

245/12

04.3.2016

Counsel for the appellant and Mr. Muhammad Jan, Government Pleader for the respondents present.

2. At the outset, the question of lack of jurisdiction of this Tribunal was raised by the Government Pleader on the ground that the issue involved in this appeal is that of "upgradation" which does not fall in ambit of terms & conditions of service of a civil servant which has been so held by the Larger Bench of the august Supreme Court of Pakistan in its recent latest judgment dated 17.2.2016 in Civil Appeals No. 101 & 102-P/2011, titled "Regional Commissioner Income Tax, Northern Region, Islamabad etc. Versus Syed Manawar Ali and others".

3. It was not disputed on behalf of the appellant that the issue involved is that of upgradation of the appellants. With the assistance of the learned Government Pleader, we would like to reproduce relevant portion from the said judgment:-

"The aforesaid definition of the expression "Upgradation" clearly manifests that it cannot be construed as promotion, but can be granted through a policy. In fact, this Court in the judgment titled as Ali Azhar Khan Baloch vs. Province of Sindh (2015 SCMR 456) and an unreported judgment of this Court passed in the case of Chief Commissioner Inland Revenue and another vs. Muhammad Afzal Khan (Civil Appeal No. 992 of 2014) has held that the issue relating to upgradation of civil servants can be decided by a High Court in exercise of its

constitutional jurisdiction and bar contained under Article 212 (3) of the Constitution would not be attracted. The policy of upgradation, notified by the Government, in no way, amends the terms and conditions of service of the civil servant or the Civil Servants Act and or the Rules framed there-under. The Service Tribunals have no jurisdiction to entertain any appeal involving the issue of upgradation, as it does not form part of the terms and conditions of service of the civil servants. The question in hand has already been answered by the aforesaid two judgments of this court.”

4. In the light of the foregoing brief discussion, this Tribunal is of the view that since it lacks jurisdiction to adjudicate upon this appeal, therefore, the same is directed to be returned to the appellant, after retaining its copy, for presentation before the competent/proper forum, if so advised.

ANNOUNCED

04.03.2016


MEMBER


MEMBER

Vide order sheet dated 07.12.2015 in connected appeal No.
246/2012 this appeal is adjourned to _____.

READER

01.4.2014

vide order sheet dated 27.9.2013, in connected appeal No.246/
2012 this appeal is adjourned to 26.8.2014.

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to 29-1-14

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to 15-6-15

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____

READER

Vide order sheet dated 27.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____

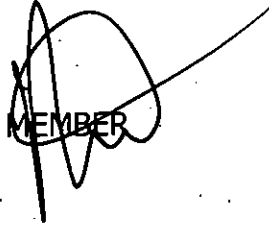
READER

Vide order sheet dated 19.9.2013 in connected appeal No.246/
2012 this appeal is adjourned to _____

READER

07.05.2013

No one is present on behalf of the appellant. Mr. Khurshid Khan, SO with Muhammad Jan, GP for the respondents present. Notices be issued to the appellant and his counsel. To come up for rejoinder on 04.07.2013.


MEMBER


MEMBER

4.7.2013

Counsel for the appellant and Mr. Muhammad Jan, GP with for the respondents present. The Tribunal is incomplete, therefore, case to come up for the same on 27.9.2013.


READER

27.9.2013

Vide order sheet dated 27.9.2013 in connected appeal No. 223/2012, this appeal is adjourned to 28.11.2013.


READER

Vide order sheet dated 27.9.2013 in connected appeal No. 223/2012, this appeal is adjourned to 27-12-13.


READER

Vide order sheet dated 27.9.2013 in connected appeal No. 223/2012, this appeal is adjourned to 12-2-14.


READER

Vide order sheet dated 27.9.2013 in connected appeal No. 223/2012, this appeal is adjourned to 10-4-14.


READER

4.9.2012.

Clerk to counsel for the appellant and Mr. Sherafgan Khattak, AAG for the respondents present. Mr. Mōsam Khanm also appeared and stated that copy of appeal has not been provided to them. A copy provided to him by Moharrir of the court to-day. To come up for written reply positively on 27.11.2012.

MEMBER

MEMBER

27.11.2012

Junior to counsel for the appellant and Mr. Sherafgan Khattak, AAG with Abbas Ali, S.O for the respondent present and requested for further time. To come up for written reply on 31.12.2012.

MEMBER

MEMBER

31.12.2012

Counsel for the appellant and AAG with Khursheed Ali, SO for the respondents present. Reply filed. Copy handed over to counsel for the appellant. To come up for rejoinder on 12.3.2013.

MEMBER

MEMBER

12.3.2013

Counsel for the appellant and AAG with Khurshēed Ali S.O for the respondent present. None for the appellant present. Notices be issued to appellant and his counsel. To come up for rejoinder on 7.5.2013.

MEMBER

9.4.2012.

Counsel for the appellant present. He contended that the benefits of upgradation given to other colleagues of the appellant. As per 1996-SCMR-1185, the appellant is entitled to the same treatment. He further contended that the earlier notification do not include the restriction of one time and personal and were effective from the date of completion of 10 years service inclusion of (one time and personal) and with immediate effect is contradictory to the earlier notification. Points raised need consideration. The appeal is admitted to regular hearing, subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply on 7.6.2012.


MEMBER

9.4.2012


This case be put up before the Final Bench IP for further proceedings.


CHAIRMAN

7.6.2012.

Counsel for the appellant and Mr. Arshad Alam, AGP with Mashal Khan, Litigation Officer for the respondent present and requested for further time. To come up for written reply on 4.9.2012.


Member


Member

**Form- A
FORM OF ORDER SHEET**

Court of -----

Case No. 245/12

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge or Magistrate |
|-------|-----------------------------------|--|
| 1 | 2 | 3 |
| 1 | 20.02.2012 | <p>The appeal of Mr. Mumtaz Ali SET submitted today by Mr. Amjad Ali Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p align="right"><i>[Signature]</i> REGISTRAR</p> |
| 2 | <p>21-2-2012</p> <p>22-3-2012</p> | <p>This case is entrusted to Primary Bench for Preliminary Hearing to be put up there on <u>22-3-2012</u>.</p> <p align="right"><i>[Signature]</i> CHAIRMAN</p> <p><i>Counsel for appellant present. Request for adjournment. To come up for p.H. on 3-4-2012.</i></p> <p align="right"><i>[Signature]</i> Member.</p> |

Before the Khyber pakhtoon khwa Service Tribunal Peshawar

Service Appeal No 245 of 2011

Mumtaz Ali SET

(Appellant)

Versus

1. Gov't of K.P.K through secretary Education, Peshawar
..... (Respondent)

INDEX

| S.No. | Description of documents | Annexure | Page No. |
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| 2 | Copy of appointment order in BPS-15 | "A" | 4-6 |
| 3 | Copy of notification dated 26/10 /2007 | "B" | 7-8 |
| 4 | Copy of notification dated 26/01/2008 | "C" | 9 |
| 5 | Copy of notification dated 25/05/2010 | "D" | 10-13 |
| 6 | Copy of judgment dated 03/07/2009 | "E" | 14-16 |
| 7 | Copy of judgment dated 23/02/2010 | "F" | 17-21 |
| 8 | Copy of notification dated 03/11/2010 | "G" | 22 |
| 9 | Copy of departmental appeal | "H" | 23 |
| 10 | Copy of notification dated 19/10/2009 | "I" | 24 |
| 11 | Wakalat Nama | | |

Appellant

Mumtaz Ali

Through:

Amjad Ali
Amjad Ali Advocate
Supreme court of Pakistan
At Mardan

Cel No. 0321 988 2434

1

(11)

Before the Khyber pakhtoon khwa Service Tribunal Peshawar

Service Appeal No. 2457 of 2012

Mumtaz Ali SET Govt Middle School Roshanpora Distt Swabi

(Appellant)

Versus

1. Gov't of K.P.K through secretary Education, Peshawar
..... (Respondent)

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974

Sir,

The appellant humbly submits as under:-

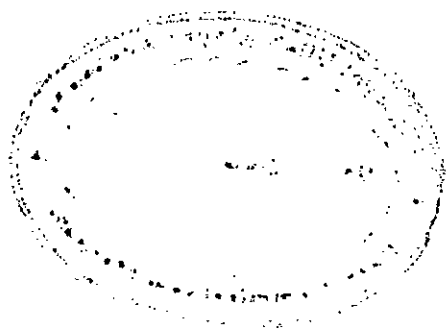
1. That appellant was appointed as a SET Teacher on 15-1-98 and placed in BPS-16
(Copy of appointment order in BPS-15 is annexure "A")
2. That respondent (Finance department Gov't of K.P.K issued notification dated 06/00/2007 for up-gradation of post.
(Copy of notification dated 06/00/2007 is annexure "B")
3. that respondent issued notification dated 26/01/2008
(Copy of notification dated 26/01/2008 is annexure "C")
4. that vide notification dated 25/05/2010 appellant's post is upgraded to BPS17.
(Copy of notification dated 25/05/2010 is annexure "D").
5. That in consequence of said notification, appellant is allowed up-gradation of posts with immediate effect instead of date of completion of 10 years service vide notification dated 25/05/2010.
6. That appellant is equipped with the requisite qualification as envisaged in the notification for up-gradation of posts.
7. That as per judgment dated 03/07/2009 of this Hon'able tribunal in numerous appeals up-gradation has been granted w.e.f 01/10/2007.
(Copy of judgment is annexure "E).
8. That vide judgment dated 23/02/2010 this Hon'able court has accepted identical cases and implemented by the department.
(Copy of judgment dated 23/02/2010 is annexure "F") and (notification dated 03/11/2010 as annexure "G").

