BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR
CAMP COURT ABBOTTABAD

SERVICE APPEAL NO. 1207/2015

Date of institution ... 27.10.2015
Date of judgment 19.01.2016

Pervez Akhtar, Junior Scale Stenographer, Excise & Taxation Office, Haripur. ..(Appellant)

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa, Excise & Taxation Department, Peshawar.
2. Director General, Excise & Taxation Department, KPK, Peshawar.
3. The Director Admn: Excise & Taxation Department, KPK, Peshawar.
4. Waheed Khan, Stenographer/Acting Superintendent, office of Director General Excise and Taxation Department, Peshawar. .. (Respondents)

Mr. Muhammad Asif Yousafzai, Advocate. — For appellant

Mr. Muhammad Saddique, Senior Govt: Pleader alongwith Legal Advisor — For official Respondents No.1 to 3

Sophia Noureen Advocate. — For private respondent No. 4.

...

Mr.Muhammad Azim Khan Afridi, — Chairman
Mr.Abdul Latif Khan, — Member

19.01.16

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN: Pervez Akhtar, Junior Scale Stenographer, Excise and Taxation office Haripur, hereinafter referred to as the appellant, has preferred the instant appeal against the Secretary to Government of Khyber Pakhtunkhwa, Excise and Taxation Department and others including private respondent No.4, Waheed Khan, under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act, 1974 against the order of respondent No.1 dated 11.9.2015, communicated to appellant on 28.9.2015, whereby his appeal dated 8.7.2015 treating him senior to private respondent No.4 was rejected.

2. Brief facts giving rise to the present appeal are that the appellant was appointed as Junior Scale Stenographer (BPS-12) in Excise and Taxation Department of KPK vide order dated 23.12.1989. That a joint seniority list of Junior Scale Stenographers of Excise and Taxation Department of Khyber Pakhtunkhwa was issued by respondent No.2, the Director General, Excise and Taxation Department, Khyber Pakhtunkhwa, Peshawar, wherein appellant was shown at S.No.2 while private respondent No.4 was shown at S.No.6 of the said list. That a meeting of Departmental Promotion Committee was held on 20.3.2012 wherein promotion of Junior Scale Stenographers against two posts of Senior Scale Stenographers (BPS-16) were considered. That the promotion of the appellant was deferred on account of a criminal case against him in the Court of Learned Anti-Corruption Judge and private respondent No.4 was promoted as Senior Scale Stenographer. That a post of Senior Scale Stenographer was reserved for the promotion of the appellant. That after the acquittal of appellant, the appellant applied for promotion but of no avail and vide letter dated 6.5.2015 promotion case of private respondent No.4 to the post of Superintendent was taken up. That aggrieved of the said decision, the appellant preferred departmental appeal which was rejected vide order dated 11.9.2015 and hence the instant service appeal.

3. Learned counsel for the appellant has argued that as per final seniority list of Junior Scale Stenographers (BPS-12) dated 31.12.2011 the name of the appellant was enlisted at S.No.2 while the name of private respondent No.4 was enlisted at S.No.6. That the appellant has joined the service on 23.12.1989 while private respondent No.4 has joined the service on 12.4.1999. That on the strength of meeting of DPC dated 20.3.2012 appellant was deferred due to his involvement in an anti-corruption case and one regular post was reserved for him under Rule-V (a) (ii). That one Muhammad Ismail enlisted as Junior Scale Stenographer at S.No. 1 has foregone his promotion and, similarly, Mr.Faqir Khan, Mr. Ali Gohar and Mr.Fida Muhammad enlisted at S.No. 3 to 5 had also foregone their promotion and, therefore, private respondent No.4 Mr.Waheed Khan was promoted as Senior Scale Stenographer (BPS-15). That the department was obliged to promote the appellant after his acquittal from the criminal case vide

judgment dated 19.2.2013 but to extend undue favour to private respondent No.4 and to usurp the rights of the appellant working paper for promotion to the post of Superintendent was prepared and the said respondent was shown sole candidate in the seniority list dated 31.8.2014 constraining the appellant to prefer departmental appeal to respondent No.1 which was rejected vide order dated 11.9.2015.

4. Legal Advisor, Learned Senior Govt. Pleader for official respondents No.1 to 3 and learned counsel for private respondent No.4 have argued that the appeal was not entertain-able as no final order was passed. That the appellant is not entitled to claim seniority or eligibility to the post of Superintendent unless and until he is promoted as Senior Scale Stenographer. That the appeal being incompetent is liable to dismissal.

5. We have heard arguments of learned counsel for the parties and perused the record.

6. The instant appeal has been preferred against final order passed by respondent No.1 dated 11.9.2015 whereby departmental appeal of the appellant was rejected. Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 authorizes a civil servant aggrieved by any final order, whether original or appellate, made by a departmental authority in respect of terms and conditions of civil servant to prefer an appeal to Tribunal within thirty days of the communication of such order. According to Section-7 of the said Act, a Tribunal may, on appeal, confirm, set-aside, vary or modify the order appealed against. Since the order of respondent No.1 is a final order within the meaning of section 4 of the said Act and the Tribunal, in view of section 7 of the said Act may confirm, set-aside, vary or modify such order as such we are of the humble view that the appeal of the appellant, on the touchstone of the afore-stated provisions of law, is competent and entertain-able.

7. Perusal of seniority list of Junior Scale Stenographers dated 31.12.2011 (Annexure-A pages 16 & 17) would reveal that the appellant was cited senior to private respondent No.4 as the name of the appellant is reflecting at S.No.2 while that of private respondent No.4 is shown at S.No.6. The said seniority list is neither disputed before us nor was ever earlier disputed by any civil servant or department. Perusal of minutes of

the meeting of Departmental Promotion Committee dated 20.3.2012 (Annexure-B page-18) would suggest that the said seniority list was considered in the same sequence and Muhammad Ismail appearing at S.No.1 was not promoted as he opted to forego promotion while appellant enlisted at S.No.2 was deferred due to his involvement in an anti-corruption case while other three civil servants namely Faqir Khan, Ali Gohar and Fida Muhammad enlisted at S.No.3, 4 and 5 were not promoted as they had opted for foregoing their promotion and, resultantly, private respondent No.4, Mr. Waheed Khan, was cleared for regular promotion as Senior Scale Stenographer. A careful perusal of the said minutes would suggest that the appellant was otherwise eligible to promotion but was deferred due to involvement in the said criminal case and the department, therefore, reserved a post for promoting him, in case of acquittal, under Rule-V(a)(ii) of Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009. It is also not disputed before us and is also established from the record that the appellant was acquitted in the criminal case by the Court of learned Special Judge Anti-Corruption, Khyber Pakhtunkhwa (Camp at Abbottabad) vide judgment dated 19.9.2013. In such a situation and keeping in view the findings of the Departmental Promotion Committee in its meeting dated 20.3.2012 the competent authority was obliged to have constituted a DPC for the consideration of the case of the appellant for promotion to the post of Senior Scale Stenographer. It is observed with concern that the authority, in negating their own stance taken in the said meeting, initiated proceedings for filling up the post of Superintendent by considering private respondent No.4, Mr. Waheed Khan, against the said post as a sole aspirant despite the fact that he may not remain senior if the appellant is considered for promotion to the post of Senior Scale Stenographer and so promoted. In such a situation it was desirable and appropriate for the appellate authority to have considered the departmental appeal of the appellant with a positive note. The final order of the appellate authority by filing the departmental appeal of the appellant vide order dated 11.9.2015 is, therefore, found contrary to the norms of justice and fair play and, therefore, provides space for interference by this Court.

19.01.16

8. In view of the above, we are, therefore, left with no option but to accept the present appeal and set aside the impugned final order of the appellate authority and direct that the case of the appellant be considered for promotion to the post of Senior Scale Stenographer at the first instance and, there-after, the post of Superintendent be filled in keeping in view the mandates and spirit of law including seniority list updated there-after in the prescribed manners. The appeal is accepted in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room.

(Abdul Latif)
Member

(Muhammad Azim Khan Afridi)
Chairman
19.01.16

ANNOUNCED
19.01.2016

ngs	Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
	2	3
	19.01.2016	KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR CAMP COURT ABBOTTABAD SERVICE APPEAL NO. 1207/2015 (Pervez Akhtar-vs-Secretary Excise & Taxation Department etc.) JUDGMENT MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN: Appellant with counsel, Mr.Arshad Javed, Inspector (lit) a nd Legal Advisor alongwith Mr. Muhammad Saddique, Senior Government Pleader for official respondents No.1 to 3 and counsel for private respondent No.4 present. Arguments heard and record perused. Vide our detailed judgment of today, placed on file, we accept the present appeal and set aside the impugned final order of the appellate authority and direct that the case of the appellant be considered for promotion to the post of Senior Scale Stenographer at the first instance and, there-after, the post of Superintendent be filled in keeping in view the mandates and spirit of law, including seniority list updated there-after in the prescribed manners. The appeal is accepted in the above terms. Parties are, however, left to bear their own costs. File be consigned to the record room. (Muhammad Azim Khan Afridi) Chairman (Abdul Latif) Member ANNOUNCED 19.01.2016

16.12.2015

Appellant in person and Mr. Arshed Javed, Inspector (litigation) alongwith Mr. Muhammad Siddique, Sr.GP for official respondents present. Due to non-availability of D.B, appeal is adjourned for rejoinder and final hearing before D.B to 19.1.2016 at Camp Court A/Abad. Status-quo be maintained.

