

12/9/2017

Counsel for the appellant and Muhammad Adeel Butt, AAG alongwith Hameed-ur-Rehman, AD for the respondents present. The learned counsel for the appellant argued the case at some length, but when this Tribunal referred to a recent judgment of the august Supreme of Pakistan 2017 SCMR 890 the learned counsel sought some time. Granted. To come up for further arguments before this DB on 11/10/2017.


MEMBER



CHAIRMAN

11.10.2017

Counsel for the appellant and Mr. Kabeerullah Khattak, Addl. Advocate General for the respondents present. Arguments heard and record perused.

This appeal is dismissed as per our detailed judgment of today in connected service appeal No. 984/2015 entitled "Badshah Islam Vs. The Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar and others". Parties are left to bear their own costs. File be consigned to the record room.


Member


Chairman

ANNOUNCED
11.10.2017

11.01.2017

Counsel for the appellant and Mr. Hameedur Rahman, AD alongwith Addl. AG for the respondents present. Rejoinder submitted. Learned counsel for the appellant requested for adjournment. Adjourned for final hearing to 18.05.2017 before D.B.


Member


Chairman

18.05.2017

Counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Clerk of the counsel for appellant requested for adjournment. Adjourned. To come up for arguments on 12.09.2017 before D.B.


(Gul Zeb Khan)
Member


(Muhammad Amin Khan Kundi)
Member

21.07.2016

None present for appellant. M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Additional AG for the respondents present. Written reply not submitted despite last opportunity. Requested for further time. Request accepted. Last opportunity is extended for submission of written reply/comments for 15.08.2016 before S.B.



MEMBER

15.08.2016

Counsel for the appellant and Addl. AG for respondents present. Written reply not submitted despite last opportunity. Requested for further time. Another last opportunity extended for submission of written reply/comments on 31.10.2016 before S/B.



Member

31.10.2016

Counsel for the appellant and Mr. Hameed ur Rehman, AD (Litigation) alongwith Addl. AG for respondents present. Written reply submitted. The appeal is assigned to D.B for rejoinder and final hearing on 11.01.2017.



Member

22.12.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant was entitled to up-gradation from BPS-16 to BPS-17 on the strength of notification dated 13.11.2007 from the date of acquiring the requisite qualification while he was given up-gradation with immediate effect where against departmental appeal was preferred which was not responded and hence the instant service appeal on 2.12.2015.

That the appellant is entitled to BPS-17 from the date of acquiring the requisite qualification.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 23.2.2016 before S.B.

Appellant Deposited
Security & Process Fee


Chairman


23.02.2016

Counsel for the appellant, M/S Khurshid Khan, SO and Hameed-ur-Rehman, AD (lit.) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 27.4.2016 before S.B.


Chairman

27.4.2016



Agent of counsel for the appellant, M/S. Khursheed Khan, SO and Sultan Shah, Asstt. alongwith Addl: A.G for the respondents present. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 21.07.2016 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 1344/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	02.12.2015	<p>The appeal of Mr. Abdul Ghaffar presented today by Syed Younas Jan Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"> REGISTRAR</p>
2	03-12-15	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>22-12-15</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1344 / 2015

Abdul GhaffarAPPELLANT

VERSUS


Government of Khyber Pakhtunkhwa and others.....RESPONDENTS.

I N D E X

S.No.	Description of documents	Annexures	Pages
1.	Grounds of appeal with affidavit		1 - 4
2.	Application for condonation of delay with affidavit, & addresses of parties		5 - 8
3.	Copy of departmental appeal	'A'	9-10
4.	Copy of the impugned order dated 13/10/2010	'B'	11-12
5.	Copy of Certificate	'C'	13
6.	Copy of order dated 18/2/2003	'D'	14-15
7.	Copy of letter/Notification dated 13-11-2007	'E'	16-17
8.	Vakalat Nama		18

Dated 02-11-2015

Appellant
through


(Eyed Younus Jan)
Advocate, High Court, Peshawar

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1344 / 2015

Abdul Ghaffar, Director, Physical Education (D.P.E)
Government Higher Secondary School, Wazir Bagh,
Peshawar APPELLANT.

VERSUS

D.V.P. Province
Service Tribunal
Diary No. 1400
dated 02-12-2015

1. Government of Khyber Pakhtunkhwa through its Chief Secretary, Civil Secretariat, Peshawar
2. Secretary, Elementary & Secondary Education, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director, Elementary & Secondary Education, Khyber Pakhtunkhwa near Government Higher Secondary School No.1, Peshawar City, G.T. Road, Peshawar.
4. The Secretary Establishment Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar
5. The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar

..... RESPONDENTS.

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 ACCORDING TO THE DEPARTMENTAL APPEAL OF THE APPELLANT WHICH IS STILL PENDING IN THE DEPARTMENT AND AFTER LAPSE OF STATUTORY PERIOD NO ORDER/ COMMUNICATION HAS BEEN MADE ON THE SAME SO FAR. (COPY OF DEPARTMENTAL APPEAL IS ANNEXURE 'A').

Filed to-day
12/11

Prayer-in-Appeal

That on acceptance of this appeal, the impugned order dated 13-10-2010 may kindly be varied/modified to the effect that the same may kindly be made effective from the date of acquiring the requisite qualification instead of immediate effect, and as such the promotion of the appellant to B.S.17 (regular) may kindly be considered from the date of his acquiring the requisite qualification instead of immediate effect.

