

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No 508-P/2020

SIHER KHAN

V/S

GOVT. OF KP & OTHERS

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Impleaded Respondent No. 3 & 4

Through


NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT

-/-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Appeal No 508-P/2024

SHER KHAN

V/S

GOVT. OF KP & OTHERS

REPLY ON BEHALF OF THE IMPEADED RESPONDENTS NO. 3 & 4.

R/SHEWETH:

ON FACTS:

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11136

Dated 14.02.24

The impleaded respondents No. 3 & 4 submits as under:-

Preliminary Objections:

- i. That the appellant has no cause of action and locus standi to file the instant service appeal.
- ii. That the appellant is estopped by his own conduct to file the instant service appeal.
- iii. That the appellant has concealed material facts from this Hon'ble Tribunal while filing the instant service appeal.
- iv. That the instant Service Appeal is not maintainable in its present form.
- v. That the appeal in hand is also time-barred, hence cannot proceed further. Facts of the case are that the appellant has brought the titled case for back benefits including promotion. It is very important to mention here that the replying respondents were working as Computer Operators and have been promoted as Programmer (BPS-17) and Web Administrator (BPS-17) vide Notifications dated 08-10-2019 respectively, through DPC. Prescribed qualification is Master Degree in Computer Science was the basic requirement for both the posts by which time the appellant was not in service. In case, the appellant is allowed all back benefits including promotion, the replying respondents might be affected, hence they approached this Hon'ble Tribunal by filing application for their impleadment in the column of respondents which was accepted by this Hon'ble Tribunal vide Order, dated 20-12-2023.
- vi. That the replying respondents are having the qualification of Master Degree in Computer Science while the appellant is having Master of Science Degree (Honors) in Rural Development, Bachelor of Science Honors in Agriculture from Agriculture University Peshawar and Bachelor of Science Degree from the University of Peshawar (**Copy of Educational Testimonials of the appellant are annexed as A & B**). It is worth to mention that the appellant is not eligible for promotion as Programmer or Web Administrator, as according to the Service Rules on the subject, i.e the Office of Advocate General Khyber Pakhtunkhwa (Recruitment and Appointment) Rules 1981 as amended from time to time, the post of

Programmer (BPS-17) and web Administration (BPS-17) are to be filled in as under:

Computer Programmer (BPS-17)

- (a) *Fifty percent (50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant programmers and Computer Operator, having qualification prescribed for initial recruitment with five years service as such; and*
- (b) *fifty percent (50%) by initial recruitment.*

Note: A joint seniority list of both the Assistant Programmers and Computer Operators shall be maintained for the purpose of promotion.

Initial Recruitment:

At least Second Class Master's Degree or equivalent qualification in Computer Science from a recognized University.

Web Administrator (BPS-17)

- (a) *Fifty percent (50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant programmers and Computer Operator, having qualification prescribed for initial recruitment with five years service as such; and*

Provided that if no suitable candidate is available for promotion then by initial recruitment.

Initial Recruitment:

At least Second Class Master's Degree or equivalent qualification in Computer Science from a recognized University.

Thus the appellant is not eligible for the said post and hence the appeal to the extent of promotion to the posts of Programmer and web Administrator, is not maintainable and liable to dismissal on this score alone. (Copy of Office of Advocate General Khyber Pakhtunkhwa (Recruitment and Appointment), Rules 1981 with amendments, is enclosed as Annexure C).

It is further worth to note that this honorable Tribunal has earlier dismissed a such like Service Appeal bearing No 820/2020 titled MUHAMMAD BILAL KHAN VS GOVT. & OTHERS vide its Judgment dated 23-11-2022, as the appellant in that appeal too was not having the relevant mandatory qualification of Master in Computer Science or equivalent qualification. (Copy of Judgment dated 23-11-

2022 is enclosed as Annexure D). Relevant portion of the Judgment is reproduced herein below:-

“08. It is evident from the above that prescribed qualification for these posts is master or equivalent qualification in Computer Science from a recognized university for initial recruitment and the same has been prescribed for promotion to these posts from amongst the Computer Operators with 05 years service as such. The appellant was therefore, formally asked to provide copy of the Master’s degree alongwith Detailed Marks Certificate (DMC) but the appellant having no Master degree in Computer Science even opted to forego promotion to the post of Computer Programmer (BS-17).

09. As a sequel to the above it is crystal clear that the appellant was not in possession of the requisite prescribed qualification at the relevant time, therefore, the departmental promotion committee did not recommend him for promotion. The instant service appeal being devoid of merits is therefore, dismissed. Parties are left to bear their own costs. File be consigned to the record room.”

- vii. Appeal of the appellant to such extent is also not maintainable, as the appellant is estopped by his conduct to claim such relief. Appellant himself provided Undertaking dated 19-03-2019 repenting on his past conduct, seeking pardon with commitment not to enter into further litigation if lenient view was taken in his case. The appellant also undertook and requested that the period during which he remained out of service may be treated as leave without pay. It is pertinent to mention here that Annex-K (Page-45), annexed with the Appeal has neither been submitted to this office nor processed rather this has been added only to misguide the Hon'ble Tribunal. It is totally fabricated and not relevant. Actual copy, received in this office on 19/03/2019 is at **Annex- E** of this reply. It means that the appellant has intentionally tried to mislead the Tribunal to get undue favor of the Tribunal. Appellant was again asked to confirm the undertaking submitted by the appellant, as to whether the same is voluntary or the same was under some pressure, vide Letter dated 21-03-2019 (**Annex-F**) which was replied by the appellant vide Letter dated 22-03-2019 (**Annex-G**), owning the same in toto, consequently, the appellant was reinstated keeping in view his undertaking/commitment after obtaining legal opinion, dated 26/10/2020 (**Annex-H**) from the Expert being wilful and voluntary and which fact is also mentioned in his reinstatement order and now he is claiming back benefits, as such the appellant could not be allowed to approbate and reprobate. The appellant also submitted an application, dated 15/01/2020 (**Annex-I**) stating that he will never challenge notifications of promotion of Computer Programmer (BPS-17) and Web Administrator (BPS-17), dated 08/10/2019 if reinstated / adjusted against the vacant post of Computer Operator (BPS-16). Reliance is placed on 2023 SCMR 354, 2021 PLD SC 745, 2020 SCMR 1846, 2023 SCMR 153.
- viii. Appeal of the appellant is also not maintainable, for, the appellant was proceeded on two separate charges, waste disciplinary proceedings and separate litigations, and he was awarded penalty of dismissal in both cases separately and two separate orders were passed by the Competent

Authority vide office order No. 8677-83/AG dated 13.08.2020 (**Annexure-J**) and office order No.8684-90/AG dated 13.08.2020 (**Annexure-K**) reinstating the appellant without back benefits against which appellant filed a combined Departmental Appeal on 10.09.2020 (**Annex-L**). However, the appellant has filed only one departmental appeal as well as the instant Service Appeal and has not impugned the second order whereby also he was reinstated without back benefits, in violation of Section 22(2) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and Rule 3 of the KP Civil Servants Appeal Rules 1986 which provide for separate departmental as well as separate service appeal. Further the appellant has not challenged both the orders bearing distinct No's, hence departmental as well as the instant Service Appeal are not legally maintainable.

