

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

S.A No. 1365/2023

Shakel Ahmad

versus

Director General & Others

I N D E X

S. No	Documents	Annex	P. No.
1.	Memo of Replication		1-5
2.	Notifications	R/1	6-10
3.	Seniority list dated 27-01-2023	R/2	11-12.
4.	Promotion order dated 08-12-2017	R/3	13
5.	WP No. 897-P/15 vide judgment dated 23-03-2018	R/4	14-21
6.	Review Petition 127-P/18 vide judgment dated 24-05-2018	R/5	22-26


Appellant

Through



Arbab Saiful Kamal
Advocate.

21-A Nasir Mansion,
Shoba Bazaar, Peshawar.

Ph: 0345-9047738

Dated.30-01-2024

BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR

S.A No. 1365/2023

Shakel Ahmad

versus

Director General & Others

REJOINDER

Respectfully Sheweth,

PRELIMINARY OBJECTION

Khyber Pakhtukhwa
Service Tribunal

Diary No. 10959

Dated 1-2-2024

All the Preliminary Objections from "a" to "h" are illegal and incorrect. No reason in support of the same is ever given as to why the appellant has no locus standi, cause of action, why not come to this hon'ble Tribunal with clean hands, why appeal is not maintainable, how bad for non-joinder and mis-joinder of parties, why estopped, what legal defects in the appeal, how pressuring when appellant has a legal right of seniority, how R. No. 05 to 12 are seniors when they are only upgraded not promoted through proper DPC.

ON FACTS

1. Reply of official respondents is not to the contents of para No. 01 whereas private R. No. 05 to 12 admitted the fact that they are only upgraded whereas appellant properly promoted to B-17, so appellant ranks senior to R. No. 05 to 12.
2. The reply of official respondents is out of context whereas the reply of R. No. 05 to 12 is shooting in the air because the appellant was promoted as AD B-17 on 28-05-2019, so naturally he joined / enter in Seniority List after words but he was promoted through DPC whereas R. No. 05 to 12 were only upgraded so cannot rank seniors to appellant as upgradation is only for monitory benefits. No change of scale is involved in upgradation according to judgments of superior courts.

3. Reply of official respondents is strange as the appellant was promoted on 28-05-2019, how could he challenge the Seniority List issued on 13-05-2019, once he was promoted he has a right to challenge the Seniority List which is not drawn in accordance with law, whereas the reply of R. No. 05 to 12 refers to only upgradation of the post wherein the post was never upgraded along with incumbents, nor R. No. 05 to 12 were promoted to the upgraded post through DPC whereas the appellant was promoted through proper DPC on 28-05-2019, so appellant is very much senior from R. No. 05 to 12, for better understanding the appellant refers different notifications of the Government.

- i. Notification dated 28-08-2018 whereby the post of Director B-18 was upgraded to B-19 by the Finance Department in the Directorate General Sports.
- ii. Notification dated 18-09-2018 whereby in pursuance of Notification dated 28-08-2018, the Secretary Sports upgraded the post of Director from B-18 to B-19.
- iii. Promotion dated 24-08-2021 whereby the incumbents were promoted to the upgraded post mentioned in the above two Notifications dated 28-08-2018 and Notification dated 18-09-2018.
- iv. Notification dated 08-07-2021, whereby the post was upgraded along with incumbents in the Appellate Tribunal Inland Revenue. (ATIR)
- v. Notification dated 17-11-2021, whereby the authority upgraded the post of District Youth Officer along with incumbents from B-16 to B-17.

So the R. No. 05 to 12 who are only upgraded cannot claim seniority over appellant who is regularly promoted as AD BPS-17. (Notifications as annex "R")

4. The reply of official respondents is strange as it refers to notification whereby the post was upgraded but was never upgraded along with incumbents as explained above in Para No. 02 and 03, whereas the appellant when he was Assistant B-14,

the Government issued Notification giving scale 16 to Assistants and other post throughout the Province so appellant case cannot be compared to the case of R. No. 05 to 12 wherein these respondents were only upgraded. As regards the reply of R. No. 05 to 12 refers to upgradation of the post but the post was never upgraded along with incumbents (R. No. 05 to 12) the reply further refers to taking charge of R. No. 05 to 12 prior to appellant, it is to clarified that taking charge on upgraded post creates no right when incumbent is not promoted or the post is not upgraded along with incumbents through proper process.

5. The reply of official respondents is out of context as the appellant filed objection on Tentative Seniority List which was issued for second time and has not filed service appeal but how can the department issued 2023 Seniority List after Seniority List of 2019 whereas the law provides for issuing Seniority List in every Calendar year. The respondent refers the seniority list stood on 10-10-2023 which is issued during the pendency of service appeal which does not effects the rights of appellant as he has already challenged seniority list stood on 18-01-2023 issued vide covering letter dated 27-01-2023 wherein the appellant has wrongly been placed below the R. No. 05 to 12 who were only upgraded not promoted whereas appellant is properly promoted so is very much senior to R. No. 05 to 12. (Attested copy of SL issued on 27-01-2023 as annex "R/2")

Note:- the respondents during pendency of the appeal illegally issued seniority list dated 10-10-2023 whereby not only R. No. 05 to 12 were placed a head of the appellant but a new incumbent (Mrs Nazia Zaki) was placed at S. No. 01 against which the appellant also preferred departmental appeal which is not responded till date.