(Copy of notification is annex "B" & impugned)

Respectfully submitted:

BRIEF facts giving rise to this appeal are :-

1. That the qualification of the appellant is M.A/M.Sc. in Health and Physical Education who passed the prescribed examination held in Aug: 2008 and his/her result was declared on 18-05-09 . (Copy of certificate ^{is} ~~is~~ Annex 'C').
2. That the appellant was promoted to the post of Director, Physical Education (D.P.E) BS-16 vide order dated 18/2/2003 (Copy of the said order is Annexure 'D').
3. That on 13-11-07 the Government of K.P.K. issued a letter/ Notification vide which the posts of D.P.Es. were upgraded from BS-16 to BS-17 (regular) for the existing incumbents who hold Master Degrees in relevant subject i.e. M.A/M.Sc. in Health and Physical Education in case of the appellant and vide para-2 of the said letter a condition was laid down for the Diploma holders to the effect that they will stay in BS-16 till such time they acquired Master Degrees in the respective subject. On acquiring Master Degrees in the relevant subject their posts will be upgraded on case to case basis from BS-16 to BS-17. (Copy of the said letter is attached as Annexure 'E').
4. That in light of para-2 of the above referred letter the appellant is/was entitled for the award of BS-17 (regular) from the date of his/her acquiring the requisite qualification but illegally, un-constitutionally and malafidely was ignored for the same relief and then he/she was promoted to BS-17 (regular) vide order dated 13-10-2010 with immediate effect instead of his/her date of acquiring requisite qualification. (Copy of the said letter/Notification is attached as Annexure 'B') above

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5. That the appellant agitated the matter with the authorities but of no use, so he/she filed a departmental appeal before respondent No.1 which is still pending and after lapse of statutory period no order/communication has been made on the same so far, hence this appeal on the following amongst other grounds :-

G_R_O_U_N_D_S

- A) That the act and omission of the respondents is illegal, un-constitutional against the facts and material on the record, therefore, is not tenable and needs interference of this Hon'ble Tribunal.
- B) That the act and omission of the respondents is not only factually incorrect and legally untenable but also is based on their malafide intention and is also against the well established principles of natural justice.
- C) That the act and omission of the respondents is also against the laws/Rules/Policies and notifications of the Provincial Government especially is against the Notification dated 13-11-07.
- D) That the Department has given a similar relief to so many colleagues of the appellant including his junior so the refusal of the same relief to the appellant is his clear discrimination and even on this score also the appellant is entitled to the same relief.
- E) That the appellant is/was well qualified, fit and thus was quite eligible for the award of regular BS-17 from the date of his acquiring the requisite qualification so the impugned order/Notification dated 13-10-2010 vide which the promotion of the appellant to BS-17 (regular) has been made with immediate effect is neither



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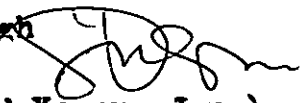
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legabomor justified and has caused gross miscarriage of justice to the appellant.

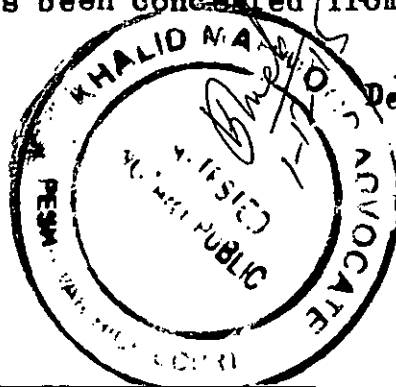
- F) That the appellant is/was a Government/Civil Servant and legal and constitutional guarantee is/was available to him to be treated equally and in accordance with law, he however has not been treated as such.
- G) That the case of the appellant is very much similar and identical to those numerous cases in which the higher/superior courts and Tribunals as well as this Hon'ble Tribunal has given a similar relief to other colleagues of the appellant and even the Department has also through its own motion granted a similar relief to other colleagues of the appellant and the appellant is also entitled to the same relief/treatment.

It is, therefore, prayed that on acceptance of this appeal, the order/Notification dated 13-10-2010 may kindly be varied/modified to the effect that the same may kindly be made effective from the date of the appellant acquiring the prescribed qualification and as such the Department may kindly be directed to consider the promotion of the appellant to BS-17 (regular) from the date of his acquiring the prescribed qualification instead of immediate effect with all other service benefits.

PESHAWAR
02-12-2015
AFFIDAVIT


Appellant
through 
(Syed Younus Jan)
Advocate, High Court, Peshawar

I, Abdul Ghaffar, D.P.E. GHSS Wazir Bagh, Peshawar, appellant do hereby solemnly affirm and declare on oath that the contents of this appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



و به این ترتیب

در هر دو طرف معادله ضرب کنیم در $\frac{1}{\cos^2 \theta}$ و داریم:

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و به این ترتیب

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در هر دو طرف معادله ضرب کنیم در $\frac{1}{\cos^2 \theta}$ و داریم:

در هر دو طرف معادله ضرب کنیم در $\frac{1}{\cos^2 \theta}$ و داریم:

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BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL, PESHAWAR.

In Service Appeal No. _____/ 2015

Abdul GhaffarAPPELLANT

VERSUS

Government of K.P.K. and othersRESPONDENTS.

APPLICATION FOR CONDONATION OF DELAY (IF ANY).

Respectfully submitted:

The applicant/appellant submits as under:-

That firstly the act and omission of the respondents /department is illegal, unconstitutional and void and secondly as financial matter is involved in the matter and the cause of action is the running cause of action, therefore, no limitation runs against the appellant/applicant, but even if this Honourable Tribunal considers the departmental appeal time barred then this application for condonation of delay if any on the following amongst other grounds:-

GROUNDS:

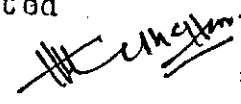
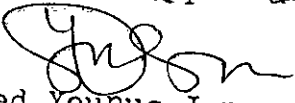
1. That in the matter in hand the cause of action is continuous cause of action and the impugned act and omission of the respondents come in the purview of the definition of continuous wrong, therefore, in the matter the cause of action starts on first date and ends on the last date of every months/every year, therefore, no question of delay arises in the matter.
2. That the law requires that the matters should/must be decided on merits rather than on technical grounds including the limitation.