That the appellant has never been reinstated into service by this Hon'ble Tribunal as well as august Supreme Court of Pakistan rather the matter was referred to the Department for de novo proceedings and during de novo inquiry, warning was proposed. The appellant was never exonerated of the charges, rather was awarded the penalty of warning keeping in view his undertaking/ commitment passed the impugned order, thus too the appellant is not entitled for the grant of back benefits.

Further noteworthy that two (02) posts i.e. post of Programmer was created on 16/03/2015 and that of Web Administrator on 17/07/2017 in the Advocate General Office and the same were going to be filled through Departmental Promotion Committee (DPC). Advocate General office has its own rules which is still in vogue and still hold the field through which the Respondents were promoted after fulfilling proper codal and legal formalities. Both the posts were created when the appellant was not in service.

That when the Appellant is not entitled to be promoted to the subject posts, as he did not possess the necessary qualification which is mandatory for the purpose of promotion, he cannot take this plea that he has been deprived of promotion but instead of wasting the precious time of this Hon'ble Tribunal. The Appellant should improve his qualification and thereafter he may be considered for promotion but when he otherwise cannot compete the Respondents, therefore, he should not waste the precious time by filing this frivolous and mischievous Appeal.

- ix. That under the well-entrenched principle of law "no work no pay" appellant is not entitled to any back benefits particularly in view of the proposal of enquiry committee for conversion of major penalty into warning.

ON FACTS:

- 1- Para No 1 pertains to record, hence needs no reply, however it is added that the appellant was initially appointed as Data Processing Supervisor BPS-14 on 28-05-2003. Upon various allegations including complaints, and after providing him opportunity of hearing and defense by way of issuance of Show Cause Notices, the appellant was dismissed from service on 30-04-2014, which shows that the appellant has not performed his duties as assigned and is having blemished service record.

- 2- That Para No 2 is not admitted. Being a responsible official of the Department, appellant was supposed to be cautious and vigilant due to the nature of his duties but he failed in his responsibilities. He deliberately got delayed CPLAs which became time barred resulting into loss to the Exchequer inspite of the fact that he was provided all record and even expenses for filing the cases.
- 3-4 That Paras No 3&4. Not admitted. Appellant being aggrieved of dismissal orders approached this Tribunal in service appeals which stood adjudicated on 16.02.2018 by holding in Service Appeal No.1211/2014 that the impugned punishment is excessive which was converted into withholding of two annual increments for a period of two years and the intervening period was treated as leave of the kind due. In Service Appeal No.1212/2014, the Tribunal held that the impugned punishment is excessive/harsh which was also converted into minor penalty of Censure. The judgments were called in question by the answering Respondents in CPLAs before the Supreme Court wherein the matter was remanded to the Tribunal vide judgments dated 10.01.2019.and 18.10.2019.
- 5-6 That Paras No 5&6 are misconceived. The Tribunal judgments were found by the Supreme Court as self-clashing and thus set aside. The Tribunal maintained the charges but reduced the punishments on account of procedural lapses and in the post-remand proceedings the Tribunal rightly referred the matter to the Department for de-novo proceedings. Moreover in the de-novo proceedings warning was proposed to the appellant. Thus there was no complete exoneration **and decision was made after his commitment, thus the appeal of the appellant is not tenable**
- 7-8 That Paras No 7&8 are absolutely misleading. The enquiry committee did not recommend back benefits to the appellant nor the recommendations of the enquiry committee were binding on the Competent Authority but a lenient view was taken due to compassionate grounds raised by the appellant on the one hand and undertaking not to claim back benefits and file further litigation on the other in written request. Moreover, appellant has clearly contravened the contents of Rule-3 of the Khyber Pakhtunkhwa (Appeal) Rules-1986 as explained hereinabove.

ON GROUNDS:

1. **A-B** That Paras A&B are misleading. In the post-remand proceedings the Tribunal remanded the case to the Department for de novo proceedings instead of allowing the appeals in toto. maxim "approbate and reprobate" is fully applied in the situation because "No one could be allowed to approbate and reprobate in the same breath"
- . The Supreme Court in a case reported as 2021 SCMR 962 held:

"In case, where there was some fault of the civil servant, including a situation where concession of reinstatement was extended to the civil servant while applying leniency or compassion or proportionality as standard and where penalty was modified but not wiped off in a way that the civil servant was restored to his position, he may be denied a portion of back benefits/back pay, while maintaining a proportion between the

gravity of the fault of the civil servant and special/extenuating circumstances of the case”

Moreover, the appellant was not completely exonerated by the enquiry committee as alleged rather warning was proposed.


C&D Not admitted as narrated by the appellant. Appellant was not reinstated into service rather he was recommended for warning by taking a lenient view. Moreover, appellant has not served the Department, during the intervening period nor the enquiry committee recommended back benefits, promotion in this report. Therefore, he is not entitled for the subject as reflected in the impugned appellate order dated 09/12/2020, wherein solid reasons have been vouchsafed.

E. Incorrect, hence vehemently denied. The appellant committed to his request and commitment till the end when expert opinion was given on 26/10/2020. Moreover, appellant never withdrew from his request verbally nor in writing even after enquiry report was submitted. He is estopped by his own conduct.

F. Not admitted. The law has provided discretion to the Competent Authority to pass any order with regard to back benefits and the Competent Authority passed the order in accordance with Law & Rules keeping in view the facts and circumstances of the case and requests of the appellant.

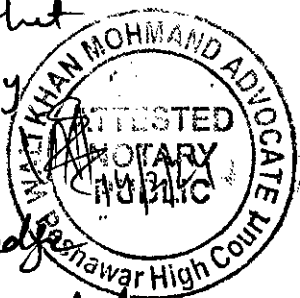
G. Incorrect, the appellant is not eligible for promotion keeping in view the criteria set/laid down in the rules on the subject. The answering respondents will also raise additional grounds at the time of arguments.

It is therefore, most humbly prayed that on acceptance of this reply on behalf of the private respondent No. 3 & 4 the Service Appeal of the appellant may very graciously be dismissed to the extent of promotion with heavy costs.


