# BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR



# R.A No. 35/2023 in S.A No. 7900/2021

Muhammad Rafiq Khattak	•••••••	• • • • • • • • • • • • • • • • • • • •	••••••	•••••	Appellant
	;	Versus			
Govt. of Khyber Pakhtunkl	iwa & Others.	************	••••••	• • • • • • • • • • • • • • • • • • • •	Respondents

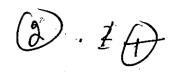
### REPLY TO QUERIES ON BEHALF OF RESPONDENTS

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S Deponent

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# BEFORE THE HON'BLE SERVICES TRIBUNAL **PESHAWAR**

Khyber Pakhtukhwa Service Tribunal

Diary No. 11 390

# R.A No.35 /2023 in S.A No.7900/2021

Dated 27- 07- 2074

Muhammad Rafiq Khattak	Petitioner/Appellant
VERSUS	
Govt. of Khyber Pakhtunkhwa through Chief Secretary	Respondents

#### REPLY TO QUERIES ON BEHALF OF RESPONDENTS

#### Respectfully Sheweth:-

1. That the Hon'ble Services Tribunal in its Order dated 06.07.2023 Passed the following directions:

"after arguing the matter at a certain length, it was found that there are certain documents which are not placed by either side on the file and those are necessary to enable the Tribunal to reach a conclusion. The documents include the status/decision/proceedings on the note dated 19.1.2017 submitted to the Chief Secretary by the Secretary, E&SE copy of the minutes of Special Committee held under the chairmanship of the Secretary, Education and others alike as well as the explanation of paragraph-05 of the letter of the Education Department bearing No. SO(S/M)E&SE/1-1/2027WP of Rafiq Khattak dated 28.3.2017. Parties are directed to make sure the production of the above mentioned documents on or before the next date"

- 2. That On 02.11.2023 while hearing the case, the Hon'ble Member Judicial, Mr.Salahuddin, inquired as to whether "the case of Mr. Muhammad Rafiq Khattak (Appellant) placed before the Special Selection Committee headed by ACS, P&D Department or not" and directed to submit all the documents in the court in support of the case, with an affidavit in the court.
- 3. In this respect, the following facts alongwith the supporting documents are presented:
  - a. That Elementary & Secondary Eeducation Department had moved a "Note for Chief Secretary" and recommended Mr. Muhammad Rafiq Khattak, Director (BS-20), E&SE Department for grant of BS-21 on meritorious service (Annex-I),
  - b. In response, Establishment Department processed the case and raised/conveyed the following observations to the Elementary & Secondary Education Department vide letter dated 15.03.2017 (Annex-II) and requested them to resubmit the case after doing the needful:-
    - Service particulars of the officer concerned reveal that his PERs score is 52.16% while required minimum threshold for BS-21 is 75%.



- ii. Certificate to the effect that whether the officer concerned has taken any long leave during the last three years or otherwise as required under Para-1(d) of the Establishment Department's Policy dated 03.11.2009 is not found attached.
- iii. Certificate whether any officer of the Department has previously availed the post of BS-21 or BS-22 on meritorious basis or otherwise is not found attached as required under Para-1(i) of the policy referred above.
- iv. According to the working paper/Note there are 16 officers holding BS-20 posts in E&SE Department and joint seniority of officers in BS-20 has not been provided.
- v. Working paper/Note is silent about distribution of the 03 allocated posts in BS-21 between different cadre/group within the Department i.e Teaching and Management Cadre.
- vi. Panel of officers not provided (duly quantified).
- vii. Proforma-II is not signed.
- c. In responses, E&SE Department has furnished annotated reply to the above observations vide letter dated 28.03.2017, wherein it was also informed that E&SE Department has not yet distributed 3 positions in BS-21 between Teaching & Management Cadre. Hence, award of BS-21 to Mr. Muhammad Rafiq Khattak (Appellant) may infringe the rights of BS-20 officers in the Teaching Cadre (Annex-III).
- d. The case was processed and again Establishment Department asked E&SE to clarify its position that there is one post reserved in BS-21 on meritorious basis for Technical/Professional Officers of E&SE and Higher Education and Industries, Commerce & Technical Education Departments, while E&SE Department indicated 03-seats in BS-21 in its share vide letter dated 04.05.2017 (Annex-IV).
- e. On 30.05.2017, E&SE Department informed that the calculation has been made on the basis of total number of technical/professional posts sanctioned in BS-20. Serial No. V of Proforma-I provides for pool posts @ 12.05 of the total number of posts in BS-20. Similarly, if it is taken on total number of posts occupied by BS-20 officers, then the share of E&SE comes to 3 posts, as at present there are 32 officers working in BS-20 in E&SE Department (Annex-V).
- f. On 10.10.2017, Establishment Department once again objected enhancement of quota from 1 post to 3-posts and asked the E&SE Department to submit the revised Working Paper (Annex-VI).
- g. On 02.01.2018, E&SE Department has only submitted revised Proforma-I, but didn't clarify that as to why E&SE Department enhanced the quota from one post to 03-posts (Annex-VII).