...2...

- 3. That the appellant/applicant has got a very good case in his favour therefore, technicalities including the point of limitation(The delay if any) are ignorable.
- 4. That the appeal of the appellant before this Honourable Tribunal is well within time and strictly in accordance with law contained in Section 4 of the NWFP now Khyber Pakhtunkhwa Service Tribunal Act 1974,
- 5. That if the delay if any is not condoned the applicant/appellant will suffer an irreparable loss to his seniority, promotion and all other service benefits.
- 6. That the delay if any has been caused by the delaying tactics of respondents/department and the appellant cannot be held responsible for the same. Especially in presence of the principles of legitimate expectancy.
- 7. That in so many similar and identical cases this Honourable Tribunal has ignored the point of limitation and in so many cases has condoned the delay, therefore, in this case also the same point is ignorable/condonable.

It is, therefore, respectfully prayed that on acceptance of this application in the best interest of justice the delay if any in filing departmental appeal may kindly be condoned/ignored and the appeal of the appellant/applicant may kindly be decided on merits. Any other remedy/relief available in the i Circumstances of the case may also kindly be granted to the applicant/appellant.

Dated 02/12/2015


 Applicant/Appellant _____
 Through 
 (Syed Younus Jan)
 Advocate Peshawar High Court
 Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ / 2015

Abdul Ghaffar APPELLANT

VERSUS

Government of K.P.K. and others RESPONDENTS.

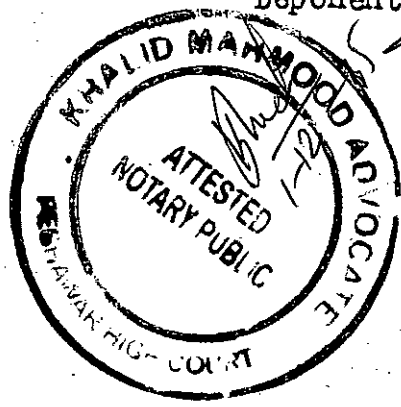
AFFIDAVIT.

I, Abdul Ghaffar, DPE (appellant) to hereby solemnly affirm and declare on Oath that the contents of the attach application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal

Dated 11/2015

Deponent

[Handwritten signature]



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. _____ / 2015

Abdul GhaffarAPPELLANT

VERSUS

Government of K.P.K. and othersRESPONDENTS.

ADDRESSES OF THE PARTIES.

Appellant.

Abdul Ghaffar,
Director, Physical Education (D.P.E)
Govt. Higher Secondary School, Wazir Bagh, Peshawar

Respondents.

1. The Govt: of Khyber Pakhtoonkhwa through its Chief Secretary Civil Seretriate Peshawar.
Education
2. Secretary Elementary and Secondary Khyber Pakhtoonkhwa Civil Secretriare Peshawar.
3. The Director Elementary and Scondary Education Khyber Pakhtoonkhwa near Govt: Higher Secondary School Peshawar City GT Road Peshawar.
4. The Secretary Establishment Department Khyber Pakhtoonkhwa Civil Secretriare Peshawar.
5. The Secretary Finance Department Khyber Pakhtoonkhwa Civil Secretriare Peshawar.

Dated: 02/12/2015

Appellant _____

Through:



(SYED YOUNUS JAN.)
Advocate Peshawar High Court
Peshawar.

Annex "A"

9

To

The Worthy Chief Secretary,
Government of K.P.K. Peshawar.

Subject:- DEPARTMENTAL APPEAL/REPRESENTATION

Through: PROPER CHANNEL

Sir,

1. That the applicant/appellant is M.A/M.Sc. in Health and Physical Education who passed the prescribed examination in August, 08 and was regularly promoted against the post of Director, Physical Education (BPS-16) vide order dated 18-02-2003.
2. That on 13-11-07 the Government of K.P.K. issued a letter/Notification vide which the posts of D.P.E. and Librarians were upgraded from BS-16 to BS-17 (regular) for the existing incumbents who hold Master Degrees in relevant subjects i.e. M.A/M.Sc. in Health and Physical Education in case of the appellant and vide para-2 of the said letter a condition was given for those Librarians and D.P.Es. who hold the Diploma in the relevant subjects that they will stay in BS-16 till such time they acquired Master Degree in the respective subject. On acquiring Master Degree in the relevant subject their posts will be upgraded on case to case basis from BS-16 to BS-17 (regular).....
3. That in light of the above referred matter of the Provincial Government the appellant was highly qualified, fit and as such was eligible for the award of BS-17 (regular) from Aug:2008 but has illegally, un-constitutionally and malafidely been ignored for the same relief.

That vide order dated 13-10-2010 the appellant has been promoted to regular BS-17 but with immediate effect instead of August, 2008.

That the appellant agitated the matter with the authority time and again but of no use, hence this appeal/representation, for grant of BS-17 (regular) from August, 2008 instead of immediate effect.

4. *Amended*
5. *Amended*
SYED FOJANUS JAM
M.A./B. Ed. Certificate Chair Lect
Associate High Court Peshawar
Federal Saif-ul-Ghaffar

(10)

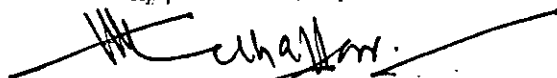
- 2 -


6. That as the appellant has acquired the requisite qualification for BS-17 (regular) in August, 2008 therefore, is entitled for the same relief from August, 2008 instead of immediate effect especially in the circumstances when the Department has awarded the same scale to other colleagues of the appellant not only on the basis of Court/Tribunal judgment but on its own motion also and the appellant is also entitled for the similar treatment.

