits of BPS-20 from the back date i.e. 17.09.2018.

ii. The operation of the impugned decision of PSB may be suspended/stayed through grant of temporary injunction till the disposal of the instant appeal.

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| 4 | Appellant's Departmental Representation dated 25.12.2018. | Annex-III | 11-15 |
| 5 | KP PCS (SG) Rules, 1997. | Annex-IV | 16-21 |
| 6 | Application for grant of Temporary Injunction. | Annex-V | 22 |

Dated: 22.04.2019


Appellant
22.04.2019
Mohammad Arshad-II, PCS (SG-BPS-19),
 Present Posting/Address:
 Additional Secretary, Inter-Provincial
 Coordination Department, Civil Secretariat,
 Peshawar.
In Person

1722

2722

**BEFORE THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR.**

Service Appeal No. 590 of 2019

Mohammad Arshad-II, presently posted as Additional Secretary, Inter-Provincial
Coordination Department, Civil Secretariat, Peshawar. **Appellant.**

Khyber Pakhtunkhwa
Service Tribunal

Versus

Diary No. 653

Dated 23-4-2019

1. The Provincial Selection Board through its Chairman, the Chief Secretary, Khyber Pakhtunkhwa.
2. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
3. The Secretary Establishment Department/Secretary of PSB.
4. Mr. Imtiaz Ayub, presently posted as Secretary, Administration Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. Mr. Muhammad Israr, Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock and Cooperation Department, Civil Secretariat, Peshawar. ----- **Respondents.**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL ACT, 1974 (KHYBER PAKHTUNKHWA ACT NO. I OF 1974)
AGAINST RECOMMENDATIONS OF THE PROVINCIAL SELECTION BOARD
(PSB) IN CASE OF CONSIDERATION OF PROMOTION CASE OF PCS (SG)
OFFICERS FROM BPS-19 TO BPS-20, CONTAINED IN THE MINUTES OF ITS
MEETING HELD ON 17.09.2018.**

Prayer: i. The recommendations of the PSB may be set-aside and directed to consider the appellant's case along with others afresh as per law/rules from the date i.e. 17.09.2018 for promotion from BPS-19 to BPS-20 and award of pay benefits of BPS-20 from the back date i.e. 17.09.2018.

Filed to-day
Registrar
ii. The operation of the impugned decision of PSB may be suspended/stayed through grant of temporary injunction till the disposal of the instant appeal.

Respectfully sheweth that:-

Facts of the Case

1. The appellant has requested the Public Information Officer, Government of Khyber Pakhtunkhwa, Establishment Department to provide information/copy of duly attested and stamped record of working paper and minutes of PSB meeting held in September, 2018 and for the years from 2011 to 2016, regarding consideration of promotion case of PCS (SG) officers from BPS-19 to 20 under the provisions of RTI Act, 2013 vide letter No. D(A&F)/PSA/1-1/PF/M.Arshad/2018/229 and 231 dated 08.10.2018 (Annex-I).

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2. The Public Body provided a copy of the PSB minutes only vide its letter No. SO(HRD-II)/ED/1-10/2014(RTI)/Mohammad Arshad dated 28.11.2018, received by the appellant on 03.12.2018. The copy of the covering letter along with minutes of the PSB meeting held on 17.09.2018 is placed at (**Annex-II**).
3. According to the minutes of the PSB meeting reproduced here verbatim as follows—"According to Service Rules of PCS, the post in BPS-20 is required to be filled as under:- i. Promotion to the posts in BS-20 shall be made on the basis of seniority-cum-fitness from amongst the officers holding posts in BS-19 who have completed the minimum length of service as prescribed by Government. ii. Under the policy of Provincial Government attending SMC is mandatory for promotion to BS-20".
4. While considering the appellant's case, the Board has made the following decision—"His date of birth is 15.02.1966. He joined government service on 19.06.1997 (the accurate date is 26.05.1997) in BS-17. He was promoted to BS-19 on 19.07.2009. He has undergone SMC. The Board thoroughly discussed his service record and **did not find him fit for promotion for the following reasons as noted in his report.** Limited understanding of public policy and his promotion potential was found limited. His comprehension of interplay of the internal and external dynamics of Pakistan was sketchy and lacked profundity. His analytical and synthesizing capacity was somewhat deficient and could barely address complex issues. He was rated very low as a leader, friend and professional by his peers. The Board gave him 7 marks out of 15. He could not achieve the required threshold for promotion. The Board therefore recommended his supersession."
5. The appellant has filed departmental representation dated 25.12.2018 against the order of recommendation of the PSB to the Chief Minister through proper channel vide letter dated 25.12.2018 (**Annex-III**).

Grounds of the Case

6. The appellant feeling aggrieved from the order/recommendation of the PSB and having received no response/decision on the departmental representation, submits the instant appeal on the following grounds amongst others that:-
 - i. The eligibility criterion for promotion to BPS-20 has been considered in violation of Section 9 of the Khyber Pakhtunkhwa Province Civil Servants

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Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and Rule 9 (b) of the Khyber Pakhtunkhwa Province Provincial Civil Service (Secretariat Group) Rules, 1997, notified at Page-218 and onwards of the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 29th September, 1997 (**Annex-IV**).

- ii. Section 9 of the Act is reproduced verbatim as follows-“(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a higher post for the time being reserved under the rules for departmental promotion in 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.”
- iii. Similarly, Rule 9 (b) of the PCS (SG) Rules, 1997 is reproduced verbatim as follows-“Promotion to the posts in B-19, 20 & 21 shall be made on the basis of seniority/fitness from amongst the officers holding posts in BPS-18, 19 & 20 respectively who have completed the minimum length of service as prescribed by Government.” The rule is clear that the only eligibility criterion for promotion to BPS-20 is seniority-cum-fitness and SMC is not mandatory for promotion to BPS-20. The minimum qualifications for promotion in case of the service shall be prescribed only through rules in light of Sections 2(i), 3, 9 and 26 of the Act and nothing else including the policy.
- iv. The appellant has not been treated according to law, which is the inalienable right of every citizen, as enshrined in Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. The adverse action against the appellant is also in violation of fundamental right to fair trial and due process guaranteed under Article 10A of the Constitution.
- v. Any other ground will be taken during the arguments of the case.

Prayer


Keeping in view the above-mentioned facts and law on the subject, it is, therefore, prayed that:-

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- i. The recommendations of the PSB may be set-aside and directed to consider the appellant's case along with others afresh as per law/rules from the date i.e. 17.09.2018 for promotion from BPS-19 to 20 and award of pay benefits of BPS-20 from the back date i.e. 17.09.2018.
- ii. The operation of the impugned order may be suspended / stayed through grant of temporary injunction till the decision of the instant appeal.

Dated 22.04.2019

Appellant

 22.04.2019

Mohammad Arshad-II, PCS(SG-BPS-19),
Present Posting/Address:
Additional Secretary, Inter-Provincial
Coordination Department, Civil Secretariat,
Peshawar.
In Person

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Annex-I

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PROVINCIAL SERVICES ACADEMY
Khyber Pakhtunkhwa at House No. 170, Street No. 15,
Sector-G-3, Phase-II, Hayatabad, Peshawar.

No. D(A&F)/PSA/I-1/ PF/M.Arshad/2018
Dated Peshawar the 08th October, 2018

229

To,

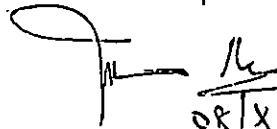
The Public Information Officer, Govt. of Khyber Pakhtunkhwa,
Establishment Department, Civil Secretariat, Peshawar.

→
10/10/2018
11:36
P

Subject: - REQUEST FOR INFORMATION / RECORD
REGARDING PSB MEETING HELD IN SEPTEMBER,
2018 UNDER RTI ACT, 2013.