Impleaded Respondents No. 3 & 4

AFFIDAVIT


I Ahmed Khan, (Respondent) do hereby solemnly affirm and declare on oath that the contents of the Reply are true and correct to the best of my knowledge and nothing has been concealed from this honorable tribunal
DEPONENT



Through


NOOR MOHAMMAD KHATTAK
Advocate Supreme Court


Muzammil Khan Mohmand


Umar Farooq Mohmand


Walced Adnan


Mehmood Jan


Khanzad Gul
Advocates High Court

Allama Iqbal Open University

Islamabad-Pakistan



'A'

-7-

Serial No. 004

Certified that Mr. / Ms. SHER KHAN

Son / Daughter of LAL MUHAMMAD

Registration No. 05-AKR-0022

Roll No. R-538854

Semester SPRING 2006

having met all the requirements

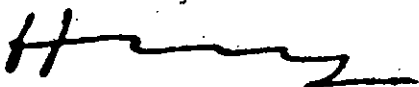
under the semester system is this day awarded the degree of

Master of Science (Honours)

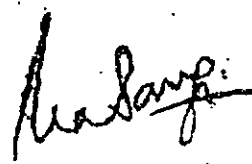
Rural Development

He / She has secured 71 % marks

and has been placed in A grade


CONTROLLER OF EXAMINATIONS




VICE-CHANCELLOR

Result declared on: February 13, 2009

Date of Issue: September 02, 2010

NOTE: THIS DEGREE IS TO BE READ IN CONJUNCTION WITH THE PROVISIONAL CERTIFICATE ISSUED SEPARATELY.

Serial No. 002954

M. A. U. Agricultural University
Peshawar - Pakistan



Having fulfilled all the requirements for the Degree of

BACHELOR OF SCIENCE HONOURS IN AGRICULTURE

In the subject of

AGRICULTURAL EXTENSION EDUCATION & COMMUNICATION

Sher Khan S/O Lal Muhammad

is this Twenty Sixth day of February 2005 admitted to the above Degree

Issue Date 12-03-2005

Registered No. 2000-App-U-6610

M. Maam
Controller of Examinations

Nawab J. H.
Registrar

D. P. I. Khan
Vice-Chancellor

**KHYBER PAKHTUNKHWA OFFICE OF THE ADVOCATE GENERAL (RECRUITMENT & APPOINTMENT)
RULES, 1981**


S. No	NOMENCLATURE OF THE POST	MINIMUM QUALIFICATION PRESCRIBED FOR APPOINTMENT BY INITIAL RECRUITMENT OR BY TRANSFER.	MINIMUM QUALIFICATION FOR APPOINTMENT BY PROMOTION	AGE LIMIT FOR INITIAL RECRUITMENT	METHOD OF RECRUITMENT
01	02	03		04	05
1	Administrative Officer	---	---	---	"By promotion, on the basis of seniority-cum-fitness from amongst the Superintendents (BS-17), with at least three (03) years service as such".
1(a)	Superintendent	---	---	---	"By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants with at least five (05) years service, as such".
2	Librarian	Degree with Diploma in Library Science from a recognized University	---	22 to 30 years	By initial recruitment
3	Private Secretary	---	---	---	"By promotion, on the basis of seniority-cum-fitness, from amongst the Stenographers (B-16) with at least five (05) years service, as such".

Ghad.
ADMINISTRATIVE OFFICER
Advocate General's Office
Khyber Pakhtunkhwa
Peshawar


14

-10-

3(a)	Computer Programmer (B-17)	At least Second Class Master's Degree in Computer Science or its equivalent qualification from a recognized University;	---	25 to 35 years	<p>a) Fifty percent (50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Programmers and Computer Operators, having qualification prescribed for initial recruitment with five years service as such; and</p> <p>b) Fifty percent (50%) by initial recruitment.</p> <p>Note: A Joint seniority list of both the Assistant Programmers and Computer Operators shall be maintained for the purpose of promotion.</p>
3(b)	Assistant Computer Programmer (B-16)	At least First Class Bachelor's Degree in Computer Science or its equivalent qualification from a recognized University with two years experience in programming or data processing.	---	22 to 30 years	<p>a) Fifty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Data Processing Supervisors (BPS-14) having three years service as such; and</p> <p>b) Fifty percent by initial recruitment.</p>
4-	Assistant	Degree from a recognized University	---	18 to 30 years	<p>(a) Fifty (50) percent by initial recruitment and</p> <p>(b) Fifty (50) percent by promotion from amongst the holders of posts of Senior Clerk with at least three (03) years service, as such; or</p> <p>(c) If no suitable Senior Clerk is available for promotion, then by initial recruitment.</p>


ADMINISTRATIVE OFFICER
 Advocate General's Office
 Khyber Pakhtunkhwa
 Peshawar

5	Senior Scale Stenographer	<ul style="list-style-type: none"> (i) 2nd Class Bachelor's Degree from a recognized University; (ii) A speed of 70 words per minute in shorthand in English and 45 words per minute in typing; and (iii) Knowledge of Computer in using MS Word and MS Excel. 	---	20 to 30 years	<ul style="list-style-type: none"> (a) By promotion, on the basis of seniority-cum-fitness, from amongst the Stenographer with at least five (05) years service, as such; (b) Provided that If no suitable candidate is available for promotion, then by initial recruitment; and
6	Stenographer	<ul style="list-style-type: none"> (i) Intermediate or equivalent qualification from a recognized Board; (ii) A speed of 50 words per minute in shorthand in English and 35 words per minute in typing; and (iii) Knowledge of Computer in using MS Word and MS Excel. 	---	18 to 30 years	By initial recruitment;
7	Data Processing Supervisor	<ul style="list-style-type: none"> (i) Bachelor's Degree with Economics/Physics/Statistics/Mathematics or Computer Science as one of the subject; and (ii) One year's experience in the field of Data Processing and Supervision of Data Control or as Punch Verifier Operator. 	---	18 to 30 years	By promotion on the basis of seniority-cum-fitness, from amongst Computer Operators (B-12), with at least five (5) years service/experience as such.


 ADMINISTRATIVE OFFICER
 Advocate General's Office
 Khyber Pakhtunkhwa
 Peshawar

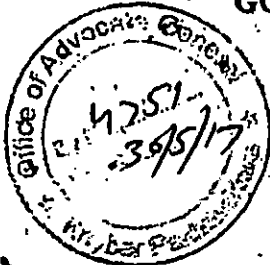
53

-12-

7(a)	Computer Operator	(i) At least Second Class Bachelor's Degree in Computer Science/ Information Technology (BSC/BIT four years), from a recognized University; or (ii) At least Second Class Bachelor's Degree from a recognized University with one year Diploma in Information Technology, from a recognized Board of Technical Education.	---	20 to 32 years	By initial recruitment
7(b)	Library Assistant	2 nd Class Bachelor degree in Library Science from any recognized University / Institution	---	18 to 30 years	By initial recruitment
8	Senior Clerk	---	---	---	By promotion from amongst the holders of posts of Junior Clerks with at least two (02) years service, as-such;
9	Junior Clerk	(i) Matriculation or equivalent from a recognized Board; and (ii) A speed of 25 words per minute in typing	----	18 to 30 years	By initial recruitment
10	Driver	(i) Literate; and (ii) In possession of a valid driving license.	---	18 to 32 years	By initial recruitment

Amjad
 ADMINISTRATIVE OFFICER
 Advocate General's Office
 Khyber Pakhtunkhwa
 Peshawar

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT



34

NOTIFICATION

Peshawar dated the, 29.05.2017.

