

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 88/2023

Ejaz Ahmad Appellant

VERSUS

Government of Khyber Pakhtunkhwa & others Respondents

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Faheem Ullah

**Senior Law Officer
Public Service Commission**

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PARAWISE COMMENTS OF (RESPONDENT NO. 03)Khyber Pakhtunkhwa
Service TribunalDiary No. 11030Dated 07-02-2024

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

1. **That the appellant is a chronic litigant and this is his second round of litigation against the lawful authority of the commission, after filing his complaint before the Honorable Governor Complaint Cell Peshawar (Annex-A).**
2. **That the appeal of appellant is badly time barred.**
3. **That the appeal of the appellant is hit by the principle of res-judicata.**
4. **That instant appeal is clearly hit by the principal laches.**
5. That Appellant has got no *cause of action* and / or *locus standi* to file the instant appeal.
6. The Appeal is based on *mis-statement*, *presumptions* / *assumptions* and appellant *concealed* material facts from this Hon'ble Tribunal, hence *bad* in the eyes of law.
7. That the Appellant is *estopped* by his own act / conduct. He filed the present Appeal *dishonestly* by design / scheme.
8. That the Appellant has been treated in accordance with law / regulations.

ON FACTS:

- 1-3. That the Khyber Pakhtunkhwa Public Service Commission advertised 166 posts of Subject Specialists (BPS-17) in various subjects vide Advertisement No. 02/1998. The basic qualification as provided in service rules was as under:



"Master's degree in the relevant subject with Bachelor's of Education or M.Ed or MA. Education from recognized University."

Note:-

If no suitable candidate possessing the above qualification is available then a candidate possessing Master's degree in the relevant subject will be considered subject to the condition that such appointee shall have to acquire the additional qualification of B.Ed. or M.Ed. etc as specified above within three years from the date of appointment failing which his/her service shall be terminated irrespective of any other provision of the rules for the time being in force.

The appellant amongst others applied for the posts in questions. The Commission completed its recruitment process and a combined inter se seniority list of Advertisement 02/1998 was conveyed to the requisitioning department. It is pertinent to mention here that the recommendees who were non B.Ed degree holders were placed at the bottom in the seniority list due to the reason that their recommendations were conditional and they were supposed to acquire qualification of B.Ed / M.Ed degrees within the period of three years. At the time when the appellant was applying for the posts in question he was not in possession of his B.Ed degree (**Annex-B**). In case of the petitioner it is relevant to mention here the then policy decision No. 5 (5.1) (a) (**Annex-C**) as adapted by the Commission under Khyber Pakhtunkhwa Public Service Commission Regulations 2003 via Regulation 19(a) (**Annex-D**) reproduced below:

"Only the qualifications, possessed on the closing date of the applications fixed for the in country candidates shall be taken into consideration."

The appellant obtained his B.Ed degree on 03.02.2000 while the closing date of Advertisement No. 02/1998 was 16.04.1998. Moreover the candidates who were B.Ed degree holders were interviewed in the first phase while non B.Ed candidates were interviewed in the subsequent second phase therefore, all those candidates who were in possession of B.Ed degrees were placed senior to non B.Ed degree holder candidates. The appellant was placed at serial No. 139 along-with other 22 non B.Ed degree holder candidates.

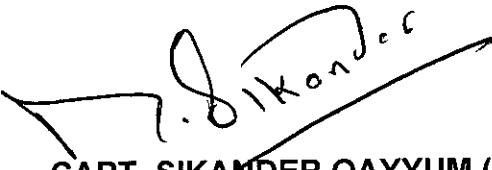
4. Does not pertain to the replying respondent.


5. The appellant being not genuinely aggrieved from any act of the replying respondent has got no grounds to invoke the jurisdiction of this Honorable Court.

GROUND:

- A-C. Incorrect. As explained in preceding paras.
- D. Incorrect. As replied in preceding paras 1 to 3 of the facts.
- E-F. The appellant has been treated according to rules and regulations therefore, these paras replete with mere allegations hence denied.
- G) Incorrect. The Appellant being not genuinely aggrieved person may not be allowed to raise other grounds before this august Tribunal.

It is therefore, most humbly prayed that in light of above mentioned submissions the instant service appeal being devoid of merits may kindly be dismissed.