I am to refer to the subject noted above and to request to
provide a copy of the duly attested and stamped information/record including
Working Paper and Minutes of the PSB meeting held in September, 2018
regarding consideration of promotion case of PCS(SG), PCS(EB) and PMS
officers from BPS-19 to 20 and BPS-20 to 21 under RTI Act, 2013.

Requester


08/10/2018
(MOHAMMAD ARSHAD)
Director (A&F)
Mob. No. 03489745323
Fax No. 091-93330003

22

delivered by

Ameez Abdullah

M/Arshad
PSA


9-10-18

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PROVINCIAL SERVICES ACADEMY
Khyber Pakhtunkhwa at House No. 170, Street No. 15,
Sector-G-3, Phase-II, Hayatabad, Peshawar.

No. D(A&F)/PSA/1-1/ PF/M.Arshad/2018
Dated Peshawar the 08th October, 2018

231

10
10/10/2018
for at 23/10/18

To,


The Public Information Officer, Govt. of Khyber Pakhtunkhwa,
Establishment Department, Civil Secretariat, Peshawar.

Subject: -

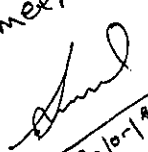
REQUEST FOR INFORMATION / RECORD
REGARDING PSB MEETINGS HELD FROM 2011 TO
2016 UNDER RTI ACT, 2013.

I am to refer to the subject noted above and to request to provide a copy of the duly attested and stamped information/record including list of number of meetings held with dates, Working Paper and Minutes of the PSB meetings held from 2011 to 2016 regarding consideration of promotion case of PCS(SG) and PCS(EB) officers from BPS-19 to 20 and BPS-20 to 21 under RTI Act, 2013.

Requester


26/10/18

(MOHAMMAD ARSHAD)
Director (A&F)
Mob. No. 03489745323
Fax No. 091-93330003

Delivered by
Ameer Abdullah N/Qasid
PSA

9-10-18

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Annex-II

8-10

Annex II

Time (3) Page (7-9)

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(HRD WING)

No. SO (HRD-II)/ED/1-10/2014 (RTI)/Muhammad Arshad
Dated Peshawar the 28th November, 2018

To

Muhammad Arshad, Director (A&F),
Provincial Services Academy, Khyber Pakhtunkhwa, House No. 170,
Street No. 15, Sector G-3, Phase-II, Hayatabad, Peshawar.

Subject: REQUEST FOR INFORMATION/RECORD REGARDING PSB MEETING HELD IN
SEPTEMBER, 2018 UNDER THE RTI ACT, 2013.

REQUEST FOR INFORMATION/RECORD REGARDING PSB MEETINGS HELD FROM
2011 TO 2016 UNDER THE RTI ACT, 2013.

Kindly refer to your letters No. D(A&F)/PSA/1-1/PF/M.Arshad/2018/229 dated 08th October,
2018 & No. D(A&F)/PSA/1-1/PF/M.Arshad/2018/231 dated 08th October, 2018 on the subject noted above
and to forward herewith copies of the requisite information under RTI Act, 2013.

Encl: As above:

Public Information Officer (PIO)
Establishment Department

Endst: No & date even.

Copy forwarded to:

1. The Chief Information Commissioner, Government of Khyber Pakhtunkhwa, Right to Information Commission, 7th Floor, Tasneem Plaza, Near Benevolent Fund Building, 6th Saddar Road, Peshawar.
2. The Section Officer (PSB), Establishment Department.
3. PA to Additional Secretary (HRD)/Public Information Officer (PIO), Establishment Department.

SECTION OFFICER (HRD-II)

Received on 03.12.2018.

03.12.2018

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ITEM NO (3)

ESTABLISHMENT DEPARTMENT
(Meeting of PSB held on 17.09.2018)

SUBJECT: PROMOTION OF PCS (SG) OFFICERS FROM BS-19 TO BS-20.

Secretary Establishment apprised the Board that number of scheduled posts in BS-20 falling to the share of PCS (SG) is twenty two (22) where twenty two (22) Officers are already working. Besides two officers of BS-20 has been recommended for promotion to BS-21. Hence two (02) posts are lying vacant.

2. According to Service Rules of PCS, the post in BS-20 is required to be filled as under:-

i. Promotion to the posts in BS-20 shall be made on the basis of seniority-cum-fitness from amongst the officers holding posts in BS-19 who have completed the minimum length of service as prescribed by Government.

ii. Under the policy of Provincial Government attending SMC is mandatory for promotion to BS-20.

3. The service record of the officers included in the panel was discussed as follows: -

| S. NO. | NAME OF OFFICER | RECOMMENDATIONS OF THE BOARD |
|--------|-------------------------|--|
| 1. | Mr. Arshad Khan | His date of birth is 20.01.1966. He joined government service on 26.05.1997 in BS-17. He was promoted to BS-19 on 12.08.2009. The Board in its meeting held on 09.03.2017, 24.03.2017 and 19.05.2017 recommended to defer his promotion as he had not attended SMC. The Board in its meeting held on 25.09.2017 was informed that he had undergone SMC mandatory for promotion. However he was arrested by NAB on 02.04.2015 and later on released on bail. Now his NAB case regarding accumulation of assets beyond his unknown source of income since 02.04.2015 has not yet finalized. The Board decided to take-up his case with NAB for knowing the details and latest position of the case. The Board recommended to defer his promotion. |
| 2. | Mr. Muhammad Arshad -II | His date of birth is 15.02.1966. He joined government service on 19.06.1997 in BS-17. He was promoted to BS-19 on 19.07.2009. He has undergone SMC. The Board thoroughly discussed his service record and did not find him fit for promotion for the following reasons as noted in his report. |

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| | | <ul style="list-style-type: none"> ➤ Limited understanding of public policy and his promotion potential was found limited. ➤ His comprehension of interplay of the internal and external dynamics of Pakistan was sketchy and lacked profundity ➤ His analytical and synthesizing capacity was somewhat deficient and could barely address complex issues. ➤ He was rated very low as a leader, friend and professional by his peers <p>The Board gave him 7 marks out of 15. He could not achieve the required threshold for promotion.</p> <p>The Board therefore recommended his supersession. ✓</p> |
| 3. | Mr. Imtiaz Ayub | <p>His date of birth is 05.01.1967. He joined government service on 26.05.1997 in BS-17. He was promoted to BS-19 on 02.12.2009. He has undergone SMC. No enquiry is pending against him. His service record upto 2017 is generally good.</p> <p>The Board recommended the officer for promotion to PCS (SG) BS-20 on regular basis. He will be on probation for a period one year.</p> |
| 4. | Mr. Muhammad Israr | <p>His date of birth is 15.05.1967. He joined government service on 26.05.1997 in BS-17. He was promoted to BS-19 on 30.05.2011. He has undergone SMC. No enquiry is pending against him. His service record upto 2017 is generally good.</p> <p>The Board recommended the officer for promotion to PCS (SG) BS-20 on regular basis, however his promotion notification shall be issued after promotion notification of Syed Kamran Shah. He will be on probation for a period one year.</p> |

Asst. Secy.
[Signature]
 Section Officer (PSB)
 Govt. of Khyber Pakhtunkhwa
 Establishment Department

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Annex - III

Ps / Secy (E) E & AD
Dialy No. 10/190
Dated 26/12/18

26/12/18
11-15
S. Clarke

To,

The Secretary, Establishment Department,
Government of Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar.

Subject:

REPRESENTATION UNDER RULE 22(2) OF THE KHYBER
PAKHTUNKHWA PROVINCE CIVIL SERVANTS ACT, 1973
AGAINST RECOMMENDATIONS OF THE PROVINCIAL
SELECTION BOARD (PSB) IN CASE OF CONSIDERATION OF
PROMOTION CASE OF PCS (SG) OFFICERS FROM BPS-19 TO
BPS-20, CONTAINED IN THE MINUTES OF ITS MEETING HELD
ON 17.09.2018.