No. E&A/LD/2-12/2017:- In exercise of the powers conferred by sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Law, Parliamentary Affairs and Human Rights Department, in consultation with the Establishment Department and the Finance Department hereby directs that in the Khyber Pakhtunkhwa office of Advocate General (Recruitment and Appointment) Rules, 1981, the following further amendments shall be made, namely:

AMENDMENTS

In the Appendix, against serial No. 3(a), in column No. 5, for the existing entries, the following shall be substituted, namely:

5
<p>(a) Fifty percent (50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Programmers and Computer Operators, having qualification prescribed for initial recruitment with five years service as such; and</p> <p>(b) fifty percent (50%) by initial recruitment.</p> <p>Note: A joint seniority list of both the Assistant Programmers and Computer Operators shall be maintained for the purpose of promotion."</p>

Secretary to, Government of the Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and Human Rights
Department.

Endst: No E&A/LD/2-12/2017/17165-75

Copy is forwarded to the:-

1. All the Administrative Secretaries Govt: of Khyber Pakhtunkhwa.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Director of Archives and Libraries, Khyber Pakhtunkhwa Peshawar.
4. Registrar, Peshawar High Court, Peshawar.
5. Advocate General, Khyber Pakhtunkhwa, Peshawar.
6. PSO to Chief Minister, Khyber Pakhtunkhwa.
7. Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar.
8. Manager, Printing Press, Khyber Pakhtunkhwa for publication in Government Gazette. He is requested to send ten (10) copies of the same to this Department.
9. Librarian, Establishment/Administration Department Khyber Pakhtunkhwa.
10. Reference & Research Officer Law Department with the request to kindly upload the same in the official website.
11. Section Officer (R-IV), Establishment Department.
12. PS to Chief Secretary Khyber Pakhtunkhwa.
13. PS to Secretary Law Department.

A.O.
Team
Amir
31/05/17

ATTACHED

(Rizwan Ullah Khan)
Section Officer (General)



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND
HUMAN RIGHTS DEPARTMENT.

NOTIFICATION

Peshawar dated the 05.06.2018.

No.E&A/LD/2-12/2018.- In exercise of powers conferred by sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Law, Parliamentary Affairs and Human Rights Department, in consultation with the Establishment Department and the Finance Department, hereby directs that in the Khyber Pakhtunkhwa Office of Advocate General (Recruitment and Appointment) Rules, 1981, the following further amendments shall be made, namely:

AMENDMENT

In the Appendix, the existing serial No. 3(b) shall be re-numbered as "3(c)" and before serial No. 3(c), as so renumbered, the following new entries shall be inserted in the respective columns, namely:

"3(b)	Web Administrator (BPS-17).	At least Second Class Master's Degree or equivalent qualification in Computer Science from a recognized University.	21 to 32 years.	By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Programmers and Computer Operators, having qualification prescribed for initial recruitment with five years service as such: Provided that if no suitable person is available for promotion then by initial recruitment."
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Service Rules file
[Signature]

Secretary to,
Government of the Khyber Pakhtunkhwa,
Law, Parliamentary Affairs and
Human Rights Department.

Endst: No & Date Even

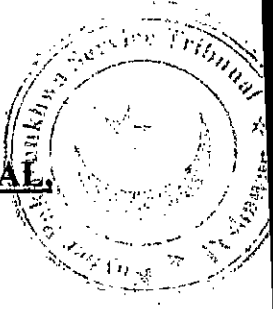
Copy is forwarded to:

1. Advocate General, Khyber Pakhtunkhwa, Peshawar.
2. The Director of Archives and Libraries, Khyber Pakhtunkhwa Peshawar.
3. The Secretary, Khyber Pakhtunkhwa Public Service Commission.
4. The Manager, Government Printing Press, Khyber Pakhtunkhwa for publication in Government Gazette. He is requested to send ten (10) copies of the same to this Department.
5. The Librarian, Establishment/Administration Department, Khyber Pakhtunkhwa.
6. The Senior Librarian, Law Department with the request to kindly upload the same in the official website.
7. The P.S. to Chief Secretary, Khyber Pakhtunkhwa.
8. The P.S. to Minister for Law, Khyber Pakhtunkhwa.
9. PS to Secretary Establishment Department.
10. PS to Secretary Finance Department.
11. PS to Secretary, Law Department.

ATTESTED

[Signature]
5761/2018
(MUHAMMAD YASIN)
Section Officer (General)

"D" - 15



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 820/2020.

BEFORE: SALAH UD DIN --- MEMBER(J)
MIAN MUHAMMAD --- MEMBER(E)

Muhammad Bilal Khan S/o Haji Muhammad Shafi R/o Street
No. 06 Saccd Abad Pajaggi Road Peshawar..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Government of Khyber Pakhtunkhwa through Secretary Law Parliamentary Affairs and Human Rights Department Peshawar.
3. Government of Khyber Pakhtunkhwa through Secretary Establishment Department Khyber Pakhtunkhwa Peshawar.
4. Advocate General Khyber Pakhtunkhwa Peshawar.
5. Ahmad Khan Computer Programmer (BPS-17) Advocate General office Khyber Pakhtunkhwa Peshawar.
6. Zia Ullah Khan Web Administrator (BPS-17) Advocate General office Khyber Pakhtunkhwa Peshawar..... (*Respondents*)

Present:

MUHAMMAD IRSHAD MOHMAND,
Advocate

--- For Appellant.

MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For official respondents No. 1 to 4

NOOR MUHAMMAD KHATTAK &
SYED NOMAN ALI BUKHARI,
Advocates

--- For private respondent No. 5 & 6

Date of Institution.....04.02.2020

Date of Hearing.....23.11.2022

Date of Decision.....23.11.2022

JUDGEMENT

MIAN MUHAMMAD, MEMBER(E):- The appellant has
instituted the instant service appeal under Section 4 of the

ATTESTED

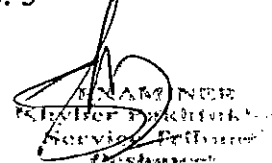
OFFICIAL SEAL

Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that "on acceptance of this appeal the impugned Notification No. E&A/Ld/2-12/2019/18688-93 dated 08.10.2019 & Notification No. E&A/Ld/2-12/2019/18682-87 dated 08.10.2019 of promotion of respondents No. 5 & 6 be declared illegal against the service recruitment & promotion rules and be set aside and the appellant be promoted to the post of Computer Programmer with all back benefits being on the top of seniority list of the department. Any other remedy which this august Tribunal deems fit and appropriate may also be granted to the appellant".