Your goodself is therefore, requested sir, that the letter/order dated 13-10-2010 may kindly be made effective from Aug:2008 and as such the regular promotion of the appellant to BS-17 (regular) may kindly be considered from August, 2008 instead of immediate effect with all other service benefits.

PESHAWAR
15-08-2015

Appellant/Applicant


(Abdul Ghafar)
Director, Physical Education (DPE)
Government Higher Secondary
School, Wazir Bagh, Peshawar


SYED YOUSUF JAN
B.A.L.L.S. & Ed. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

**GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT**

Dated Peshawar the 13-10-2010

Annex "B"

(11)

NOTIFICATION

NO.SO(PE)2-6/E&SE/DPCMEETING/10: Consequent upon the recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following nine (9) Male & four (4) Female DPEs (BS-16) to the upgraded post of DPE (BS-17) on regular basis with immediate effect:

MALE DPEs

S.No.	Name & Designation of Officers	Proposed Place of Posting	Remarks
1.	Akbar Ali Khan DPE/ADO (Sports) in Office of EDO (E&SE) Kohat.	GHSS, Panian Haripur	Against vacant post of DPE.
2.	Abdul Ghaffar DPE GHSS Akbarpura Nowshera	GHSS, Akbarpura Nowshera.	Against DPE post already occupied by him.
3.	Fazal Abbas DPE GHSS Garhi Habibullah Manshra	GHSS, Garhi Habibullah Masehra.	-do-
4.	Muhammad Rasool DPE GHSS Shahbaz Khel Lakki Marwat.	GHSS, Shahbaz Khel Lakki.	-do-
5.	Qadar Khan DPE GHSS Chaghar Matti, Peshawar.	GHSS, Chaghar Matti Peshawar.	-do-
6.	Fida Muhammad DPE GHSS Manga Mardan	GHSS, Manga Mardan.	-do-
7.	Mamrez Khan DPE ADO (Sports) in the Office of E.D.O.(E&SE) Karak.	GHSS, Nahaqi Peshawar.	Against vacant post of DPE.
8.	Raesullah DPE GHSS Hakim Haved Bannu.	GHSS, Hakim Havid Bannu.	Against DPE post already occupied by him.
9.	Zamarud Shah DPE GHSS Chorlaki Kohat.	GHSS, Chorlaki Kohat.	-do-

FEMALE DPEs

S.No.	Name & Designation of Officers	Proposed Place of Posting	Remarks
1.	Mst Misbah Seema DPE GGHSS Parova DIKhan	GGHSS, Parova DIKhan	Against DPE post already occupied by her
2.	Mst. Ghazala Naeem DPE GGHSS Lachi Kohat.	GGHSS, Lachi Kohat.	-do-
3.	Mst. Baseerat Afzal DPE GGHSS Harichand Charsadda.	GGHSS, Harichand Charsadda.	-do-
4.	Mst. Raheela Banc DPE GGHSS No.5 Qasaban DIKhan.	GGHSS, No.5 Qasaban DIKhan	-do-

2. On their promotion the officers will be on probation for a period of one (1) year in terms of section 6(2) of NWFP Civil Servant Act 1973 read with Rule 15(1) of the NWFP Civil Servant (Appointment, Promotion and Transfer) Rules

Attested
BYED YOUSUF IAN
 B.A.L.S. & B.Ed. Certificate Sharna Law
 Advocate High Court Peshawar
 Federal Secretariat General

SECRETARY TO GOVT OF KHYBER
PAKHTUNKHWA
ELEMENTARY & SECONDARY
EDUCATION DEPARTMENT

Endst; of even no. & date:
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.
- 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 Education 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)

AYUB YOUNUS JAN
B.A.B.L.E., B.Ed., Certificate Baris Law
Advocate High Court Peshawar
Federal Shariat Court.

Serial No. GU 000639
I

Annex "C" (13)



VERIFIED

GOMAL UNIVERSITY
DERA ISMAIL KHAN
N.W.F.P PAKISTAN

[Signature]
Controller of Exams
Gomal University
Dera Ismail Khan
22/9/14
[Signature]

Registration No: 1868-GUP-80
Roll No: 520
Session: 2007-2008

Provisional Certificate

This is certify that ABDUL GHAFFAR
Son / Daughter-of MUHAMMAD AZIM
of the Department / Institute of COLLEGE OF PHY EDUCATION(PVT:)PESHAWAR
has passed M.Sc, Examination held in AUGUST,2008
in the subject of HEALTH AND PHYSICAL EDUCATION
He / She was placed in SECOND division,
Securing 622 marks out of 1100

The Examination was taken as Whole

Result Declaration Date 18-05-2009

[Signature]
CONTROLLER OF EXAMINATIONS
GOMAL UNIVERSITY D. I. KHAN
24/5/09

[Signature]
SYED YOUNUS JAN
B.A.B.L.S. B Ed. Certificate Sharba Law
Advocate High Court Peshawar
Federal Shariat Court.

[Signature]
SYED YOUNUS JAN
B.A.B.L.S. B Ed. Certificate Sharba Law
Advocate High Court Peshawar
Federal Shariat Court.

DIRECTORATE OF SCHOOLS AND LITERACY N.W.F.P. PESHAWAR.

OFFICE ORDER.