Prayer:

i. The recommendations of the PSB may be set-aside and directed to consider the petitioner/appellant's case along with others afresh as per law/rules from the date i.e. 17.09.2018 for promotion from BPS-19 to BPS-20 and award of pay benefits of BPS-20 from the back date i.e. 17.09.2018.
ii. The operation of the impugned decision of PSB may be suspended / stayed through grant of temporary injunction till the disposal of the instant representation.

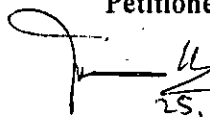
Dear Sir,

Enclosed please find herewith a representation in original for information and necessary action. The representation is spread over a total of nine (09) pages with following break-up:-

- | | | |
|------|----------------------------|-------------|
| i. | Index | : 01 page. |
| ii. | Text of the representation | : 03 pages. |
| iii. | Two Annexes | : 05 pages. |
| iv. | Total Pages | : 09 pages. |

Dated: 25.12.2018

Petitioner/Appellant


25.12.2018

MC

Mohammad Arshad-II, PCS (SG-BPS-19),
OSD, Establishment Department.
Postal Address: House No. 11, Officers Colony,
Dabgari Gardens (New), Peshawar Cantonment.
Cell No. 0348-9745323

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To, The Honourable Chief Minister,
Khyber Pakhtunkhwa.

Subject: **Through Proper Channel** i.e. through Secretary Estt. Deptt.
REPRESENTATION UNDER RULE 22(2) OF THE KHYBER
PAKHTUNKHWA PROVINCE CIVIL SERVANTS ACT, 1973
AGAINST RECOMMENDATIONS OF THE PROVINCIAL
SELECTION BOARD (PSB) IN CASE OF CONSIDERATION OF
PROMOTION CASE OF PCS (SG) OFFICERS FROM BPS-19 TO
BPS-20, CONTAINED IN THE MINUTES OF ITS MEETING HELD
ON 17.09.2018.

Prayer: i. The recommendations of the PSB may be set-aside and directed to
consider the petitioner/appellant's case along with others afresh as
per law/rules from the date i.e. 17.09.2018 for promotion from BPS-
19 to BPS-20 and award of pay benefits of BPS-20 from the back
date i.e. 17.09.2018.
ii. The operation of the impugned decision of PSB may be suspended
/ stayed through grant of temporary injunction till the disposal of
the instant representation.

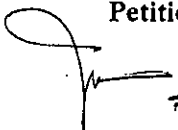
Dear Sir,

INDEX

| S. No. | Description of the Document | Annex | Page No. |
|--------|---|----------|----------|
| 1 | Index | | 1 |
| 2 | Text of the Representation | | 2-4 |
| 3 | Petitioner/Appellant's two letters dated 08.10.2018 | Annex-I | 5-6 |
| 4 | Public Body letter dated 28.11.2018 | Annex-II | 7-9 |

Dated: 25.12.2018

Petitioner/Appellant


25.12.2018

Mohammad Arshad-II, PCS (SG-BPS-19),
OSD, Establishment Department.
Postal Address: House No. 11, Officers Colony,
Dabgari Gardens (New), Peshawar Cantonment.
Cell No. 0348-9745323



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To,

The Honourable Chief Minister,
Khyber Pakhtunkhwa.

Subject:

Through Proper Channel i.e. through Secretary Estt. Deptt.
REPRESENTATION UNDER RULE 22(2) OF THE KHYBER
PAKHTUNKHWA PROVINCE CIVIL SERVANTS ACT, 1973
AGAINST RECOMMENDATIONS OF THE PROVINCIAL
SELECTION BOARD (PSB) IN CASE OF CONSIDERATION OF
PROMOTION CASE OF PCS (SG) OFFICERS FROM BPS-19 TO
BPS-20, CONTAINED IN THE MINUTES OF ITS MEETING HELD
ON 17.09.2018.

Prayer:

- i. The recommendations of the PSB may be set-aside and directed to consider the petitioner/appellant's case along with others afresh as per law/rules from the date i.e. 17.09.2018 for promotion from BPS-19 to 20 and award of pay benefits of BPS-20 from the back date i.e. 17.09.2018.
- ii. The operation of the impugned decision of PSB may be suspended / stayed through grant of temporary injunction till the disposal of the instant representation.

Sir,

Respectfully submitted that:-

Facts of the Case

1. The petitioner/appellant has requested the Public Information Officer, Government of Khyber Pakhtunkhwa, Establishment Department to provide information/copy of duly attested and stamped record of working paper and minutes of PSB held in September, 2018 and for the years from 2011 to 2016, regarding consideration of promotion case of PCS (SG) officers from BPS-19 to 20 under the provisions of RTI Act, 2013 vide letters No. D(A&F)/PSA/1-1/PF/M.Arshad/2018/229 and 231 dated 08.10.2018 (Annex-I).
2. The Public Body provided a copy of the PSB minutes only vide its letter No. SO(HRD-II)/ED/1-10/2014(RTI)/Mohammad Arshad dated 28.11.2018, received by the petitioner/appellant on 03.12.2018. The copy of the covering letter along with minutes of PSB meeting held on 17.09.2018 is placed at (Annex-II).
3. According to the minutes of the PSB meeting reproduced verbatim as follows-
"According to Service Rules of PCS, the post in BS-20 is required to be filled as under:- i. Promotion to the posts in BS-20 shall be made on the basis of seniority-cum-fitness from amongst the officers holding posts in BS-19 who have completed the minimum length of service as prescribed by Government. ii. Under the policy of Provincial Government attending SMC is mandatory for promotion to BS-20".

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4. While considering the petitioner's case, the Board has made the following decision-"His date of birth is 15.02.1966. He joined government service on 19.06.1997 (the accurate date is 26.05.1997) in BS-17. He was promoted to BS-19 on 19.07.2009. He has undergone SMC. The Board thoroughly discussed his service record and **did not find him fit for promotion for the following reasons as noted in his report.** Limited understanding of public policy and his promotion potential was found limited. His comprehension of interplay of the internal and external dynamics of Pakistan was sketchy and lacked profundity. His analytical and synthesizing capacity was somewhat deficient and could barely address complex issues. He was rated very low as a leader, friend and professional by his peers. The Board gave him 7 marks out of 15. He could not achieve the required threshold for promotion. The Board therefore recommended his supersession."

Grounds of the Case

5. The petitioner/appellant feeling aggrieved from the decision/recommendation of the PSB, submits the instant representation on the following grounds amongst others:-
- i. That, the eligibility criteria for promotion to BPS-20 has been considered in violation of Section 9 of the Khyber Pakhtunkhwa Province Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973) and Rule 9 (b) of the Khyber Pakhtunkhwa Province Provincial Civil Service (Secretariat Group) Rules, 1997, notified at Page-218 and onwards of the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 29th September, 1997.
 - ii. Section 9 of the Act is reproduced verbatim as follows-"(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a higher post for the time being reserved under the rule for departmental promotion in 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."
 - iii. Similarly, Rule 9 (b) of the PCS (SG) Rules, 1997 is reproduced verbatim as follows-"Promotion to the posts in B-19, 20 & 21 shall be made on the basis



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of seniority/fitness from amongst the officers holding posts in BPS-18, 19 & 20 respectively who have completed the minimum length of service as prescribed by Government." The rule is clear that the eligibility criterion for promotion to BPS-20 is seniority-cum-fitness and SMC is not mandatory for promotion to BPS-20. The minimum qualifications for promotion in case of the service shall be prescribed only through rules in light of Sections 2(i), 3, 9 and 26 of the Act and nothing else including the policy.

- iv. The petitioner/appellant has not been treated according to law, which is the inalienable right of every citizen, as enshrined in Article 4 of the Constitution of Islamic Republic of Pakistan, 1973. The adverse action against the petitioner is also in violation of fundamental right to fair trial and due process guaranteed under Article 10A of the Constitution.