Chairman
Camp Court A/Abad

29.10.2015

Appellant with counsel present. Learned counsel for the appellant argued that the appellant was appointed as Junior Scale Stenographer in the year 1989 while private respondent No. 4, Waheed Khan, was appointed as in the year 1999. That vide promotion order dated 30.3.2012 appellant was deferred as he was involved in an inquiry being conducted by the Anti Corruption Department and a post was reserved for his consideration to promotion. That the appellant was acquitted of the charges vide order dated 19.9.2013 but was not considered for promotion and finally appellant departmental appeal dated 8.7.2015 which was rejected on 11.9.2015 but communicated to appellant on 28.9.2015 and hence the instant service appeal on 27.10.2015.

Appellant Deposited
Security & Process Fee

That the appellant is entitled to promotion with retrospective effect and from the date when private respondent No. 4 was promoted.

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 17.11.2015 before S.B at Camp Court Abbottabad as the matter pertains to the territorial limits of Hazara Division. Notice of stay application be also issued for the date fixed. Status-quo be maintained.

Chairman

17.11.2015

Appellant in person, Mr.Arshad Javed, Inspector (lit) alongwith Mr.Muhammad Siddique, Sr.G.P for official respondents No.1 to 3 and counsel for private respondent No.4 present. Written reply by official respondents as well as private respondent alongwith Wakalat Nama submitted. The appeal is assigned to D.B for rejoinder and final hearing for 16.12.2015 at Camp Court A/Abad. Status-quo be maintained.

Chairman
Camp Court A/Abad

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1207/2015

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	27.10.2015	The appeal of Mr. Pervez Akhtar presented today by Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order. REGISTRAR
2	27-10-15	This case is entrusted to S. Bench for preliminary hearing to be put up thereon 29-10-2015. CHAIRMAN

16

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

S.A No. 1207 /2015.

Pervez Akhter Junior Scale Stenographer Excise and Taxation Office, Haripur.

Appellant

Versus

Secretary, to Government of KPK Excise and Taxation Department, Peshawar and others.

Respondents

Service appeal

I N D E X

S.No.	Particulars	Annexures	Pages
1	Service appeal alongwith affidavit.		1-15
2	Copy of joint seniority list.	A	16-17
3	Coy of minutes of the meeting.	B	18
4	Copy of application alongwith the judgment.	C	19-24
5	Copy of summary prepared for the promotion of Junior Scale Stenographer of dated 17.07.2014.	D	25-27
6	Copy of letter dated 06.05.2015 and seniority list of Senior Scale Stenographer.	E & F	28-29
7	Copy of appeal	G	30-32
8	Copy of decision of respondent No.1 dated 11.09.2015 which was communicated to appellant on 28.09.2015.	H	33

17

9			
10	C.M. Application alongwith affidavit.		
11	Vakalatnama		

Appellant

Through:-

(Abdul Shakoor Khan)
Advocate Supreme Court of Pakistan Abbottabad.

Dated:-26/10/2015.

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

S.A No. 1207 /2015.

Pervez Akhter Junior Scale Stenographer Excise and Taxation Office, Haripur.

Appellant

Versus

1. Secretary, to Government of KPK Excise and Taxation Department, Peshawar.
2. The Director General, Excise and Taxation Department, K.P.K Peshawar.
3. The Director Admn, Excise and Taxation Department, K.P.K Peshawar.
4. Waheed Khan, Stenographer / Acting Superintendent, office of Director General Excise and Taxation Department, Peshawar.

Respondents

APPEAL UNDER SECTION 4 OF KPK SERVICE TRIBUNAL ACT 1974 against the decision of respondent No.1

dated 11.09.2015, which was communicated to appellant on 28.09.2015, whereby it has filed his appeal dated 08.07.2015 for treating him Senior to respondent No.4 after his being promoted as Senior Scale Stenographer, in the light of letter No.1500 /Estb/P-File dated 19.08.2015 of respondent No.2.

It is respectfully submitted as under:-

1. That on 23.12.1989 the appellant was appointed as Junior Scale Stenographer in BPS-12 in Excise and Taxation Department of KPK and accordingly posted in the office of Excise and Taxation officer Abbottabad.

2. That appellant since joining the service is performing his duties with full devotion and he has never provided any opportunity to his superiors even for issuance of warning.

3. That on 31.12.2011 a joint seniority of Junior Scale Stenographers of Excise & Taxation Department of KPK was issued from the office of respondent No.2. Copy of joint seniority list is annexed as Annexure A.

4. That under the said seniority list appellant was at serial No.2 in terms of his seniority of Junior Scale Stenographer of Excise and Taxation Department KPK. Whereas respondent No.4 was enlisted at serial No.6 of the said seniority list. Meaning thereby the respondent No.4 was four step junior to appellant in the said seniority list. It is pertinent to mention here that said seniority list remained same being not challenged by any of Junior Scale Stenographers.

5. That on 20.03.2012 a meeting of Departmental Promotion Committee was held for the promotion of Junior

Scale Stenographer against the two posts of Senior Scale Stenographers BPS-16. In the said meeting the present appellant due to foregoing the promotion by one Muhammad Ismaeel Junior Scale Stenographer who was the senior most Junior Scale Stenographer in the aforesaid seniority list the appellant became senior most Junior Scale Stenographer, but, his promotion was deferred on account of pendency of a case against him in the court of Anti-Corruption Judge, whereas, due to foregoing the promotion by other three Junior Scale Stenographers the respondent No.4 was cleared for regular promotion as Senior Scale Stenographer. It is also pertinent to mention here that the Departmental Promotion Committee has reserved one regular post of Senior Scale Stenographer for the promotion of present appellant. Coy of minutes of the meeting is annexed as Annexure B.

6. That appellant shortly after the aforesaid Departmental Promotion Committee meeting was acquitted in the case due to pendency of which his promotion was deferred but a post of Senior Scale Stenographer was reserved for his promotion as Senior Scale Stenographer. The appellant after his being acquitted in the case due to which his promotion was deferred had sent the copy of the same to respondent No.2 for their doing needful, so appellant be promoted with effect from 20.03.2012. Copy of application alongwith the judgment is annexed as Annexure C.

7. That appellant after the submission of aforesaid application had waited a long for the constitution of Departmental Promotion Committee by respondent No.1, so appellant be promoted as Senior Scale Stenographer by retaining his seniority as it stood on 31.12.2011, but no effect. As it is clear from

the aforementioned meeting of D.P.C that appellant case for the promotion was deferred on the basis of pendency of a case and he was not superseded.

8. That appellant time and again had been asking the respondent that they may do the needful for the constitution of DPC so appellant be promoted as Senior Scale Stenographer w.e.f 20.03.2012 and accordingly be declared as senior most Senior Scale Stenographer. But, alas till this date the respondent No.1 had not constituted any DPC meeting so it would consider the case of promotion of appellant with effect from 20.03.2012. However, on 17.07.2014 a working paper for the promotion of Junior Scale Stenographers in BPS-14 to the post of Senior Scale Stenographer BPS-16 was prepared for the consideration of DPC, but, no DPC was constituted thereof. It is not out of context to mention here that in that working

paper appellant was shown at serial No.2 in terms of his seniority. The same was highly unjust, unfair, unethical against the good conscience, equity and law. As the case of appellant is very clear that he was deferred on account of pendency of a case. After his being acquitted in that case, he was entitled to be promoted by the DPC w.e.f 20.03.2012 by retaining his seniority as it stood on 31.12.2011. But same was not done as yet. However, due to hue and cry of the appellant the aforesaid summary was not referred to DPC. Copy of summary prepared for the promotion of Junior Scale Stenographer of dated 17.07.2014 is annexed as Annxure D.

9. That appellant, through a letter dated 06.05.2015, which was sent to him by someone, on 18.06.2015 from the office of respondent No.1 through fax, has come to know that the respondent No.4 was going to be promoted as Superintendent. He after

being aware of the said fact tried to get some other document on the basis of which respondent No.4 was going to be promoted as Superintendent. He as a result of that effort became able to get a final seniority list of Senior Scale Stenographer which was showing that there is only respondent No.4. Copy of letter dated 06.05.2015 and seniority list of Senior Scale Stenographer is annexed as Annexure E & F.

10. That appellant being aggrieved from the decision of respondent No.2 of the promotion of respondent No.4, who, if the DPC was constituted after his acquittal for his promotion w.e.f 20.03.2012 would be junior to him and in no way would be promoted earlier to him filed appeal against the same before respondent No.1. Copy of appeal is annexed as Annexure G.

11. That respondent No.1 instead of constituting a DPC for its meeting for the promotion of appellant with effect from 20.03.2012 so he may rank senior to respondent No.4 and be promoted as Superintendent earlier to him has filed the same. Copy of decision of respondent No.1 dated 11.09.2015 which was communicated to appellant on 28.09.2015 is annexed as Annexure H.

12. That under the circumstances the appellant is left with no other option but to file appeal before this Honourable Tribunal. Hence, this appeal, inter-alia, on the following grounds and that other better grounds which shall be urged at the time of hearings.