(2)

9. that there are no promotion prospects of appellant i.e SET teacher whereas 93% quota for grade-18 and 19 is allotted to subject specialist and quota of set is only one percent and that too after 28/30 years and 91% set teachers stand retired in the same grade. Thus appellant is discriminated and no regular promotion is granted to appellant.
10. That as per rules/ practice of department appellant is entitled for one premature increment but the same has no been granted to appellant.
11. That appellant filed departmental appeal, but remained unresponded even after lapse of 90 x days.
(copy of the departmental appeal as annexure "H and Notification dated 19/10/2009 is annexure "I").
12. That as per 4 tire formula for promotion 50 posts in 17 then 34 posts in 18 then 15 posts in 19 and one post in 20, which means deprivation of promotion to appellant in reality/ practical sense i.e 1-15-34-50 formula.
13. That thus this up-gradation to BPS-17 is needed to be treated as regular promotion for the purpose of BPS-18,19 , 20 and not treatment of the same as selection grade for financial benefits only.
14. That as per policy appellant is entitled for the advance premature increment.
15. That non-grant of up gradation to PBS-17 w.e.f date of completion of 10 years services per judgment of service tribunal dated 03/07/2009 and dated 23/02/2010 and non-deleting condition of one time and personal only inspite of notification dated 19/10/2009, non-grant of advance premature increment on promotion/ up-gradation and non-treating instant up-gradation as regular promotion for BPS-18,19,20 are illegal, against law and facts on following grounds:-

GROUND:

- A. Because earlier notification do not include the restriction of one time and personal and were effective from date of completion of 10 years service inclusion of (one time and personal) and with immediate effect is contradictory to the earlier notification/ judgments.
- B. Because up-gradation of posts is given effect and not up-gradation of civil servants.
- C. Because principles of promissory estoppel and locus poenitentiae are applicable to the case of appellant with all force.
- D. Because valuable rights has accrued to appellant and the same cannot be snatched,
- E. Because neither the competent authority nor departmental promotion committee can cross the parameters of notification issued by the Gov't and finance department.



- F. Because there is no need of even D.P.C as it is up-gradation.
- G. Because premature advance increment is right of appellant which has been withheld for no good reason.
- H. Because instant up-gradation is in fact promotion to BPS-17 for all practical purposes i.e promotion to BPS-18,19, and 20.
- I. Because as per judgment of this Hon'able tribunal the benefit of giving effect to up-gradation from 01/10/2007 i.e dated of notification cannot be snatched from appellant as appellant is similarly placed to judgment holders, reliance is placed on 1996 SCMR 1185, SCMR 2009 page-1

It is therefore, humbly prayed that order/notification dated 25/05/2010 may please be modified by treating same w.e.f dated of completion of ten years service and omitting one time and personal from the same. Instant up-gradation/promotion may please be treated as regular promotion for the purpose of BPS-18,19 and 20. Appellant be granted premature advance annual increment on promotion/ up-gradation.

Any other relief deemed fit, which is not specifically asked for may also be graciously granted.

Dated: 20/04/2012

Appellant

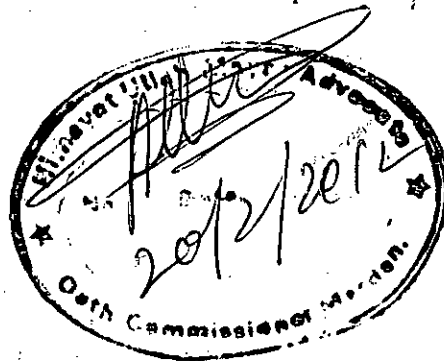
Through:

Amjad Ali Advocate
Supreme court of Pakistan
At Mardan

AFFIDAVIE

I, do hereby solemnly affirm and declare on oath that the contents of appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'able tribunal.

Deponent



Part A

(4)

OFFICE OF THE DIRECTOR OF SECONDARY EDUCATION N.W.F.P. PESHAWAR.
NOTIFICATION.

Consequent upon the selection made by the NWFP Public Service Commission, Peshawar and in relaxation of ban by the competent authority, the Director of Secondary Education, NWFP Peshawar is pleased to appoint the following candidates against SET Posts in BPS-16 (Rs. 2535-107-3490) plus usual allowances as admissible under the rules with immediate effect subject to the terms & conditions given below:

TERMS AND CONDITIONS.

1. They will be governed by such rules & Regulations as may be prescribed by the Govt; from time to time for the category of Govt; servants to which they belong.
2. Their services will be liable to termination on one month's notice from either side. In case of resignation without notice one month's pay will be forfeited in lieu thereof.
3. They should join the posts within one month of the issue of this Notification.
4. Their inter-se seniority will be determined in accordance with the merit of NWFP Public Service Commission.
5. Charge reports should be submitted to all concerned.
6. They shall be on probation for a period of 2 years.
7. Their original Certificates/Degrees should be checked and verified from the concerned Universities before handing over charge.
8. The declaration of assets should be obtained from them immediately and placed on record.
9. Complete information on the prescribed proforma (attached) alongwith charge report be submitted to this Directorate within a week positively otherwise their names could be included in the Seniority List.

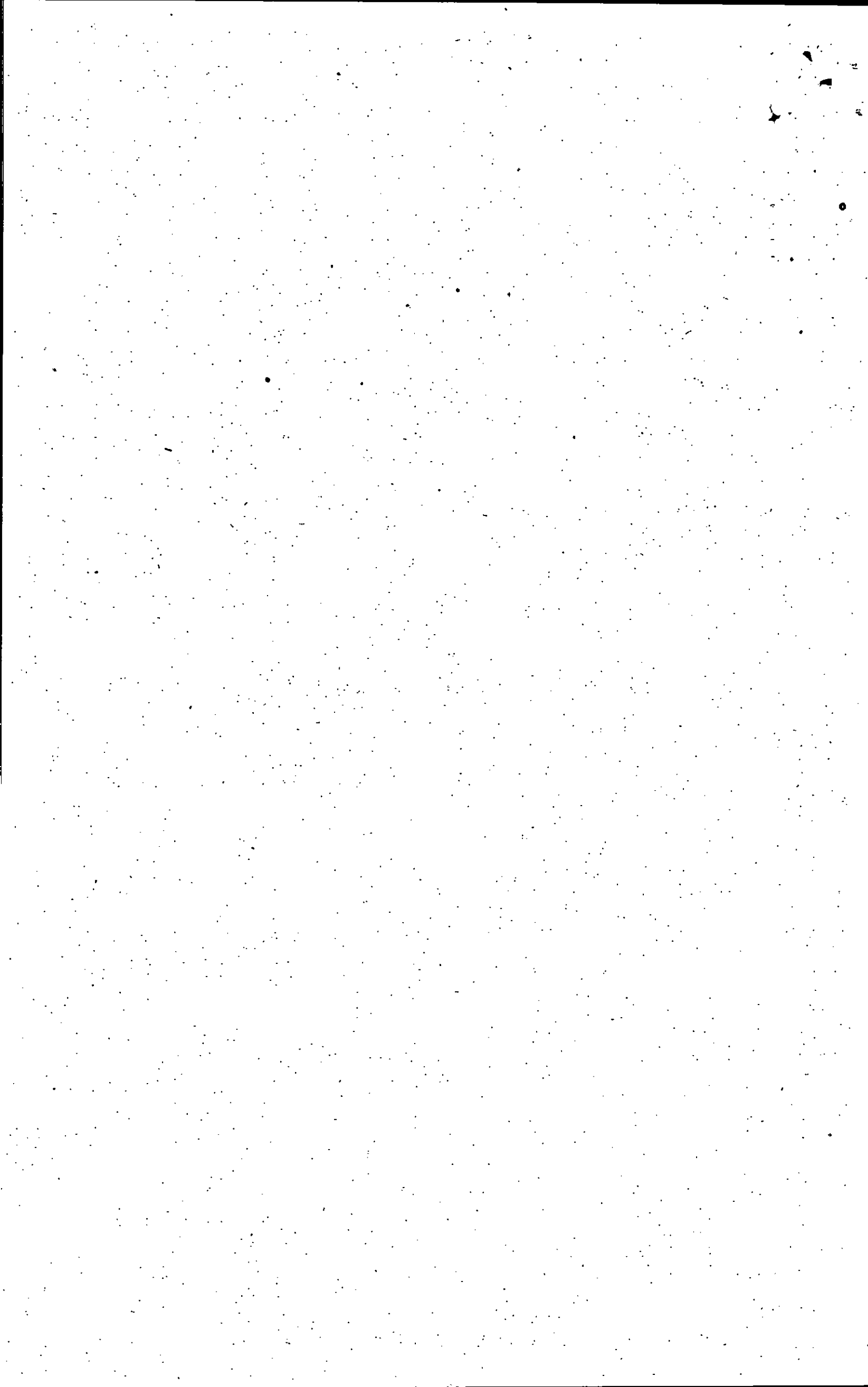
No T.A./D.A. allowed.