Prayer

Keeping in view the above-mentioned facts and law on the subject, it is, therefore, prayed that:-

i. The recommendations of the PSB may be set-aside and directed to consider the petitioner/appellant's case along with others afresh as per law/rules from the date i.e. 17.09.2018 for promotion from BPS-19 to 20 and award of pay benefits of BPS-20 from the back date i.e. 17.09.2018. The petitioner/appellant also desires and prays to be given a chance of personal hearing.

ii. The operation of the impugned order may be suspended / stayed through grant of temporary injunction till the decision of the instant representation. The special law *ibid* though does not provide for the assignment of powers of temporary injunctions to the Appellate Authority. But, according to the principle of law, where special law is silent, general law on the subject would be applicable. Hence, provisions of Civil Procedure Code, 1908 regarding temporary injunctions are applicable in the case.

Dated: 25.12.2018

Petitioner/Appellant

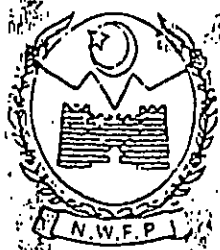
Mohammad Arshad-II, PCS (SG-BPS-19),
OSD, Establishment Department.
Postal Address: House No. 11, Officers Colony,
Dabgari Gardens (New), Peshawar Cantonment.
Cell No. 0348-9745323



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ORDINARY

GOVERNMENT



REGISTERED NO. P. 111

GAZETTE

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Annex - III

Annex - IV

16-21

North-West Frontier Province

Published by Authority

PESHAWAR, MONDAY, 29TH SEPTEMBER, 1997.

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE
SERVICES AND GENERAL ADMINISTRATION DEPARTMENT.

(REGULATION WING).

NOTIFICATIONS.

Dated Peshawar, the 26th June, 1997.

No. SORIV (S&GAD) 3-7/95. Vol. II.— In exercise of the Powers conferred by Section 26 of the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act XVIII of 1973); the Governor of the North-West Frontier Province is pleased to make the following rules, namely:—

THE NORTH-WEST FRONTIER PROVINCE PROVINCIAL CIVIL SERVICE (SECRETARIAT GROUP) RULES, 1997.

PART—I-GENERAL

1. **Short title and commencement.**— (1) These rules may be called the North-West Frontier Province Provincial Civil Service (Secretariat Group) Rules, 1997.

(2) They shall come into force at once.

2. **Definition.**— In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

- (a) "Appointing Authority" means the authority specified in column 3 against Serial No.1 of the Table in rule 4 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989;
- (b) "Attached Department" means a Department defined in rule 2 (b) of the North-West Frontier Province Government Rules of Business, 1985;
- (c) "Commission" means the North-West Frontier Province Public Service Commission;
- (d) "Government" means the Government of the North-West Frontier Province;
- (e) "Governor" means the Governor of the North-West Frontier Province;
- (f) "Initial Recruitment" means appointment made otherwise than by promotion or transfer;
- (g) "Recognised University" means any University incorporated by law in Pakistan or any other University which may be declared as recognised by Government;
- (h) "Post" means a post specified in the Schedule appended to these rules;
- (i) "Schedule" means the Schedule appended to these rules at Appendix 'A' to be revised from time to time;
- (j) "Secretariat" means the North-West Frontier Province Civil Secretariat, as defined in rule 2 (r) of the North-West Frontier Province Government Rules of Business, 1985;

Handwritten signature and stamp:
Secretary (Services & Administration Deptt.)

Price: Rs. 64.000

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- (k) "Service" means the North-West Frontier Province Provincial Civil Service (Secretariat Group);
- (l) "Share" means the share of the Officers of the service in the posts as allocated under these rules; and
- (m) "Province" means the North-West Frontier Province.

PART-II RECRUITMENT

3. **Number and Nature of Posts.**— The service shall comprise:
- (a) 80% of the total number of posts of Section Officers in the Secretariat; and
- (b) Various other posts in B-17 to B-21 as per share allocated under rule 6 of these rules.
4. **Appointing Authority.**— Appointment to the service shall be made by the authority as specified in rule 2 (a).
5. **Method of Recruitment.**— The members of the Service shall be recruited in BPS-17 as per following method:-
- (i) 50% of posts in B-17 shall be filled by initial recruitment based on the result of a Competitive Examination to be held by the Commission for this purpose in accordance with Appendix B to these rules; and
- (ii) the remaining 50% of the posts in B-17 shall be filled in by promotion on the basis of seniority-cum-fitness from amongst the Superintendents and Private Secretaries who have under-gone a training course of nine (9) weeks at the Provincial Management Academy/Provincial Staff Training Institute.

Note:— A common seniority list shall be maintained of the Superintendents and Private Secretaries for the purpose of promotion to the posts of Section Officers.

6. **Share of the Service in Schedule Posts.**— (1) The share of Provincial Officers in Schedule posts in various scales/grades shall be distributed between Provincial Civil Service (Secretariat Group) & Provincial Civil Service (Executive Group) at the ratio worked out on the basis of their basic cadre strength i.e. the total sanctioned posts of Section Officers and Extra Assistant Commissioners respectively (less 10% of the Secretariat posts in B-18 and above which shall be reserved for the Officers of the Technical Departments on tenure basis) as may be revised from time to time.

(2) For the purpose of sub-rule (1) above, the number of posts falling to the share of Provincial Officers shall be worked out at the following ratio:-

| <u>BPS/Grade of the Posts</u> | <u>Share of Provincial Officers</u> |
|-------------------------------|-------------------------------------|
| 21 | 35% |
| 20 | 40% |
| 19 | 50% |
| 18 | 60% |
| 17 | 75% |

Age.— (1) No person shall be appointed to the service by initial recruitment in BPS-17 who is less than twenty-one years or more than twenty-eight years of age; provided that in the case of persons serving in connection with the affairs of the Federation (on regular basis) who are domiciled in the Province and the persons serving in connection with the affairs of the Province (on regular basis), with atleast three (3) years service as such, the upper age limit shall be 35 years.

(2) The age shall be reckoned from the 1st January of the year in which the Competitive Examination is proposed to be held by the Commission.

Qualifications.— (1) No person shall be appointed to the service by initial recruitment unless he is a graduate from a recognised University.

(2) No person, not already in Government service, shall be appointed to the service unless he produces a certificate of character from the Head of Academic Institution last attended, and also certificate of character from two other responsible persons, not being his relatives, who are well acquainted with his character and antecedents.

Section Officer
Establishment & Administration Deptt

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PART-III PROMOTION

9. **Promotion.**— The appointments against various posts in BPS-18 and above shall be made by way of promotion as per following manner:

- (a) To ensure minimum possible standards, the promotion to the posts in B-18 as worked out under rule 6(1) shall be made on the basis of seniority/fitness from amongst the members of the service, holding posts in BPS-17 who have successfully completed the prescribed training course at the Provincial Academy for Management and have passed the prescribed departmental examination, if any, and have completed the minimum length of service in B-17 as notified by Government from time to time.
- (b) Promotion to the posts in B-19, 20 & 21 shall be made on the basis of seniority / fitness from amongst the officers holding posts in BPS-18, 19 & 20 respectively who have completed the minimum length of service as prescribed by Government

10. **Repeal.**— The West Pakistan Secretariat (Section Officer) Service Rules, 1962 and the West Pakistan Deputy Secretaries Recruitment Rules, 1963 are hereby repealed.

No. SORIV (S&GAD) 3-7/95, Vol. II.— In exercise of the Powers conferred by Section 26 of the North-West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act XVIII of 1973), the Governor of the North-West Frontier Province is pleased to make the following rules, namely:—

THE NORTH-WEST FRONTIER PROVINCE PROVINCIAL CIVIL SERVICE (EXECUTIVE GROUP) RULES, 1997.

PART-I GENERAL.

1. **Short title and commencement.**— (1) These rules may be called the North-West Frontier Province Provincial Civil Service (Executive Group) Rules, 1997.