G R O U N D S

a. That it is crystal clear from the minutes of the meeting of DPC dated 20.03.2012 that appellant was deferred by DPC in that meeting, thus, he after his

acquittal in the case was legally entitled to be promoted as Senior Scale Stenographer w.e.f 20.03.2012. In view of this position he would rank senior to respondent No.4 as Senior Scale Stenographer and deserve to be promoted as Superintendent earlier to him.

b. That, appellant is suffering on account of in-action and non-action of the respondents of not constituting the D.P.C for his promotion as Senior Scale Stenographer w.e.f 20.03.2012. it is well settled that no one shall suffer on account of in action and non action of public functions thus, appellant under the circumstances in no way can be deprived from his right of being promoted as Senior Scale Stenographer and subsequently as Superintendent earlier to respondent No.4.

c. That, it is highly unjust, unfair, against the equity and good conscience that appellant who was having legal right to be promoted w.e.f 20.03.2012 and so rank senior to respondent No.4 as Senior Scale Stenographer was not promoted for benefiting the respondent No.4. Under the policy of fair play it is utmost duty of respondents that they before doing needful for the promotion of respondent No.4 as Superintendent constitutes a DPC for the promotion of appellant as Senior Scale Stenographer. So he may be promoted as Superintendent earlier to respondent No.4.

d. That, it is settled law, if any Government Servant whose promotion is deferred for want of something and other are promoted in the same meeting will be promoted after the

removal of that deficiency w.e.f the date on which other have been promoted. As such under the said principle of law the respondents are under obligation to first constitute the DPC for the promotion of appellant with effect from 20.03.2012 and then do needful for the promotion of Senior Scale Stenographer as Superintendent. As the appellant on the date of promotion of respondent No.4 as Senior Scale Stenographer was four step senior to him. As under the settled principle of law and justice he cannot be deprived from his right of becoming Senior Scale Stenographer and rank senior to respondent No.4.

e. That appeal is within time.

PRAYER

It is, therefore, very humbly prayed that this Honourable Tribunal may graciously be pleased to pass an order as follows:-

1. That appellant was deferred only, as such, he after being acquitted in the case was having a legitimate right to be promoted as Senior Scale Stenographer w.e.f 20.03.2012 the date of DPC meeting.

2. That appellant in no way shall suffer on account of in action and non-action of the respondents of not constituting DPC for his promotion as Senior Scale Stenographer w.e.f date of DPC on which date the respondent No.4 was promoted as Senior Scale Stenographer who was four step junior to the appellant.

3. That respondents are prohibited to promote the respondent No.4 as Superintendent before the constitution of DPC meeting for the promotion of

appellant as Senior Scale Stenographer w.e.f 20.03.2012 since the deficiency on account of which he was deferred had been removed two years back.

4. That it is the legal right of appellant that he be promoted as Senior Scale Stenographer with effect from 20.03.2012 by retaining his seniority existing on that date after the non-existing of deficiency on account of which his case was deferred for promotion.

5. That respondents are under legal obligation to fist constitute a DPC meeting for the promotion of appellant as Senior Scale Stenographer w.e.f 20.03.2012 by retaining his seniority on that date before doing anything for the promotion of Senior Scale

Stenographer as Superintendent.

6. That appellant be promoted by DPC w.e.f. 20.03.2012 against the post of Senior Scale Stenographer which is still lying vacant since then alongwith all back benefits.

Appellant

Through:-

(Abdul Shakoor Khan)
Advocate Supreme Court of Pakistan Abbottabad.

Dated:- 26/10/2015.

AFFIDAVIT

I, Pervaz Akhter Junior Scale Stenographer Excise and Taxation Office, Haripur, do hereby declare on oath that the contents of the appeal are true and correct and nothing has been concealed from this Honourable Court.

Deponent

Dated: 26/10/2015.

ATTESTED
SYED MUZAFFAR AHMED SHAH
NOTARY PUBLIC
Advocate High Court

26/10/2015

(16)

ANNEXURE A

DIRECTORATE GENERAL EXCISE & TAXATION, KHYBER PAKHTUNKHWA PESHAWAR.

NOTIFICATION

Peshawar, dated 20/01/2012

No 5545 /Estb/XXXV-A-227. Final Seniority list of Junior Scale Stenographer (BPS-12), Excise & Taxation Department, Khyber Pakhtunkhwa, as it stood on 31-12-2011, is circulated for information of all concerned.

DIRECTOR GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR

No. 5546-87 /Estb/XXXV-A-227

Copy forwarded to:

1. All Excise & Taxation Officers in Khyber Pakhtunkhwa.
2. Section Officer (Estt), Excise & Taxation Department, Khyber Pakhtunkhwa, Peshawar.
3. Officials concerned.

DIRECTOR GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR.

(19)

Attested

ANNEXURE B (18)

MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION COMMITTEE MEETING OF EXCISE & TAXATION DEPARTMENT HELD ON 20-03-2012 AT 11:00 AM

In order to fill up the two regular posts of Senior Scale Stenographers (BPS-15) a meeting of the Departmental Promotion Committee of Excise & Taxation Department Khyber Pakhtunkhwa was held on 20-03-2012 at 11:00 AM in the office of Director General, Excise & Taxation, Khyber Pakhtunkhwa to discuss the cases of promotion of Junior Scale Stenographer (BPS-12) to the post of Senior Scale Stenographer (BPS-15). The following members attended the meeting:

1. Syed Nazar Hussain Shah
   Director General, Excise & Taxation,
   Khyber Pakhtunkhwa. — In Chair
2. Mohammad Kabir Afridi,
   Director (Admn.), Excise & Taxation,
   Khyber Pakhtunkhwa. — Member
3. Syed Mazhar Ali Shah,
   Section Officer (Establishment),
   Excise & Taxation Department, Khyber Pakhtunkhwa. — Member

The Committee after thorough examination and scrutiny of service record of eligible officials, decided as follows:

S.No.	Name of Junior Scale Stenographer (BPS-12)	Decision
1.	Mohammad Ismail	Opted to forego promotion.
2.	Mr. Pervez Akhtar	Deferred due to his alleged involvement in an anti-corruption case although one regular post reserved for him under Khyber Pakhtunkhwa Civil Servants Promotion Policy, 2009, Rule V (a) (ii).
3.	Mr. Faqir Khan	Opted to forego promotion.
4.	Mr. Ali Gohar-I	Opted to forego promotion for time being.
5.	Mr. Fida Mohammad	Opted to forego promotion for time being.
6.	Mr. Waheed Khan	Cleared for regular promotion as Senior Scale Stenographer (BPS-15)

The meeting ended with the exchange of thanks.

Attested

SYED NAZAR HUSSAIN SHAH
Director General, Excise & Taxation,
Khyber Pakhtunkhwa
Peshawar

MOHAMMAD KABIR AFRIDI
Director (Admn),
Excise & Taxation,
Khyber Pakhtunkhwa.
Peshawar

Attested

SYED MAZHAR ALI SHAH
Section Officer,
Excise & Taxation Department,
Khyber Pakhtunkhwa
Peshawar

FINAL SENIORITY LIST OF JUNIOR SCALE STENO
KHYBER PAKHTUN

S.NO	NAME OF OFFICIALS	HOME DISTRICT	DATE OF BIRTH	DATE JOINING SERVI
1	Mr.Muhammad Ismail	Swat	22-12-1957	05-05-1
2	Mr.Pervaz Akhtar	Abbottabad	12-04-1967	23-12-1
3	Mr.Faqir Khan	Kohat	16-01-1969	29-05-1
4	Mr.Ali Gohar-I	Swabi	29-04-1969	13-10-1
5	Mr.Fida Muhammad	Peshawar	08-10-1969	17-10-1
6	Mr. Waheed khan	Peshawar	16-12-1973	12-04-1
7	Mr. Bawar Khan	Swat.	12-02-1958	01-06-1
8	Mr. Shabir Ahmad	Abbottabad	06-12-1958	18-05-1
9	Mr. Rahamdil Khan	Swat.	01-02-1957	03-03-1
10	Mr. Nasrullah Khan	Karak	14-09-1969	14-09-1
11	Mr. Musa Khan	Karak	01-11-1966	12-07-1
12	Mr. Mohammad Riaz	Mansehra	18-05-1953	08-01-1
13	Mr. Ali Gohar-II	Charsadda	10-01-1958	23-08-1
14	Mr. Abdul Hafeez	Peshawar	22-08-1978	26-04-200

Attested

ANNEXURE C (19)

No. 3041 /ESTB Dated Haripur, the 18-11-/2013

From The Excise & Taxation Officer,
Haripur

To

The Director General,
Excise & Taxation Department,
Khyber Pakhtunkhwa,
Peshawar.

Through **PROPER CHANNEL**

Subject: PROMOTION OF THE APPLICANT AS SENIOR SCALE STENOGRAPHER AND THEREAFTER PROMOTION OF THE APPLICANT AS SUPERINTENDENT AND GRANT OF ALL BACK BENEFITS FROM THE DATE OF DEFERMENT I.E. 20/03/2012 BY THE DEPARTMENTAL PROMOTION COMMITTEE OF EXCISE & TAXATION DEPARTMENT

Memorandum

Enclose please find herewith an application / representation on the subject noted above (in original) submitted by Mr. Pervez Akhtar, Stenographer of this office for favourable consideration please.