- h. The case was processed and could not sent to Special Selection Committee due to deficient information as:
  - i. Elementary & Secondary Education Deptt. failed to provide any cogent reasons for enhancement of posts from one to 3 posts on its own level.
  - ii. As one post in BS-21 is reserved for Teaching Cadre officers of the E&SE, Higher Education Departments and E&SE Department had forwarded Working Paper of a Management Cadre officer.
- 4. It is to bring into the notice of the Hon'ble Tribunal that since then, due to the above mentioned deficiencies/flaws, the case of the appellant was not processed.
- 5. That Hon'ble Tribunal in its order dated 06-07-2023 also sought explanation of Para 5 of the letter dated 28-03-2017 which is not answered by E&SE Department till date.
- 6. That the appellant has tried to mislead/misguide the Hon'ble Tribunal by raising the plea that his case was placed before Special Selection Committee. Besides, if this case is allowed lopsidedly, then it will open a Pandora box for Provincial Government and also may pave the way for unnecessary litigations by the other employees of such cadres.

In view of the above facts, it is, therefore, very humbly prayed that the Execution Petition may very graciously be dismissed, being devoid of merit.

> Secretary Establishment Respondent No.03

shahid ullah Khan,

Respondent No.01

deem Allam Chaudair y



# GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT & ADMINISTRATION DEPARTMENT

# **AUTHORITHY LETTER**

Mr. Sultan Shah, Superintendent Litigation Section-I, Establishment Department, Government of Khyber Pakhtunkhwa is hereby authorized to submit joint parawise comments before the Khyber Pakhtunkhwa Service Tribunal, Peshawar in connection with S.A No. 7900/2021 titled Muhammad Rafiq Khattak VS Government of Khyber Pakhtunkhwa & others on behalf of Respondents.

Shahid Ullah Khan, Secretary
Establishment through Kaleem Ullah Baloch,
Special Secretary Establishment

CNIC: 11101-1464320-1

#### <u>BEFORE THE KHYBER PAK</u>

#### <u>VA SERVICE TRIBUNAL, PESHAWAR</u>



#### SERVICE APPEAL NO. 7900/2021

Muhammad Rafiq Khattak	Appellant
Vonená	·
Versus	
Govt. of Khyber Pakhtunkhwa & Others	Respondents

# PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 01 & 03

#### **AFFIDAVIT**

I Kaleem Ullah Baloch, Special Secretary Establishment Department do hereby solemnly declare that contents of the joint parawise comments are correct to the best of my knowledge and record and nothing has been concealed from this Honourable Tribunal.

It is further stated on oath that in this Appeal, the answering respondents have neither been placed ex-parte nor their defense has been struck-off/lost.



Deponent

Shahid Ullah Khan, Secretary
Establishment through
Kaleem Ullah Baloch, Special
Secretary Establishment
CNIC: 11101-1464320-1

Mobile No. 0333-9744944





# GOVERNMENT OF KHYBER PAKHTUNKHWA ELEMENTARY & SECONDARY EDUCATION DEPARTMENT.



# NOTE FOR CHIEF SECRETARY

Subject: - AWARD OF BS-21 ON MERITORIOUS SERVICE IN RESPECT OF MR. MUHAMMAD RAFIQ KHATTAK (BS-20) DIRECTOR E&SE KHYBER PAKTHUNKHWA, PESHAWAR.