6. The reply of official respondents is very much strange how can the issuance of seniority list stood on 18-01-2023 issued on 27-01-2023 be denied when the same was issued by the R. No. 01, properly signed by him against which the appellant has preferred departmental appeal dated 17-03-2023 as for as reply of R. No. 05 to 12 is based on malafide.

Note:- The judgment mentioned in the SL refers to WP No. 897-P/2015 whereby relief was given to incumbents up to S. No. 07 in the impugned SL who were properly promoted against the vacant posts vide order dated 08-12-2017 whereas the R. No. 05 to 12 were never promoted only the post was upgraded, the review petition No. 127-P/18 in WP 897/15 by the respondents was dismissed by the High Court vide judgment dated 25-05-2018, which clarifies the position that R. No. 05 to 12 has no right seniority over the appellant who was promoted through DPC on regular basis. (Copies of promotion order dated 08-12-2017, WP 897/15 and Review Petition No. 127/18 as annex "R/3", "R/4" and "R/5")

GROUND S:

- a. R. No. 01 to 04 not replied while R. No. 05 to 12 refers the Rule 17 APT and judgment 2010 SCMR 450 both are incorrect and when the appellant was promoted through DPC, then he pursue his cause timely, whereas the R. No. 05 to 12 has not been promoted and only post upgraded so are juniors to appellant and are yet to be promoted to B-17 against the upgraded post so cannot rank senior to appellant.
- b. Denied, only the post is upgraded, no promotion order of respondents is available on the record, nor they are upgraded along with the post, so the respondents are still in B-16 and appellant being promoted through DPC to B-17 has a right to be placed a head of the respondents in the seniority list.
- c. Appellant was promoted through DPC whereas the respondents are not promoted and upgraded only which involves monetary benefits and does not create right of seniority according to the judgments of superior courts.
- d. Denied, seniority list is not drawn according to law as the respondents having no right were placed in seniority list of B-17.
- e. Not replied so admitted correct.

- f. Denied 17 (2) of APT has no application in the present case as R. No. 05 to 12 has not been regularly promoted through DPC only post is upgraded.
- g. Denied, if rules were not made at the time of upgradation of the post even then law provides for regular promotion to the post for seeking seniority to a post / cadre which is missing in this case.
- h. Denied. The para is very much applicable to the present case as superior courts has drawn distinction between promotion and upgradation as upgradation only involves monetary benefits and gives no right of seniority over the incumbents who are regularly promoted through process of DPC.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.



Appellant

Through

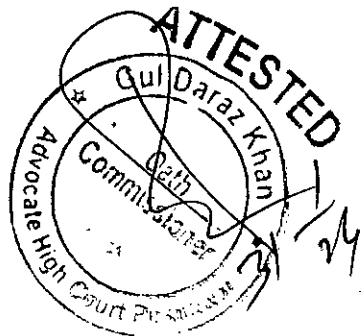


Arbab Saiful Kamal
Advocate,

Dated: 30-01-2024

AFFIDAVIT

I, Shakel Ahmad, (appellant) do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.




DEPONENT

R/A 6 (R.A.) S. P. P. S.
GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
(REGULATION WING) ①

No SO(FR)FD/7-34/2017/17434/Sports
Date of Posting: 20th August 2018

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Sports, Culture, Tourism, Archeology, Museum
& Youth Affairs Department

Subject: RESTRUCTURING OF DIRECTORATE GENERAL SPORTS/
UPGRADATION OF THE POSTS OF DIRECTORS FROM BPS-18
TO BPS-19

Dear Sir,

I am directed to refer to your department letter No.SO(S)1-10.2008/Sports facilities dated 09-08-2018 on the subject noted above and to state that the competent authority has been pleased to upgrade 03 posts of Director Sports from BPS-18 to BPS-19 in Sports, Culture, Tourism, Archeology, Museum & Youth Affairs Department with immediate effect.

Audit copy may be prepared and sent to this department for authentication

Yours faithfully


Section Officer (FR)

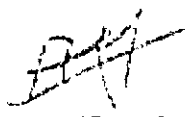
Copy forwarded to:

- 1 The PS to Secretary, Finance Department.
- 2 The Director FMU, Finance Department.
- 3 The Budget Officer-III, Finance Department for information and further necessary action.

Section Officer (FR)

12/11/18

10/11


3/9/18

Aurta




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GOVERNMENT OF KHYBER PAKHTUNKHWA, SPORTS,
TOURISM, CULTURE, YOUTH AFFAIRS ARCHAEOLOGY,
AND MUSEUMS DEPARTMENT.

ORDER

No. SO (Sports)2-2/2018:- In pursuance to the Govt of Khyber Pakhtunkhwa Finance Department (Regulation Wing) vide letter No. SO(FR)FD/7-34/2017/1734/Sports dated 28th August, 2018, the competent authority has been pleased to up-graded 03 Posts of Director Sports from BPS-18 to BPS-19 in Sports, Culture, Tourism, Archeology, Museums & Youth Affairs Department with immediate effect:

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
SPORTS, TOURISM, ARCHAEOLOGY, MUSEUMS &
YOUTH AFFAIRS DEPARTMENT

Endst: No. SO(FR)FD/7-34/2017/1734/2017-18

dated 18/09/2018

A copy is forwarded to the Accountant General, Khyber Pakhtunkhwa, Peshawar for information and necessary action.