CAPT. SIKANDER QAYYUM (RETD.)
CHAIRMAN
KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
(RESPONDENT NO.03)



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

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AFFIDAVIT

I, Capt. Sikander Qayyum (Retd.) Chairman Khyber Pakhtunkhwa Public Service Commission Peshawar, do hereby solemnly affirm and declare that the contents of the accompanying Para-wise comments are correct and true to the best of my knowledge and belief, nothing has been concealed from this Honorable Tribunal and the answering respondent have neither been placed ex-parte nor defense has been struck off.



[Handwritten Signature]
DEPONENT
CNIC: 17301-1277842-3
Phone: 091-9213500

خدمت جناب گورنر، نامہ نمبر فیبرو پبلیکیشن نو ایشیادور

Amended

مضمون: اپیل بلڈ مزوری درستی مایہر و مفاہین میرٹ لسٹ جاری فیبرو پبلیکیشن نو

پبلک سروس کمیشن ایشیادور، جولائی 2000ء، No. 02/18 Advertisement

جناب عالی!

جوالہ مضمون درخواست گزار میں بہت سی ایجاز اور

افضل خان گورنر، 25-05-2000 کو مایہر و مضمون (Maths) پر Appointment بنا گیا تھا

جب میں اس پوسٹ پر Apply کیا تھا۔ اس Advertisement میں بہت سی تگائی تھی

تھی کہ جو افسر وار B.Ed ڈگری ہولڈر نہ ہوں وہ بھی Apply کر سکتے ہیں لیکن

ان افسروں کو Appointment بعد سے سالہ اندر B.Ed کرنا لازم ہوگا۔

یہ کہ جب میں اس پوسٹ پر Apply کر رہا تھا، اس وقت میں I.E.R Deptt.

یونیورسٹی آف ایشیادور میں B.Ed ماسٹروڈنٹ تھا۔ لیکن Recruitment process مکمل

ہونے سے پہلے مؤرخہ 03-02-2000 کو میرا B.Ed کارڈز لٹ Declare ہو چکا تھا۔

اور مؤرخہ 25-05-2000 کو میرا Appointment order جاری ہوا۔ اور اس آرڈر

میں ہی بہت سی تگائی تھی کہ جو افسر وار B.Ed ڈگری ہولڈر نہیں ہیں وہ اپنی

Appointment بعد سے سالہ اندر B.Ed مکمل کریں۔

یہ کہ مذکورہ Advertisement کی جاری کردہ میرٹ لسٹ میں میرا میرٹ آرڈر نمبر 21

ہو نا چاہیے جبکہ مجھے میرٹ آرڈر نمبر 139 پر لیا گیا ہے۔ جبکہ میرے ٹوٹل نمبر

57 ہیں جو کہ سراسر نا انصافی ہے کیونکہ $(38 + 19 = 57)$ Interview Academic 30

ڈا) پروفیشنل ڈگری (B.Ed) کا میرٹ آرڈر میں ٹوٹل عمل دخل نہیں ہوتا۔ فرض کیا اگر میرا

بھی یہ ٹوٹل B.Ed ڈگری ہولڈرز کو وہ نمبرز مل چکا ہوتا اور مجھ میں سے کوئی لہذا مجھ

میرے حاصل کردہ نمبرات کے مطابق میرے آرڈر نمبر 21 پر لیا جائے۔

داتا

Attested
No. 10
Public Information Commission



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KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
2-Fort Road, Peshawar Cantt.

No. PSC/SR-III/ 031261

Dated: 06/07/2022

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To,

The Incharge Governor Complaint Cell,
Governor House KP Peshawar

Subject: -

APPLICATION FOR CORRECTION IN MERIT LIST OF
SUBJECT SPECIALISTS (MATHS) STANDS ON 139 INSTEAD OF
21 ADVERTISEMENT NO. 02/1998 ADVERTISED BY KP PUBLIC
SERVICE COMMISSION.

Dear Sir,

I am directed to refer to your letter No. SO(complaint)/Gov-Secretariat/1-11/Column RTI/2021 dated 01.06.2022 on the subject noted above and to state that the Khyber Pakhtunkhwa Public Service Commission advertised one hundred and sixty six (166) posts of Male Subject Specialists in various subjects vide Advt. No. 02/1998. The basic qualification for the post of male subject specialist as provided in service rules was as under:

QUALIFICATIONS:

" Master's degree in the relevant subject with Bachelor's of Education or M.Ed or M.A Education from a recognized University."