- As per policy contained on Page-67 of the Esta Code Revised Edition-2011 (Flagged/A), BPS-21 is admissible to Technical and Professional Officers on the basis of Mentorious Services.
- 2. The Elementary & Secondary Education Department Khyber Pakhtunkhwa recommends Mr. Muhammad Rafiq Khattak BS-20 (Management Cadre), the incumbent Director E&SE Khyber Pakhtunkhwa, Peshawar for promotion to BS-21 on meritorious grounds on account of rendering un-yielded meritorious services both as an Educationist and a professionally competent Manager.
- 3. The Officer joined the Education Department as a Teacher on 09.8.1978 and then selected and appointed as Principal BPS-18 through Public Service Commission on 23/11/1998 (Flagged/B). He was promoted to BS-19 on 13/09/2004 (Flagged/C) and then selected and appointed as EDO E&SE in management cadre through Public Service Commission on 24.02.2011 (Flagged/D) He was posted as Director on 13-10-2011 (Flagged/E) and was promoted to BS-20 on 51.01.2014 in management cadre and posted as Director of Elementary & Secondary Education Khyber Pakhtunkhwa, Peshawar on 31.01.2014 (Flagged/F). Since then he has been deliveting remarkable services. He has completed the required length of service for promotion to BS-21 and is eligible for promotion. He has earned 20 Very Good and 04 Good PERs during his total service.
- 4. He is currently heading a team of more than 300 Officers working in the field and in the Directorate E&SE, which is highly motivated under his leadership and struggling hard ensuring better service delivery, & quality education. He has particularly worked hard for elimination of drop out in the schools which he made possible by dint of his extra ordinary efforts and dynamic vision.

SHA





- As Director E&SE, he greatly contributed in merit based recruitment and rapid promotion/upgradation of teachers of different categories from BS-12 to BS-16 working in Government Schools across the province. This has certainly improved the performance of teachers and standard of Education in Government Sector. Similarly he has set an example in the execution/utilization of 100% budget efficiently in transparent manner during the fiscal year 2014-15 and 2015-16. He also made significant improvements on developmental side in terms of equipment and infrastructure.
- 6. Mr. Muhammad Rafiq Khattak accomplished supervisory and non-supervisory duties in an exemplary manner, setting a record of achievements, and inspiring others to improve the quantity and quality of their work. He exhibited unusual courage and competence in adverse situations without compromising his usual assigned duties, ensuring smooth service delivery. He demonstrated unusual initiative and skill in undertaking challenging assignments. His personality combines enthusiasm, motivation, adaptability and good leadership qualities. He enjoys equal respect from his superiors, peers and sub ordinates.
- 7. His professional development during service includes attending various meetings, conferences, and trainings inside and outside the country, including United Kingdom, Thailand, Germany, Turkey and Nepal successfully, where he represented E&SE Department Khyber Pakhtunkhwa.

8. With forgoing in view, Mt. Muhammad Rafiq Khattak (BS-20) Director E&SE Khyber Pakhtunkhwa, Peshawat is recommended for grant of BS-21 in lieu of Meritorious Services rendered by him.

E&SE Department

Chief Secretary Khyber Pokktunkhwa.

SHUSH

Note for Chief Secretary submitted by Elementary & Secondary Education Department regarding Award of BS-21 on Meritorious Service in respect of dri Mr. Muhammad Rafiq Khattak (BS-20). Director E&SE, Khyber Pakhtunkhwa has been Téxamined.

The E&SE Department has submitted working paper for Selection Board through the instant Note for Chief Secretary. The Note highlighted the achievement of athrough the instant Note to San Additional Services rendered by incumbent. The Department has recommended the officer for BS-21 against soats reserved for Meritorious Services.

It is worth to mention that for awarding BS-21 for Meritorious Service, criteria has been laid down vide Establishment Department circular letter dated 05-11-2009 (F/A). According to the said criteria, all information, facts and distinction of the panelist are required to be included in the working paper. The working paper submitted alongwith the Note has been examined and certain deficiencies/observations have been noted as reflected at FAI which would be conveyed to E&SE Department.

. Foregoing facts in view, this Note is submitted for information and perusal of the Chief Secretary as an interim progress on the Note moved by Secretary E&SE. The working paper received with the Note would be returned with observations at F/J to E&SE Department for rectification.

> (Masood Ahmad) Special Secretary (Reg) March 2

Govt of Khyber Pakhtunkhwa

SECRETARY ESTABLISHMENT

Establishment & Administration Department

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NO. SO (E-I)/E&AD/9-88/2017 Dated Peshawar, the March 15, 2017

To

The Secretary to Government of Khyber Pakhtunkhwa. Elementary & Secondary Education Department.

SUBJECT: - AWARD OF BS-21 ON MERITORIOUS SERVICE IN RESPECT OF MUHAMMAD RAFIQ KHATTAK (BS-20) DIRECTOR E&SE KHYBER PAKHTUNKHWA, PESHAWAR.