(2) They shall come into force at once.

2. **Definition.**— In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:—

- (a) "Appointing Authority" means the authority specified in column 3 against Serial No.1 of the Table in rule 4 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989;
- (b) "Attached Department" means a Department as defined in rule 2 (b) of the North-West Frontier Province Government Rules of Business, 1985;
- (c) "Commission" means the North-West Frontier Province Public Service Commission;
- (d) "Government" means the Government of the North-West Frontier Province;
- (e) "Governor" means the Governor of the North-West Frontier Province;
- (f) "Initial Recruitment" means appointment made otherwise than by promotion or transfer from another service;
- (g) "Recognised University" means any University incorporated by law in Pakistan or any other University which may be declared as recognised by Government;
- (h) "Post" means a post specified in the Schedule appended to these rules;
- (i) "Schedule" means the Schedule appended to these rules at Appendix 'A' to be revised from time to time;
- (j) "Secretariat" means the North-West Frontier Province Civil Secretariat as defined in rule 2 (r) of the North-West Frontier Province Government Rules of Business, 1985;
- (k) "Service" means the North-West Frontier Province Provincial Civil Service (Executive Group);

Section
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- (i) "Share" means the share of the Officers of the Service in the posts as allocated under these rules; and
- (ii) "Province" means the North-West Frontier Province.

PART-II RECRUITMENT

3. **Number and Nature of Posts.**— The service shall comprise:-
- (a) the total number of sanctioned posts of Extra Assistant Commissioners-in the Province; and
 - (b) various posts in B-17 to B-21 as per share allocated under rule 6 of these rules.
4. **Appointing Authority.**— Appointment to the service shall be made by the authority as specified in rule 2 (a).
5. **Method of Recruitment.**— The members of the Service shall be recruited in BPS-17 as per following method:-

- (i) 50% of posts in B-17 shall be filled by initial recruitment based on the result of a Competitive Examination to be held by the Commission for this purpose in accordance with Appendix B to these rules; and
- (ii) the remaining 50% of the posts in B-17 shall be filled in by way of promotion as per following manner:-
 - (a) 87.50% of such posts shall be filled on the basis of seniority-cum-fitness from amongst the Tehsildars who have passed the prescribed Departmental Examination; and
 - (b) the remaining 12.50% of such vacancies shall be filled on the recommendation of Provincial Selection Board based on the result of competitive examination conducted in the manner specified in Appendix "C" from amongst persons holding substantive appointments as Superintendents, Private Secretaries, Personnel Assistants, Assistant Steno in the Provincial Secretariat, Attached Departments, Commissioner Offices and other Divisional Offices, who—
 - (i) hold a Degree in 2nd Division from a recognised University;
 - (ii) have rendered atleast ten years Government service; and
 - (iii) are not more than Forty years of age.

Note:— A common seniority list shall be maintained of the Tehsildars, Superintendents, Private Secretaries, Personnel Assistants, Stenographers and Assistants in the Provincial Secretariat, Attached Departments, Commissioner Offices and other divisional offices.

6. **Share of the Service in Schedule Posts.**— (1) The share of Provincial Officers in Schedule posts in various scales/grades shall be distributed between Provincial Civil Service (Executive Group) and Provincial Civil Service (Secretariat Group) at the ratio worked out on the basis of their inside cadre strength i.e. the total sanctioned posts of Extra Assistant Commissioners and Section Officer respectively (less 10% of the Secretariat posts in B-18 and above which shall be reserved for the Officers of the Technical Department on tenure basis) as may be revised from time to time.
- (2) For the purpose of sub-rule (1) above, the number of posts falling to the share of Provincial Officers shall be worked out at the following ratio:-

| BPS/Grade of the Posts | Share of Provincial Officers |
|------------------------|------------------------------|
| 21 | 35% |
| 20 | 40% |
| 19 | 50% |
| 18 | 60% |
| 17 | 75% |

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P. GOVERNMENT GAZETTE EXTRA ORDINARY, 29th September, 1997. 222

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Age.— (1) No person shall be appointed to the service by initial recruitment in BPS-17 who is less than twenty-one years or more than twenty-eight years of age; provided that in the case of persons serving in connection with the affairs of the Federation (on regular basis) who are domiciled in the Province and the persons serving in connection with the affairs of the Province (on regular basis), with at least three years service as such, the upper age limit shall be 35 year

(2) For the purpose of this rule, age shall be reckoned:

- (i) Where recruitment is to be made on the basis of a written examination, as on the 1st January of the year in which the examination is proposed to be held; and
- (ii) in other cases as on the 1st date fixed for submission of application for appointment.

8. Qualifications.— (1) No person shall be appointed to the service by initial recruitment unless he is a graduate from a recognised University.

(2) No person, not already in Government service, shall be appointed to the service unless he produces a certificate of character from the Head of Academic Institution last attended, and also certificates of character from two other responsible persons, not being his relatives, who are well acquainted with his character and antecedents.

PART-III PROMOTION

9. Promotion.— The appointments against various posts in BPS-18 and above shall be made by way of promotion as per following manner:-

- (a) To ensure minimum possible standards, the promotion to the posts in B-18 as worked out under rule 6(1) shall be made on the basis of seniority-cum-fitness from amongst the members of the service, holding posts in BPS-17 who have successfully completed the prescribed training course at the Provincial Academy for Management and have passed the prescribed departmental examination, if any, and have completed the minimum length of service in B-17 as notified by the Government from time to time.
- (b) Promotion to the posts in B-19, 20 & 21 shall be made on the basis of seniority / fitness from amongst the officers holding posts in BPS-18, 19 & 20 respectively who have completed the minimum length of service as prescribed by the Government.

10. Repeal.— The West Pakistan Civil Service (Executive Branch) Rules, 1964 and West Pakistan Deputy Secretaries Recruitment Rules, 1963 shall stand repealed.

CHIEF SECRETARY,
Government of North-West Frontier Province.

Establishment & Administration Deptt

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APPENDIX 'A'
See rule 2 (1) & 6

AS PER ADMINISTRATIVE REFORMS PACKAGE NEW
SCHEDULE OF POSTS APPENDED TO S&GAD.

NOTIFICATION NO. SORIV (S&GAD) 3-7/95, Vol. II
Dated 26th June, 1997.

| Name of the posts | BPS | No. of Posts |
|--|---------|--------------|
| Chief Secretary | B-21/22 | 1 |
| Addl: Chief Secretary | B-21 | 1 |
| Senior Member B.O.R. | B-21 | 1 |
| Secretaries | B-21 | 3 |
| Chairman S.D.A. | B-21 | 1 |
| Secretaries | B-20 | 20 |
| Commissioners | B-20 | 7 |
| Member B.O.R. | B-20 | 1 |
| Director S.T.I. | B-20 | 1 |
| Chairman P.I.T. | B-20 | 1 |
| D.G. Population Welfare | B-20 | 1 |
| Member P.S.C. | B-20 | 1 |
| Chairman G.I.T./Member P.I.T. | B-20 | 1 |
| Member Service Tribunal | B-20 | 2 |
| D.G. SDU/PE&D | B-20 | 1 |
| M.D.F.V.D.B. | B-20 | 1 |
| M.D. Frontier Edu: Foundation | B-20 | 1 |
| Director (Finance) S.D.A. | B-20 | 1 |
| Director Industries | B-20 | 1 |
| Director Food | B-19 | 1 |
| D.G. LG&RD | B-19 | 1 |
| M.D. SHB | B-19 | 1 |
| Registrar Co-operative Societies | B-19 | 1 |
| Addl: Secretaries | B-19 | 28 |
| Chief of Section PE&D | B-19 | 5 |
| Addl: Commissioners | B-19 | 6 |
| Member G.I.T. | B-19 | 1 |
| G.M. (Finance/Admin): F.D.C. | B-19 | 1 |
| Senior Economist Finance Deptt: | B-19 | 1 |
| Deputy Commissioners | B-19 | 1 |
| Political Agents | B-18 | 23 |
| Addl: Deputy Commissioners | B-18 | 8 |
| Settlement Officers | B-18 | 2 |
| Secretary P.S.C. | B-18 | 2 |
| Secretary B.O.R. | B-18 | 1 |
| Director Land Record | B-18 | 1 |
| Director Social Welfare | B-18 | 1 |
| Div: Director LG&RD | B-18 | 1 |
| Dy: Director Provincial Services Academy | B-18 | 2 |
| Administrator A.R.O. | B-18 | 1 |
| Deputy Secretaries | B-18 | 1 |
| Asst: Chief of Section | B-18 | 49 |
| Director Anti-Corruption | B-18 | 9 |
| Dy: Director (Admn): S.T.I. | B-18 | 1 |
| Dy: Director (Tgr): STI | B-18 | 1 |
| Jr: Economist Finance Deptt: | B-18 | 1 |
| Asst: Economic Advisor (Ind:) | B-18 | 1 |
| Secretary P.T.A. | B-18 | 1 |
| Assistant Commissioners | B-18 | 1 |
| Assistant Political Agents | B-17 | 41 |
| Asst: to Commissioner/Secretary to Commissioners | B-17 | 22 |
| | B-17 | 19 |