Annex "D"
(14)

Consequent upon the approval by the Departmental Selection Committee Schools & Literacy NWFP in its meeting held on 26-12-2002. The following CT/PET/PTC, etc are hereby promoted to the posts of DPE/ADO (Physical) B-16 on regular basis in the interest of public service with immediate effect.

S.#	Name & Designation	Promoted as	Place of posting	Remarks
1	Mr. Sher Azam Khan PET	DPE	GEC, Ghorī Wala Bannu	Against the post already occupied by him
2	Mr. Siraj-ud-Din PET	DPE	GHSS, Khowaza Khela Swat	Against the post already occupied by him
3	Muht Ibrahim-ud- Din PET	DPE	GHSS, Lachi Kohat	Against the post already occupied by him
4	Mr. Bahadar Nawaz PET	DPE	GHSS No.2 Pesh: Canmtt:	Against the post already occupied by him
5	M. Falak Naz PET	DPE	GHSS Manga Dargai Charsadda	Against the post already occupied by him
6	Mr. Deedar Khan PET	DPE	GHSS Chamkani Peshawar	Against the post already occupied by him
7	Mr. Muhammad Jalal PET	DPE	GHSS Kakki Bannu	Against the post already occupied by him
8	Mr. Abdus Sattar PET	DPE	GHSS Gul Inam Tank	Against the post already occupied by him
9	Mr. Jamal Abdul Nasir PET	DPE	GHSS Totakan Mkd Agy:	Against the post already occupied by him
10	Muht Faisal Phy: Supervisor	DPE	GHSS Daag Peshawar	Against the post already occupied by him
11	Mr. Muhammad Naeem PET	DPE	GHSS Ghalri Kapura MDN	Against the post already occupied by him
12	Mr. Saukat Hayat PET	DPE	GHSS Kot Malakand Agy:	Against the post already occupied by him
13	Mr. Bashir Ahmad PET	DPE	GHSS Dosehra Char: da	Against the post already occupied by him
14	Mr. Shamal Khan PET	DPE	GHSS Dara Pezu Lak:	Against the post already occupied by him
15	Mr. Aqal Daraz PET	DPE	GHSS Tough Bala Kohat	Against the post already occupied by him
16	Mr. Azizullah Khan PET	DPE	GHSS Kotgarn D I Khan	Against the post already occupied by him
17	Abdul Majeed Phy: Supervisor	DPE	GEC (M) Peshawar	Against the post already occupied by him
18	Mr. Muhibullah PET	DPE	GHSS Nizampur NSR	Against the post already occupied by him
19	Mr. M. Saeed Shah PET	DPE	GHSS Kawai Manshira	Against the post already occupied by him
20	Mr. S. Bakht Shah PET	DPE	GHSS Zaida Sawabi	Against the post already occupied by him
21	Mr. Hameedullah Khan PET	DPE	GHSS Dakki D. I. Khan	Against the post already occupied by him
22	Mr. Muhammad Israr PET	DPE	GHSS Bughdad Mardan	Against the post already occupied by him
23	Mr. Naeem Khan PET	DPE	Phy: Edu: Collage Karak	Against the post already occupied by him
24	Mr. Shah Mehmood PET	DPE	GHSS Urmar Payan Pesh:	Against the post already occupied by him
25	Mr. Tali Zar Khan PET	DPE	GHSS Katlang Mardan	Against the post already occupied by him
26	Mr. Rais Khan PET	DPE	GHSS Kheshgai NSR	Against the post already occupied by him
27	Mr. Inayat Khan PET	DPE	GHSS Umar Zai Chd:	Against the post already occupied by him
28	Mr. Sardar Khan PET	DPE	GHSS Mayar Mardan	Against the post already occupied by him
29	Mr. Ihtishamud Din PET	DPE	GHSS Bilitang Kohat	Against the post already occupied by him
30	Mr. Abdullah Shah PET	DPE	ADO (Phy:) at EDO (S&L) Tank	Against the post already occupied by him
31	Mr. Rukh Niaz PET	DPE	GHSS Khanis Pst Abbottabad	Against the post already occupied by him
32	Mr. Abdul Ghaffar PET	DPE	GHSS Lal Qilla Dir	Against the post already occupied by him
33	Mr. Gul Badshah PET	DPE	GHSS Hazar Khwani Pesh:	Against the post already occupied by him
34	Mr. Muhammad Safdar PET	DPE	GHSS Deaba Kohat	Against the post already occupied by him
35	Mr. Safdar Jan PET	DPE	GHSS No.1 Peshawar city	Against the post already occupied by him
36	M. Fazli Rabbi PET	DPE	GHSS Totalai Buner	Against the post already occupied by him
37	Mr. Khaki Rehman PET	DPE	GEC (M) Mir Ali NWA	Against the post already occupied by him
38	Mr. Roshan Akber PET	DPE	GHSS Gandaf Swabi	Against the post already occupied by him
39	Mr. Habibullah PET	DPE	ADO(Phy) at EDO(S&L) Charsadda	Against the post already occupied by him
40	Mr. Lal Marjan PET	DPE	GHSS Shabqadar For: hd:	Against the post already occupied by him
41	Mr. Ahmad Nawaz PET	DPE	ADO(Phy:) at EDO(S&L) Battagram	Against the post already occupied by him
42	Mr. Zar Bahisht Khan PET	DPE	ADO (Phy:) at EDO(S&L) Buner	Against the post already occupied by him
43	Mr. Kiramatullah PET	DPE	GHSS Bogara Karak	Against the post already occupied by him
44	Mr. Salar Khan PET	DPE	GHSS Baghicha Dhari Mardan	Against the post already occupied by him
45	Mr. Rashi Din PET	DPE	GHSS Warana Karak	Against the post already occupied by him
46	S. Fazal Abbas Zaidi PET	DPE	GHSS Utmanzai Charsadda	Against the post already occupied by him
47	Mr. Falak Naz PET	DPE	GHSS Adezai Peshawar	Against the post already occupied by him
48	Mr. Fazli Wahid PET	DPE	GHSS Khanpur Dir	Against the post already occupied by him
49	Mr. Mushtaq Khan PET	DPE	GHSS Wazir Bagh Peshawar	Against the post already occupied by him
50	Mr. Arbab Fawad Khalil PET	DPE	ADO (Phy:) at EDO(S&L)NSR	Against the post already occupied by him