SECTION OFFICER (FR)
FINANCE DEPARTMENT
KHYBER PAKHTUNKHWA.

Endst: No. SO(Sports)2-2/2018

dated 18/09/2018

A copy is forwarded to:-

- 1- The Director General Sports Khyber Pakhtunkhwa, Peshawar.
- ✓ 2- The Budget Officer-III Finance Department Khyber Pakhtunkhwa.
- 3- The Section Officer (FR) Finance Department Khyber Pakhtunkhwa.

SECTION OFFICER SPORTS
& YOUTH AFFAIRS DEPARTMENT
KHYBER PAKHTUNKHWA

Agents



8

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198

GOVERNMENT OF KHYBER PAKHTUNKHWA
SPORTS, TOURISM, CULTURE, ARCHAEOLOGY,
MUSEUMS & YOUTH AFFAIRS DEPARTMENT
(Sports & Youth Affairs Section)

Dated Peshawar the 24th August, 2021

1774-85

NOTIFICATION

No. SO (Sports) 1-7/DPC/PSB/2021/

The Competent Authority, on the recommendations of Provincial Selection Board, in its meeting held on 31.07.2021, is pleased to promote the following Deputy Directors / Regional Sports Officers from BS-18 to the post of Directors BS-19 of Directorate General of Sports, Khyber Pakhtunkhwa, on regular basis, with immediate effect: -

S. No.	Name of Officers	Present Posting
1	Syed Muhammad Saqlain Shah	Deputy Director (BPS-18)
2	Muhammad Saleem Raza	Director (BS-19) in his OPS

2. The officers on promotion will remain on probation 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 & Transfer) Rules, 1989. However, the officer at Sr. # 1 (Syed Muhammad Saqlain Shah) will remain on probation till his retirement.

3. Posting / transfer of the above officers will be issued later on.

-Sd-

Secretary

Sports, Tourism, Culture, Archaeology,
Museums & Youth Affairs Department,
Khyber Pakhtunkhwa

Endst No. & date even.

Copy to the:-

1. Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. Accountant General, Khyber Pakhtunkhwa.
5. Director General Sports, Khyber Pakhtunkhwa.
6. PSO to Chief Secretary, Khyber Pakhtunkhwa.
7. Section Officer (PSB), Establishment Department, Khyber Pakhtunkhwa.
8. All RSOs/DSOs of Directorate General of Sports, Khyber Pakhtunkhwa.
9. PS to Secretary, Sports & Youth Affairs Department.
10. PA to Additional Secretary-II, Sports & Youth Affairs Department.
11. PA to Deputy Secretary-II, Sports & Youth Affairs Department.
12. Officer concerned.

Section Officer (Sports)

25.08.2021

9/c

Sports

Example

upgrades to B19.

late manifests
Domestic Trip DPG:

TO BE PUBLISHED IN THE NEXT ISSUE
OF THE GAZETTE OF PAKISTAN PART I

GOVERNMENT OF PAKISTAN
LAW AND JUSTICE DIVISION

NOTICE NO. 2021/AY

Islamabad On 08th July 2021

NOTIFICATION

Consequent upon approval of the Establishment and Finance Division, the following posts in the Appellate Tribunal Inland Revenue (ATIR), under the administrative control of Law & Justice Division are upgraded along with their incumbents, with immediate effect:

S. No.	Name of post	Up-gradation	
1	Deputy Registrar	BPS-17	BPS-18
2	Assistant Registrar	BPS-16	BPS-17
3	Superintendent	BPS-15	BPS-16
4	Supervisor	BPS-14	BPS-15

2. The financial implications in account of up-gradation of the above mentioned posts shall be met within the sanctioned budget of Appellate Tribunal Inland Revenue.

3. This issue with the approval of Secretary, Law & Justice Division

/
Sajid Afzal
Section Officer
Ph. 9202356

The Member,
Parliamentary Commission for Human Rights
University Road
Karachi

Copy to:-

1. Chairman, Appellate Tribunal Inland Revenue, Islamabad.
2. Registrar, Appellate Tribunal Inland Revenue, Islamabad.
3. Deputy Registrar, Assistant Registrars, Appellate Tribunal Inland Revenue, Islamabad, Lahore, Karachi and Peshawar.
4. ACP, Islamabad, and CPs, Karachi, Lahore and Peshawar.
5. Record.

Section Officer (A/TIR)

Sample.

July 2nd 1911

Appendix of post-graduate
numbers.



10

5

GOVERNMENT OF KHYBER PAKHTUNKHWA;
SPORTS, CULTURE, TOURISM, ARCHAEOLOGY, MUSEUMS & YOUTH
AFFAIRS DEPARTMENT.
13-A Khyber Road, Peshawar

Dated Peshawar, the 17th Nov, 2021.

NOTIFICATION

No. SO(Budget)1-17/Up-gradation /2021/ In pursuance of the recommendations of the Up-gradation Committee meeting held on 27-5-2021 and subsequent approval of the competent authority i.e. Chief Secretary, Khyber Pakhtunkhwa, sanction is hereby accorded for up-gradation of the posts of District Youth Officers along with the incumbents from BS-16 to BS-17 under the Directorate of Youth Affairs, Khyber Pakhtunkhwa with immediate effect.


2. The expenditure involved is debitable to the Function-Cum-Object Classification "08-Recreational, Culture, Religion, 081-Recreational and Sporting Services, 0811-Recreational & Sporting Services, 081120-Others, within the sanctioned budget Grant during the financial year 2021-22.