Section
Establishment &
Administration Deptt

21422

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Annex-V
22

BEFORE THE KHYBER PAKHTUNKHWA SERVICES
TRIBUNAL, PESHAWAR.

C.M.A. No. _____ of 2019

Mohammad Arshad-II ----- Appellant.

V E R S U S

The Provincial Selection Board through its Chairman, Chief Secretary and four Others
----- Respondents.

APPLICATION FOR TEMPORARY INJUNCTION.

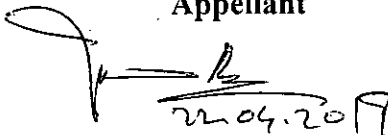
Respectfully sheweth that:-

1. The above appeal is filed before this honourable court.
2. The appellant has a strong prima-facie case against the respondents. The balance of convenience is in favour of the appellant. The appellant would suffer irreparable loss if temporary injunction is not granted.

It is, therefore, most humbly prayed that the respondents No. 1 to 3 may be directed to refrain from considering any further promotion case to BPS-20 in the PCS(SG) service/cadre till the decision of the important question of law raised in the appeal. Any other relief which this honorable tribunal may deem proper and just in the circumstances of the case.

Dated: 22.04.2019

Appellant


22.04.2019
Mohammad Arshad-II, PCS(SG-BPS-19),
Present Posting/Address:
Additional Secretary, Inter-Provincial
Coordination Department, Civil Secretariat,
Peshawar.
In Person

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 520 / 2019

Mr. Muhammad Arshad-II (PCS SG BS-19)
Additional Secretary, IPC Department

(Appellant)

VERSUS

1. The Provincial Selection Board through its Chairman, i.e. Chief Secretary, Govt. of KP Peshawar.
2. The Government of Khyber Pakhtunkhwa through Chief Secretary, Establishment Department KP.
3. The Secretary Establishment/Secretary of PSB.
4. Mr. Imtiaz Ayub, Secretary Administration
5. Mr. Muhammad Israr, Secretary, Agriculture.

Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 - 3.

PRELIMINARY OBJECTIONS

1. This Honourable Services Tribunal has no jurisdiction to entertain the instant Appeal.
2. That the Appellant has got no cause of action/locus standi to file the instant Appeal against the respondents.
3. That the present Appeal is not maintainable.
4. That the Appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
5. That the Appeal is barred by law/time.
6. That the Appellant has not come to this Honourable Services Tribunal with clean hands.
7. That the Appeal is bad for mis-joinder and non-joinder of necessary parties.
8. That the Appeal is hit by laches.

ON FACTS

1. Pertains to record.
2. Pertains to record.
3. Correct.
4. Correct.
5. Case was processed and filed.
6. No comments.

ON GROUNDS

- I. Incorrect. The Appellant is PCS SG BS-19 officer and promotion of PCS SG officers to higher grades is considered in accordance with the procedure laid down in promotion policy 2009 which is covered under Section-26 (1 & 2) of the Civil Servants Act, 1973 (**Annex-I**).
- II. Correct.
- III. Incorrect. Under section 26 (1 & 2) of the Civil Servants Act, 1973, Competent Authority is authorized:-
 - 1. To make such rules as appeared to him necessary or expedient for carrying out the purpose of this act.
 - 2. Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.


Therefore, Competent Authority approved Promotion Policy, 2009 that applies to the promotions of all Civil Servants holding appointment on regular basis and will come into effect immediately. Under the Promotion Policy, successful completion of the trainings is mandatory for promotions of officers of the Provincial Civil Service / Provincial Management Service to various Basic Scales, Mid-Career Management Course for promotion to BS-19, Senior Management Course for promotion to BS-20 and National Management Course for promotion to BS-21. Similarly under the said policy there will be no exemptions from mandatory trainings and 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.

Keeping in view the provisions of Promotion Policy, Establishment Department nominated the Appellant for Senior Management Course (SMC) and he undergone 21st SMC. After completion of 21st SMC, his case was placed before the PSB in its meeting held on 17.9.2018 and PSB **thoroughly discussed his service record and did not find him for promotion for the following reasons as noted in his report and recommended his Supersession:-**

- Limited understanding of public policy and his promotion potential was found limited.
- His comprehension of interplay of the internal and external dynamics of Pakistan was sketchy and lacked profundity.
- His analytical and synthesizing capacity was somewhat deficient and could barely address complex issues.
- He was rated very low as a leader, friend and professional by his peers.

(IV) Incorrect, the case of the Appellant has been treated in accordance with law, rules and policy in current practice. He earned 61 marks out of 70 awarded for Performance Evaluation Reports (PERS) and Board given him 7-marks out of 15 for mandatory training (SMC). Hence he earned 68 marks out of 100 whereas the requisite threshold for promotion to BS-20 is 70 marks. Hence the board recommended his supersession as per para-III (iii) of Promotion Policy, 2009.

It is, therefore, most humbly prayed that the instant Appeal being devoid of merit may very graciously be dismissed with costs.


(RESPONDENTS NO. 1 - 3)

Annex-1

For official use



GOVERNMENT OF KHYBER PAKHTUNKHWA

THE KHYBER PAKHTUNKHWA CIVIL SERVANTS ACT, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973)

Compiled by:

O&M SECTION, REGULATION WING
ESTABLISHMENT & ADMINISTRATION DEPARTMENT
GOVERNMENT OF KHYBER PAKHTUNKHWA

THE KHYBER PAKHTUNKHWA CIVIL SERVANTS ACT, 1973
(Khyber Pakhtunkhwa Act No. XVIII of 1973)

²An Act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa.

Preamble- WHEREAS it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons in, the service of the Khyber Pakhtunkhwa, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

1. Short title, application and commencement:- (1) This Act may be called the Khyber Pakhtunkhwa Civil Servants Act, 1973.

(2) This section and section 25, shall apply to persons employed on contract, or on work charged basis, or who are paid from contingencies, and the remaining provisions of this Act including this section, shall apply to all civil servants wherever they may be.

(3) It shall come into force at once.