The pay of the teachers at S.No. 14, 15, 22 & 24 (Peshawar Div.) S.No. 6, 14, & 18 (Mardan Div.) S.No. 3 & 6 (Kohat Div.) S.No. 10 (Dikhet) S.No. 2, 10, 12, 13, 17 & 22 (Malakand Div.) S.No. 8 (Hazara Div.) S.No. 9, 12, 14, 18, 20 & 22 (F.A.T.) may not be released, as the reports regarding their Character/Ancedents from the Police Department has not been received so far.

| S.No. | Name/Addresses. | Where Posted. | Remarks. |
|-------|-----------------|---------------|----------|
|-------|-----------------|---------------|----------|

contd: N/P

AMJAD ALI
Advocate
SUPREME COURT



MARDAN.

| S.No. | Name/Address | Where posted | Remarks |
|-------|--|--------------------------------------|-------------------------------|
| 1. | Alam Zab S/O Habibur Rehman, B.Sc/B.Ed. Moh: Mosa Khel, Vill: & P.O. Baja, Swabi. | GHS Jhanda (Swabi) | Against vacant post of S.E.T. |
| 2. | Wisal Muhammad S/O Abdul Qudus, M.Sc/B.Ed. Mirgar Khel, Vill: & P.O. Yar Hussain, Teh: Lahore, District Swabi. | GHS No. 1, Mardan. | -do- |
| 3. | Arif Nasim S/O Sherin Gul, B.Sc/B.Ed, C.T. G.S Rustam (Mardan). | GHS Sawalder " | -do- |
| 4. | Fazli Malik S/O Abdul Ghafoor, B.Sc/B.Ed, Vill: & P.O. Adina, Teh: & Distt: Swabi. | GHS, Baghicha Dheri. | -do- |
| 5. | Ferman Ali S/O Azmat Khan, M.Sc/B.Ed, P.O. Nawankilli, Moh: Humarkhel, Distt: Swabi. | GHS Manaji Manaji, Swabi. | -do- |
| 6. | Khan Badshah S/O Saeed Shah, B.Sc/M.Ed, Pashan Abad, P.O. Baja, Distt: Swabi. | GHS, Sengawoo. GHS | -do- |
| 7. | Syed Mujtaba Shah S/O Afzal Shah, M.Sc/B.Ed Anjum Shafa Khana, New Bus Stand, Mardan. | GHS No. 2, Mardan. | -do- |
| 8. | Sadiqullah S/O Mir Abdullah, B.Sc/B.Ed, Vill: Salim Khan, Moh: Abo Banda, P.O. Qaziabad, Swabi. | GHS, Maryan, (Swabi). | |
| 9. | Hidayatur Rehman S/O Fazli Rehman, M.Sc/B.Ed, Vill: Zarif Khan P.O. Dheri Lickpani, Mardan. | GHS Qasmi, Mardan. | -do- |
| 10. | Mutahir Shah S/O S. Gohar Shah, M.Sc/B.Ed, Vill: P.O. Sheikh Jana, Moh: Karakhel, Distt: Swabi. | GHS Tano, Swabi. | |
| 11. | Wisal Khan S/O Yousaf Khan, M.Sc/B.Ed. Moh: Shahbaz Lara Vill & P.O. Tordher, Swabi. | GHS Jalbai, Swabi. | -do- |
| 12. | Taj Nabi S/O Muslim Khan, B.Sc/B.Ed, Oxford Public School, Katlang, Mardan. | GHS Qadar, Mardan. | -do- |
| 13. | Tilawat Shah S/O S. Gohar Shah B.Sc/B.Ed, Vill: & P.O. Sheikh Jana, Distt: Swabi. | GHS Hund, Swabi. | -do- |
| 14. | Zulfiqar Ali S/O M. Ayub Sani, MA/B.Ed, Vill: Kot Sharif, P.O. Nawankilli, Swabi. | GHS, Tordher, Swabi. | -do- |
| 15. | Abdallah S/O Sahibullah MA/B.Ed, Vill: & P.O. Karabat, Distt: Swabi. | GMS, Kot Babai, (Gadon). | -do- |
| 16. | Muhammad Faiq Khan S/O Muhammad Yaqub, BA/B.Ed, CAO SNCOs Mess, PAF Base, Kohat. | GHS Nawankilli, Swabi. | -do- |
| 17. | Mehar Zaman S/O Lal Zarin MA/M.Ed, Moh: Aka Khel, Vill: & P.O. Mayar, Distt: Mardan. | GHS, Toru (Mardan). | -do- |
| 18. | Muhammad Rahman S/O Mira Khan, MA/B.Ed, Vill: Fazal Abad P.O. Nawankilli, Swabi. | GHS, Koha, Swabi. | -do- |
| 19. | Ashraf Ali S/O Abdus Sattar, MA/B.Ed, Moh: Khattak Vill: & P.O. Sawalder, Mardan. | GMS Sohatabad, Mardan. | -do- |
| 20. | Jehar Ali S/O Dil Roze, MA/B.Ed, Moh: March, Vill: Kot Daulatgai, P.O. Darhi Kapura, Mardan. | GHS Gaphi Kapura | -do- |
| 21. | Arshed Hussain S/O Noor Afzal MA/B.Ed, P.O. Kohi Barmol, Moh: Haibat Khel, Mardan. | GHS Bughada, Mdn. | -do- |
| 22. | Inayat Ali S/O Qamar Ali, MA/B.Ed, V.P.O. Gushat, Teh: & Distt: Mardan. | GHS No. 4, Mardan. | -do- |

(N/P)

23. Fazli Haider S/O Ali Akbar, MA/B.Ed. GHS, Kotha, Swabi. Against Vacant post of SET.
W/P.O. Kalabat, Moh: Barichan, Swabi.
24. Tida Mohammad S/O Amir Mohammad, MA/M.Ed. GHS, Topi, Swabi. -do-
V/P.O. Baja, Moh: Musakhel, Swabi.
25. Faizul Qadus S/O Fanoos Khan MA/B.Ed. GHS Lundkhawar -do-
GHS Pir Sadi, Mardan.
26. Inayat Ali Shah S/O Afaq Akbar, MA/B.Ed. GHS, Gumbat. -do-
V/P.O. Dobian, Teh: Lahor, Distt: Swabi.
27. Afsar Khan S/O Abdul Jalil, MA/B.Ed. GHS Tordher, Swabi -do-
GHS Ayubkhan Killi, Teh: Lahor, Distt: Swabi.
28. Mohammad Nisar S/O Mohammad Israr MA/B.Ed. GHSS, Kabgani, Gaforn. -do-
V/P.O. Gandaf Teh: & Distt: Swabi.
29. Azizur Rehman S/O Khaiber Khan, MA/B.Ed. GHSS Katlang, Mardan. -do-
V/P.O. Mian Khan, Teh: & Distt: Mardan.
30. Mohammad Salim S/O Mohammad Farooq MA/B.Ed. GHS Jehangira, Swabi. -do-
Moh: Khudarkhel, Vill: Nawankilli, Swabi.
31. Mumtaz Ali S/O S. Zarshad MA/B.Ed. GHS, Swabi. -do-
Moh: Rohanpur, V/P.O. Newankilli, Swabi.
32. Jehan Ali S/O Lutfur Rehman, MA/B.Ed. GMS Zaida Swabi -do-
V/P.O. Kala Khan, Moh: Mamakhel, Distt: Swabi.

(SYED ABU SAED BACHA)
DIRECTOR OF SECONDARY EDUCATION
N.W.F.P., PESHAWAR.

Enclst: No. 2851-2890 / 1-14/SET/1998. Dated 15.01/1998.

- Copy of the above is forwarded for information to the:-
- 1- Secretary NWFP Public Service Commission Peshawar.
 - 2- Divisional Director of Edu: (S) Mardan.
 - 3- P/S to Minister for Education NWFP, Peshawar.
 - 4- Section Officer (Schools) Govt: of NWFP Edu: Deptt: Peshawar.
 - 5- District Edu: Officers (M/S) Concerned.
 - 6- District Accounts Officers Concerned.
 - 7- Principals/Headmasters concerned.
 - 8- All Candidates concerned.
 - 9- P/A to Director Secondary Education NWFP, Peshawar.

15/1/98
Deputy Director Secondary
Education NWFP, Peshawar.

Ann B

Attention: Abhter Ali Shah.

Government of N.W.F.P.
Finance Department
No.SO(FI)10-22(B)/2007
Dated. 01-10-2007

7

To: The Secretary, Govt. of NWFP
Schools & Literacy Department

Subject: UP-GRADATION OF VARIOUS POSTS OF
TEACHERS/CAREER STRUCTURE IN SCHOOLS &
LITERACY DEPARTMENT GOVERNMENT OF N.W.F.P.

Sir,

I am directed to refer to your letter No.SO(G)S&L/1-47/2007 dated 01-10-2007 on the subject noted above and to inform that the Chief Minister NWFP has been pleased to up-grade various posts of teachers in Schools & Literacy Department N.W.F.P. as per details given below in respect of those incumbents who acquire or possess the qualification and experience mentioned against each with immediate effect.

| S./I | Designation/Existing Pay Scale | Qualification | Revised Pay Scale |
|------|--|---|-------------------|
| 1. | Primary School Teacher (PST) BPS-07 | F.A/F.Sc. at least 2 nd Division with PTC/Diploma in Education. | 09 |
| 2. | PST with requisite experience renamed as Head Teacher/Head Mistress of Primary School BPS-07 | On the basis of 10 years service/experience as Primary School Teacher in BPS-09 | 12 |
| 3. | CT BPS-09 | B.A/B.Sc. at least 2 nd Division with Diploma in Education/CT | 15 |
| 4. | AWI/CT (Technical)/Industrial Arts/Home Economics BPS-09 | B.A/B.Sc. at least 2 nd Division with Diploma in Education/ Certificate from Directorate of Curriculum & Teachers Education NWFP Abbottabad in Agro. Tech./ Industrial Arts/Home Economics | 15 |
| 5. | D.M. BPS-09 | D.A/D.Sc. at least 2 nd Division with Drawing Master Course. | 15 |
| 6. | PET BPS-09 | B.A/B.Sc. at least 2 nd Division with IDPE | 15 |
| 7. | Qari/Qaria BPS-07 | Hafiz-e-Quran with SSC at least 2 nd Division and Sanad in Qir'at | 12 |
| 8. | SSTs/SST Tech./Agri; with requisite experience renamed as Sr. SST/Sr. SST Tech./Sr. SST Agri; BPS-16 | M.A/M.Sc. at least 2 nd Division with B.Ed./M.Ed./MA Edu. or equivalent qualification | 17 |
| 9. | DPE BPS-16 | M.Sc. at least 2 nd Division in (HPE) | 17 |
| 10. | Librarian BPS-16 | Master degree in Library Science at least 2 nd Division | 17 |

2. The Promotion/Direct Recruitment against the upgraded posts shall be made as per laid down procedure and in accordance with the Service Rules to be framed pursuant to the relevant provisions of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules-1989 read with the NWFP Civil Servants Act, 1973 in the light of the

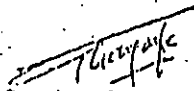
ANNAD ALI
Advocate
SUPREME COURT

117 117 117

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meeting held on 26-09-2007 of the committee constituted vide Schools & Literacy
Department Notification No.SO(G)/S&L/1-47/2007 dated 01-08-2007.