02. Brief facts, as per memorandum of the service appeal, are that the appellant has been working as Computer Operator in the office of respondent No. 4 since 2007. On creation of 02 new posts of Computer Programmer (BS-17) and Web Administrator (BS-17) the respondent department convened meeting of the Departmental Promotion Committee and based on its recommendations, private respondent No. 5 and 6 were promoted as Computer Programmer and Web Administrator respectively vide two separate Notifications on 08.10.2019. Both the Notifications have been impugned and are under scrutiny before us for adjudication.

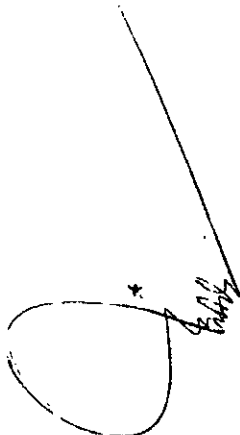
03. Notices were issued to the respondents, who submitted their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard learned counsel for the appellant as well as learned counsel for private respondents No. 5

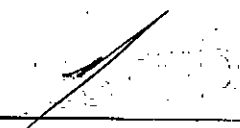
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REGISTRAR
Khyber Pakhtunkhwa
Service Tribunal

& 6 and Additional Advocate General for official respondents and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the appellant who joined the respondent department as Computer Operator in 2007 and being the senior most appearing at serial No. 1 of the seniority list, was deprived of his legal right of promotion to the post of Computer Programmer (BS-17) in the meeting of Departmental Promotion Committee convened on 09.08.2019. The Departmental Promotion Committee recommended private respondent No. 5 & 6 for promotion to the post of Computer Programmer (BS-17) and Web Administrator (BS-17) respectively despite the fact that both of them were junior to the appellant as reflected at serial No. 2 and 5 of the seniority list of Computer Operator (BS-16). In pursuance of the recommendations of Departmental Promotion Committee, their promotion Notifications were issued on 08.10.2019 separately. Feeling aggrieved, the appellant submitted departmental appeal to the appellate authority on 16.10.2019 which was not decided within the stipulated statutory period. It was vehemently contended that the appellant being qualified, eligible and senior most in his cadre, was entitled to be promoted to the post of Computer Programmer (BS-17). The denial of official respondents to promote the appellant is not only illegal but also unwarranted, unjustified and is the result of their malafide and illegal exercise of power and authority. Learned counsel for the





appellant while referring to the Service Rules of the department argued that for promotion to the post of Computer Programmer, a Computer Operator with five (05) years service is the prescribed criteria which makes the appellant eligible and entitled for promotion. In support of his arguments, learned counsel for the appellant referred to the Service Rules of various departments i.e. Home & Tribal Affairs department, Forest, Environment & Wildlife department, Planning & Development department and Agriculture, Live Stock, Fisheries & Co-Operative department.

05. Learned counsel for private respondent No. 5 & 6 raised preliminary objection and argued that the instant appeal is not maintainable and hit by the principle of estoppel because the appellant has not challenged the Service Rules under which private respondents have been promoted, rather he has challenged their promotion Notifications. On this score alone, the service appeal is liable to be dismissed. Moreover, the appellant has no locus standi to file the service appeal within the meaning of Section 4 (b) (i) of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 because he does not qualify to be promoted to the post of Computer Programmer as he is lacking the mandatory qualification required for the post. The appellant has tried to mislead the Tribunal by quoting and mentioning the irrelevant rules as the Rules referred to in Para 4 of the appeal, are not the Rules for the posts of Computer Programmer (BS-17) and Web Administrator (BS-17) of the office of respondent No. 4. The

ATTESTED

EXCISE
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

prevalent and in vogue Service Rules of the respondent department applicable for promotion, lay down the prescribed criteria and qualification for elevation to the next grade and the appellant did not fulfill the prescribed criteria and qualification therefore, private respondents were promoted irrespective of his seniority which is not the only and sole criteria for promotion against the technical/professional posts. The appellant has therefore, rightly been overlooked and private respondent No. 5 & 6 promoted in accordance with the Service Rules of the department. To strengthen his arguments, learned counsel for private respondents No. 5 & 6 relied on 2009 PLC (C.S) 215 and 2017 PLC (C.S) 1283.

06. Learned Additional Advocate General, on the other hand, controverted the assertions made in the service appeal and arguments of the learned counsel for appellant; mainly on the ground that though the appellant was senior to private respondent No. 5 and 6 on the seniority list of Computer Operator (BS-16) but his qualification is B.com/DIT whereas for promotion to the post of Computer Programmer (BS-17) the required qualification is Master's degree or equivalent qualification in Computer Science. Moreover, the appellant having not the requisite qualification, himself opted to forgo promotion vide his formal intimation on 29.05.2019. The respondent department has therefore, followed the Service Rules, prescribed criteria and fulfilled all codal formalities before issuance of the impugned

ATTORNEY
 S. NABIN
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

Notifications of promotion of private respondent No. 5 and 6. The service appeal being devoid of merits, may graciously be dismissed with costs, he concluded.

07. Perusal of the record reveals that the appellant joined the department as Computer Operator in the year 2007. He had the requisite qualification for the post of Computer Operator at that time. It is an admitted fact that the appellant is on top of the Computer Operator in the office of official respondent No. 4 and his seniority is not disputed before us rather admitted by both the sides. The question of contention before the Bench is the prescribed qualification for the post of Computer Programmer and Web Administrator. It is therefore, appropriate to reproduce the relevant portion of the recruitment and appointment Rules, 1981

Computer Programmer (BPS-17)

- (a) *Fifty percent (50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant programmer and Computer Operator, having qualification prescribed for initial recruitment with five years service as such; and*
- (b) *Fifty percent (50%) by initial recruitment*

Note: A joint seniority list of both the Assistant Programmers and Computer Operators shall be maintained for the purpose of promotion.

ATTESTED

[Signature]
 (Seal of the Department of Public Service Commission)
 Department of Public Service Commission
 Government of India

Initial Recruitment: At least Second Class Master's Degree or equivalent qualification in Computer Science from a recognized University.

Web Administrator (BPS-17)

(a) Fifty percent (50%) by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant programmers and Computer Operator, having qualification prescribed for initial recruitment with five years service as such; and Provided that if no suitable candidate is available for promotion then by initial recruitment.

Initial Recruitment:

At least Second Class Master's Degree or equivalent qualification in Computer Science from a recognized University.

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08. It is evident from the above that prescribed qualification for these posts is master or equivalent qualification in Computer Science from a recognized university for initial recruitment and the same has been prescribed for promotion to these posts from amongst the Computer Operators with 05 years service as such. The appellant was therefore, formally asked to provide copy of the Master's degree alongwith Detailed Marks Certificate (DMC) but the appellant having no Master degree in Computer Science even opted to forego promotion to the post of Computer Programmer (BS-17).