SYED FARUQ US JAN
B.A.B.L.B. B.E.S. Certificate holder
Advocate High Court Peshawar
Federal Shariat Court

15

51	Mr. Habibullah PET	DPE	GEC (M) Dir	Against the post already occupied by him
52	Mr. Mujeebur Rehman PET	DPE	GHSS Shakar Dara Kohat	Against the post already occupied by him
53	Mr. Jehan Alam PET	DPE	ADO (Phys) at EDO(S&L) Shangla	Against the post already occupied by him
54	Mr. Abdul Qadeer Khan PET	DPE	GHSS, Parova D.I.Khan	Against the post already occupied by him
55	Mr. Channi Khan PET	DFE	GHSS, Takkar GHSS Mardan	Against the post already occupied by him
56	Mr. Amjad Khan PET	DPE	GHSS Sherpao Charsadda	Against the post already occupied by him
57	Mr. Nikhat ullah PET	DFE	GEC (M) Kotka Habibullah FR Bama	Against the post already occupied by him
58	Mr. Farid Zaman C.T.	DFE	Phy:Edu:Collage Karak	Against the post already occupied by him
59	Mr. Ikramullah PET	DPE	GHSS Sirkot Haripur	Against the post already occupied by him
60	Mr. Muhammad Usman PET	DPE	GHSS Muryali D.I.Khan	Against the post already occupied by him
61	Mr. Waris Khan P.T.C.	DPE	GHSS Munda Dir Lower	Against the post already occupied by him
62	Mr. Muhammad Nawaz PET	DPE	GHSS Shabaz Gijari Mardan	Against the post already occupied by him
63	Mr. Ihsan Ullah PET	DPE	GHSS Fatehpur Swat	Against the post already occupied by him
64	Mr. Ashraf Ali Khan PET	DPE	GHSS Ustarzai Kohat	Against the post already occupied by him
65	Mr. Zahoor Zaman P.T.C.	DPE	GHSS Kalam Swat	Against the post already occupied by him
66	Mr. Fateh Sher PET	DPE	GHSS Kabal Swat	Against the post already occupied by him
67	Mr. Muhammad Sharif PET	DPE	GHSS Kot Najibullah H/Pur	Against the post already occupied by him
68	Mr. Said Khan PET	DPE	GHSS Lora Abbottabad	Against the post already occupied by him
69	Mr. Ghulam Hussain PET	DPE	GEC(M) Mardan	Against the post already occupied by him
70	Mr. Ghulam Nabi PET	DPE	GHSS Fakh Bhai Mardan	Against the post already occupied by him
71	Mr. Muhammad Gul PET	DPE	GHSS No.2 D.I.Khan	Against the post already occupied by him
72	Mr. Raeesullah P.T.C.	DPE	GHSS Charbagh Swat	Against the post already occupied by him
73	Mr. Nasir Khan PET	DPE	ADO (Phys) at EDO (S&L) Hangu	Against the post already occupied by him
74	Mr. Zahoor Ahmad PET	DPE	GHSS Jalozai Nowshera	Against the post already occupied by him
75	Mr. Muhammad Haroon PET	DPE	GHSS Ismaila Swabi	Against the post already occupied by him
76	Mr. Muhammad Iqbal PET	DPE	GHSS Turbela T.Ship H/Pur	Against the post already occupied by him
77	Mr. Farmanullah PET	DPE	GHSS Pir Pai Nowshera	Against the post already occupied by him

- Note: -
1. Charge report should be submitted to all concerned.
 2. No TA/DA etc: are allowed.

(HAFIZ BAHADAR KHAN)
Director Schools & Literacy
NWFP Peshawar

Endst No. 542-3628 1A-14/Promo:/DPE B-16. Dated Peshawar the 18/2/2003

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

1. Director of Education (FATA) NWFP Peshawar.
2. Director Bureau and Teacher Education, NWFP Abbottabad.
3. Accountant General NWFP Peshawar.
4. Executive District Officers (Schools & Literacy) in NWFP.
5. District/Agency Accounts Officers in NWFP.
6. Principal GEC (M) concerned.
7. Principal Govt: College of Physical Education Karak.
8. Principal GHSS concerned.
9. PS to Minister for Education NWFP Peshawar.
10. PS to Secretary Schools & Literacy Department Govt: of NWFP Peshawar.
11. DPE/ADO Physical concerned.
12. PA to Director Schools & Literacy NWFP Peshawar.

Attested
[Signature]
SYED YOUSUF JAN
B.A.B.L.B. & B.E. Certificate holder
Advocate High Court Peshawar
Federal Shariat Court.

[Signature]
17/02/03
Deputy Director Establishment
Directorate Schools & Literacy
NWFP Peshawar

GOVERNMENT OF N.W.F.P.
SCHOOLS & LITERACY DEPARTMENT
Dated, Peshawar the 13/11/2007.

Annex "E"

NOTIFICATION.