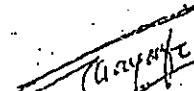
Audit copy may please be prepared and sent to this Department for
authentication/signature.


Section Officer (FR)

Encls: of even No. & Date

Copy for information & necessary action to:

1. Accountant General NWFP
2. Director Schools & Literacy NWFP Peshawar
3. Director of Education FATA NWFP Peshawar
4. PSO to Chief Minister NWFP
5. PSO to Chief Secretary NWFP
6. PS to Secretary Finance Department NWFP
7. All District/Agency Accounts Officers in NWFP


Section Officer (FR)



GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

Dated Peshawar, the 26th January, 2008.

Anx C
شیر علی خان بلوان
مدرسہ تنظیم اہل سنت
مدرسہ انیسویں
فصلیہ مردانہ

NOTIFICATION

NO.FD/SO(FR)10-22/2007. In supersession of this Department's letter No.SO(FR)10-22(B)/2005 dated 01-10-2007 and in pursuance of the decisions of the meeting held under the Chairmanship of Secretary Establishment on 2-1-2008, the Competent Authority is pleased to allow upgradation for the incumbents of the posts as per details given below w.e.f. 1-10-2007:-

(9)

| S.NO | Existing Designation and Pay Scale | Qualification | Upgraded Scale |
|------|---|---|---------------------------|
| 1 | Primary School Teacher (PST) (BPS-07). | FA/FSc and are trained teachers | BPS-09 (one time only) |
| 2 | Primary School Teacher (PST) with requisite experience renamed as Head Teacher/Head Mistress of Primary Schools (BPS-07). | Having 10 years service | BPS-12 (one time only) |
| 3 | CT (BPS-09). | BA/BSc and are trained teachers | BPS-15 (one time only) |
| 4 | SET (BPS-16) | With at least ten years service. Upgradation to the post shall be made through DPC as per laid down procedure | BPS-17 |
| 5 | Hafiz/Quari (BPS-07) | Hafiz Quran with SSC | BPS-12 |

SECRETARY TO GOVT. OF NWFP
FINANCE DEPARTMENT

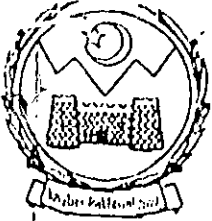
Encl. No. Date even.

Copy of the above is forwarded for information and necessary action to the:-

- 1) All the Secretaries in NWFP, Peshawar.
- 2) All the DCOs/EDOs Schools & Literacy Department, NWFP.
- 3) Accountant General, NWFP, Peshawar.
- 4) Director Schools & Literacy NWFP, Peshawar.
- 5) Director of Education FATA NWFP, Peshawar.
- 6) PSO to Chief Minister, NWFP.
- 7) PSO to Chief Secretary, NWFP.
- 8) PS to Secretary Finance Department, NWFP.
- 9) All District/Agency Accounts Officers in NWFP.

AMJAD ALI
Advocate
SUPREME COURT

(NAIB KHAN)
SECTION OFFICER (FR)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated Peshawar 25-05-2010

Ann D
10

NOTIFICATION

NO.SO(PE)2-6/E&SED/DPCMTG/UPGRADATION/10: The Competent Authority on the recommendation of the Departmental Promotion Committee and in consultation with Finance department is pleased to allow up gradation from BS-16 to BS-17 (Personal) to the following 1013 Male SETs, 347 Female SETs and 1 Male SET (Tech) with immediate effect subject to the condition that the post of SET shall be downgraded from BS-17 to BS-16 as and when vacated by the incumbents:

1013 MALE SET (GEN)

| S.No | Seniority List No. | Name of Officer | Date of Appointment as Regular SET | Present Place of Posting |
|------|--------------------|-----------------------|------------------------------------|-----------------------------------|
| 1. | 1286(A) | Nazir ud din | 12.6.88 | SET GHSS Shamoza Swat |
| 2. | 1756 | Mohammad Khalid | 09-10-89 | SET GHS Kholian bala Haripur |
| 3. | 1964(A) | Muhammad Naeem Shah | 7.4.98 | SET GHS Naryab Hango |
| 4. | 2274 A | Syed Jamil Ahmad Shah | 11-1-91 | SET GHS Ghora Bazran A.Abad |
| 5. | 2330-b | Muhammad Zaman | 27-07-91 | SET GHS Khragi FR-Tank |
| 6. | 2337(B) | Malik Jan | 11.8.91 | SET GHS Dara Adam khel FR Kohat |
| 7. | 2337(D) | Muhammad Riya | 15-04-93 | SET GHSS Jamrud |
| 8. | 2337(27) | Ahmad Khan | 29-04-93 | SET GMHS Sadda Kurram Agy |
| 9. | 2337(38) | Ghulam Habib | 29-04-93 | SET GHS Ashkar Kot SWA |
| 10. | 2337(86) | Taj Mohammad Khan | 5-3-94 | SET GHSS Kot Najeeb ullah Haripur |
| 11. | 2628 | Muhammad Farooq Khan | 10-11-94 | ADO (AEO) Fata |
| 12. | 2708(10) | Faqir Mohammad | 21-05-95 | SET GHSS Tarnaab Charsadda |
| 13. | 2717 | Mr. Fazli Khaliq | 23-5-95 | SET GHS Mullazai Tank |
| 14. | 3489-a | Akbar Ali | 10-02-96 | SET GHS Hisara Bara Khyber Agency |
| 15. | 3489-b | Kamil Khan | 10-02-96 | SET GHS Sani khel, FR Kohat |
| 16. | 3530 | Mulazim Hussain | 25-3-96 | GHS No.2 Paharpur DIK |
| 17. | 3714 | Mr. Rafiq ul Ahmad | 25-3-96 | SET GCMS Chitral |
| 18. | 4025(1) | Noorullah Jan | 6-5-96 | SET GHS Shagai, Khyber |
| 19. | 4025(19) | Sultan Farooq | 8-3-90 | SET GEC Mir Ali NWA |
| 20. | 4025(20) | Saad Ullah Khan | 18-11-97 | SET GMS Palangzal NWA |
| 21. | 4027 | Mr. Zia Ahmed | 15-1-98 | SET GHS Dheri khattak khel NSR |
| 22. | 4030 | Mr. Abdullah | 15-1-98 | GHS Batakara Swabi |
| 23. | 4032 | Mr. Masoodur Rehman | 15-1-98 | SETGHS Kanjoram SWA |
| 24. | 4033 | Mr. Mazhar Munir | 15-1-98 | GHSS No.4 DIKhan |
| 25. | 4034 | Mr. Mutahir shah | 15-1-98 | SET GHS Tor Landi Swabi |
| 26. | 4036 | Mr. Munawwar Hussain | 15-1-98 | SET GHSS Abu khel Lakki |
| 27. | 4039 | Mr. Shamsur Rehman | 15-1-98 | SET GHS No.3 Kohat |
| 28. | 4042 | Mr. Gulzar Khan | 15-1-98 | SET GHS Mall Khel Bala Nowshera |
| 29. | 4043 | Mr. Jehangir Khan | 15-1-98 | SETGHS No.1 Charsadda |