ATTESTED

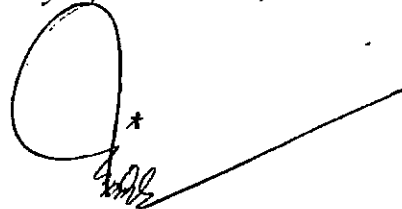
Handwritten signature and official stamp of the attesting authority.

09. As a sequel to the above it is crystal clear that the appellant was not in possession of the requisite prescribed qualification at the relevant time, therefore, the departmental promotion committee did not recommend him for promotion. The instant service appeal being devoid of merits is therefore, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

10. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 23rd day of November, 2022.*

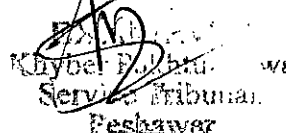


(SALAH UD-DIN)
MEMBER (J)



(MAIN MUHAMMAD)
MEMBER (E)

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 28/11/22
 Number of Wards 3200
 Copy No. 341-
 Date of Delivery of Copy 05/01/23
 Date of Delivery of Copy 05/01/23



To

The Advocate General,
Khyber Pakhtunkhwa, Peshawar.

Subject: **HUMBLE REQUEST**

Sir,

With due respect I beg to submit the following humble submissions in your honour for your kind perusal and treating them on compassionate grounds:-

1. That I was dismissed from service on 30.04.2014 on account of 36 time barred cases.
2. That I am repentant on what occurred on my part and now request for taking a lenient view in my case as I am totally destroyed financially.
3. Since fresh inquiry is about to be launched against the undersigned as per the orders of the august Supreme Court of Pakistan judgment dated 10/01/2019, therefore, it is, humbly requested that the same may not be conducted strictly as I have already suffered and remained jobless during the last five years.
4. That, I have five schools going children dependent on me and have no other source of income except this job and all children are under education in different classes.
5. That during my jobless period of five (05) years, I got suffered financially to the maximum due to the litigation issues, house hold expenses, education of my children etc, for which I even sold out my personal home and now have been living in a rented house for the last four (04) years.
6. That I was appointed in Education Department (FATA) in 2000 and then through proper channel I applied for the post of DPS in the Advocate General's office through Public Service Commission in 2003, worked since 2013 in the said office. Now I am the age of 41 years and cannot apply to any service due to age limit.
7. That due to my jobless period, my children are suffering educationally, socially and economically.

It is, therefore, requested that I may kindly be pardoned at this time. As I have five (05) minor school going children, wholly dependent upon me and for the sack of their future. I also under take that I will never go into litigation in any Court and lenient view be taken. I may kindly be re-instated against any post. I further undertake that the period from 30/4/2014 till my reinstatement may please be treated as leave without pay.

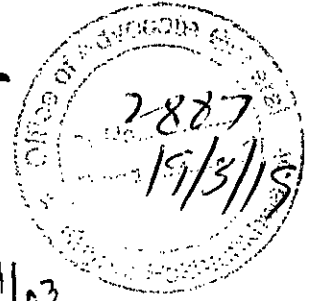
Yours obediently,

(Sher Khan)
Junior Scale Stenographer

Seen by me
Cd. AG. KP.

19/03/2019

15/03/19



-23-

19/03

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OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 7703-04 /AG

Dated Peshawar, the 21-Mar-2019

Address: High Court Building, Peshawar.
Tel. No. 091-9212681

Exchange No 9213833
Fax No. 091-9210270

To

Mr. Sher Khan,
Stenographer (BPS-14),
Advocate General Office,
Khyber Pakhtunkhwa, Peshawar.

Subject: **HUMBLE REQUEST**

Reference your request, dated 15/03/2019 on the subject noted above.

It is to inform you that your request, dated 15/03/2019 has been received on 19/03/2019 and perused by the Competent Authority. The Competent Authority has desired to confirm that each and every word, contained in paras 1 to 7, alongwith concluding para as well as the signature, recorded on the request are owned and written by you.

You are, therefore, directed to apprise this office within three (03) days about your confirmation of what have been written in the humble request. You are also directed to inform as to whether the request has been written under any sort of pressure or in your complete senses?


(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER

Endst. No. & date even

Copy to PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.


ADMINISTRATIVE OFFICER

93

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To

The Advocate General,
Khyber Pakhtunkhwa, Peshawar.

Subject: **HUMBLE REQUEST**

Dear Sir,

Reference this office letter No. 7703-04/AG, dated 21/03/2019 on the subject noted above.

It is submitted that I hereby undertake that all the words as well as the signature in the humble request, dated 15/03/2019 are owned by me and there was no pressure on me to write the humble request. I was in my complete senses.

Yours obediently,


(SHER KHAN) 22/3/19
Stenographer (B-14)

~~RECEIVED~~

"H" 26-

(9)



OFFICE OF ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No _____/AG

dated _____/2020

Address: High Court Building, Peshawar.
Tel. No. 091-9210119

Exchange No 9213833
Fax No. 091-9210270

OPINION

Mr. Sher Khan Computer Operator (BS 16) of this office was dismissed from the service on **31/04/2014** and was subsequently re-instated, for the purpose of inquiry afresh, after rounds of litigation, in pursuance to the Judgment dated 10/01/2019 of the Apex Court in **CP No. 11/20/2018**, vide order dated 12/02/2020.

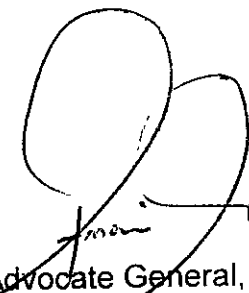
Accordingly, an inquiry was conducted and the official was exonerated from the charges as is evident from its report dated 30/10/2019. Pertinent to highlight here that, official himself made different humble requests dated 15/03/2019 & 22/03/2019, that lenient view may be taken and he may be re-instated- the intervening period of his dismissal may be treated as without pay. Now after exoneration from inquiry and re-instatement, the official is requesting for back benefits for the intervening period of his dismissal from the service etc.

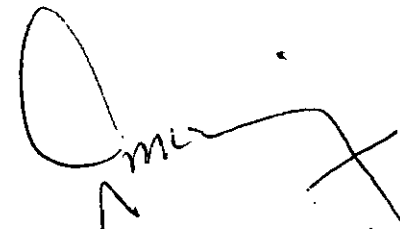
In the given scenario, I am of the view that, he is not entitled for the relief claimed (Back Benefits) as the official himself made different requests for lenient view and that intervening period of his dismissal may be treated as without pay.

Even otherwise, this is an admitted fact that, he has not served the department during the period of his termination and by now this is a settled principle that "**where there is no work- there is no pay**".

This Opinion is subject to approval of worthy Advocate General Khyber Pakhtunkhwa.

Submitted for kind perusal please.

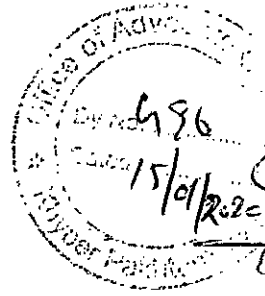

Ld. Advocate General,
Khyber Pakhtunkhwa,
Peshawar


(Zafar Abbas Mirza)
Law Officer

26th Oct
2020

"I"

27-



15/01/2020

To

The Ld. Advocate General,
Khyber Pakhtunkhwa, Peshawar.