(Encl: 07)

Excise & Taxation Officer,
Haripur

Attested

(20)

To,

The Director General,
Excise & Taxation,
Khyber Pakhtunkhwa,
Peshawar.

Through **PROPER CHANNEL**

Subject: PROMOTION OF THE APPLICANT AS SENIOR SCALE STENOGRAPHER AND THEREAFTER PROMOTION OF THE APPLICANT AS SUPERINTENDENT AND GRANT OF ALL BACK BENEFITS FROM THE DATE OF DEFERMENT I.E. 20/03/2012 BY THE DEPARTMENTAL PROMOTION COMMITTEE OF EXCISE & TAXATION DEPARTMENT

Sir,

It is respectfully submitted as under:-

1. That the applicant is serving in the Excise & Taxation Department from 23/12/1989 as Junior Scale Stenographer and is presently posted at Haripur Excise & Taxation Office.

2. That in the year 2012 two posts of the Senior Scale Stenographers fell vacant in the Excise & Taxation Department and after complying with the formalities, the meeting of the Departmental Promotion Committee was held on 20/03/2012 being headed by your goodself. Copy of the minutes of the meeting is attached as Annexure "A"

3. That only the applicant and one Waheed Khan's cases for promotion were considered being fit and qualified for promotion as per criteria for such promotion.

4. That the applicant was deferred on the allegation that the applicant is involved in an anti-corruption case, though, such ground is alien to be considered for the promotion of the Junior Scale Stenographer to the post of Senior Scale Stenographer. The only hurdle which could have been considered for deferment of the promotion of the applicant if any was pendency of any disciplinary proceedings against the applicant and no such proceedings were pending against the applicant, therefore, the ground for deferment is void ab-initio.

Attested

(21)

5. That the applicant preferred application as well as representation for redressal of the grievance of the applicant, however, without any fruitful result.

6. That on 19/09/2013, the applicant has been acquitted under section 249-A Cr.PC from the alleged anti corruption case by the Honourable Special Judge Anti Corruption (Provincial), Peshawar Camp at Abbottabad. Copy of the said order of the court is attached as Annexure "B".

7. That it is pertinent to mention that one vacancy of Senior Scale Stenographer was reserved for the applicant. During the intervening period a post of Superintendent has fallen vacant and the same is filled up by promoting the above said Waheed Khan who is about ten years junior in service to the applicant.

8. That the ground on the basis of which the promotion of the applicant was deferred was no more a legal ground and now it is proved that the applicant was involved falsely in the said anti corruption case, thus, it will be highly in the interest of justice and law that the injustice done to the applicant may be remedied by promoting the applicant as Senior Scale Stenographer from the date of his deferment i.e. 20/03/2012 and thereafter he may be promoted as Superintendent being senior most stenographer in the department and also be granted the back benefits from which the applicant has been deprived without any legal and justifiable reason.

Hence, this application.

It is, respectfully prayed, that the case for promotion of the applicant as explained in the subject may kindly be processed and the concerned authority may kindly be requested for the grant of promotion to the applicant as requested in the subject above.

Dated 18/11/2013

PERVAIZ AKHTAR
Stenographer
Excise & Taxation office
Haripur

Attested

ORDER.

1. Accused Pervez Akhtar present on bail with his counsel and P.P. for state present. Muhammad Riaz cousin of complainant, who earlier reported about the proceedings of complainant Nazak khan to Saudi Arabia, is present and his statement recorded as CW-1. In the meanwhile counsel for accused Pervez Akhtar had already moved an application u/s 249-A Cr.Pc for acquittal of accused hence arguments on application were heard and record perused.

2. From the record it is clear that on the report of complainant Nazak khan, that accused Pervez Akhtar, a stenographer in Excise & Taxation Department Haripur is demanding Rs.1200/- as illegal gratification for transfer of motorcycle registration and after lodging of FIR a raid supervised by Illaqa Magistrate was conducted and Rs.1200/- were recovered from his front pocket. After interrogation and investigation challan against him was submitted.

3. During trial the prosecution examined PW-1 Fazal Gul khan Judicial Magistrate, PW-2 Zahidur Rehman, the then C.O. ACE Haripur and PW-3 Syed Piamber Raza.

4. From the raid report of Judicial Magistrate Ex.PW1/4 para-3, it is clear that the alleged recovery is effected from the possession of accused (front pocket) however in cross examination PW-3 Piamber Raza replied that the shirt of accused was not taken into possession by the I.O. due to the reason that the shirt was having no front pocket at all. At the same timePW-2 Zahidur Rehman has admitted that at

19.9.2013.
Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar

ATTESTED

EXAMINER
Court Of Special Judge
Anti Corruption KPK Peshawar
17/12/14

0-13. 19.9.2013.

the time of raid, he has not heard any conversation between accused and complainant. The cross examination of Zahidur Rehman shows that no documents with regard to the transfer of motorcycle were produced to him or to the magistrate, nor the same were recovered from accused. If at all the amount was to be paid for transfer of registration of motor cycle then complainant was suppose to hand over the relevant documents required for such transfer. Besides these facts, during the course of investigation complainant had presented an affidavit that the case was reported and registered due to mis-understanding and accused had informed him of the registration fee of motor car instead of motor cycle. The said affidavit was admitted by PW-2 Zahidur Rehman and is available on file as Ex.PW2/D-1. In addition to that complainant is not available in the country to support the prosecution case.

19.9.2013.
Special Judge
Anti Corruption
Khyber Pakhtunkhwa Peshawar

5. After considering all these aspects of the case, I am of the view, that even if complainant would have been available, he may not have deposed against the accused due to the earlier compromise between them. Moreso, the contradiction between the raid report and that of PW-3 Piamber Raza is so glaring that it shatter the whole prosecution case and even if remaining evidence is recorded, it may not converge into the conviction of accused and therefore in light of the above discussion, it is held that there is no probability of conviction of accused and provision of section 249-A Cr.Pc is attracted to his case.

6. Resultantly, this application is accepted and accused Pervez Akhtar stenographer Excise & Taxation office Haripur is acquitted in the case.

ATTESTED

EXAMINER
Court Of Special Judge
Anti Corruption KPK Peshawar

17/12/14

Attested

(24)

D.13. 19.9.2013

He is on bail and is relieved and his sureties are also discharged.

7. The case property, if any, be kept intact till the expiry of the period of limitation prescribed for appeal/revision.

8. Order announced and the case file be consigned to the record room after its necessary completion.

ATTESTED

EXAMINER
Court of Special Judge
Anti-Corruption KPK, Peshawar

Announced.
Abbottabad.
19.09.2013.

19.9.2013.
Special Judge,
Anti-Corruption KPK,
(Camp at Abbottabad)

Attested

ANNEXURE D

(25)

DIRECTORATE GENERAL, EXCISE & TAXATION, KHYBER PAKHTUNKHWA.

Auqaf Complex, Shami Road, Peshawar Cantt. Phone Nos. 091-9212260-9211205

No. 9219- /Estb/ Dated Peshawar 17/07/2014.

To

The Secretary to Government of Khyber Pakhtunkhwa,
Excise and Taxation Department.

Subject: **WORKING PAPER FOR THE PROMOTION OF JUNIOR SCALE STENOGRAPHERS (BPS-14) TO THE POST OF SENIOR SCALE STENOGRAPHERS(BPS-16).**

Kindly refer to this Office letter No. 8984/Estb/XXX V-D-412, dated. 07.07.2014 regarding the subject matter. The Departmental Promotion Committee meeting earlier scheduled for 11.07.2014 has now been re-scheduled to be held on 21-7-2014. at 10:00 AM in Office of the undersigned. A revised copy of working paper is enclosed.

It is therefore, requested that a representative of your Office may kindly be deputed to attend the said meeting at the time, date and venue as mentioned above.

Attested

DIRECTOR-GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR.

26

GOVERNMENT OF KHYBER PUKHTUNKHAWA,
EXCISE & TAXATION DEPARTMENT.

WORKING PAPER

SUBJECT: **PROMOTION OF JUNIOR SCALE STENOGRAPHERS (BPS-14) TO THE POST OF SENIOR SCALE STENOGRAPHER (BPS-16).**

There are total two sanctioned posts of Senior Scale Stenographers (BPS-16) in the Office of Director General, Excise & Taxation Khyber Pakhtunkhwa Peshawar (Budget copy for 2013-2014 is Annexure-A). Both the posts are presently lying vacant due to the promotion of Mr. Asif Iqbal, Senior Scale Stenographer as superintendent-I on regular basis and Mr. Waheed Khan, Senior Scale Stenographers, as Superintendent-II on acting charge basis.

2- In terms of Serial No.11 Column 5 of the appendix of the Khyber Pakhtunkhwa Excise & Taxation Department Service Rules 2010 which were framed/notified vide Notification No.SO(Estb)E&T/1-41/2009 dated 30th March 2010, the following method of recruitment for the post of Senior Scale Stenographer (BPS-16) has been prescribed (Annexure-B);

"By promotion, on the basis of Seniority-cum-fitness, from amongst Junior Scale Stenographers (BPS-14), with at least 5 years service as such; provided that if no suitable candidate is available for promotion, then by initial recruitment".