AMJAD ALI
Advocate
SUPREME COURT

| | | | | |
|-----|------|-------------------------|---------|----------------------------------|
| 31. | 4046 | Mr. Qudrat Shah | 15-1-98 | SET GHS Dag Ismail Khel Nowshera |
| 32. | 4047 | Mr. Fakhrul Abrar | 15-1-98 | SETGHS Garoral Shangla |
| 33. | 4048 | Mr. Shahid Nawaz | 15-1-98 | SET GCMHS No.1 DIKlijan |
| 34. | 4040 | Mr. Muhammad Zaman | 15-1-98 | SET GMS Kriinj Chitral |
| 35. | 4050 | Mr. Syad Farman Shah | 15-1-98 | SET ADO P & D Poshawar |
| 36. | 4052 | Mr. Siddiqur Rehman | 15-1-98 | SETGMS Nasurudin Bego khel Lakki |
| 37. | 4053 | Mr. Gul Rohan | 15-1-98 | SET GHSS Chamkani Poshawar |
| 38. | 4055 | Mr. Masoodur Rehman | 15-1-98 | SET GHS KTS Haripur |
| 39. | 4056 | Mr. Hidayat Shah | 15-1-98 | SET GHS No.1 Nowshera Cantl. |
| 40. | 4057 | Mr. Muhammad Rehman | 15-1-98 | SET GHS Maneri Paya Swabi ✓ |
| 41. | 4063 | Mr. Samlullah | 15-1-98 | SET GHS Kohl sher Haidar Bara |
| 42. | 4067 | Mr. Khushdil Khan | 15-1-98 | SET GHSS Urmay Payan Peshawar |
| 43. | 4070 | Mr. Muhammad Siddiqua | 15-1-98 | SET GHS Milla khel karak |
| 44. | 4072 | Mr. Farkhtullah Khan | 15-1-98 | SET GMS Umm Chhar Lakki |
| 45. | 4073 | Mr. Arif, Naseem | 15-1-98 | SET GHS Rustam Mardan |
| 46. | 4075 | Mr. Mautasim Billah | 15-1-98 | SET ODO Samar bagh Dir L |
| 47. | 4076 | Mr. Fazli Malik | 15-1-98 | SET GHSS Mardan |
| 48. | 4077 | Mr. Zahidur Rehman | 15-1-98 | SET GHS Pabbi Nowshera |
| 49. | 4080 | Mr. Khan Uadshah | 15-1-98 | SET GHS Babuzal Mardan |
| 50. | 4083 | Mr. Karimullah | 15-1-98 | SET GHS Sarwar Jan. FR Bannu |
| 51. | 4004 | Muhammad Ghaznavi | 15-1-98 | SET GCMHS Chitral |
| 52. | 4005 | Mr. Fozul Qadus | 15-1-98 | SET GHSS Pir sadi Mardan |
| 53. | 4088 | Mr. Sadiqullah | 15-1-98 | SET GHS No.2 Saleem Khan Swabi ✓ |
| 54. | 4090 | Mr. Akhtar Nawaz Khan | 15-1-98 | SET GHS T.T. Ship KTS Haripur |
| 55. | 4093 | Mr. Hidayatur Rehman | 15-1-98 | SET GHSS Dheri likpani Mardan |
| 56. | 4094 | Mr. Khurshid Anwar | 15-1-98 | SET GHS Lalumber karak |
| 57. | 4097 | Mr. Muhammad Juma Khan | 15-1-98 | SET GHS Mastuj Chitral |
| 58. | 4098 | Mr. Khan Nawaz | 15-1-98 | SET GHS Makhazal Kurram.Agy |
| 59. | 4101 | Mr. Inayat Ali Shah | 15-1-98 | SET GMS Sard Chena Swabi ✓ |
| 60. | 4102 | Mr. Wisal Khan | 15-1-98 | SET GHS Tordhor. No.2 Swabi ✓ |
| 61. | 4104 | Mr. Javed Iqbal | 15-1-98 | SET GHS Nawa kail Darket Swat |
| 62. | 4108 | Mr. Amir Jan | 15-1-98 | SET GHS Islampur Swat |
| 63. | 4109 | Mr. Afsar Khan | 15-1-98 | SET GMS Shahdad Kilki Swabi ✓ |
| 64. | 4110 | Mr. Taj Nabl | 15-1-98 | SET GHS Kallang Mardan |
| 65. | 4111 | Mr. Fozle Rehman | 15-1-98 | SET GHS Mani khola Charsadda |
| 66. | 4112 | Mr. Sirajud Din | 15-1-98 | SET GHS Malangal B.Agy |
| 67. | 4113 | Mr. Shafiqatullah | 15-1-98 | SET GHS Tiarza SWA FATA |
| 68. | 4114 | Mr. Anwar Khan | 15-1-98 | SET GHSS No.4 Kashkai Poshawar |
| 69. | 4115 | Mr. Abidullah | 15-1-98 | SET GHS No.1 Charsadda |
| 70. | 4116 | Mr. Jamal Shah | 15-1-98 | SET GHS Dagl Banda Nowshera |
| 71. | 4118 | Mr. Muhammad Ishaq | 15-1-98 | SETGHS Harno Aziz A.Abad abad |
| 72. | 4119 | Mr. Iqbal Ahmad | 15-1-98 | SET GHS No.1 Cantl Nowshera |
| 73. | 4120 | Mr. Muhammad Nisar | 15-1-98 | SET GHS Bada Gadoon Swabi ✓ |
| 74. | 4121 | Mr. Azizur Rehman | 15-1-98 | SET GHS No.3 Cantl Pesh |
| 75. | 4122 | Mr. Hafeezullah | 15-1-98 | SET GHS Bharat Michen Khel Bannu |
| 76. | 4126 | Mr. Shabeer Ahmad | 15-1-98 | SET GHS Rojaya A.Abad |
| 77. | 4130 | Mr. Muhammad Turab Mian | 15-1-98 | SET GHS Chamatal Swat |
| 78. | 4131 | Mr. Mumtaz Ali | 15-1-98 | SET GHS Roshan Pura Swabi ✓ |
| 79. | 4133 | Mr. Rasool Kilan | 15-1-98 | SET GHS Sa derghi Fik Pesh |

| | | | | |
|------|---------|---------------------|---------|--|
| 316. | 1731 | Azra Yasmin, | 12.7.99 | SET GGMS, Pishtarakhar Payan Pesh |
| 317. | 1732 | Riyasal, | 12.7.99 | SET GGHS, Panr Swat |
| 318. | 1733 | Humaira Naz, | 12.7.99 | SET GGMS, Zoormandi hero shah Malakand |
| 319. | 1734 | Ghazala Shabnam, | 12.7.99 | SET GGHS, Lund khwar, Mardan |
| 320. | 1735 | Ruqia, | 12.7.99 | SET GGHS, Tour dher Swabi |
| 321. | 1737 | Sajida Nuzhal, | 12.7.99 | SET GGHS Mingo-a Swat |
| 322. | 1738 | Nizakat Ambar, | 12.7.99 | SET ADO Swat |
| 323. | 1740 | Falak Naz | 12.7.99 | SET GGHS, Shahbaz Ghari Mardan |
| 324. | 1741 | Salma Begum | 12.7.99 | SET GGHS Shaheen Camp Peshawar |
| 325. | 1742 | Nighat Seema, | 12.7.99 | SET GHS, Fata Directorate |
| 326. | 1743 | Hayat Begum, | 12.7.99 | SET GGHS, Odigram swat |
| 327. | 1744 | Naila Perveen, | 12.7.99 | SET GGHS, Malta Swat |
| 328. | 1745 | Shakila Naz | 13.7.99 | SET GGHS Skhakot Malakand |
| 329. | 1746 | Almas Begum, | 12.7.99 | SET GGHS, Charbagh Swat |
| 330. | 1748 | Naila Perveen, | 12.7.99 | SET GGHS, Bara Durash Khel Swat |
| 331. | 1749 | Razia Taj, | 12.7.99 | SET GGHS, Hathian Mardan |
| 332. | 1751 | Yasmin Bibi, | 12.7.99 | SET GGHS, Miana Malakand |
| 333. | 1753 | Nasim Akhtar, | 12.7.99 | SET GGMS, Surok Toor Chappar Fata |
| 334. | 1754 | Samina Yousaf, | 12.7.99 | SET GGHS, Suban Khawar Moh: Agy |
| 335. | 1755 | Gul Pari, | 12.7.99 | SET GGMS, Wali Khel, Fata |
| 336. | 1757 | Nabita Naz, | 12.7.99 | SET GGHS Karigar ghari, Kh. Agy |
| 337. | 1758 | Lubna Begum, | 12.7.99 | SET GGMS, Haryana Bala Pesh |
| 338. | 1760 | Syeda Rozina Kausar | 12.7.99 | SET GGHS Landi Arbab Pesh |
| 339. | 1765 | Amina Wazeer | 12.7.99 | SET GGMS, Jamu shahi Khel FR Kohat |
| 340. | 1767 | Khalida Jan, | 12.7.99 | SET AAEO, Mohd Agency |
| 341. | 1772 | Wahida Khan, | 12.7.99 | SET AAEO, Khyber Jamrud |
| 342. | 1774 | Zahida Bibi | 12.7.99 | SET GGMS, Kohi bahara FR DIK |
| 343. | 1776 | Anila Zaheer | 12.7.99 | SET GGMS SRD M. Agy. |
| 344. | 1780 | Noor Rabia | 12.7.99 | SET GGHS, Subhan Khwar, Moh. Agy |
| 345. | 1781 | Faihat Amir | 12.7.99 | SET GGMS, Baz Mohd kor M. Agy |
| 346. | 1782(A) | Nosheena Aziz | 12.7.99 | SET GGHS Chamkani Pesh |
| 347. | 1782(B) | Nur Jabeen | 12.7.99 | SET GGMS Sragala Kurram Agency FATA |

1 MALE SET (TECH)

| S.No | Sonlority List No. | Name of Officer | Date of Appointment as Regular SET. | Present Place of Posting |
|------|--------------------|-----------------|-------------------------------------|-------------------------------|
| 1. | 115 C | Mumtaz Khan | 17-12-02 | SET (TECH)-GHS Lalambar Kurak |

SECRETARY TO GOVT OF KHYBER
PAKHTUNKHWA
ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT

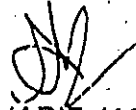
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Copy is forwarded to:-

- 1) Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
- 2) Special Secretary (Regulation), Establishment Department, Govt of Khyber Pakhtunkhwa Peshawar.
- 3) Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department, Peshawar.
- 4) Secretary to Chief Minister Khyber Pakhtunkhwa.
- 5) PS to Chief Secretary Khyber Pakhtunkhwa.