Note: -

If no suitable candidate possessing the above qualification is available then a candidate possessing Master's degree in the relevant subject will be considered subject to the condition that such appointee shall have to acquire the additional qualification of B.Ed or M.Ed etc as specified above within three years from the date of appointment failing which his/her service shall be terminated irrespective of any other provision of the rules for the time being in forced.

In pursuance of the above criteria as provided in the service rules the Khyber Pakhtunkhwa Public Service Commission completed the recruitment process and a combined inter-se- seniority list of Male Subject Specialists of advertisement No. 02/1998 was conveyed to the department. It is pertinent to mention here that those candidates who were non B.Ed degree holders were placed at the bottom in the seniority list due to the reason that their recommendations/appointments were conditional and they would have to acquire B.Ed /M.Ed degree within the specified period of 03 years. In case of failure their services were liable to be terminated. The plea of the complainant that he had applied for the post of Male Subject Specialist Maths while he was B.Ed student of Institute of Education and Research Department in University of Peshawar claimed that his result B.Ed had been declared before the completion of the recommendation process and hence the Commission should have placed him in proper place in the Inter-Seniority list.

In this regard the Khyber Pakhtunkhwa Public Service Commission regulations 12(2)(a) (copy enclosed) is relevant which provides that, "Only the qualifications, possessed on the closing date of the application fixed for the in country candidates shall be taken into consideration." Since the candidate had not obtained his B.Ed degree before the closing of the advertisement No. 02/1998 which was 16.04.1998, while the candidate completed his B.Ed degree on 03.02.2000. Therefore, he was considered as non B.Ed candidate Moreover, candidates who possessed B.Ed degree were interviewed in the first phase while non B.Ed degree holders were interviewed in the subsequent

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PUBLIC SERVICE COMMISSION
PESHAWAR

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second phase. Therefore, all those candidates who were non B.Ed degree holders were placed junior to those candidates who were in possession of B.Ed degree as their requirements and qualifications etc were complete in all respect.

Mr. Ejaz Ahmad s/o Afzal Khan was hence awarded the Seniority at S.No. 139 along with twenty-two (22) other non B.Ed candidates.

In view of the above it is advised that the complainant may take up with the concerned Administrative Department.

Yours sincerely

(Fazal Qayyum)
Assistant Director-II

Assistant Director-II

Copy to:-

1. PS to Chairman PSC for information.

Attested

[Signature]
Assistant Director-II

University of Peshawar

(Pakistan)

Session ANNUAL 1999

EJAZ AHMED Son of AFZAL KHAN and a student
of FACULTY OF EDUCATION, UNIVERSITY OF PESHAWAR having passed the prescribed Examination
held in SEPTEMBER 1999 is this day admitted by the University of Peshawar to the Degree of

Bachelor of Education

In the FIRST Division in Theory

In the FIRST Division in Teaching Practice

In the FIRST Division in Aggregate

Passed also in COMPUTER EDUCATION as an Optional Subject

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

ATTESTED

(A)

Serial No. 910760

Registration No. 94-U-7070

Roll No. 177

Result declared on FEBRUARY 3, 2000



Afzal Khan
Registrar

Countersigned

J. Ishaq
Vice-Chancellor

Annex B

ATTESTED

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Annex "C"

POLICY DECISION NO.5

ACADEMIC QUALIFICATION


5.1.

- (a) Only the qualification possessed on the closing date of the application fixed for the in-country candidates shall be taken into consideration.
- (b) A candidate who has been declared to have passed a particular Degree / Diploma examination may be considered provisionally on the basis of provisional certificate/s signed by the Controller of Examination provided that he will have to produce proper degree to the Commission before his nomination to the Government.
- (c) The grade or division of the recognized foreign Degrees / Diplomas shall be assessed by the Commission on individual merit.
- (d) When the Degrees/ Diplomas granted by a Pakistani University does not mention the division / grade, but gives marks obtained by a candidate the division in which the candidate passed a particular examination shall be worked out in accordance with the following formula:

| <u>Marks obtained</u> | <u>Division</u> |
|----------------------------|--------------------------|
| Less than 45 percent | 3 rd Division |
| 45 to less than 60 percent | 2 nd Division |
| 60 percent or above | 1 st Division |