CHAPTER-I

PRELIMINARY

2. Definitions:- (1) In this Act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "ad hoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method,
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-
 - (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
 - (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or

¹ For the words "NWFP" or "North-West Frontier Province", wherever occurred, the words "Khyber Pakhtunkhwa" substituted by the Khyber Pakhtunkhwa Laws (Amendment) Act, 2011 (Khyber Pakhtunkhwa Act No. IV of 2011) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 2nd April, 2011

² Published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 12-11-1973 at pages 287 N-287V

- (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923);
- (c) "Government" means the Government of the Khyber Pakhtunkhwa.
- (d) "Initial appointment" means appointment made otherwise than by promotion or transfer;
- (e) "Pay" means the amount drawn monthly by a civil servant as pay, and includes special pay, personal pay and any other emoluments declared by the prescribed authority to be paid ;
- (f) "Permanent post" means a post sanctioned without limit of times;
- (g) "Prescribed" means prescribed by rules;
- (h) "Province "means the Khyber Pakhtunkhwa;
- (i) "rules" means rules made or deemed to have been made under this Act ;
- (j) "Selection authority" means the Khyber Pakhtunkhwa Public Service Commission, a departmental selection board, departmental selection committee or other authority or body on the recommendations of, or in consultation with which any appointment or promotion, as may be prescribed, is made;
- (k) "temporary post" means a post other than a permanent post.

(2) For the purpose of this Act, an appointment, whether by promotion or otherwise, shall be deemed to have been made on regular basis if it is made in the prescribed manner.

CHAPTER-II

TERMS AND CONDITIONS OF SERVICE OF CIVIL SERVANTS

3. **Terms and Conditions:-** The terms and conditions of service of a civil servant shall be as provided in this Act and the rules.
4. **Tenure of office of civil servants:-** Every civil servant shall hold office during the pleasure of the Governor.
5. **Appointment:-** Appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorized by the Governor in that behalf.
6. **Probation:-** (1) An initial appointment to a service or post referred to in section 5, not being an ad hoc appointment, shall be on probation as may be prescribed.

(2) Any appointment of a civil servant by promotion or transfer to a service or post may also be made on probation as may be prescribed.

(3) Where, in respect of any service or post, the satisfactory completion of probation includes the passing of a prescribed examination, test or course or successful completion of any training, a person appointed on probation to such service or post who, before the expiry of the original or extended period of his probation, has failed to pass such examination or test or to successfully complete course or the training shall, except as may be prescribed otherwise-

- (a) if he was appointed to such service or post by initial recruitment, be discharged; or
- (b) if he was appointed to such service or post by promotion or transfer, be reverted to the service or post from which he was promoted or transferred and against which he holds a lien or, if there be no such service or post, be discharged:

Provided that in the case of initial appointment to a service or post, a civil servant shall not be deemed to have completed his period of probation satisfactorily until his character and antecedents have been verified as satisfactory in the opinion of the appointing authority.

7. **Confirmation :-** (1) A person appointed on probation shall, on satisfactory completion of his probation, be eligible for confirmation in a service or, as the case may be, a post as may be prescribed.

(2) A civil servant promoted to a post ¹[] on regular basis shall be eligible for confirmation after rendering satisfactory service for the period prescribed for confirmation therein.

(3) There shall be no confirmation against any temporary post.

(4) A civil servant who, during the period of his service, was eligible to be confirmed in any service or against any post retires from service before being confirmed shall not, merely by reason of such retirement, be refused confirmation in such service or post or any benefits accruing there-from.

(5) Confirmation of a civil servant in a service or post shall take effect from the date of occurrence of permanent vacancy in that service or post or from the date of continuous officiation, in such service or post, whichever is later.

8. **Seniority:-** (1) For proper administration of a service, cadre or ²[post], the appointing authority shall cause a seniority list of the members for the time being of such service, cadre or ³[post] to be prepared, but nothing herein contained shall be construed to confer any vested right to a particular seniority in such service, cadre or ⁴[post] as the case may be.

¹ The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

³ The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁴ The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

(2) Subject to the provisions of sub-section (1), the seniority of a civil servant shall be reckoned in relation to other civil servants belonging to the same service or [cadre] whether serving the same department or office or not, as may be prescribed.

(3) Seniority on initial appointment to a service, ²[cadre] or post shall be determined as may be prescribed.

³(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.

⁴(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 ⁵[higher] post for the time being reserved under the rule for departmental promotion in ⁶[] 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:

¹ The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

³ Sub section (4) of Sec-8 substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁴ Sub section (5) of Sec-8 added by Khyber Pakhtunkhwa Act No. 1 of 1989

⁵ The word "higher" inserted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁶ The words "the higher grade of" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

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 holds a lien against his former post in such ¹[service] or cadre, but he shall be reverted to his former ²[service], cadre or post, as the case may be;

- (ii) On the expiry of the initial or extended period of his employment; or
- (iii) if the appointment is made ad hoc terminable on the appointment of a person on the recommendation of the selection authority, on the appointment of such person.

(2) Where, on the abolition of a post or reduction in the number of posts in a cadre or grade, the services of a civil servant are required to be terminated, the person whose services are terminated shall ordinarily be the one who is the most junior in such cadre or grade.

(3) Notwithstanding the provisions of sub-section (1), but subject to the provisions of sub-section (2), the service of a civil servant in temporary employment or appointed ad hoc shall be liable to termination on fourteen days' notice or pay in lieu thereof.

11-A. Absorption of civil servants rendered surplus. Notwithstanding anything contained in this Act, the rules made there-under, any agreement, contract or the terms and conditions of service, a civil servant who is rendered surplus as a result of re-organization or abolition of a department, office or abolition of a post in pursuance of any Government decision may be appointed to a post, carrying basic pay scale equal to the post held by him before such appointment, if he possesses the qualifications and fulfils other conditions applicable to that post:

Provided that, where no equivalent post is available, he may be offered a lower post in such manner and subject to such conditions as may be prescribed, and where such civil servant is appointed to a lower post, the pay being drawn by him in the higher post immediately preceding his appointment to a lower post shall remain protected.

12. Reversion to a lower ⁴post:- A civil servant appointed to a higher post or ⁵[before the commencement of the Khyber Pakhtunkhwa Civil Servants amendment) Ordinance, 1985 to a higher] grade ad hoc or on temporary or officiating basis shall be liable to reversion to his lower post ⁶[] without notice.

12-A. Certain persons to be liable to removal or reversion:- Notwithstanding Notwithstanding anything contained in his terms and conditions of service, a civil servant appointed or promoted during the period from first day of January, 1972 to the fifth day of July, 1977 may be removed from service or reverted to his lower post as the

¹ The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² The word "grade" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

³ The new Section "11-A" inserted by Khyber Pakhtunkhwa Ordinance No. VI of 2001

⁴ The words "grade or service" substituted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁵ The words inserted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

⁶ The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985

⁷ Section 12A inserted by Khyber Pakhtunkhwa Ordinance No. IX of 1978.

case may be, without notice, by the Governor or a person authorized by him in this behalf, on such date as the Governor or, as the case may be, the person so authorized may, in the public interest, direct.

13. Retirement from service: - (1) A civil servant shall retire from service-

- (a) on such date after he has completed ³[twenty] years of service qualifying for pension or other retirement benefits as the competent authority may, in public interest, direct; or
 - (b) where no direction is given under clause (a), on the completion of sixtieth year of his age.
- (2) No direction under clause (a) of sub-section (1) shall be made until the civil servant has been informed in writing of the grounds on which it is proposed to make the direction, and has been given a reasonable opportunity of showing cause against the said direction.

Explanation: In this section, the expression "competent authority" means the appointing authority prescribed in rule 4 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

14. Employment after retirement:- (1) A retired civil servant shall not ordinarily be re-employed under Government, unless such re-employment is necessary in the public interest and is made with the prior approval of the authority next above the appointing authority:

Provided that, where the appointing authority is the Governor, such re-employment may be ordered with the approval of the Governor.

(2) Subject to the provision of sub-section(1) of section 3 of the Ex-Government Servants (Employment with Foreign Governments) (Prohibition) Act, 1966 (Act XII of 1966), a civil servant may, during leave preparatory to retirement, or after retirement from Government service, seek any private employment:

Provided that, where employment is sought by a civil servant while on leave preparatory to retirement or within two years of the date of his retirement, he shall obtain the prior approval of the prescribed authority.