3. Service rules will be amended in prescribed manner through SSRC accordingly.

Sd.
Secretary Sports, Tourism, Culture, Archaeology,
Museums, & Youth Affairs Department
Khyber Pakhtunkhwa

Endst No. SO(FR)FD/7-34/2021/Sports Tourism Department

Copy forwarded for information and necessary action to the Accountant General, Khyber Pakhtunkhwa.


Section Officer (FR)
Finance Department.

Endst: number & date even.

Copy is forwarded to the:

1. All District Accounts Officers in Khyber Pakhtunkhwa.
2. All Deputy Commissioners in Khyber Pakhtunkhwa.
3. Director Youth Affairs, Khyber Pakhtunkhwa, Peshawar.
4. PS to Secretary Sports, Tourism & Youth Affairs Department, Peshawar.
5. Section Officer (FR) Finance Department, Peshawar with reference to his letter No.SO(FR)FD/7-34/2021 Sports Tourism Department dated 9-11-2021.
6. Officers concerned.


Section Officer (Budget)
Sports & Tourism Department

17/11/21



Smith

some youth office
updates but also
incubators

(4)

SPORTS OFFICERS & ADMINISTRATORS (BPS-17) OF THE DIRECTORATE GENERAL OF SPORTS KHYBER PAKHTUNKHWA

Approved on: 18-01-2023.

Total Sanctioned Posts: 46 Posts i.e 07 posts of Assistant Directors, 28 Posts of District Sports Officers & 11 posts of Administrators.
Vacant Posts : 46 Posts

BASIC PAY SCALE: 17

S.No	Name of Officer with academic Qualifications	Date of birth and domicile	Date of 1 st entry into Govt. Service	Regular appointment / promotion to the present posts			Present appointment with date	Remarks
				Date	BPS	Method of recruitment / appointment		
1)	Mr. Sikandar Shah, Regional Sports Officer (a.c.b), M.Sc	25-04-1963 Kohat	04-06-1991	20-05-2014	17	By promotion	RSO (a.c.b) 20-05-2014	Promoted to the rank of Regional Sports Officer (BPS-18) on 24-04-2019 on acting charge basis. His seniority has been fixed w.e.f. 20-05-2014 in light of the judgments of PHC.
2)	Mr. Muhammad Jamshid, (District Sports Officer), M.Sc.	05-05-1978 D.I.Khan	01-01-2005	20-05-2014	17	By promotion	DSO 20-05-2014	The seniority has been fixed w.e.f. 20-05-2014 in light of the judgments of PHC.
3)	Mr. Muhammad Suleman, (District Sports Officer), M.Sc.	01-04-1971 Dir Lower	06-06-1990	20-05-2014	17	By promotion	DSO 20-05-2014	-do-
4)	Mr. Anwar Kamal, (District Sports Officer), B.A	27-03-1975 D.I.Khan	29-09-2005	20-05-2014	17	By promotion	DSO 20-05-2014	-do-
5)	Mr. Amir Zahid Shah, (District Sports Officer), M.Sc.	05-09-1967 Bannu	29-06-1992	20-05-2014	17	By promotion	DSO 20-05-2014	-do-
6)	Mr. Zakir Ullah, (District Sports Officer), M.A/ M.Sc.	22-04-1977 Peshawar	29-09-2005	20-05-2014	17	By promotion	DSO 20-05-2014	-do-
7)	Mr. Razi Ullah Khan, (District Sports Officer), M.A/ M.Sc.	01-10-1979 Tank	02-09-2002	20-05-2014	17	By promotion	DSO 20-05-2014	-do-
8)	Muhammad Ismail Khan, (District Sports Officer), M.A/ M.Sc.	02-06-1977 Bannu	19-06-2005	20-05-2014	17	By Upgradation	DSO 20-05-2014	-do-
9)	Mr. Tariq Muhammad, (District Sports Officer), M.A/ M.Sc.	22-10-1972 Swabi	26-06-1997	20-05-2014	17	By Upgradation	DSO 20-05-2014	-do-
10)	Mr. Asad Khan, (District Sports Officer), M.A	20-05-1968 Mardan	20-03-2006	20-05-2014	17	By Upgradation	DSO 20-05-2014	-do-
11)	Mr. Ahmad Zaman, (District Sports Officer), M.Sc.	30-04-1980 Haripur	17-06-2009	20-05-2014	17	By Upgradation	DSO 20-05-2014	-do-
12)	Mr. Munir Abbas, (District Sports Officer), MBA	12-3-1984 Hangu	09-08-2006	08-03-2018	17	By Upgradation	DSO 08-03-2018	On Deputation to Tourism & Culture Authority, (Comd. P/2)

(Signature)
 Assistant Director
 (Litigation) Directorate
 General of Sports KPK Peshawar