(13)

- 6) All Directors in Elementary & Secondary Education Department Khyber Pakhtunkhwa.
- 7) Executive District Officers Elementary & Secondary Education concerned.
- 8) The Accountant General Khyber Pakhtunkhwa.
- 9) All District Accounts Officers / Agency Accounts Officers concerned
- 10) PS to Minister for Elementary & Secondary Department Khyber Pakhtunkhwa.
- 11) PS to Secretary / Special Secretary / Additional Secretary E&S Edu: Deptt Govt of Khyber Pakhtunkhwa.
- 12) PA to Deputy Secretary (Admn) Elementary & Secondary Edu: Department Govt of Khyber Pakhtunkhwa.
- 13) Officers concerned
- 14) Master file



(ARIF JAMIL)

SECTION OFFICER (PRIMARY)

Ann E

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 266 of 2009

(14)

Date of Institution ... 18.02.2009
Date of Decision ... 03.07.2009

Haroonur Rashid S/O Ghulam Sarwar near Bilal Masjid Mohallah Ram Bagh Mardan
(SET Government Cenital Model High School Bank Road, Mardan). (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education Department Government of NWFP, Peshawar.
2. The Chief Secretary, Government of NWFP Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE NWFP SERVICE TRIBUNAL ACT, 1974, TO THE EFFECT THAT NOTIFICATION NO. SO(PE)2-6/E&S/UPGRADATION/SET DATED 27.9.2008 TO THE EXTENT OF ALLOWING ONE TIME UPGRADATION FROM B-16 TO BPS-17 TO THE SETS INCLUDING APPELLANT WITH IMMEDIATE EFFECT I.E. 27.9.2008 INSTEAD OF 01.10.2007.

MR. ADAM KHAN,
Advocate.

For appellant.

MR. JAMAL ABDUL NASIR,
Addl. Government Pleader,

For respondents.

MR. JUSTICE (R) SALIM KHAN,
MR. ABDUL JALIL KHAN,

CHAIRMAN
MEMBER.

AMJAD ALI
Advocate
SUPREME COURT

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.- The legal issues in Service Appeals Nos. 266 to 282 of 2009 (17 cases), in Service Appeals Nos. 213 to 219 and 429 to 431 of 2009 (10 cases) as well as in Service Appeal No. 200 of 2009, are similar, and need discussion and disposal at the same time. The learned counsel for the appellants in the first set of 17 cases, the learned counsel for the appellants in second set of 10 cases and the special attorney of the appellant in single case No. 200 of 2009 and the A.G.P explained the cases.

2. Haroon Rashid, appellant contended that he was SET BPS-16. The Finance Department issued the Notification No. FD/SO(FR)10-22(B)/2005, dated 26.1.2008, vide which upgradation of various posts of teachers in the Education Department was ordered. It included the incumbents of posts of S.E.T with atleast 10 years service, subject to the recommendations of the Departmental Promotion

Committee. Vide order dated 27.9.2008, upgradation was allowed to the appellant with immediate effect instead of 1.10.2007. The cases of the other appellants are almost the same, though the cases in the second set also contained the contention that imposition of restriction of one time and personal was illegal, against law and facts. The appellant of Service Appeal No. 200 of 2009 contended that she was posted as SET (BPS-17) but grant of upgradation was delayed upto 27.9.2008, and it was granted to her with immediate effect, instead of the due date.

3. The respondents contested the appeal. They submitted that the grant of upgradation was for one time only with atleast 10 years service, and the condition of processing the cases through the Departmental Promotion Committee was part and parcel of the notification, vide which the appellants claimed the facility.

4. We heard the arguments and perused the record as aforementioned.

5. The notification dated 26.1.2008 clearly shows that the Authority was pleased to allow upgradation for the incumbents of the posts w.e.f. 01.10.2007. Vide order dated 27.9.2008, certain persons were granted upgradation, but with immediate effect and subject to the condition that these upgradations were personal, and the posts shall be degraded from BPS-17 to BPS-16 when these are vacated by the present incumbents.

6. It was the prerogative of the Government to grant upgradation for one time only, though to all civil servants of the Education Department who had the requisite qualification on the date of issue of the above mentioned notification dated 26.1.2008. It was also the prerogative of the Provincial Government to withdraw the said order on the same date for the purposes of all those persons who were not qualified for upgradation of their posts on 26.1.2008. The Government had the power to declare that the posts shall stand upgraded for the purposes of their incumbents only, and not perpetually.

7. The above mentioned notification had clearly declared that the upgradation would be effected from 01.10.2007. The Departmental Promotion Committee had to take time in processing the cases of incumbents of the posts in order to check whether they had the required length of service, and they were otherwise eligible for upgradation through their service record. But it did not mean

that the Departmental Promotion Committee could change the contents of the notification itself, specially with respect to its effectiveness. It is not the job of the Departmental Promotion Committee to fix the date of promotion/upgradation prospectively, when the notification had declared the date of effectiveness from a previous certain date, or when a vacancy was available for a certain civil servant from a previous date. It was the authority of the Appointing Authority to antedate the upgradation as, as the case may be, to the respective date mentioned by the notification, or availability of the vacancy. That date is 01.10.2007 in the present cases, which could not be changed by the D.P.C, or, even, by the Appointing Authority.

8. In the light of the above, we accept all the above mentioned appeals to the extent that the upgradation of their respective posts and their appointment to those posts shall be declared effective from 01.10.2007, though such upgradation and posting shall be one time only and shall be personal to the appellants, and their similarly placed colleagues, as per the contents of the notification quoted above. Parties are left to bear their own costs.

ANNOUNCED.
03.7.2009

Sd/- Justice C. J. Prasad
Chairman
Sd/- Abdul Jabbar
Member

| | |
|----------------------------|--------|
| | 3.9.09 |
| Number of appeals | 1200 |
| Number of appeals disposed | 8 |
| Number of appeals pending | 2 |
| Number of appeals referred | 10 |
| Date of meeting | 3.9.09 |
| Date of approval of report | 3.9.09 |

Before the N.W.F.P. Service Tribunal, Peshawar

S.A. No. 41 of 2010.

Hukum Khan, SET, GHS Dagai, Swabi

(Appellant)

Versus

1. Govt. of NWFP through Secretary Education, Peshawar.
 2. Chief Secretary, Govt. of NWFP, Peshawar.
- (Respondents)

N.W.F.P. Provincial
Service Tribunal

Diary No. 11/2010

Dated 12/11/2010

Ant
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17

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974

Sir,

The appellant humbly submits as under:-

1. That appellant was appointed as a SET Teacher on 23/5/95 and placed in BPS-16.

(Copy of appointment order in BPS-15 is annexure "A")

2. That respondent (Finance Department Govt. of NWFP) issued notification dated 26/01/2007 for up-gradation of post.

(Copy of Notification dated 01/10/2007 is annexure "B")

3. That respondent issued Notification dated 26/01/2008.

(Copy of Notification dated 26/01/2008 is annexure "C")

4. That vide Notification dated 21/04/2008, appellant's post is upgraded to BPS-17 but with addition of one time only.

(Copy of Notification dated 21/04/2008 is annexure "D")

5. That in consequence of said Notification, appellant is allowed up-gradation of posts with immediate effect instead of 01/10/2007 vide notification dated 27/09/2008.

(Copy of Notification dated 27/09/2008 is annexure "E").

6. That appellant is equipped with the requisite qualification as envisaged in the Notification for up-gradation of posts.

7. That as per judgment dated 03/07/2009 of this Hon'able Tribunal in numerous appeals up-gradation has been granted w.e.f. 01/10/2007.

(Copy of judgment is annexure "F").