Subject: **RE-INSTATEMENT IN SERVICE AS COMPUTER OPERATOR (BPS-16)**

Dear Sir,

It is respectfully stated that I was serving as Data Processing Supervisor since 28.05.2003 and dismissed from service on 30.04.2014. I will never challenge the Notifications of promotion of the posts of Computer Programmer and Web Administrator bearing No. E&A/LD/2-12/2019/18688-93, dated 08/10/2019 and No. E&A/LD/2-12/2019/18682-87, dated 08/10/2019 respectively.

It is, therefore, humbly requested that I may please be re-instated / adjusted against the vacant post of Compute Operator and oblige.

Yours obediently,

(SHER KHAN)

Junior Scale Stenographer (BPS-14)

Dated: 15/01/2020

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OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 8677-83 /AG

Dated Peshawar, the 13-Aug-2020

Address: High Court Building, Peshawar.
Tel. No. 091-9210119

Exchange No 091-9213833
Fax No. 091-9210270

OFFICE ORDER

1. Whereas, Mr. Sher Khan was appointed as Data Processing Supervisor (BPS-14) in this office vide office order bearing No. 3041-95/AG, dated 28/05/2003;
2. And whereas, he was proceeded against departmentally and dismissed from Govt. service vide this office order bearing No. 7771-73/AG, dated 30/04/2014;
3. And whereas, he challenged / impugned his dismissal order, dated 30/04/2014 before the Khyber Pakhtunkhwa Services Tribunal through Service Appeal No. 1212/2014 (Sher Khan-vs-Govt. of Khyber Pakhtunkhwa) which was decided on 16/02/2020 and the punishment was converted into minor penalty of "censure";
4. And whereas, the Govt. challenged Judgment of the Services Tribunal, dated 16/02/2020 in the august Supreme Court of Pakistan which through its Judgment, dated 10/01/2019 directed the learned Advocate General, Khyber Pakhtunkhwa to hold fresh enquiry into the allegations against the respondent;
5. And whereas, he was re-instated as Stenographer (BPS-14) vide this office order No. 3680-82/AG, dated 12/02/2020 for the purpose of fresh inquiry in light of para-5 of Judgment, dated 10/01/2019 of the Hon'ble Supreme Court of Pakistan in Civil Petition No. 1120/2018.
6. And whereas, an Enquiry Committee was constituted vide office order No. 19316-19/AG, dated 28/09/2019 for conducting fresh enquiry which exonerated the official, under enquiry, as is evident from the report, dated 30/10/2019;
7. And whereas, the official under enquiry, through his humble requests, dated 15/03/2019 and 22/03/2019 undertook that he would never go into litigation in any Court if lenient view is taken and further that his intervening period from 01/05/2014 till his reinstatement may be treated as leave without pay;
8. And whereas, he, through another request diary No. 496, dated 15/01/2020, further undertook that he would never challenge Notifications of promotions as Computer Programmer and Web Administrator bearing No. E&A/LD/2-12/2019/18688-93, dated 08/10/2019 and No. E&A/LD/2-12/2019/18682-87, dated 08/10/2019 respectively.

Now, in view of the foregoing, the undersigned, as the Competent Authority, after having perused at length Judgments of the Hon'ble Courts / Tribunal, report of the Enquiry Committee and requests of the official, under enquiry, is pleased to order re-instatement of Mr. Sher Khan, Stenographer (BPS-14) against the post of Computer Operator (BPS-16) w.e.f. 12/02/2019. However, the intervening period w.e.f. 01/05/2014 to 11.02.2019 is hereby treated as leave without pay. The official shall not be entitled to any back benefits.

Sd/-
ADVOCATE GENERAL
KHYBER PAKHTUNKHWA
(Competent Authority)

Endst. No. & date even

Copy for necessary action to the:

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Syed Sikandar Hayat Shah, Additional Advocate General/Enquiry Officer, Peshawar.
4. Mr. Arshad Ahmad, Additional Advocate General/Enquiry Officer, Peshawar.
5. Budget & Accounts Officer of this office.
6. PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.
7. Mr. Sher Khan, Computer Operator (BPS-16) of this office.


(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER



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OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 8684-90 /AG

Dated Peshawar, the 13-Aug-2020

Address: High Court Building, Peshawar.
Tel. No. 091-9210119

Exchange No 091-9213833
Fax No. 091-9210270

OFFICE ORDER

1. Whereas, Mr. Sher Khan was appointed as Data Processing Supervisor (BPS-14) in this office vide office order bearing No. 3041-95/AG, dated 28/05/2003;
2. And whereas, he was proceeded against departmentally and dismissed from Govt. service vide this office order bearing No. 7771-73/AG, dated 30/04/2014;
3. And whereas, he challenged / impugned his dismissal order before the Khyber Pakhtunkhwa Services Tribunal through Service Appeal No. 1211/2014 which was decided on 16/02/2018 and the punishment was converted into withholding of two (02) annual increments for a period of two (02) years;
4. And whereas, the Govt. challenged Judgment of the Services Tribunal, dated 16/02/2018 in the august Supreme Court of Pakistan which remanded, vide Judgment, dated 18/10/2019 the Appeal back to the Services Tribunal for a fresh decision on merit within two (02) months;
5. And whereas, the Khyber Pakhtunkhwa Services Tribunal decided the remanded Appeal on 07/01/2020, accepted the Service Appeal, set aside the impugned order dated 30/04/2014 and re-instated the appellant into service with further directions to the respondents to hold a denovo enquiry if they so desire;
6. And whereas, the Govt. conducted denovo enquiry vide office order No. 3849-52/AG, dated 05/03/2020 which recommended a formal warning to the appellant.

Now, in view of the foregoing, the Competent Authority, after having perused at length Judgments of the Hon'ble Court / Tribunal and the enquiry report, is pleased to order re-instatement of Mr. Sher Khan, Stenographer (BPS-14) against the post of Computer Operator (BPS-16) w.e.from 12/02/2019, because of pending enquiry in another matter, also now concluded in terms of office order bearing No. 8677-83/AG, dated 13/08/2020 (contents whereof may be read as part of this office order as well).

Sd/-
ADVOCATE GENERAL
KHYBER PAKHTUNKHWA
(Competent Authority)

Endst. No. & date even

Copy for necessary action to the:

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Law Department, Peshawar.
2. Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. Mr. Atif Ali Khan, Additional Advocate General/Enquiry Officer, Peshawar.
4. Mr. Umar Farooq, Additional Advocate General/Enquiry Officer, Peshawar.
5. Budget & Accounts Officer of this office.
6. PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.
7. Mr. Sher Khan, Computer Operator (BPS-16) of this office.