(Signature)
 DSO
 Date: 18/01/23
 P. No. 117

R.N. 5
 R.N. 6
 R.N. 7
 R.N. 4

R/2 11

S.#	Name of Officer with academic Qualifications	Date of birth and domicile	Date of 1 st entry into Govt. Service	Regular appointment/ promotion to the present posts			Present appointment with date	Remarks
				Date	BPS	Method of recruitment / appointment		
13)	Mr. Kashif Farhan, (District Sports Officer), M.Phil	13-04-1984 Bannu	31-08-2017	08-03-2018	17	By Upgradation	DSO 08-03-2018	Working against the post of RSO Swat in OPS
14)	Mr. Hazrat Ullah, (District Sports Officer), PhD	01-01-1984 Karak	31-08-2017	08-03-2018	17	By Upgradation	DSO 08-03-2018	DSO Hangu
15)	Mrs. Gul Rukh Gulfam, (District Sports Officer), M.Sc	01-06-1991 Abbottabad	29-09-2017	08-03-2018	17	By Upgradation	DSO 08-03-2018	DSO Peshawar
16)	Mr. Amjad Iqbal, Assistant Director, Provincial HQ, MSc Botany (Gold Medalist)	19-6-1967 Peshawar	15-8-1992	28-05-2019	17	By Promotion	Assistant Director 28-05-2019	Assistant Director (Accounts)
17)	Mr. Shakeel Ahmad, Assistant Director, Provincial HQ, M.A	04-1-1971 Buner	18-1-2008	28-05-2019	17	By Promotion	Assistant Director 28-05-2019	Assistant Director (Operation)
18)	Mr. Hamid Ali, Assistant Director, Provincial HQ, BJT (Honrs:)	16-06-1985 Charsadda	14-07-2008	04-01-2022	17	By promotion	Assistant Director 04-01-2022	Assistant Director (H.Q)

R.No 10
R.No 11
R.No 12

Appellu

[Handwritten signature]

The seniority of officers mentioned at S.No.1 to 11 has been fixed w.e.f. 20-05-2014 in light of the judgment of Peshawar High Court (Annex-I) and creation of supernumerary posts without back benefits by the Finance Department (Annex-II).

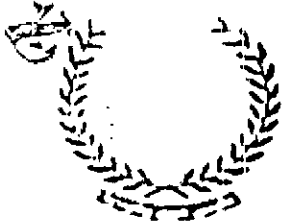
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 Approved
 Co-Ordinator
 DE S&A
 Attested
[Signature]

ATTESTED
to be true copy

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R/3

13



GOVERNMENT OF KHYBER PAKHTUNKHWA
SPORTS, TOURISM, ARCHAEOLOGY, MUSEUMS & YOUTH
AFFAIRS DEPARTMENT
H-5054, P.O. Box 1000
ISLAMABAD

100

NOTIFICATION

08th December 2017

No. SO(Sports) 1-7/2017: On the recommendations of the Deputy District Sports Officers, District Sports Officers and Deputy District Sports Officers BPS 16/17 of the District Sports Officers, Khyber Pakhtunkhwa are hereby promoted as District Sports Officers BPS-17 with immediate effect.

P.S. 1519-17/1P.10/17
Date 12-10-17
Director General of Sports
Khyber Pakhtunkhwa

- 1. Mr. Muhammad Jamshed
- 2. Mr. Muhammad Suaman
- 3. Mr. Anwar Kamal
- 4. Mr. Amir Zahid Shah
- 5. Mr. Zahir Ullah
- 6. Mr. Razi Ullah

On promotion, the above officers will be on probation for a period of one year in terms of Section-3(2) of Khyber Pakhtunkhwa Civil Servant Act 1973 read with Rule-15 of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules 1989.

Secretary to Government of Khyber Pakhtunkhwa
Sports, Tourism, Archaeology, Museums &
Youth Affairs Department

14525-33

Encl: No. SO(Sports) 1-7/2006:-

Dated Peshawar the 08th December, 2017

Copy forwarded for information to the:-

- 1 Director General, Sports and Youth Affairs, Khyber Pakhtunkhwa
- 2 Accountant General, Khyber Pakhtunkhwa
- 3 Officers concerned
- 4 PS to Secretary, Sports and Youth Affairs, Khyber Pakhtunkhwa

[Signature]
SECTION OFFICER (SPORTS)

[Handwritten signatures and notes]
12/10/17
K/12
Section Officer (Sports)

R/4 14

(11)

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BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. _____ /2015

1. Raziullah Khan, Deputy District Sports Officer, DI Khan.
2. Anwar Kamal Barki, Deputy District Sports Officer, Tank.
3. Amir Zahid Shah, Deputy District Sports Officer, Director of Sports, Peshawar.
4. Muhammad Ismail, Deputy District Sports Officer, Karak.
5. Ahmed Zaman, Deputy District Sports Officer, Haripur.
6. Suliman Khan, Deputy District Sports Officer, Dir.
7. Zakirullah, Deputy District Sports Officer, Nowshera.
8. Tariq Muhammad, Deputy District Sports Officer, Swabi.
9. Asad Khan, Deputy District Sports Officer, Director of Sports, Arbab Niaz Stadium, Peshawar.
10. Jamshid Balouch, Deputy District Sports Officer, Arbab Niaz Stadium, Peshawar.