3- According to the final seniority list of Junior Scale Stenographers (BPS-14) as it stood on 31.12.2013 (Annexure-C), the following junior scale stenographers (BPS-14) are in the line of promotion against the vacant posts of Senior Scale Stenographer (BPS-16);-

S#	NAME OF JR.SCALE STENOGRAPHER	DATE OF BIRTH	DATE OF APPOINTMENT AS JR. SCALE STENOGRAPHER	Whether Eligible
1-	Muhammad Ismail.	22-12-1957	22-01-1985	Yes
2-	Mr. Pervez Akhtar.	12-04-1967	23-12-1989	Yes
3-	Mr. Faqir Khan.	16-01-1969	29-05-1990	ACRs incomplete/missing/not countersigned for several years.
4-	Mr. Ali Gohar-I.	29-04-1969	13-10-1990	Opted not to avail promotion.
5-	Mr. Fida Muhammad.	08-10-1969	17-10-1990	Yes

As per available record it is certified that:-

I) None of the officials are involved in any criminal / judicial case.

II) No penalties were imposed on any of the above officials during the preceding 5 years.

III) No officials are actually serving on deputation or long leave.

IV) All the officials are holding the posts of Junior Scale Stenographer (BPS-14) on regular basis and none of them is holding the post on ad-hoc basis.

V) All the officials have completed the prescribed minimum length of 5 years qualifying service.

VI) Seniority of the officials is final and undisputed.

Attested

The synopsis of PERs of the officials concerned are placed below for perusal of committee Original CR – dossiers will be produced before the Committee during the meeting.

The Departmental Selection Committee is requested to consider the suitability of two Junior Scale Stenographers (BPS-14) for promotion and appointment to the post of Senior Scale Stenographers (BPS-16) – i.e., one on regular basis and one on acting charge basis

DIRECTOR GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR.

Attested

ANNEXURE E

(28)

DIRECTORATE GENERAL, EXCISE, TAXATION & NARCOTICS CONTROL DEPARTMENT KHYBER PAKHTUNKHWA.

Auqaf Complex, Shami Road, Peshawar, Phone No. 091-9212260

No. 11440 /Estb/XXXV-D-5 Peshawar dated 6 /05/2015.

To Secretary to Govt. of Khyber Pakhtunkhwa,
Excise & Taxation Department,
Peshawar.

SUBJECT:- **WORKING PAPER FOR REGULAR PROMOTION TO THE POST OF SUPERINTENDENT.**

In continuation of this office letter No.11272/Estb/XXXV-D-5 dated 17-09-2015, on the subject captioned above.

In view of the above it is brought to your kind notice that Mr. Pervez Akhtar, Junior Scale Stenographer (BPS-14) Office of Excise & Taxation Officer-Haripur was lodged an appeal before the Service Tribunal Khyber Pakhtunkhwa Peshawar against the appointment as Superintendent of Mr. Waheed Khan, on acting charge basis.

The Hon'ble Service Tribunal dismissed and withdrawn the appeal of Mr. Pervez Akhtar, Junior Scale Stenographer (BPS-14) on 22-04-2015 (copy enclosed) for ready reference.

It is therefore, once again requested that the promotion on regular basis of Mr. Waheed Khan, already appointed as Superintendent on acting charge basis may be processed at an early date please.

DIRECTOR GENERAL,
EXCISE, TAXATION &
NARCOTICS CONTROL DEPARTMENT
PESHAWAR.

Attested

ANNEXURE G

(30)

Diary No. 446
Dated 08-07-2015
P/S to Secy: E&T Deptt:
original copy retained in the Deptt. its photocopy.

To

The worthy Secretary,
Excise & Taxation Department,
Khyber Pakhtunkhwa,
Peshawar.

APPEAL AGAINST THE IMPUGNED SENIORITY LIST ISSUED AND PREPARED BY DIRECTOR GENERAL EXCISE & TAXATION KPK DATED 31/08/2014 in respect of MR WAHEED KHAN, WHICH IS ILLEGAL, UNLAWFUL, AGAINST THE PRINCIPLE OF NATURAL JUSTICE, INEFFECTIVE UPON THE RIGHTS OF APPELLANT AND LIABLE TO BE SET-ASIDE.

Respectfully Sheweth:-

1. That the undersigned was appointed on 23/12/1989 as Steno Typist (Junior Scale Stenographer) in BPS-12.

2. That after joining service, the undersigned continuously performed his duty with full devotion and responsibility.

3. That a joint seniority list was issued on 31/12/2011, whereby, the undersigned was at S.No. 02 of the said seniority list.

4. That in the year 2011 Anti Corruption Provincial Establishment made so-called allegation against the undersigned without any justification and proof and thereafter they lodged so-called FIR against the undersigned.

5. That after lodging FIR the undersigned faced trial and denied all allegations and thereafter was acquitted honourably by the learned

Attested

FINAL SENIORITY LIST OF SENIOR SCA
PAKHT

S. NO.	NAME / QUALIFICATION OF SENIOR SCALE STENOGRAPHER	QUALIFICATION
1	Mr. Waheed khan	D.Com

Attested

Anti Corruption Judge, as nothing was proved against the undersigned.

6. That in between the trial of the undersigned, a DPC meeting was held on 20/03/2012 in the office of learned Director General Excise & Taxation and whereby, the name of the undersigned was deferred on the pretext of criminal trial against the undersigned.

7. That another meeting was thereafter called by the Director General Excise & Taxation office on 06/08/2013 whereby another seniority list was issued and vide the said meeting the case of undersigned was not considered at all, even in the wake of representations made before the competent authority regarding consideration of the undersigned.

8. That after the said meeting of the DPC dated 06/08/2013, another seniority list was issued whereby Mr. Waheed Khan was shown to be senior than the undersigned which was totally against the facts, against which, the undersigned preferred a representation but the said representation was not entertained till date.

9. That the undersigned has now been acquitted honourably by the learned trial court from all charges and therefore, seeks indulgence of your goodself in the correction of the so-called seniority list prepared by the DPC without considering the representation of the undersigned, therefore, the same requires correction as the undersigned is senior to Mr. Waheed Khan who wrongly has been shown senior to the undersigned.

Attested

10. That the undersigned in all respect qualifies to be considered for seniority in accordance with the rules/regulations and the seniority list prevailing at the moment is liable to be corrected accordingly.

11. That even otherwise the seniority list needs to be corrected as Mr. Muhammad Ismail had forgone his seniority previously but still is being shown at S. No. 1 of the seniority list, so keeping all these submissions, the undersigned humbly requests that the seniority list be corrected accordingly.

It, is therefore humbly prayed that on acceptance of instant appeal the seniority list be corrected and thereafter the undersigned be declared senior as per seniority in respect of Mr. Waheed Khan and Mr. Ismail according to the seniority depicted as on 31/12/2011 and further after the correction of the seniority list my representation / appeal regarding promotion of senior scale stenographer and thereafter superintendent be also considered and allowed accordingly.

PERVAIZ AKHTAR
Junior Scale Stenographer
Excise & Taxation Office
HARIPUR

Attested

ANNEXURE -H

(33)

GOVERNMENT OF KHYBER PAKHTUNKHWA
EXCISE, TAXATION AND NORCOTICS CONTROL DEPARTMENT

NO. SO(Admn)E&T/1-12/2009/391-93
Dated Peshawar the 11.09.2015

To

The Director General,
Excise, Taxation & Narcotics Control,
Khyber Pakhtunkhwa, Peshawar.

Subject:- **APPEAL AGAINST THE IMPUGNED SENIORITY LIST ISSUED AND PREPARED BY DIRECTOR GENERAL EXCISE & TAXATION KPK DATED 31/08/2014 IN RESPECT OF MR. WAHEED KHAN, WHICH IS ILLEGAL UNLAWFUL, AGAINST THE PRINCIPLE OF NATURAL JUSTICE, INFECTIVE UPON THE RIGHTS OF APPELLANT AND LIABLE TO BE SET-ASIDE.**

Peshawar 28/9

I am directed to refer to the representation of Mr. Pervaiz Akthar, Jr. Scale Stenographer o/o ETO Haripur received on 08/07/2015 on the subject noted above and to say that the competent authority has filed his request in light of your letter No. 1500/Estb/P-File dated 19/08/2015.

SECTION OFFICER (ADMN)

Endst: No. & Date Even.

Copy forwarded to the:-

1. Mr. Pervaiz Akthar, Jr. Scale Stenographer o/o ETO Haripur alongwith copy of parawise comments submitted by Director General Excise, Taxation & Narcotics Control.
2. P.S to Secretary Excise, Taxation & Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.

D.No. 777
28-9-15

SECTION OFFICER (ADMN)

Attested

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

C.M.A No_____/2015

In Ref:

S.A No._____/2015.

Pervez Akhter Junior Scale Stenographer Excise and Taxation Office, Haripur.

Applicant/ Appellant

Versus

Secretary, to Government of KPK Excise and Taxation Department, Peshawar and others.

Respondents

APPLICATION TO THE EFFECT THAT RESPONDENTS No. 1 TO 3 MAY NOT TAKE ANY STEP FOR THE PROMOTION OF RESPONDENT NO.4 TILL THE DISPOSAL OF MAIN APPEAL.