(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER

ALLIED

Annex - 2 - 30 -
- 27 - (40)

To

The Secretary,
Government of Khyber Pakhtunkhwa,
Law, Human Right and Parliamentary Affairs
Department Peshawar

Through: Proper Channel

Subject: DEPARTMENTAL APPEAL UNDER SECTION 22 OF KHYBER PAKHTUNKHWA CIVIL SERVANT ACT, 1973 READ WITH RULE 3 OF KHYBER PAKHTUNKHWA CIVIL SERVANTS (APPEAL) RULES, 1986 AGAINST THE IMPUGNED ORDERS DATED 13/08/2020 THEREBY I HAVE BEEN REINSTATED INTO SERVICE WITHOUT BACK BENEFITS.

Respected Sir,

I have the honour to submit this departmental appeal on the following facts and grounds for yours kind consideration and sympathetic and favourable action:-

- 1- That I joined the office of learned Advocate General Khyber Pakhtunkhwa on 28/05/2003 as Data Processing Supervisor BPS-14 (now upgraded vide notification dated 29/07/2016 as Computer Operator BPS-16) after my selection through Khyber Pakhtunkhwa Public Service Commission, Peshawar and since then I was performing my duties efficiently till the date of passing the impugned order of dismissal dated 31/04/2014 having ten (10) years and 9 months service at my credit with splendid service record.
- 2- That after my dismissal from service dated 31/04/2014 I filed departmental appeals to the Learned Secretary Law & Advocate General KP, Peshawar which were undecided, therefore I filed Service Appeal No.1212/2014 & 1211/2014 against the dismissal orders of the same date and same allegations which were accepted as by the courts mentioned as under:-

ATTESTED

-31-4

Court	Decision
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❖ Khyber Pakhtunkhwa Service Tribunal, Peshawar

Service Appeal No. 1211/2014 filed by the applicant on 26/09/2014

Accepted on 16/02/2018 after 4 years:- Major Penalty of Dismissal was converted into "Censure"

Service Appeal No. 1212/2014 filed by the applicant.

Accepted on 16/02/2018 after 4 years:- Major Penalty of Dismissal was converted into "withholding two increments & intervening period was treated as leave without pay"

❖ Supreme Court of Pakistan, Islamabad

Civil Petition No. 1120/2018 filed by the Advocate General against the reinstatement order dated 16/02/2018.

Dismissed on 10/01/2019 with direction for De-novo inquiry where as appellant was reinstated as Junior Scale Stenographer (BPS-14) in non cadre post as my own post was filled on promotion illegally and unlawfully on 06/06/2014 by the Ex-Advocate General whereas my cases were pending before the courts.

De-novo Enquiry was conducted by the following Law Officers:

- 1- Syed Sikandar Hayat Shah, Addl. Advocate General KP, Peshawar.
- 2- Arshad Ahmad Addl. Advocate General, KP, Peshawar

Both the Hon'ble Member thoroughly examined all the evidences, documents and statements and exonerated the appellant from all charges leveled against appellant *without any penalty.*

Civil Petition No. 1131/2018 filed by the Advocate General against the reinstatement order dated 16/02/2018.

Dismissed on 18/10/2019 as the august Court order that if there is no any charges leveled against the appellant then why 2 annual increments were stopped by the Ld. Service Tribunal and hence remanded the case for fresh Decision.

Civil Petition No. 1415/2018 Filed by the appellant against the KP Service Tribunal of stoppage of two annual increments and the period leave without pay.

Accepted:- The Hon'ble Supreme Court accepted the appellant appeal and remanded the case to KP Service Tribunal for rectification that why the two increments were stopped if there was no charges leveled against the appellant.

ATTN: AD

-32- (42)

**Remanded Service Appeal
No.1211/NEEM/2014.
Remanded by the august
Supreme Court of Pakistan.**

Accepted:- The appeal of the appellant was accepted as prayed for and the department was directed that De-novo inquiry at the liberty of the Department if they do the de-novo inquiry or not. The Advocate General constitute Fresh inquiry of two members comprising:-

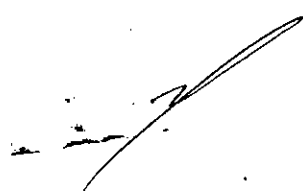
- 1- Mr. Atif Ali Khan, Addl. Advocate General KP, Peshawar
- 2- Mr. Umar Farooq, Addl. Advocate General KP, Peshawar

Both the Hon'ble Member thoroughly examined all the evidences, documents and statements and awarded a minor penalty of **formal warning** which does not come under the E&D Rules.

- 3- That the impugned order dated 13/08/2020 in paras No. 7 & 8 is the violation Rules and deprivation/constitution rights of the appellant as the letters dated 30/10/2019 & 15/03/2019 were taken from the appellant forcedly not willingly as the appellant was dismissed from service, having no job if the Ex-Advocate General, KP (Abdul Latifeef Yousafzai) ordered to the appellant for taking written for accepting the **reinstatement order as Sweeper**, the appellant must be accepted as the appellant was jobless. Judgments of Supreme Court are available on such points that if a competent authority take such written forcedly it would not be acceptable.
- 4- That the reinstatement order dated 13/08/2020 was totally followed in the light of judgment of KP Service Tribunal, Peshawar dated 16/20/2018 which was challenged by the appellant in its CP No.1415/2018 as well by the Advocate General also challenged in CP No.1131/2018 before the august Supreme Court of Pakistan which were clubbed and decided as under:-

"We, therefore, set aside the impugned judgment and remanded this case to the Tribunal for a fresh decision on merits after examining the inquiry reports, the evidence on the record and submission of the parties."

- 5- That the said judgment of KP Service Tribunal has been set aside and a fresh decision of the KP Service Tribunal had already been delivered in Remand case which have been accepted as prayed for and gave option for Inquiry which was conducted exonerated the appellant without any penalty except "**Formal Warning**" which is not come under the E&D Rules 2011, hence no charges leveled against the appellant.



-33- (15)

- 6- That the appellant faced very difficult situations economically and paid 8 (Eight Lacs) approximately on litigation charges of KP Service Tribunal and august Supreme Court of Pakistan in both the cases (Service Appeal NO.1211/2014, 1212/2014, Civil Petition No. 1120/2018, 1131/2018 & 1415/2018) KP Service Tribunal, august Supreme Court of Pakistan respectively.
- 7- That the appellant sold his wife gold and even his own residential house for the said litigation cost as well for house expenses and now living on rent. Similarly my children education was also suffered and they were waiting for admission fees and other needs for education up till now.

It is humbly prayed that on acceptance of this departmental appeal the impugned orders dated 13/08/2020 thereby the appellant was reinstated into service may be modified and reinstated the appellant with all back benefits.

Yours obediently

Sher Khan, Computer Operator (BPS-16)
Advocate General Office, KP, Peshawar

Dated 10/09/2020

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