.....PETITIONER

VERSUS

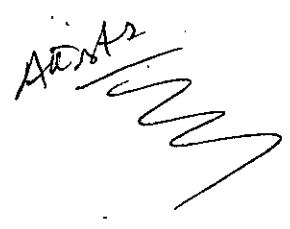
1. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Government of Khyber Pakhtunkhwa, through, Secretary Sports, Culture, Tourism, Archeology and Museums Department, Peshawar.
3. Secretary, Sports, Culture, Tourism, Archeology and Museums Department, Khyber Pakhtunkhwa, Peshawar.
4. Secretary to Govt. of KPK, Establishment Department, Peshawar.
5. Secretary to Govt. of KPK, Finance Department, Peshawar.
6. Director General Sports Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF

Comments

↓
↓

Adas


#

PAKISTAN, 1973 FOR DECLARATION TO THE EFFECT THAT PETITIONERS WHO WERE APPOINTED THROUGH PUBLIC SERVICE COMMISSION (KPK) ARE PERFORMING THEIR DUTIES AS DEPUTY DISTRICT SPORTS OFFICER IN BPS-16, BEING QUALIFIED AND ELIGIBLE ARE ENTITLED TO BE GIVEN BPS-17 FROM THE DATE OF THEIR APPOINTMENTS WITH ALL BACK BENEFITS AND THE ACT OF RESPONDENTS IN NOT ISSUING THE NOTIFICATION OF UPGRADATION OF THEIR SCALES FROM BPS-16 TO BPS-17 IS ILLEGAL, UNLAWFUL, WITHOUT LAWFUL AUTHORITY, ARBITRARY, PERVERSE, DISCRIMINATORY AND CONSEQUENTLY OF NO LEGAL EFFECT UPON THE RIGHTS OF PETITIONER.

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PRAYER :- ON ACCEPTANCE OF THE INSTANT WRIT PETITION, THE RESPONDENTS BE GRACIOUSLY DIRECTED TO FORTHWITH ISSUE NOTIFICATION FOR UPGRADATION THE SCALE OF PETITIONERS FROM BPS-16 TO BPS-17 FROM THE DATE OF THEIR APPOINTMENTS WITH ALL BACK BENEFITS. ANY OTHER RELIEF DEEMED FIT AND PROPER IN THE CIRCUMSTANCES OF THE CASE MAY ALSO BE GIVEN TO THE PETITIONERS.

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Respectfully Sheweth:-

1. That the petitioners were appointed as Deputy District Sports Officer BPS-16 through Public Service Commission Khyber Pakhtunkhwa and are performing their duties as such at different stations/districts.
2. That the description and nature of job of Deputy Sports Officer and District Sports Officer is one and the same. However, their scale and nomenclature of the post is different.
3. That there are only seven officers who are working at Divisional Headquarters are in BPS-17 with the nomenclature as District Sports Officers and rest of the officers who are working at District level in all over the province are known as Deputy District Sports Officer in BPS-16.
4. That it is clear discrimination with the petitioners that although they are performing duties as is being performed by the District Sports Officer, but their status is of clerical staff because the Assistants and office Superintendents are working in BPS-16 & BPS-17 respectively.

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5. That faced with the situation and feeling highly aggrieved, the petitioners have now come to this Honourable Court with the instant petition in hand, assailing the impugned act of respondents being unwarranted at law and facts, inter-alia, on the following amongst many other:-

GRUNDS

- a. That the impugned act of respondents is illegal, unlawful, without lawful authority, arbitrary, perverse, discriminatory and consequently of no legal effect upon the rights of petitioner, hence, liable to be set-aside.
- b. That the Constitution of Pakistan provides that every citizen should be treated equally, however, in case of petitioner sheer discrimination has been caused to them, calling for indulgence of this Honourable Court.
- c. That through the act of respondents, there is no difference between the clerical staff and the officers; rather, the office Assistant is working in BPS-16, which is also against the Financial Rules and also against principle of parity as has

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been mentioned in Notification No. SO (FR)/FD/7-2/2008 dated 11/10/2010. Copies of Notification dated 20/05/2014 and 11/10/2010 are attached as Annexures "A" & "B".

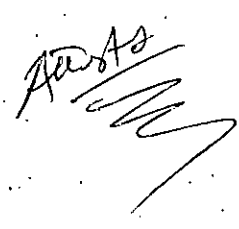
d. That in the similar situation, this Honourable Court has allowed the writ petition filed by one Sikandar Shah, Deputy District Sports Officer. Copy of the writ petition No. 52/2008 is attached as Annexure "C".

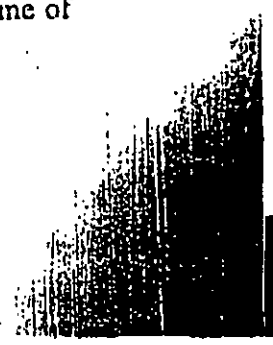
e. That there is no other speedy, adequate and efficacious remedy available to the petitioner, except the present writ petition.

f. That the addresses of the parties have correctly been given in the heading of the petition.

g. That Court fee stamp paper worth Rs. 500/- are annexed.

h. That other grounds shall be urged at the time of arguments.

As As




It is, therefore, humbly prayed that on acceptance of the instant writ petition, the respondents be graciously directed to forthwith issue notification for upgradation the scale of petitioners from BPS-16 to BPS-17 from the date of their appointments with all back benefits. Any other relief deemed fit and proper in the circumstances of the case may also be given to the petitioners.

INTERIM RELIEF

In the meanwhile, the respondents be kindly directed not to disturb the petitioners in any manner whatever, till final disposal of the main writ petition.

.....PETITIONERS

Through

Dated 12/3 /2015



(HAFIZ KALA KHAN)
Advocate High Court, Haripur

VERIFICATION

Hafiz Kala Khan Advocate High Court verify on oath that the contents of foregoing writ petition are true and correct as per information given by my clients and nothing has been suppressed from this Honourable Court.