It is respectfully submitted as under:-

1). That the appellant has filed the titled appeal today and the contents of the same be treated as integral part of this application.

2). That appellant has made out a good prima facie case in his favour and there is every likelihood of its success.

3). That balance of inconvenience lies in the favour of the applicant/appellant as he was deferred for promotion as Senior Scale Stenographer who on the day of meeting of DPC dated 20.03.2012 was four step senior to respondent No.4, in case of the promotion of respondent No.4 as Superintendent before the constitution of DPC for his promotion as Senior Scale Stenographer with effect from 20.03.2012 shall suffer irreparable loss.

It is, therefore, very humbly prayed that this Honourable Court may graciously be pleased to restrain and prohibit the respondents from taking any step for the promotion of respondent No.4 as Superintendent till the disposal of the main appeal.

Applicant/ Appellant

Through:-

(Abdul Shakoor Khan)
Advocate Supreme Court of Pakistan Abbottabad.

Dated:-26/10/2015.

AFFIDAVIT

I, Pervez Akhter Junior Scale Stenographer Excise and Taxation Office, Haripur, do hereby declare on oath that the contents of the foregoing application are true and correct and nothing has been concealed from this Honourable Court.

Deponent

Dated: 26/10/2015.

ATTESTED
SYED MUZAFFAR ANWAR
NOTARY PUBLIC
Court Abbottabad
26/10/2015

بعدالت

سروس ٹریبونل پشاور

مورخہ
مقدمہ
دعویٰ اپیل
جرم

سنہ 2 منجانب اپیلانٹ

پرویز اختر بنام حکومت

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ

آن مقام پشاور کیلئے محمد آصف یوسفزئی اور شمس علی خان ایڈووکیٹس

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا مختار 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 بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ 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 پیروی مذکور کریں۔ لہٰذا وکالت نامہ لکھدیا کہ سند رہے۔

M. Asif Yousafzai
Advocate High Court Peshawar.
Room No FR-8, Fourth Floor
Bilour Plaza Peshawar Saddar.
Cell: 0333-9103240

Attested & Accepted by

المرقوم ماہ 20ء

دستخط اپیلانٹ

العبد گواہ العبد

مقام کے لئے منظور ہے۔

وکالت نامہ

کورٹ فیس قیمتی

بعدالت جناب INTHE KPK SERVICETRIBUNAL PESHAWAR

Appellent منجانب

Pervez Akhter V/S Secretary to Govt of KPK & others

Abbottabad دعویٰ یا جرم Service Appeal باعث تحریر آنکہ

مندرجہ بالا عنوان میں اپنی طرف سے پیروی و جوابدہی Abdul Shakoor khan مقام Abbottabad بدیں شرط وکیل مقرر کیا ہے میں ہر پیشی پر خود یا بذریعہ مختار خاص روبرو عدالت حاضر ہوتا رہونگا اور بوقت پکارے جانے وکیل صاحب موصوف کو اطلاع دیکر حاضر کروں گا۔ اگر کسی پیشی پر مظہر حاضر نہ ہوا اور غیر حاضری کی وجہ سے کسی طور پر مقدمہ میرے خلاف ہو گیا تو صاحب موصوا سکے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے علاوہ کسی اور جگہ کچہری کے مقررہ اوقات سے پہلے یا بروز تعطیل پیروی کرنیکے مجاز نہ ہونگے۔ اگر مقدمہ مقام کچہری کے کسی اور جگہ سماعت ہونے پر یا بروز کچہری کے اوقات کے آگے یا پیچھے ہونے پر مظہر کو کوئی نقصان پہنچے تو ذمہ داریاں اسکے واسطے کسی معاوضہ ادا کرنے مختار نامہ واپس کرنے کے بھی صاف و موصوف ذمہ دار نہ ہونگے۔ جھے کل ساختہ پرداختہ صاحب مثل کردہ ذات خود منظور و قبول ہوگا اور صاحب موصوف کو عرضی دعویٰ اور درخواست اجرائے ڈگری و نظر ثانی اپیل نگرانی دائر کرنے نیز ہر قسم کی درخواست پر دستخط تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراث کرانے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے کا ہو رقسم کا بیان دینے اور سپرد ثالثی و راضی نامہ و فیصلہ برخلاف کرنے و اقبال دعویٰ کا اختیار ہوگا اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یک طرفہ درخواست حکم امتناعی یا ڈگری قبل از فیصلہ اجرائے ڈگری بھی صاحب موصوف کر بشرط ادائیگی علیحدہ پیروی مختار نامہ کرنے کا مجاز ہوگا۔ ار بصورت ضرورت اپیل یا اپیل کے واسطے کسی دوسرے وکیل یا بیرسٹر کو بجائے اپنے ہمراہ مقرر کریں اور ایسے مشیر قانونی کو بھی اس امر میں وہی اختیارات حاصل ہونگے جیسے صاحب موصوف کو پوری فیس تاریخ پیش سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی حالت میں میرا مطالبہ صاحب موصوف سکے برخلاف نہیں ہوگا لہذا اختیار نامہ لکھ دیا ہے کہ سند رہے۔ مضمون مختیار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

PERVEZ AKHTAR [signature]

المرقوم: ___/___/201

العبد العبد العبد

Accepted by

[signature]

Abdul Shakoor khan

ASC

BEFORE THE HON'BLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1207/2015

Pervez Akhtar Junior Scale Stenographer (BPS-14),
Excise & Taxation Office, District Haripur. **(Appellant)**

VERSUS

1 Secretary to Govt. of Khyber Pakhtunkhwa,
Excise, Taxation & Narcotics Control Department,
Peshawar & others.....Respondents.

INDEX.

S.No	Particulars	Annexures	Pages
1-	Para wise reply.	--	1-5
2-	Affidavit.	--	6
3-	Reply on behalf of Respondent 1-3 on application of the appellant for Stay.	--	7
4-	Affidavit.	--	8
5-	Options of Muhammad Ismail, Jr.Scale Stenogrpaher.	A	9
6-	Option of Mr. Faqir Khan, Jr.Scale Stenographer.	B	10
7-	Option of Mr. Ali Gohar(I), Jr. Scale Stenographer.	C	11
8-	Option of Mr. Fida Muhammad, Jr. Scale Stenographer.	D	12
9-	Promotion order of Waheed Khan, for Sr. Scale Stenographer.	E	13
10-	Appointment order for Acting Supdt (BS-17).	--	14
11-	Appeal for grant of promotion as Superintendent.	--	15-16
12-	Representation regarding DPC meeting.	--	17-18
13-	Representation against deffering the promotion.	--	19-20
14-	Request for promotion to Sr. Scale Stenographer.	--	21-23
15-	Appeal deffered by Secretary Excise, Taxation & Narcotics Control Deptt:	--	24-26

Arbab Khalid Mehmood,
Advocate, Peshawar High Court,
Peshawar / Legal Advisor for
Excise, Taxation & Narcotics Control Deptt:

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

(1)

Service Appeal No. 1207/2015

Pervez Akhtar Junior Scale Stenographer (BPS-14),
Excise & Taxation Office, District Haripur. **(Appellant)**

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa,
   Excise, Taxation & Narcotics Control Department, Peshawar.
2. Director General, Excise, Taxation & Narcotics Control,
   Khyber Pakhtunkhwa Peshawar.
3. Director (Administration),
   Directorate General, Excise, Taxation & Narcotics Control Peshawar.
4. Mr. Waheed Khan, Stenographer / Acting Superintendent, Directorate General, Excise, Taxation & Narcotics Control, Peshawar.**(Respondents).**

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

REPLY ON BEHALF OF RESPONDENTS NO. 1-3.

Respectfully Sheweth.

Preliminary Objections.

1. That appellant has got no cause of action and locus standi to file the appeal-in-hand.
2. That, the appeal-in-hand is incompetent in its present form.
3. That, the appellant has been estopped by his own conduct to file the appeal.
4. That, the appeal-in-hand is badly time barred. The impugned deferrment by departmental promotion committee was held on 20-03-2012, against such decision of respondents authority, neither any departmental representation was filed within time, nor any appeal before the august Service, Tribunal therefore the Appeal-in-hand is liable to be dismissed, summarily.

5. That this Hon'ble Tribunal has no jurisdiction to entertain / adjudicate the appeal.

(2)

6. That, the appellant has come to Tribunal with unclean hands as he has suppressed the material facts.

7. That, the appeal-in-hand is bad due to mis-joinder of necessary parties, and misguidance of unnecessary parties.

FACTS.

1. Pertain to record.

2. Subject to proof however appellant was got involved in FIR No.03, dated 15-07-2011, U/S 161 PPC/5(2)C.Act.

3. Para-III upto the extent of seniority list is correct, but on the other hand the serious allegation of corruption was leveled against the present appellant, and in this regard a corruption case was registered bearing FIR No.03, dated 15-07-2011 U/S 161 PPC read with the Section-5 (2) of prevention of corruption Act 1997;.