ATTESTED
Secretary
NWFP Service Tribunal
Peshawar

AMJAD ALI
Advocate
SUPREME COURT

| No. of Order or proceedings | Date of Order or proceeding | Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary. | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------------------------|-----------------------------|---|-------|-------------------|--------------------------|----|---------|-------------------|----|---------|----------------|----|---------|----------------|----|---------|----------------|----|---------|-----------------|----|---------|-----------------|----|---------|----------------|----|---------|---------------|----|---------|---------------------|-----|---------|--------------|-----|---------|--------------|-----|---------|-------------|-----|---------|------------------|-----|---------|----------------------|-----|---------|-----------------|-----|---------|----------------|-----|---------|-------------|-----|---------|---------------|-----|---------|------------------|-----|---------|------------------|-----|---------|-------------|-----|---------|---------------|-----|---------|---------------|-----|---------|--------------|-----|---------|-----------------|-----|---------|----------------|-----|---------|----------------|-----|---------|------------------|-----|---------|----------------|
| 1 | 2 | 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 04 | 23.02.2010 | <p style="text-align: center;"><u>Appeal No. 41/2010 (Hukum Khan-vs-Govt. of NWFP through Secretary Education, Peshawar and another)</u></p> <p style="text-align: center;">Appellant with counsel present and heard.</p> <p>Though the appeal was argued at the preliminary stage, yet in the light of decision of this Tribunal dated 3.7.2009 in Appeal No.266/2009 titled 'Haroon-ur-Rashid-vs-Secretary Elementary & Secondary Education Department, Government of NWFP, Peshawar and another; and in view of consistent view of the august Supreme Court of Pakistan as reflected in the case reported as 2005 SCMR 499 (Supreme Court of Pakistan) and other reported cases, it is proposed to dispose of this appeal as well as similar nature appeals, listed below, vide this single order:-</p> <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">S.No.</th> <th style="text-align: left;"><u>Appeal No.</u></th> <th style="text-align: left;"><u>Name of appellant</u></th> </tr> </thead> <tbody> <tr><td>1.</td><td>42/2010</td><td>Muhammad Irshad ✓</td></tr> <tr><td>2.</td><td>43/2010</td><td>Abdul Waheed ✓</td></tr> <tr><td>3.</td><td>44/2010</td><td>Muhammad Farid</td></tr> <tr><td>4.</td><td>45/2010</td><td>Muhammad Saeed</td></tr> <tr><td>5.</td><td>46/2010</td><td>Muhammad Saleem</td></tr> <tr><td>6.</td><td>47/2010</td><td>Muhammad Tanvir</td></tr> <tr><td>7.</td><td>48/2010</td><td>Khalid Mehmood</td></tr> <tr><td>8.</td><td>49/2010</td><td>Muhammad Riaz</td></tr> <tr><td>9.</td><td>50/2010</td><td>Syed Amjad Ali Shah</td></tr> <tr><td>10.</td><td>51/2010</td><td>Gulab Shah ✓</td></tr> <tr><td>11.</td><td>52/2010</td><td>Rahimullah ✓</td></tr> <tr><td>12.</td><td>53/2010</td><td>Said Zada ✓</td></tr> <tr><td>13.</td><td>54/2010</td><td>Muhammad Saeed ✓</td></tr> <tr><td>14.</td><td>55/2010</td><td>Bakht Sher Hussain ✓</td></tr> <tr><td>15.</td><td>56/2010</td><td>Mujahid Hussain</td></tr> <tr><td>16.</td><td>57/2010</td><td>Abdur Rashid ✓</td></tr> <tr><td>17.</td><td>58/2010</td><td>Attaullah ✓</td></tr> <tr><td>18.</td><td>59/2010</td><td>Amir Rehman ✓</td></tr> <tr><td>19.</td><td>60/2010</td><td>Saleh Muhammad ✓</td></tr> <tr><td>20.</td><td>61/2010</td><td>Muhammad Tahir ✓</td></tr> <tr><td>21.</td><td>62/2010</td><td>Johar Ali ✓</td></tr> <tr><td>22.</td><td>63/2010</td><td>Wahitab Gul ✓</td></tr> <tr><td>23.</td><td>64/2010</td><td>Bakht Nawab ✓</td></tr> <tr><td>24.</td><td>65/2010</td><td>Qabil Shah ✓</td></tr> <tr><td>25.</td><td>66/2010</td><td>Waheed-uz-Zaman</td></tr> <tr><td>26.</td><td>67/2010</td><td>Muhammad Usman</td></tr> <tr><td>27.</td><td>68/2010</td><td>Muhammad Hanif</td></tr> <tr><td>28.</td><td>69/2010</td><td>Muhammad Sarfraz</td></tr> <tr><td>29.</td><td>70/2010</td><td>Naeemul Hassan</td></tr> </tbody> </table> | S.No. | <u>Appeal No.</u> | <u>Name of appellant</u> | 1. | 42/2010 | Muhammad Irshad ✓ | 2. | 43/2010 | Abdul Waheed ✓ | 3. | 44/2010 | Muhammad Farid | 4. | 45/2010 | Muhammad Saeed | 5. | 46/2010 | Muhammad Saleem | 6. | 47/2010 | Muhammad Tanvir | 7. | 48/2010 | Khalid Mehmood | 8. | 49/2010 | Muhammad Riaz | 9. | 50/2010 | Syed Amjad Ali Shah | 10. | 51/2010 | Gulab Shah ✓ | 11. | 52/2010 | Rahimullah ✓ | 12. | 53/2010 | Said Zada ✓ | 13. | 54/2010 | Muhammad Saeed ✓ | 14. | 55/2010 | Bakht Sher Hussain ✓ | 15. | 56/2010 | Mujahid Hussain | 16. | 57/2010 | Abdur Rashid ✓ | 17. | 58/2010 | Attaullah ✓ | 18. | 59/2010 | Amir Rehman ✓ | 19. | 60/2010 | Saleh Muhammad ✓ | 20. | 61/2010 | Muhammad Tahir ✓ | 21. | 62/2010 | Johar Ali ✓ | 22. | 63/2010 | Wahitab Gul ✓ | 23. | 64/2010 | Bakht Nawab ✓ | 24. | 65/2010 | Qabil Shah ✓ | 25. | 66/2010 | Waheed-uz-Zaman | 26. | 67/2010 | Muhammad Usman | 27. | 68/2010 | Muhammad Hanif | 28. | 69/2010 | Muhammad Sarfraz | 29. | 70/2010 | Naeemul Hassan |
| S.No. | <u>Appeal No.</u> | <u>Name of appellant</u> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 1. | 42/2010 | Muhammad Irshad ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 2. | 43/2010 | Abdul Waheed ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3. | 44/2010 | Muhammad Farid | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4. | 45/2010 | Muhammad Saeed | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5. | 46/2010 | Muhammad Saleem | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6. | 47/2010 | Muhammad Tanvir | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7. | 48/2010 | Khalid Mehmood | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8. | 49/2010 | Muhammad Riaz | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9. | 50/2010 | Syed Amjad Ali Shah | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10. | 51/2010 | Gulab Shah ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11. | 52/2010 | Rahimullah ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12. | 53/2010 | Said Zada ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 13. | 54/2010 | Muhammad Saeed ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 14. | 55/2010 | Bakht Sher Hussain ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 15. | 56/2010 | Mujahid Hussain | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 16. | 57/2010 | Abdur Rashid ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 17. | 58/2010 | Attaullah ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 18. | 59/2010 | Amir Rehman ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 19. | 60/2010 | Saleh Muhammad ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 20. | 61/2010 | Muhammad Tahir ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 21. | 62/2010 | Johar Ali ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 22. | 63/2010 | Wahitab Gul ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 23. | 64/2010 | Bakht Nawab ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 24. | 65/2010 | Qabil Shah ✓ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 25. | 66/2010 | Waheed-uz-Zaman | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 26. | 67/2010 | Muhammad Usman | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 27. | 68/2010 | Muhammad Hanif | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 28. | 69/2010 | Muhammad Sarfraz | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 29. | 70/2010 | Naeemul Hassan | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Peshawar
18

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| | | |
|-----|---------|--------------------|
| 30. | 71/2010 | Bashir Ahmad |
| 31. | 72/2010 | Muhammad Naeem |
| 32. | 73/2010 | Wali Dad. |
| 33. | 74/2010 | Muhammad Nazir |
| 34. | 75/2010 | Javed Iqbal |
| 35. | 76/2010 | Rustam Khan |
| 36. | 77/2010 | Muhammad Javed |
| 37. | 78/2010 | Nisar Ahmad Lodhi |
| 38. | 79/2010 | Ali Mullah Hiran ✓ |
| 39. | 80/2010 | Abdur Rauf ✓ |
| 40. | 81/2010 | Bohrmand ✓ |
| 41. | 82/2010 | Fazli Raziq |
| 42. | 83/2010 | Muhammad Zubair |
| 43. | 84/2010 | Abdul Waheed |
| 44. | 85/2010 | Noor-ul-Jamil ✓ |
| 45. | 86/2010 | Muhammad Nisar ✓ |
| 46. | 87/2010 | Shamsur Riaz ✓ |
| 47. | 88/2010 | Muhammad Parvez |
| 48. | 89/2010 | Zahoor Akhtar |
| 49. | 90/2010 | Shah Jehan ✓ |
| 50. | 91/2010 | Muhammad Karim ✓ |
| 51. | 92/2010 | Abdullah ✓ |
| 52. | 93/2010 | Majid Ghufan |

19

The appellant, who was appointed as SET in BPS-16 is seeking upgradation to BPS-17 w.e.f. 01.10.2007, in the light of Notification dated 26.01.2008, instead of upgradation with immediate effect vide Notification dated 27.9.2008. The appellant has further assailed the impugned Notification dated 27.9.2008 on the ground of one time upgradation and that, too, personal to the appellant. The appellant has further prayed for one advance increment on account of upgradation and treating the upgradation as regular promotion for the purpose of further promotion to BPS-18, 19 and 20.

So far upgradation with effect from 01.10.2007 in the light of Notification dated 26.1.2008 is concerned, the matter stands resolved through the above referred decision of the Tribunal dated 3.7.2009 in Appeal No. 266/2009, whereby, similar nature appeals were disposed of with the following order:-

"In the light of the above, we accept all the above mentioned appeals to the extent that the

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 EXAMINER
 SUPP. SERVICE TRIBUNAL
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20

upgradation of their respective posts and their appointment to those posts shall be declared effective from 01.10.2007, though such upgradation and posting shall be one time only and shall be personal to the appellants, and their similarly placed colleagues, as per contents of the notification quoted above. Parties are left to bear their own costs".

It would be seen from the perusal of the above reproduced order of the Tribunal that the issues of one time upgradation and the upgradation personal to the appellants was also resolved; but the appellant has placed on file Notification dated 19.10.2009, which has obviously been issued after the above referred decision, showing the withdrawal of the condition of 'one time only' from the Notification dated 21.4.2008. As regards the grant of

premature advance annual increment on promotion/upgradation, suffice it to say that the department will have no other option but to grant premature advance annual increment if admissible under the rules on upgradation of the appellants. So far treating the upgradation as regular promotion, the learned counsel for the appellants would not press this issue in view of the prevailing legal position.

In view of the above, when the Tribunal had already resolved the issue of declaring the upgradation effective from 01.10.2007 and had directed the department to also grant the upgradation from that particular date to the similarly placed colleagues of the appellants, the department should have acted accordingly and should have extended the benefit to the appellant, and appellants in the connected appeals, instead of forcing them to move the appeals for the rights already adjudicated in their favour by the Tribunal. In such like situations, it has been the consistent view of the august Supreme Court of Pakistan that:

ATTESTED
JUDGE

(21)

"When Tribunal or Court decides a point of law relating to the terms of service of a civil servant which covered not only the case of civil servants who litigated, but also of other civil servants, who might have not taken any legal proceedings, the dictates of justice and rule of good governance demand that the benefit of the decision be extended to other civil servants, who might not be parties to the litigation instead of compelling them to approach the Tribunal or any other legal forum." (2005 SCMR 499-Supreme Court of Pakistan).