16

No. SOG/S&L/1-69/06/Vol-1/DPE/LIB: Sanction of the competent authority is hereby accorded to the upgradation of the posts of Librarians and Directors Physical Education (D.P.Es) from BS-16 to BS-17 (Regular) for the existing incumbents who hold Master Degree in the relevant subject in the Schools & Literacy Department NWFP with immediate effect as per following details:-

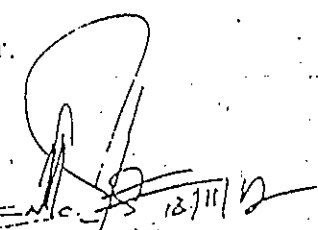
- 1) Promotion against the upgraded posts (from BS-16 to BS-17) shall be made in the prescribed manner and in accordance with the service rules to be framed as per relevant provisions of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules 1989 read with the NWFP Civil Servants Act, 1973.
- 2) The Librarians and D.P.Es who hold the diploma in the relevant subject will stay in BS-16 till such time, they acquire Master degree in the respective subject. On acquiring Master Degree in the relevant subject, their posts will be upgraded on case to case basis from BS-16 to BS-17 (Regular) and promotion (from BS-16 to BS-17) would be given as per laid down procedure and in accordance with the service rules to be framed. However their existing seniority will remain intact.
- 3) All the vacant posts of Librarians and D.P.Es in Schools & literacy department in BS-16 are hereby upgraded to BS-17, appointments against which would be made from amongst the persons who hold Master degree in the relevant subject, in the prescribed manner.
- 4) In future Librarians and D.P.Es will initially be recruited on the basis of Master degree in the relevant subject in BS-17 (Regular).
- 5) Henceforth no appointment of Librarians and D.P.Es in BS-16 shall be made on the basis of diploma, being declared as "Dying Cadre".

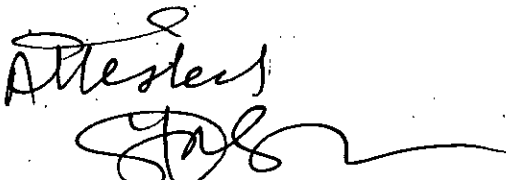
Sd/-

SECRETARY TO GOVERNMENT OF NWFP
SCHOOLS & LITERACY DEPARTMENT.

Endst: No. FD (SOSR-II) 10-7 / 03 / VOL.-11 Dated, Peshawar the, 13/11/2007.
Copy is forwarded for information and necessary action to :-

- 1) The Accountant General, NWFP, Peshawar.
- 2) All District Accounts Officers in NWFP.
- 3) All Agency Accounts Officers in NWFP.


(MUNAWAR KHAN)
SECTION OFFICER (SR-11)
FINANCE DEPARTMENT
GOVERNMENT OF NWFP.


Attested

SYED YOUNUS JAN
B.A.B.L.S. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

(P.T.O.)

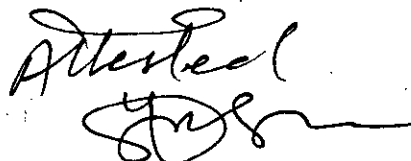
Endst: No. & Date Even.

Copy is forwarded to:-

- 1) Secretary to Government of NWFP, Establishment Department.
- 2) Secretary to Government of NWFP, Finance Department.
- 3) P.S to Chief Minister NWFP, Peshawar.
- 4) P.S to Chief Secretary NWFP, Peshawar.
- 5) Director Schools & Literacy, NWFP, Peshawar.
- 6) Director, Curr: & Teachers Edu; NWFP, Mandian Abbottabad.
- 7) Director of Education FATA NWFP, Peshawar.
- 8) P.S to Minister of Education, NWFP, Peshawar.
- 9) P.S to Secretary Schools & Literacy NWFP, Peshawar.
- 10) Office File.

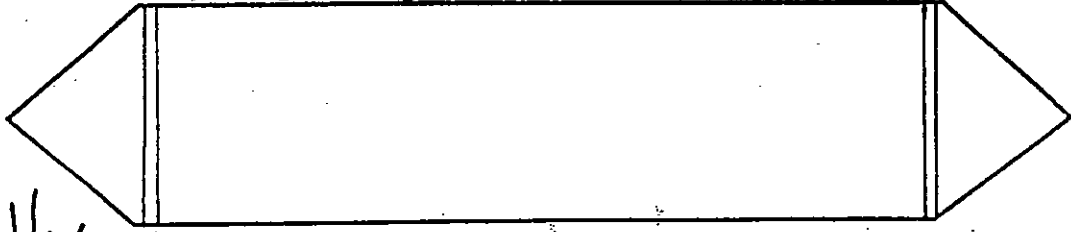


(FARID AHMAD KHATTAK)
SECTION OFFICER (GENERAL)
SCHOOLS & LITERACY DEPARTMENT
GOVERNMENT OF NWFP.



SYED YOUNUS JAN
B.A., B.L.S. & Ed. Certificate Sharia Law
Advocate High Court Peshawar
Federal Shariat Court.

بعدالت KPK سروس ٹریبیونل اپور



2 جناب عبدالغفار اہیلا نٹ
بنام حکومت KPK وغیرہ
رہسائڈنٹان

عبدالغفار
اہیلا نٹ

موزعہ
مقدمہ
دعویٰ
جرم
Service Appeal
No _____ of 2015

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیردی وجواب دہی دکل کاروائی متعلقہ
آن مقام _____ کیلئے سید یونس جان اور وکیل آپ
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
دکیل صاحب کو راضی نامہ کرنے و تقرر حالت و فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور صولی چیک در و پیرہ عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی
نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور
کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے اور اس کا ساختہ
پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ دہر جائد التوائے مقدمہ کے سبب سے وہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیردی
مذکور کریں۔ لہذا دواکالت نامہ لکھدیا کہ سندر ہے۔

المرقوم

20 _____ ماہ _____

عبدالغفار اہیلا نٹ

بمقام KPK سروس ٹریبیونل اپور کے لئے منظور ہے۔

Accepted

SYED YOUNUS JAN
B.L.S.L.B. B. Ed. Certificate Shari Law
Advocate High Court Peshawar
Federal Shariat Court.