4. In reply to Para-IV, it is submitted that at the time of issuing of seniority list as it stood on 20-01-2012, the present appellant was working as Junior Scale Stenographer in (BPS- 12) however, the seniority is not the sole grounds for promotion to a particular post. The remaining para is incorrect because Muhammad Ismail, Faqir Khan, Ali Gohar (1) and Fida Muhammad placed at the same seniority at S.No.1, 3, 4 & 5 respectively also opted to forgo promotion (copies of option are annexed at "**A, B, C & D**" and in the light of above stated circumstances respondent No.4, Waheed Khan, was promoted as Senior Scale Stenographer in (BS-15) copy of promotion order is annexed at "**E**", later on the same post was up-grated by the Government of Khyber Pakhtunkhwa in (BPS-16). The respondent No.4, Waheed Khan was further appointed as Superintendent (BPS-17) on acting charge basis under the Rules against the post vacated by Muhammad Ali, the then Superintendent whose appointment was also made as Excise & Taxation Officer (BPS-17) on acting charge basis.

5. Under the meeting of Departmental Promotion Committee of Excise, Taxation & Narcotics Control was held on 20-03-2012, against the regular available two posts one Junior Scale Stenographer namely Waheed Khan was promoted to the post of Senior Scale Stenographer (BPS-16) because Muhammad Ismail, at S.No.1, Mr. Faqir Khan, S.No.3, Ali Gohar (1) S.No.4 and Fida Muhammad S.No.5, was also opted to forgo promotion while the present appellant differed due to his alleged involvement in Corruption case, though one regular post is reserved for him who will be death in accordance with Law & Rule-V of under Khyber Pakhtunkhwa, Promotion Policy, 2009 Rule-5(a)(II).

6- In correct. The appellant was dealth with according to law and policy on the matter. As per Promotion Policy 2009 Rule-V, if a Civil Servant is differed and after becoming eligible his seniority would be remained intact over the junior. Further unless and until the meeting of Departmental Promotion Committee is not held and denied the right of the appellant, he could not approach to Service Tribunal for direction to promote appellant as it is not within the jurisdiction of the Service Tribunal, according to Section-4(b)(i) of Service Tribunal Act 1974.

7. In correct. The appellant has no locus standai to file the appeal as no Departmental Promotion Committee for the promotion of Senior Scale Stenographer is held. He is to be dealt with in accordance with law and rules.

8. As per paras mentioned above he will be promoted as per promotion policy 2009, when the Departmental Promotion Committee Meeting will be held as per his eligibility at present he has no cause of action or locus standai.

9. Pertain to record. However, as the appellant is still Junior Scale Stenographer while respondent No.4 is Senior Scale Stenographer whose promotion order has not been challenged so far as seniority is concerned will be determined when appellant would be promoted so appellant cannot questioned the same at this stage.

(4)

10. As per Paras mentioned above. However, at the moment he has no locus standai to pray for the relief before any promotion order of the appellant as neither he challenged his deferrment order nor did promotion order of respondent No.4, as Senior Scale Stenographer.

11. As per Para mentioned above. However, the instant appeal is badly time barred as appellant filed first representation dated 29-07-2013, second representation on 06-08-2013, third representation on 23-12-2014 and fourth representation was on 08-07-2015, which was forwarded by the Minister for Higher Education and Information Khyber Pakhtunkhwa which shows his conduct for exercising political influence for his promotion, which was filed on 11-09-2015. So the instant appeal is badly time barred as per 2013 SCMR 911 successive Department appeal could not extend period of limitation further appellant prior to this appeal filed an appeal before this Hon'ble Tribunal appeal **No.965/2014 which was dismissed on 22-04-2015** hence the instant appeal is hit by R 23 of Service Tribunal Rules.

12. Incorrect. The appellant has been treated accordingly to law and and Promotion Policy 2009.

GROUNDS.

a. Incorrect. The appellant has been treated as per Law & Rules. Promotion is neither a vested right and cannot be claimed as a right as **per 2015 SCMR 269** (2015 Supreme Court Monthly Review 269) as annexed at **(F)**.

b. Incorrect. No vested rights of the appellant has been violated, further the appellant was facing criminal charges at the time he was consider as and deferred. However he will be dealth as per Policy and Rules.

c. Incorrect. As per paras above.

d. Correct to the extent of promotion of the defferred official, however, the same would be consider in the next Departmental Promotion Committee if deferrement seized to exits and he will retain his seniority. The appellant has no cause of action or locus standai to pray for the relief.

e. Incorrect. The instant appeal is badly time barred.

(5)

Therefore, it is requested that the instant appeal is liable to be dismissed with cost.

The Respondents No. 1-3

1. **Secretary to Government of**
Khyber Pakhtunkhwa,
Excise, Taxation & Narcotics Control
Department, Peshawar.

2. **Director General,**
Excise, Taxation & Narcotics Control
Khyber Pakhtunkhwa,
Peshawar.

3. **Director Admn,**
Excise, Taxation & Narcotics Control,
Khyber Pakhtunkhwa, Peshawar

Through

Arbab Khalid Mehmood,
Advocate, Peshawar High Court,
Peshawar / Legal Advisor for
Excise, Taxation & Narcotics Control Deptt:

BEFORE THE HON'BLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR.

(6)

Service Appeal No. 1207/2015

Pervez Akhtar Junior Scale Stenographer (BPS-14),
Excise & Taxation Office, District Haripur.....**(Appellant)**

VERSUS

1. Secretary to Govt. of Khyber Pakhtunkhwa,
   Excise, Taxation & Narcotics Control Department, Peshawar.
2. Director General, Excise, Taxation & Narcotics Control,
   Khyber Pakhtunkhwa Peshawar.
3. Director (Administration),
   Directorate General, Excise, Taxation & Narcotics Control Peshawar.
4. Mr. Waheed Khan, Stenographer / Acting Superintendent, Directorate General, Excise, Taxation & Narcotics Control, Peshawar.**(Respondents).**

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

REPLY TO THE APPLICATION ON BEHALF OF RESPONDENTS NO. 1-4.

AFFIDAVIT.

I, Muhammad Javed Marwat, Director General, Excise, Taxation & Narcotics Control Khyber Pakhtunkhwa (Respondent No.2) do hereby solemnly affirm and declare on Oath that contents of the reply is true and correct to the best of my knowledge and belief and nothing has been kept concealed or mis-stated from this Hon'bel Tribunal.

Deponents.

Through

Arbab Khalid Mehmood,
Advocate, Peshawar High Court,
Peshawar / Legal Advisor for
Excise, Taxation & Narcotics Control Deptt:

BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA PESHAWAR.

Service Appeal No. 1207/2015

Pervez Akhtar Junior Scale Stenographer (BPS-14),
Excise & Taxation Office, District Haripur. **(Appellant)**

VERSUS

Secretary to Govt. of Khyber Pakhtunkhwa,
Excise, Taxation & Narcotics Control Department, Peshawar & others.

REPLY ON BEHALF OF RESPONDENTS NO. 1-3, ON APPLICATION OF THE APPELLANT FOR STAY.

The replying respondents submit as under;

1- No comments.

2- Incorrect. All the three ingrdenets are in favour of the respondents.

3- Incorrect. All the three ingredients are in favour of the respondents and in case accepting the application the public at large will face irreparable loss. Further reply to main appeal may kindly be consider part of this reply.

It is therefore, requested that the application may kindly be dismissed with cost.

Respondents.

1. **Secretary to Government of** Khyber Pakhtunkhwa, Excise, Taxation & Narcotics Control Department, Peshawar.

2. **Director General,** Excise, Taxation & Narcotics Control Khyber Pakhtunkhwa, Peshawar.

3. **Director Admn,** Excise, Taxation & Narcotics Control, Khyber Pakhtunkhwa, Peshawar

Through

Arbab Khalid Mehmood,
Advocate, Peshawar High Court,
Peshawar / Legal Advisor for
Excise, Taxation & Narcotics Control Deptt:

BEFORE THE HON'BLE SERVICE TRIBUNAL,
KHYBER PAKHTUNKHWA PESHAWAR.

(8)

Service Appeal No. 1207/2015

Pervez Akhtar Junior Scale Stenographer (BPS-14),
Excise & Taxation Office, District Haripur.....**(Appellant)**

VERSUS

5. Secretary to Govt. of Khyber Pakhtunkhwa,
   Excise, Taxation & Narcotics Control Department, Peshawar.
6. Director General, Excise, Taxation & Narcotics Control,
   Khyber Pakhtunkhwa Peshawar.
7. Director (Administration),
   Directorate General, Excise, Taxation & Narcotics Control Peshawar.
8. Mr. Waheed Khan, Stenographer / Acting Superintendent, Directorate General, Excise, Taxation & Narcotics Control, Peshawar.**(Respondents).**

SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974.

REPLY ON BEHALF OF RESPONDENTS NO. 1-4, ON APPLICATION OF APPELLANT FOR STAY.

AFFIDAVIT.

I, Muhammad Javed Marwat, Director General, Excise, Taxation & Narcotics Control Khyber Pakhtunkhwa (Respondent No.2) do hereby solemnly affirm and declare on Oath that contents of the reply is true and correct to the best of my knowledge and belief and nothing has been kept concealed or mis-stated from this Hon'bel Tribunal.

Deponents.