PETITIONERS

Through



Hafiz Kala Khan
Advocate High Court



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PESHAWAR HIGH COURT, PESHAWAR		
FROM 'A'		
FORM OF ORDER SHEET		
COURT OF		
CASE NO.		
SERIAL NO OF ORDER OR PROCEEDINGS	DATE OF ORDER OR PROCEEDINGS	ORDER OR OTHER PROCEEDINGS WITH SIGNATURE OF JUDGE OR MAGISTRATE AND THAT OF PARTIES OR COUNSEL WHERE NECESSARY.
1	2	3
22.03.2018		<p>W.P. No. 897-P/2015 with IR.</p> <p>Present: -</p> <p>Mr. Ghulam Nabi, advocate for the petitioner.</p> <p>Syed Qaisar Ali Shah, AAG for official respondents.</p> <p>oooooo</p> <p>WAQAR AHMAD SETH J; - Through the instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, petitioners prayed that;-</p> <p>“On acceptance of the instant writ petition, the respondents be graciously directed to forthwith issue Notification for up-gradation the scale of petitioners from BPS-16 to BPS-17 from the date of their appointments with all back benefits.</p> <p>Any other relief deemed fit and proper in the circumstances of the case may also be given to the petitioners.”</p> <p>2. When the case was taken up for hearing, at the very out set learned counsel for the petitioners produced copy of Notification No. SO(Sports) 1-7/2017 dated 08.12.2017 issued by Section Officer (Sports) Government of Khyber Pakhtunkhwa, Sports, Tourism, Archaeology, Museums & Youth Affairs Department, Peshawar and stated at the bar that petitioners have been promoted as District Sports Officers/Administrators (BPS-17) with immediate effect. He also produced copy of letter No. SO(FR)FD//7-34/2014/Sports Deptt/1743 dated 08.03.2018 and averted that respondents/Competent Authority has been pleased to upgrade the post of Deputy District Sports Officer, District Sports</p>

Amir Bashir Awan, Court Secretary.

(DB), Mr. Justice Waqar Ahmad Seth, Hon'ble Senior Puisne Judge and Justice Ms. Musarrat Hissain, J.J.

Officer (BPS-16) to the post of District Sports Officer (BPS-17) in the Directorate General of Sports Khyber Pakhtunkhwa on permanent basis with immediate effect. He consented that petitioners will not claim any back benefits if their promotion may please be made from "20.05.2014" instead of "with immediate effect." Allowed. Order accordingly.

What has been discussed, petition in hand is disposed of accordingly.


JUDGE


JUDGE

ANNOUNCED
22.03.2018



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(1)

IN THE PESHAWAR HIGH COURT, PESHAWAR

Review Petition No. 127/P /2018

Chief Secretary Govt: of Khyber Pakhtunkhwa etc

.....Petitioners (In Review)/Respondents

Versus

Raziullah Khan etc

.....Respondents (In Review)/Petitioners

IN

WP No.897-P/2015

1. Raziullah Khan, Deputy District Sports Officer, D.I.Khan.
2. Anwar Kamal Barki, Deputy District Sports Officer, Tank.
3. Amir Zahid Shah, Deputy District Sports Officer, Director of Sports, Peshawar.
4. Muhammad Ismail, Deputy District Sports Officer, Karak.
5. Ahmed Zaman, Deputy District Sports Officer, Haripur.
6. Suliman Khan, Deputy District Sports Officer, Dir.
7. Zakirullah, Deputy District Sports Officer, Nowshera.
8. Tariq Muhammad, Deputy District Sports Officer, Swabi.
9. Asad Khan, Deputy District Sports Officer, Director of Sports, Arbab Niaz Stadium, Peshawar.
10. Jamshaid Balouch, Deputy District Sports Officer, Arbab Niaz Stadium, Peshawar.Petitioners

Versus

1. Chief Secretary, Govt: of Khyber Pakhtunkhwa, Peshawar.
2. Govt: of Khyber Pakhtunkhwa, through, Secretary Sports, Culture, Tourism, Archeology and Museums Department, Peshawar.
3. Secretary, Sports, Culture, Tourism, Archeology and Museums Department, Khyber Pakhtunkhwa, Peshawar.
4. Secretary to Govt: of Khyber Pakhtunkhwa Establishment Department, Peshawar.
5. Secretary to Govt: of Khyber Pakhtunkhwa, Finance Department, Peshawar.
6. Director General Sports Khyber Pakhtunkhwa, Peshawar.

.....Respondents

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Deputy Registrar

30 APR 2018

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(2)

REVIEW PETITION U/S 114 OF C.P.C READ WITH ORDER 47 OF C.P.C TO REVIEW THE JUDGMENT/ORDER DATED 22/03/2018 PASSED BY THIS HON'BLE COURT IN WRIT PETITION NO.897-P/2015 TITLED AS "RAZIULLAH KHAN ETC V/S CHIEF SECRETARY GOVT: OF KHYBER PAKHTUNKHWA ETC".

PRAYER:-

ON ACCEPTANCE OF THIS REVIEW PETITION, THE JUDGMENT/ORDER DATED 22/03/2018 PASSED BY THIS HON'BLE COURT IN WRIT PETITION NO.897-P/2015 MAY KINDLY BE REVIEWED.