2/

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No: 1344 / 2015

Abdul Ghafar DPE GHSS Wazir Bagh, District Peshawar.

.....Appellant.

VERSUS

Secretary E&SE Department, Khyber Pakhtunkhwa & others.Respondents

JOINT PARAWISE COMMENTS FOR & ON BEHALF OF RESPONDENTS No: 1-5.

Respectfully Sheweth:-

The Respondents submit as under:-

PRELIMINARY OBJECTIONS.

- 1 That the Appellant has got no cause of action / locus standi.
- 2 That the instant Service Appeal is badly time barred.
- 3 That the Appellant has concealed material facts from this Honorable Tribunal, hence liable to be dismissed on this score.
- 4 That the Appellant has filed the instant appeal on malafide motives.
- 5 That the Appellant has not come to this Honorable Tribunal with clean hands.
- 6 That the Appellant is not entitled for the relief he has sought from this Honorable Tribunal.
- 7 That the instant Service Appeal is against the prevailing law & rules.
- 8 That the instant Appeal is based on malafide intentions just to put extra pressure on the Respondents for gaining illegal service benefits.
- 9 That this Honorable Tribunal has got no jurisdiction to adjudicate upon the present service appeal.
- 10 That the appeal is not maintainable in its present form & circumstances of the case.
- 11 That the appeal is bad for mis-joinder & non-joinder of the necessary parties.
- 12 That the instant Appeal is barred by law.

ON FACTS.

- 1 That Para-I, needs no comments being pertains to the academic & professional qualification of the appellant.
- 2 That Para-2, is correct to the extent that the appellant has been promoted against the DPE in BPS-16 post vide the Notification dated 18-2-2003 (S/No: 32) in terms of Para-2 of the said Notification of the Respondent No: 5 & consequent upon the approval of the DPC meeting / minutes held on 26-12-2002 issued by the Respondent No: 3 in favour of the appellant (Copies of both the Notifications are annexed as (Annexures A & B).
from PET

- 22
- 3 That Para-3 is correct to the extent that the post of DPE has been upgraded from BPS-16 to 17 for existing incumbents having MA degree in the relevant subject in the E&SE Department with immediate effect. Similarly the DPEs in (BPS-17) shall be recruited afresh on the basis of having MA at least in 2nd Division from duly recognized University in the relevant subject by declaring the post of DPEs (BPS-16) as Dying Cadre vide Notification dated 13-11-2007 issued by the Respondent No: 5(Copy of the said is as Annexure-C).
 - 4 That Para-4 is correct to the extent that the appellant has been promoted against the DPE (BPS-17) post (Regular) vide Notification dated 13-10-2010 in terms of the Notification dated 13-11-2007 issued by the Respondent No: 5 and in accordance with the Appointments, Promotion & Transfer Rules 1989 read with Civil Servants Act 1973 issued by the Respondent No: 2 in the interest of public service & with immediate effect (Copy of the same is annexed as Annexure-D).
 - 5 That Para-5 is also incorrect & denied. No Departmental Appeal has been filed by the appellant against the impugned Notification dated 13-10-2010. Hence the appeal of the appellant is liable to be dismissed on the following grounds inter alia :-

GROUND.

- A Incorrect & denied. The act of the Respondents with regard to the impugned Notification dated 13-10-2010 is in accordance with law, Rules & Policy. Hence needs no interference of this Honorable Tribunal.
- B Incorrect & denied. The act of the Respondents is based on facts & law. Hence the plea of the appellant is liable to be dismissed.
- C Incorrect & denied. The impugned promotion order dated 13-10-2010 is within legal sphere & is liable to be maintained in favour of the Respondents in the interest of justice.
- D Incorrect & denied. The stand of the appellant is baseless & against the factual position & even based on presumption. Hence liable to be rejected.
- E Incorrect & denied. The appellant has been found fit & eligible for promotion against the DPE BPS-17 (Regular) post wef the date of the impugned Notification dated 13-10-2010, which is not only legal but is also liable to be maintained of being based on natural justice.
- F Incorrect & denied. The appellant has been treated as per rules & Policy in the instant case vide impugned Notification dated 13-10-2010 by the Respondents. Hence the plea of the appellant is liable to be struck down.
- G Incorrect & denied. The statement of the appellant is based on presumption as no cogent evidence / proof has been annexed by the appellant in support of his plea regarding similarly placed person. Hence he has been made entitled for promotion wef 13-10-2010 by the Respondents.

Prayer

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

Hyil KWC 21/4/2016
Secretary,
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 1&2)

14/4/2016
Director,
E&SE Department Khyber
Pakhtunkhwa, Peshawar.
(Respondents No: 3).

[Signature]
Secretary,
(Etab:) Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 4)

[Signature]
Secretary,
(Finance) Department Khyber
Pakhtunkhwa, Peshawar.
(Respondent No: 5)

AFFIDAVIT

I, Khaista Rehman Asstt: Director (Lit: II) E&SE Department Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant Parawise Comments in the titled Service appeal are true & correct to the best of my knowledge & belief & that nothing has been concealed from the ambit of this Honorable Tribunal.

[Signature]
Deponent