Dear Sir.

t am directed to refer to subject cited above and to return the subject summary alongwith Working Paper (in original) for rectification of the following observations:

- 1. Service particulars of the officer concerned reveal that his P.E.Rs score is 52 16% white required minimum threshold for BS-21 is 75%.
- 2. Certificate to the effect that whether the officer concerned has taken any long leave during the last three years or otherwise as required under para-1(d) of the Establishment Department's instruction dated 03.11.2009 (F/A) is not found attached.
- 3. Certificate whether any officer of the Department has previously availed the post of BS-21 or BS-22 on meritorious basis or otherwise is not found attached as required under Para-1 (i) of the policy referred to at (F/A).
- 4. Accordingly to the working paper/Note there are 16 officers holding BS-20 post in E&SE Department and joint seniority of officers in BS-20 has not been provided.
- §. Working paper/Note is silent about distribution of the 03 allocated posts in BS-21 between different cadre/group within the Department i,e teaching and management cadre.
- 6. Panel of officers not provided (duly quantified).

7. Proforma-II is not signed.

Yours faithfully,

Encl:- As above

(ASHIF IQBAL JILANI) SECTION OFFICER (E-I)



## GOV RANGEQ OF KHYBER PAKITUNKHWA ELEMENTARY SECONDARY EDUCATION DEPARTMENT



No.SO(S/M)E&SED/1-1/2017/W.P of Rafiq Khattak Dated Peshawar the March 28, 2017

Τo

The Section Officer (E-I). Establishment Department, Khyber Pakhtunkhwa, Poshawar.

Subject: -

AWARD OF BS-21 ON MERITORIOUS SERVICE MUHAMMAD RAFIQ KHATTAK DIRECTOR (BS-20) E&SE KHYBER PAKHTUNKHWA, PESHAWAR.

Lam directed to refer to your letter No.SO(E-I)E&AD/9-88/2017 dated 15-03-2017 on the subject cited above and to re-submit herewith (7) sets of the subject working papers (in original) alongwith reply of observations as following;

1. PERs score of the officer has been re-evaluated and found as 64.01 instead of 52.16 whoreas para (b) of Establishment & Administration Department Notification No. SQE(1)F&AD/9-133/09, dated 03-11-2009 provides that PERs shall be assigned a weightage of 70%. Hence 70% is the maximum wherein the PERs score is to be calculated Furthermore 15 marks have been allocated for scrutiny by the special selection committee out of which it will grant marks to the officer.

2. Certificate to the effect that the officer has not taken any long leave during the last 3

years, is altached, as per (Annexure-VI).

. 3. Certificate to the effect that no other officer of E&SE Department has availed the post of BPS-21 or 22 on mentorious basis as per (Annexure-VII). A Milar and

4. Thate are 2 separate cadres i.e. Management & Teaching Cadre. There is only one gificer i.e. Muhammad Raiiq Khattak working as Director BPS-20 E&SE Khyber Raktilunkhwa in the Management cadre while 22 officers are working in BPS-20 in the Teaching Cadre: Seniority of both the Management and Teaching Cadre is

5. The department has not yet distributed 3 positions in BPS-21 between the Teaching and Management Cadre. Hence award of B-21 to Mr. Muhammad Rafiq Khattak Director E&SE (Management Cadre) will not infringe the right of B-20 officers in the

Teaching Cadre

6. Pangl of the officers provided as per (Annexure-VIII)

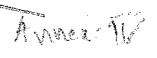
Encl: As Above:

(MUJEEB-UR-REHMAN) SECTION OFFICER (SCHOOLS MALE)

Endst: Even No. & Date:

Copy of the above is forwarded to the:-

PS to Secretary E&SE Khyber Pakhtunkhwa.







# GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT

NO. SO (E-I)/E&AD/9-88/2017 Dated Peshawar, the May 4, 2017

То

The Secretary to Government of Khyber Pakhtunkhwa. Elementary & Secondary Education Department.

SUBJECT: - AWARD OF BS-21 ON MERITORIOUS SERVICE IN RESPECT OF MR. MUHAMMAD RAFIQ KHATTAK (BS-20) DIRECTOR E&SE KHYBER PAKHTUNKHWA, PESHAWAR.

Dear Sir.

I am directed to refer to your letter No.SO(S/M)E&SE/1-1/2017/W.P of Rafiq Khattak dated 28.03 2017 on the subject noted above and to state that one post of BS-21 was allocated to E&SE Department and Higher Education Department as per this Department letter No SO(E-I)E&AD/9-133/09 dated 03.11.2009 regarding policy of Grant of BS-21 & BS-22 to the Technical & Professional Officers on account of mentorious service. However, the proforma-I furnished by Elementary & Secretary Education Department indicates 3-seats in Grade-21 falling to its share

In view of the above, it is requested that Administrative Department may kindly clarify its position regarding enhancement of its quota from one to three posts in BS-21 reserved for promotion of officers of Elementary & Secondary Education Department on account of meritorious service.