RESPECTFULLY SHEWETH:-

FACTS:-

1. That Writ Petition No.897-P/2015 has been disposed of by this Hon'ble Court vide Order dated 22/03/2018 and this Hon'ble Court has allowed that the promotion of the Respondents (in Review)/Petitioners be made from "20/05/2014" instead of with "immediate effect". (Copies of Writ Petition No.897-P/2015, comments and Order dated 22/03/2018 are attached as annex "A, B & C")
2. That the Review Petitioners being aggrieved & dissatisfied with the Judgment/Order dated 22/03/2018 passed by this Hon'ble Court in Writ Petition No.897-P/2015 seek the Review of Judgment/Order dated 22/03/2018 on the following grounds amongst others;-

GROUND:-

- A. That the Judgment/Order dated 22/03/2018 passed by this Hon'ble Court in Writ Petition No.897-P/2015 is against facts and record, therefore, is liable to be reviewed.
- B. That out of 10 Petitioners, 06 numbers Petitioners were promoted to the rank of District Sports Officer/Administrator BPS-17 on 08/12/2017 against the available vacant post on their due tern on the basis of seniority/cum-fitness and assumed the charge of the post

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and drawing their pay accordingly. Prior to the promotion of Petitioner, one senior most officer was promoted to the rank of District Sport Officer (BPS-17) against the available vacant post on his due tern on the basis of seniority/cum-fitness.

- C. That this Hon'ble Court vide its Order dated 22/03/2018 passed in Writ Petition No.897-P/2015 has directed that the Respondents (in Review)/Petitioners be promoted w.e.f 20/05/2014 instead of with immediate effect which order is difficult to implement as there was no vacant post available on 20/05/2014, hence, the Respondents (in Review)/Petitioners cannot be promoted w.e.f 20/05/2014, therefore, the Order dated 22/03/2018 passed by this Hon'ble Court in Writ Petition No.897-P/2015 is liable to be reviewed.
- D. That since no vacant post was available on 20/05/2014, therefore, it may be difficult to implement the Order of this Hon'ble Court and to promote the Respondents (in Review)/Petitioners w.e.f 20/05/2014. Furthermore the basic objective of the Respondents (in Review)/Petitioners has been entertained.
- E. That it is in the best interest of justice that on the submissions mentioned above the Order dated 22/03/2018 passed by this Hon'ble Court in Writ Petition No.897-P/2015 may kindly be reviewed
- F. That apart from the above mentioned submissions, the counsel for the Review Petitioners may kindly be allowed to raise additional grounds at the time of arguments.

It is, therefore, humbly prayed that on acceptance of this Review Petition, the Judgment/Order dated 22/03/2018 passed by this Hon'ble Court in Writ Petition No.897-P/2015 may kindly be reviewed as no vacant post was available on 20/05/2014.

FILED TODAY
Deputy Registrar
30 APR 2018


28-04-2018
Advocate General,
Khyber Pakhtunkhwa,
Peshawar.



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PESHAWAR HIGH COURT, PESHAWAR		
FROM 'A'		
FORM OF ORDER SHEET		
COURT OF _____ CASE NO. _____		
SERIAL NO OF ORDER OR PROCEEDINGS	DATE OF ORDER OR PROCEEDINGS	ORDER OR OTHER PROCEEDINGS WITH SIGNATURE OF JUDGE OR MAGISTRATE AND THAT OF PARTIES OR COUNSEL WHERE NECESSARY.
1	2	3
24.05.2018		<p>Review Petition No. 127-P/2018 in W.P. No. 897-P/2015.</p> <p>Present: -</p> <p style="text-align: center;">Syed Qaisar Ali Shah, AAG for petitioner/State.</p> <p style="text-align: center;">ooooo</p> <p>WAQAR AHMAD SETH SPJ:- Through the instant review petition filed under section 114 of CPC r/w Order XLI CPC, petitioner/State has made a prayer for review of the judgment rendered by this Court on 22.03.2018, in W.P. No. 897-P/2015 titled "Razilullah Khan versus Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others."</p> <p>2. The terse facts of the case are that above referred writ petition was allowed vide order dated 22.03.2018, by allowing the promotion to the respondents from BPS-16 to BPS-17 as District Sports Officer. That out of 10 petitioners, 06 petitioners were promoted to the rank of District Sports Officer/Administrator BPS-17 vide order dated 08.12.2017, against the available vacant post on their due term on the basis of seniority-cum-fitness etc. Directions have also been issued that respondents be promoted w.e.f. 20.05.2014 <u>instead of immediate</u></p>

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effect. Hence the instant review petition.

3. Arguments of learned counsel for the petitioner heard and available record perused with their able assistance.

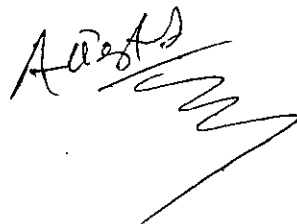
4. There is no quarrel with the proposition that the review jurisdiction would be applicable to such errors in the judgment only which are self evident, found floating on the surface or discoverable without much deliberation and has material impact on the final result of the case. Needless to say that review could not be filed as an alternative of an appeal/petition and the Court could review its order only when it would affect materially and cast shadow on the final result of the case. In the above touchstone we have gone through the record of the case the judgment under review and found nothing wrong/error floating on the surface of the record/judgment.

5. Since no case is made out for interference by this Court while exercising its review jurisdiction; therefore, the petition stands dismissed in limine.


SENIOR PUISNE JUDGE


JUDGE

ANNOUNCED.
24.05.2018



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Some of the Respondents has not
filed with petition...