15. Conduct:- The conduct of a civil servant shall be regulated by rules made, or instructions issued, by Government or a prescribed authority, whether generally or in respect of a specified group or class of civil servants.

16. Disciplinary action:- A civil servant shall be liable to prescribed disciplinary action and penalties in accordance with the prescribed procedure.

17. Pay:- A civil servant appointed to a post ⁴[] shall be entitled, in accordance with the rules, to the pay sanctioned for such post ¹[].

¹ Section 13 substituted vide Khyber Pakhtunkhwa Civil Servants (Amendment) Act 1991(Act III of 1991)

² Section 13 again substituted vide Khyber Pakhtunkhwa Civil Servants (Amendment) Ordinance 2000 (Khyber Pakhtunkhwa Ordinance No. VIII of 2000).

³ The word "twenty-five" years substituted with the words "twenty" in Section 13 vide Khyber Pakhtunkhwa Civil Servants (second amendments) Ordinance 2001.

⁴ The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

Provided that, when the appointment is made on a current-charge basis or by way of additional charge, his pay shall be fixed in the prescribed manner:

Provided further that where a civil servant has, under an order which is later set aside, been dismissed or removed from service or reduced in rank, he shall, on the setting aside of such order, be entitled to such arrears of pay as the authority setting aside such order may determine.

18. Leave:- A civil servant shall be allowed leave in accordance with the leave rules applicable to him; provided that the grant of leave will depend on the exigencies of service and be at the discretion of the competent authority.

19. Pension and gratuity.—(1) On retirement from service, a civil servant shall be entitled to receive such pension or gratuity as may be prescribed.

(2) In the event of death of civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as may be prescribed.

(3) No pension shall be admissible to a civil servant who is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such civil servant, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal.

(4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualified for pension or gratuity, and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally-determined as payable to such civil servant or his family.

20. Provident Fund:- (1) Before the expiry of the third month of every financial year, the Accounts Officer or other officer required to maintain provident fund accounts shall furnish to every civil servant subscribing to a provident fund the account of which he is required to maintain a statement under his hand showing the subscriptions to including the interest accruing thereon, if any, and withdrawals or advances from his provident fund during the preceding financial year.

(2) Where any subscription made by a civil servant to his provident fund has not been shown or credited in the account by the Accounts Officer or other officer required to maintain such account, such subscription shall be credited to the account of the civil servant on the basis of such evidence as may be prescribed.

21. Benevolent Fund and Group Insurance:- All civil servants and their families shall be entitled to the benefits admissible under the West Pakistan Government

¹ The words "or grade" omitted by Khyber Pakhtunkhwa Ordinance No. IV of 1985.

² Section-19 substituted by the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 (Khyber Pakhtunkhwa Act No. III of 2013) published in the Khyber Pakhtunkhwa Government Gazette Extraordinary dated 22nd January, 2013.

Employees Welfare Fund Ordinance, 1969 (W.P Ord.I of 1969), or the Khyber Pakhtunkhwa Government Servants Benevolent Fund Ordinance, 1972 (Khyber Pakhtunkhwa Ordinance VII of 1972); and the rules made thereunder.

22. 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.

CHAPTER-III

MISCELLANEOUS

23. Saving:- Nothing in this Act or in any rule shall be construed to limit or abridge the power of the Governor to deal with the case of any civil servant in such manner as may appear to him to be just and equitable:

Provided that, where this Act or any rule is applicable to the case of a civil servant, the case shall not be dealt with in any manner less favourable to him than that provided by this Act or such rules.

23-A Indemnity.- No suit, prosecution or other legal proceedings shall lie against a civil servant for anything done or intended to be done in good faith in his official capacity under this Act or the rules, instructions or direction made or issued thereunder.

23-B. Jurisdiction barred.—Save as provided under this Act and the Service Tribunal Act, 1974 (Khyber Pakhtunkhwa Act No. 1 of 1974), or the rules made thereunder, no order made or proceedings taken under this Act, or the rules made thereunder by the Governor or any officer authorized by him shall be called in question in any court and no injunction shall be granted by any court in respect of any decision made, or proceedings taken in pursuance of any power conferred by or under this Act or the rules made thereunder.

24. Removal of difficulties:- If any difficulty arises in giving effect to any of the provisions of this Act, the Governor may make such order, not inconsistent with the provisions of this Act, as may appear to him to be necessary for the purpose of removing the difficulty:

¹ Section-23A inserted vide Khyber Pakhtunkhwa Ordinance No. XIV of 2002.

² Section-23B inserted vide Khyber Pakhtunkhwa Ordinance No. XIV of 2002.

Provided that no such power shall be exercised after the expiry of one year from the coming into force of this Act.

25. Appointment of persons on contract, etc:- The Governor or any person authorized by the Governor in that behalf may, on such terms and conditions as he may specify in each case, appoint persons on contract basis, or on work-charged basis, or who are paid out of contingencies:

Provided that all such employees who were working in any such capacity immediately before the commencement of this Act shall continue to be so employed on the same terms and conditions on which they were appointed.

26. Rules:- (1) The Governor or any person authorized by the Governor in this behalf, may make such rules as appear to him to be necessary or expedient for carrying out the purposes of this Act.

(2) Any rules, orders or instructions in respect of any terms and conditions of service of civil servants duly made or issued by an authority competent to make them and in force immediately before the commencement of this Act shall, in so far as such rules, orders or instructions are not inconsistent with the provisions of this Act, be deemed to be rules made under this Act.

27. Repeal:- The Khyber Pakhtunkhwa Civil servants Ordinance, 1973 (Khyber Pakhtunkhwa Ordinance No. VI of 1973), is hereby repealed.

¹ The Governor Khyber Pakhtunkhwa has authorized the Chief Minister Khyber Pakhtunkhwa to make rules vide Notification No. SOR-I (S&GAD)1-206/74/Vol-V, dated 18-04-1989 read as "In exercise of the powers conferred by sub-Section (1) of Section 26 of the Khyber Pakhtunkhwa Civil Servants Act 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), the Governor of the Khyber Pakhtunkhwa is pleased to authorize the Chief Minister Khyber Pakhtunkhwa to make rules for carrying out the purpose of the said Act".

AN
ACT

to amend the Khyber Pakhtunkhwa Civil
Servants Act, 1973.

WHEREAS it is expedient to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. **Short title and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2015.

(2) It shall come into force at once.

2. **Insertion of new section in the Khyber Pakhtunkhwa Act No. XVIII of 2013.**--- In the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), hereinafter referred to as the said Act, after section 11A, the following new section shall be inserted, namely:

"11B. Absorption or appointment of Federal employees.--- (1) Notwithstanding anything contained in this Act, all those employees of the Federal Government, who are holding various posts in Federal Government entities on regular basis, before the commencement of the Constitution (Eighteenth Amendment) Act, 2010 (X of 2010) and the said entities being devolved to Province in pursuance of aforesaid amendment, shall be deemed to be the civil servants of the Province for all intents and purposes under this Act.

(2) All such Federal Government employees,-

- (a) if their relevant cadre is available in Government, shall be absorbed in the said cadre in the prescribed manner; and
- (b) if no relevant cadre is available in Government, shall be deemed to have been appointed on regular basis to various cadres posts to be created for this purpose:

Provided that on such appointment or absorption, as the case may be,-

- (i) their seniority shall be determined in accordance with the provision of this Act; and
- (ii) their liabilities with regard to pension, gratuity, group insurance, benevolent fund and leave encashment shall be proportionally shared between the Federal Government and Government in such a manner as may be agreed upon.

(3) Government shall constitute a committee consisting of Secretary to government, Establishment Department, Secretary to Government, Finance Department, Secretary to Government, Law, parliamentary Affairs and Human Rights Department, Secretary to Government, Inter Provincial Coordination Department and Secretary of the concerned Department to remove difficulties, if any, in implementation of this section."

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)
Secretary
Provincial Assembly of Khyber
Pakhtunkhwa