Yours faithfully,

Stuch

KASHIF IQBAL JILANI). SECTION OFFICER (E-I) Amen. T

#### GOVERNMENT OF KHYBER PAKITTUNKHWA **ELEMENTARY & SECONDARY EDUCATION** DEPARTMENT



No.SO(SM)E&SED/1-1/2017/W.P of Rafig Khattak Dated Peshawar the May 30, 2017

To

The Section Officer (E-I), Establishment Department, Khyber Pakhtunkhwa, Peshawar.

Subject:-

AWARD OF BS-21 ON MERITORIOUS SERVICE IN RESPECT OF MR. MUHAMMAD RAFIQ KHATTAK (BS-20) DIRECTOR E&SE KHYBER PAKHTUNKHWA, PESHAWAR.

If am directed to refer to your letter No.SO(E-I)/E&AD/9-88/2017 04.05.2017 on the subject noted above and to state that the matter was discussed with Regulation Wing Establishment Department. The calculation has been made on the basis of total number of technical/professional posts sanctioned in BPS-20. Serial No.V of proforma-I provides for pool posts @12.5 of the total number of posts in BPS-20. Similarly if it is taken on total number of posts occupied by BPS-20 officers then the share of this Department comes to 3 as at present there are 32 officers working in BPS-20 in this Department 1

(MUJEEB-UR-REHMAN)

SECTION OFFICER (SCHOOLS MALE)

Endst: Even No. & Date:

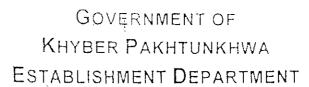
Copy of the above is forwarded to the:

PS to Secretary, E&SE Department Khyber Pakhtunkhwa, Peshawar.

; in .

SECTION OFFICER (SCHOOLS MALE)





NO. SO (E-I)/E&AD/9-88/2017 Dated Peshawar the October 10, 2017

To

The Secretary,

Goyt of Khyber Pakhtunkhwa,

Elementary & Secondary Education Department.

Amin VI

SUBJECT: - AWARD OF BS-21 ON MERITORIOUS SERVICE IN RESPECT OF

MUHAMMAD RAFIQ KHATTAK (BS-20) DIRECTOR E&SE

KHYBER PAKHTUNKHWA, PESHAWAR

Dear Sir,

SHAN

1 I am directed to refer to your letter No.SO(SM)E&SED/1-1/2017/W.P of Rafiq Khattak dated 30.05.2017 on the subject noted above and to submit that one post of BS-21 was allocated to two Departments i.e. Elementary & Secondary Education and Higher Education Departments on the basis of their total strength in BS-20 in accordance with the prescribed manner sanctioned by Federal Government Policy of grant of BS-20 to the Technical & Professional Officers on the basis of meritorious service. However, the Administrative Department has enhanced its quota in the workjug paper from one post to three posts without approval of Competent Authority.

I am directed to request that the revised working paper indicating one approved post of BS-21 falling to the share of Elementary & Secondary Education Department/Higher Education Department to submit the same to this Department for placement before PSB.

Yours faithfully,

(ASHIF IQBAL JILANI)

ŠĖSTION OFFICER (E-I)

No.SO(SM)E&SED/1-1/2017/W.P. of Raffq Khanak DELVBUMENT ELEMENTARY & SF MDVBA EDACVLION WE FAKHTUNKHWA

Dated Peshawar the January 02, 2018

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Қиубет Ракишиният Розбаууат. Datablishment Department, The Section Officer (E-I),

MOLLYMMAD RAFIO KHATTAK (BS-20) DIRECTOR E&SE KHYBER VAVED OF BS-21 ON MERITORIOUS SERVICE IN RESPECT OF MR.

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**JAKHTUNKHWA, PESHAWAR**,

may please be processed further. please be attached with the working paper alieady submitted to your office and the subject case the needful as desired vide letter under reference with the request that the said proforma-I may on the subject noted above and to resubmit herewith revised proforms-I (nine copies) after doing I am directed to refer to your letter No.SO(E-I)/E&AD/9-88/2017 dated 10.10.2017

Епсі, аз яроуе,

SECLION OFFICER (SCHOOLS MALE) (MATERBAREMENN)

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Endst: Even No. & Date:

Copy of the above is forwarded to the: 🧚

PS to Secretary, E&SE Department Khyber Pakhtunkhwa, Peshawari

SECTION OFFICER (SCHOOLS MALE)