- (e) A University / Institution which is not recognized in the country in which it is situated shall not be acceptable as a recognized University / Institution.
- (f) The eligibility of a candidate claiming to be in possession of equivalent qualifications if not specifically laid down in the service regulations shall be decided by the Commission on the merits of each case.
- (g) The equivalence of Grade / Division under the old and the new system shall be followed as under: -

| <u>Grade</u> | <u>Quality Point</u> | <u>Division</u> |
|--------------|----------------------|-----------------|
| A & B | 3 - 4 | 1 st |
| C | 2 - 2.99 | 2 nd |

Attested

 LAW OFFICER
 Kyber Pakhtunkhwa
 Public Service
 Commission

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N.W.F.P. PUBLIC SERVICE COMMISSION *Annex D*

NOTIFICATION

15th December, 2003.

Notification No. NWFP/PSC/31550. In exercise of the powers conferred by Section 10(A) of the North-West Frontier Province Public Service Commission (Amendment) Ordinance, 2002 (N.W.F.P. Ordinance XXVII of 2002), the Commission is pleased to make the following Regulations.

PART - I

GENERAL

1. (a) These Regulations may be called the North-West Frontier Province Public Service Commission Regulations, 2003.
- (b) They shall come into force at once.
2. In these Regulations, unless the context otherwise requires: -
 - (a) "**Attached Department**" means the department as defined in the NWFP Government Rules of Business, 1985.
 - (b) "**Appointing Authority**" means the officer or authority designated as such in the Service Rules framed by the government for the post.
 - (c) "**Commission**" means the North-West Frontier Province Public Service Commission.
 - (d) "**Member**" means the Member of the Commission and includes the Chairman.
 - (e) "**Department**" means a department as defined in the NWFP Government Rules of Business, 1985.
 - (f) "**Departmental Representative**" means the senior officer of the department of the government to which post/s relates and who assists the Committee / Panel of the Commission for conducting the viva-voce / interview.
 - (g) "**Subject Specialist**" means the advisor called for interview by the Commission from the University / Colleges / Institutions / Autonomous Bodies / Retired Officer directly or through the Head of Department.
 - (h) "**Government**" means the Government of North-West Frontier Province.
 - (i) "**Committee**" means the Committee of one or more Members constituted by the Chairman for any specific task.

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PART – IV

19. **ACADEMIC QUALIFICATIONS.**

- (a) Only the qualification possessed on the closing date of the application fixed for the incountry candidates shall be taken into consideration.
- (b) A candidate who has been declared to have passed a particular Degree / Diploma examination may be considered provisionally on the basis of provisional certificate/s signed by the Controller of Examination provided that he will have to produce proper degree to the Commission before his nomination to the Government.
- (c) The grade or division of the recognized foreign Degrees / Diplomas shall be assessed by the Commission on individual merit.
- (d) When the Degrees / Diplomas granted by a Pakistani University does not mention the division / grade, but gives marks obtained by a candidate the division in which the candidate passed a particular examination shall be worked out in accordance with the following formula:

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- (g) The equivalence of Grade / Division under the old and the new system shall be followed as under: -

| Grade | Quality Point | Division |
|--------------|----------------------|-----------------|
| A & B | 3 – 4 | 1 st |
| C | 2 – 2.99 | 2 nd |
| D | Below 2 | 3 rd |

NOTE: Grade pertains to the new system and division to the old system.

Attested

LAW OFFICER
 Kyber Pakhtunkhwa
 Public Service
 Commission



**KHYBER PAKHTUNKHWA
PUBLIC SERVICE COMMISSION
2-FORT ROAD, PESHAWAR CANTT
(NEAR GOVERNOR HOUSE)**

AUTHORIZATION

Mr. Mehtab Gul (CNIC No: 17301-1972107-9), Law Officer-II (BS-17), Khyber Pakhtunkhwa Public Service Commission, Government of Khyber Pakhtunkhwa is hereby authorized to do all the acts pertaining to litigation including appearance, vetting, submission and signing of Power of Attorneys, Affidavits, Reports, Para-wise Comments and Appeals etc. on behalf of the Khyber Pakhtunkhwa Public Service Commission before all the Courts of Pakistan, particularly the CPLA/Appeals against the orders of the High Court.

ATTESTED BY

**Deputy Director
Public Service Commission
K.P.K Peshawar**

**Secretary
Khyber Pakhtunkhwa
Public Service Commission**

M. Nadeem Khan Peshawar