Consequently, the appeal, and all the above listed appeals, are accepted in limine, with direction to the respondent-department to immediately, without further loss of time, declare the upgradation of the respective posts of the appellants and their appointment to those posts effective from 01.10.2007 with all consequential benefits in accordance with the decision of the Tribunal dated 3.7.2009, relevant rules and Notifications, including Notification of the Finance Department dated 19.10.2009. No order as to costs.

ANNOUNCED
23.02.2010

(QALANDAR ALI KHAN)
CHAIRMAN

NOTICE TO THE PUBLIC
IN THE MATTER OF
THE SUPREME COURT OF PAKISTAN
ISLAMABAD

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT
Dated Peshawar the 03-11-2010.

Anx G

(22)

NOTIFICATION.

No.SO(PE)2-6/DPC/Up-Gradation SETs BS-16 to BS-17. In pursuance of Judgement of Khyber Pakhtunkhwa, Services Tribunal Peshawar, the Competent Authority is pleased to upgrade 2804 posts of SETs in E&SE Department KPK from BPS-16 to BPS-17 as personal to the incumbents with effect from 01-10-2007 subject to the condition that the posts shall automatically be downgraded as and when vacated by the incumbents under the following break-up:-

| S.No. | Posts | Total No. of Posts. |
|-------|---------------------------|---------------------|
| 1 | SETs (Male) | 2333 |
| 2 | SETs (Female) | 446 |
| 3 | SETs (Technical)/Commerce | 25 |
| | Total:- | 2804 |

SECRETARY TO GOVT. OF
KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT

Endst No. SO(FR)FD/10-22(B)/2007/Vol.II Dated Peshawar the, 03-11-2010

1. Copy forwarded to the Accountant General, Khyber Pakhtunkhwa, Peshawar for information & necessary action.

And
SECTION OFFICER (FR)
FINANCE DEPARTMENT.

Endst. No. & Date as above.

Copy forwarded to:-

1. The Secretary to Governor, Governor's Secretariat (FATA) Khyber Pakhtunkhwa
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Establishment & Admn. Department.
3. The Secretary to Govt. of Khyber Pakhtunkhwa, Finance Department w/r to his letter No.SO(FR)FD/10-22(B)/2007/Vol-II dated 14-10-2010.
4. All Directors of Education (E&SE) in Khyber Pakhtunkhwa including Director (FATA).
5. All Executive District Officers Elementary & Secondary Education in Khyber Pakhtunkhwa.
6. All Agency Education Officers in Khyber Pakhtunkhwa.
7. All District Accounts Officers, in Khyber Pakhtunkhwa
8. All Agency Accounts Officers in Khyber Pakhtunkhwa
9. Section Officer (FR) Finance Department w/r to his letter No. SO(FR)FD/10-22(B)/2007/Vol.II dated 14-10-2010.
10. P.S to Secretary E&SE Department.
11. P.S to Additional Secretary E&SE Department.
12. P.A to Deputy Secretary E&SE Department.

Mujeeb-ur-Rahman
(MUJEEB-UR-RAHMAN)
SECTION OFFICER (PRIMARY)

Amjad Ali
AMJAD ALI
Advocate
SUPREME COURT

Notified - 25/2/2011

No-72

8/11/11
A.H.

(83)

To
The Secretary to Govt of KPK,
Elementary & Secondary Education
Department, Peshawar.

Subject : Appeal for grant of BPS-17. on Completing 10 years service as SET.

R/Sir,

With due reverence & respect, it is stated that 2804 SETs were upgraded from BPS-16 to BPS-17 wef 01-10-2007 in the light of the judgement of Khyber Pukhtoonkhwa Services Tribunal Peshawar vide Endst No. SO(FR)FD/10-22(B)/2007/Vol II, dated: 03-11-2010. As I have been working as SET in Education Department since 15-1-1998 MY 10 years Service as SET completed on 15-1-2008.

So, your honourable authority is humbly requested that I may also please be awarded BPS-17 from the date of my completing 10 years service as SET.


I shall be much obliged.

Dated: 29-10-2011

Yours Obediently,

Sign: Mumtaz

Name: Mumtaz Ali
GMS Roshan Pura
(Swabi)


AMJAD ALI
Advocate
SUPREME COURT

Annex 1

Annex
[Signature]
[Signature]

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

(24)

NO.FD/SO(FR)/10-22(B)/2007/Vol-II
Dated Peshawar, the 19-10-2009

To

All Secretaries to the Govt: of NWFP.

Subject:- NOTIFICATION.

Dear Sir,

I am directed to refer to this Department's Notification bearing No.FD/SO(FR)10-22/2007, dated 21-04-2008, and to state that the competent authority has been pleased to withdraw the condition of "one time only" as was mentioned under last column against serial No. 4 in the aforementioned letter. The same may thus be kindly read as under: -

| S.NO | Existing Designation and Pay Scale | Qualification | Upgraded Scale |
|------|------------------------------------|--|----------------|
| 4 | SETs (BPS-16) | With at least ten years service. Upgradation to the post shall be made through DPC as per laid down procedure. | BPS-17 |

Yours faithfully,

(SHAUKAT ULLAH)
SECTION OFFICER (FR)

ENDST: NO & DATE EVEN:

Copy of the above is forwarded for information and necessary action to:-

1. All the DCOs/EDOs Schools & Literacy Department, NWFP.
2. Accountant General, NWFP, Peshawar.
3. Director Schools & Literacy NWFP, Peshawar.
4. Director of Education FATA NWFP, Peshawar.
5. PSO to Chief Minister, NWFP.
6. PSO to Chief Secretary, NWFP.
7. PS to Secretary to Govt: of NWFP Finance Department.
8. All District/Agency Accounts Officers in NWFP.

AMJAD ALI
Advocate
SUPREME COURT

[Signature]
SECTION OFFICER (FR)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal #245/2012.

Mr. *Mumtaz Ali, SET*

.....Appellant

VERSUS

Govt. of Khyber Pakhtunkhwa through Secretary Elementary & Secondary Education
Peshawar & others..... Respondents

Written reply/ Para wise comments for & on behalf of Respondents.

Respectfully Sheweth,

Preliminary Objections:-

1. That the appeal is badly time barred.
2. That the appeal is bad for non joinder/ mis-joinder for necessary party.
3. That the appellant has not come to this Honourable Court with clean hand.
4. That the appeal is not maintainable in its present form.
5. That the appellant has concealed important material facts from this Honourable Court.
6. That the appellant has been estopped by his own conduct to file the instant appeal.
7. That the appellant has no cause of action.
8. That the Rule 3(2) of the Khyber Civil Servant (Appointment, Promotion & Transfer) Rules 1989, authorized the Department to lay down method of appointment qualification and other condition applicable to the post in consultation with the Establishment & Administration Department and Finance Department. Hence the present appeal is liable to be dismissed.
9. That the present appeal does not come within the ambit of the Section-4 of the Service Tribunal Act 1973.

FACTS.

1. This para pertains to court record, hence no comments.
2. The mentioned Notification was issued by the competent authority. However, it remain no more in the field as superseded by Notification dated 26-01-2008 (Annexure-C of the appeal).
3. That the mentioned Notification was issued in accordance with law & rules.
4. The mentioned Notification was issued in accordance with law and rules and policy, by the competent authority, through Departmental Promotion Committee.
5. Incorrect. the promotion/ up-gradation, as according to rules, always granted with immediate effect.
6. This parka pertains to appellant academic record, hence no comments.

7. This para pertains to the record of the Tribunal, hence no comments.
8. Replied in para-6 above.
9. Incorrect and denied, the claim of the appellant is against the prevailing rules and policy. However, it is pertinent to mention here that the appellant has not claimed and regular promotion in departmental appeal in (Annexure-H at Page-29 of the appeal), hence the present appeal is not maintainable and tenable according to law.
10. Incorrect. The appellant did not adduce any legal proof/ law in support of his claim. Hence the appellant is not entitled for any promotion and advance increment. The appellant also did not mention this claim in is time barred departmental appeal dated 29-10-2011, hence the present appeal is liable to be dismissed.
11. The mentioned departmental appeal is annexed a page-22 is badly time barred.
12. Incorrect and denied.
13. As replied in foregoing para-6
14. As replied in forgoing para-9.
15. Incorrect and not admitted. The claims of the appellant mentioned in this para are illegal, without any legal proof, against the prevailing law, rules, policy and facts, hence the present appeal is liable to be dismissed inter alia on the following grounds:-

ON GROUNDS.

- A. Incorrect and not admitted. There is no contradiction as mentioned by the appellant. All the Notification mentioned herein are in accordance to law, rules and policy and issued by the competent authorities.
- B. Incorrect. The statement of the appellant in this para is not related to claim of the appellant as mentioned in is time barred departmental appeal.
- C. Incorrect and not admitted. The Principle mentioned in this para is not applicable to the case of the appellant.
- D. Incorrect. The appellant claim in this para is against the law and rules, without proof and based on malafide motives.
- E. Incorrect. All Notification mentioned in this para were issued in consultation with Establishment and Administration Department and Finance Department, hence denied.
- F. Incorrect and not admitted. The statement of the appellant in this para is against the Notification dated 08-01-2008 S# 4 column of qualification (Annexure-C of the appeal at page-9).
- G. Incorrect and not admitted. The statement of the appellant is not supported by any rules and law, nor the same was prayed in he departmental appeal dated 29-10-2011 by the appellant denied.

H. Incorrect. The appellant misread and mis-apprehend the mentioned up-gradation and attempted to misguide this Honourable Court. Hence the present appeal is liable to be dismissed being against law, rules, policy and facts.

I. This para pertains to the record of the courts, hence no comments. However, the respondents seek the permission of this Honourable Tribunal to adduce more grounds and proofs at the time of arguments.

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

Secretary to Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department.

19/12/12