Through

Arbab Khalid Mehmood,
Advocate, Peshawar High Court,
Peshawar / Legal Advisor for
Excise, Taxation & Narcotics Control Deptt:

Annexure-XI

(9)

OPTION

I, Mr. Muhammad Ismail, Stenographer office of the Excise & Taxation Officer Swat do hereby opt that my wife is serving as FST (Teacher) in Swat District and Due to my some domestic problems, I forgo my promotion as Senior Scale Stenographer, (BPS-15).

Yours Obediently.

11/4/2011

MUHAMMAD ISMAIL,
STENOGRAPHER(J/SCALE,
EXCISE & TAXATION OFFICE,
SWAT.

No. 1165 /Acctt: Dated 11/4 /2011.

Forwarded in original to Director General, Excise & Taxation, Khyber Pakhtunkhwa, Peshawar for information and necessary action.

11/4/11

EXCISE & TAXATION OFFICER,
SWAT.

12/
DIRECTOR
EXCISE & TAXATION
KHYBER PAKHTUNKHWA

D. 5933
12/4/2011

Annexure-D F/D

(10)

To

The Director (Admn)
Excise & Taxation Department,
Khyber Pakhtunkhwa, Peshawar.

Subject: OPTION.

Kindly refer to your letter No. 962-63 Dated 9/9/201 on the subject cited above.

I do hereby express my willingness to forego promotion to BPS-15 as Senior Scale Stenographer, please.

(FAQIR KHAN)
Junior Scale Stenographer,
Excise & Taxation Office,
Kohat

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

OFFICE OF THE EXCISE AND TAXATION OFFICER, KOHAT.

No. 4106 /E&T Dated Kohat the 14/9/2011

Forwarded to Director (Admn), Excise & Taxation Department, Khyber Pakhtunkhwa, Peshawar for favourable / sympathetic consideration please.

Excise & Taxation Officer,
Kohat.

Dn 1127 21/9/2011

RK.

12.X.11

TO:-

The Director (Admn),
Excise & Taxation Khyber Pakhtunkhwa,
Peshawar.

SUBJECT:- **OPTION / FINAL NOTICE.**

Kindly refer to your office Option/final Notice No.8072-74/Estb/XXXV-D-412 dated 10-02-2012 on the subject cited above.

Due to some my domestic affairs, I am not in a position to avail the chance of promotion as Senior Scale Stenographer (BPS-15) at this stage, therefore, I, hereby, opt not to avail promotion.

This option is only for a single chance/one time only.

Yours obediently

(ALI GOHAR-I)
Junior Scale Stenographer,
o/o Excise & Taxation Officer-Swabi.

D.No. 2822
01-03-2012

Annexure G

TO

The Director (Admn),
Excise & Taxation Khyber Pakhtunkhwa,
Peshawar.

SUBJECT:- **OPTION / FINAL NOTICE.**

Kindly refer to your office Option/final Notice No.8072-74/Estb/XXXV-D-412 dated 10-02-2012 on the subject cited above.

I, ~~hereby,~~ **opt** ~~not to avail promotion at this stage due to some~~ personal reasons.

This option is only for a single chance/one time only.

Yours obediently

(FIDA MUHAMMAD)
Junior Scale Stenographer,
o/o Director General, E&T, Peshawar.

D.NO 2809
29/2/12

link up.

DIRECTORATE GENERAL, EXCISE & TAXATION, KHYBER PAKHTUNKHWA.

Aucaf Complex, Shami Road, Peshawar Cantt. Phone Nos. 091-9212260-9211209.

ORDER.

Peshawar dated the 20/03/2012.

No. 9726 /Estb/XXXV-D-412. On the recommendation of the Departmental Promotion Committee, **Mr. Waheed Khan,** Junior Scale Stenographer (BPS-12) Office of Director General, Excise & Taxation Khyber Pakhtunkhwa Peshawar, is hereby promoted to the post of Senior Scale Stenographer (BPS-15) on regular basis with immediate effect.

2- The official will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules, 1989.

3- Consequent upon his promotion, **Mr. Waheed Khan,** Senior Scale Stenographer (BPS-15) is posted in the Directorate General, Excise & Taxation Khyber Pakhtunkhwa Peshawar against the vacant post.

DIRECTOR GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR.

No. 9727-31 /Estb/XXXV-D-412.

Copy forwarded for information to;

1- Accountant General, Khyber Pakhtunkhwa Peshawar
2- PS to Secretary Excise & Taxation Khyber Pakhtunkhwa Peshawar.
3- Assistant Director (Accounts) Excise & Taxation Directorate Peshawar.
4- Mr. Waheed Khan, Excise & Taxation Directorate Peshawar.
5- P.File.

DIRECTORATE GENERAL, EXCISE AND TAXATION, KHYBER PAKHTUNKHWA, PESHAWAR

Auqaf Complex, Shami Road, Peshawar.
Phone. 091-9212260

ORDER

Dated 06/08/2013

No. 609 /Estb/XXXV-D-412. In pursuance of the recommendation of the Departmental Promotion Committee meeting held on 05-08-2013, Mr. Waheed Khan, Senior Scale Stenographer (BPS-16) is hereby appointed as Superintendent (BPS-16) on acting charge basis with immediate effect.

2. The above officer will remain on probation for a period of one year in terms of Section-6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

DIRECTOR GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR

No. 610-624/Estb/XXXV-D-412

Copy forwarded for information and necessary action to:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Director (Admn), Excise & Taxation, Khyber Pakhtunkhwa.
3. Director (Revenue), Excise & Taxation, Khyber Pakhtunkhwa.
4. Deputy Director (Registration), Excise & Taxation, Khyber Pakhtunkhwa.
5. Deputy Director (Admn), Excise & Taxation, Khyber Pakhtunkhwa.
6. All Regional Deputy Directors, Excise & Taxation, Khyber Pakhtunkhwa.
7. Assistant Director (Acctts.) Directorate General, Excise & Taxation, Khyber Pakhtunkhwa, Peshawar.
8. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Excise & Taxation Department.
9. PS to Advisor to Chief Minister for Excise & Taxation, Khyber Pakhtunkhwa.
10. Mr. Waheed Khan, Superintendent office of Director General, Excise & Taxation, Khyber Pakhtunkhwa, Peshawar.
11. P.File.

DIRECTOR GENERAL,
EXCISE & TAXATION,
KHYBER PAKHTUNKHWA,
PESHAWAR.

Annexure II (B)

To,

The Worthy Secretary,
Excise & Taxation Department,
Khyber Pakhtunkhwa Peshawar.

Subject: **APPEAL FOR THE GRANT OF PROMOTION AS SUPERINTENDENT IN OWN PAY SCALE / ACTING SUPERINTENDENT TILL THE DECISION OF THE CASE.**

Respected Sir,

Most humbly and respectfully the appellant sets out the submit the following for your kind consideration and favourable action please.

1) That the appellant is a senior most person as Stenographer in Excise & Taxation Department Khyber Pakhtunkhwa and served the department with great zeal and efficiency to the entire satisfaction of his superior. As the senior scales stenographer seniority list has not been circulated to any of the employee.

2) That recently a Departmental Promotion Committee has been constituted and decided the following persons for further promotion, which is contrary to law on governing subjects.

3) That the undersigned /appellant was deferred due to the pendency of the case of Anti-Corruption, but a post has been reserved for the appellant under the provision of Khyber Pakhtunkhwa Civil Servants Promotion Policy Rule -V (a) II.

4) [illegible] Waheed Khan who is most junior [illegible] promoted as Superintendent [illegible] cases.

Diary No. 154
Dated 06-2-2013
PS to Secy: E&T Deptt:

Annexure-II (C)

5) That the appellant is quit deserving for the post of superintendent and if the promotion is not possible till the decision of the case he is liable to be consider as acting superintendent in own pay and scale.

6) That if the opportunity of promotion is not given to the appellant the whole service career and experience has been dilapidated.

7) That so far the approval has not been granted by this august forum if the same is approved then the appellant will suffer irreparable loss and the whole service career will become in fructuous.

It is, therefore, humbly prayed that on acceptance of this appeal the appellant may very graciously be considered for the post of superintendent and the junior person may please be held in absence for further promotion.

Dated 06/08/2013

Yours Obediently

(PARVEZ AKHTAR)
Stenographer
Excise & Taxation Office
Haripur.

Annexure (VI)(B)

OFFICE OF THE EXCISE AND TAXATION OFFICER, HARIPUR

No. ________________/ Dated Haripur, the 01/08/2013

To

The Director General,
Excise & Taxation Khyber Pakhtunkhwa,
Peshawar.

Subject: **MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION COMMITTEE MEETING OF EXCISE & TAXATION DEPARTMENT HELD ON 20/03/2012 AT 11:00AM.**

Memorandum:

Enclosed please find herewith an application (in original) submitted by Mr. Parvaiz Akhtar, stenographer of this office for favourable consideration at your ènd please.

— Sd —
Excise & Taxation Officer,
Haripur

No. 2363/

Copy forwarded to the PA to Secretary Excise & Taxation, KPK, Peshawar for information and favourable consideration please.

Excise & ~~Taxation~~ Officer,
Haripur

Diary No. 144
Dat. 05-08-2013.
P/S to ... E&T Deptt:

D/S for necessary action.

12/08/13

Annexure (IV) C

18

To

The Worthy Secretary,
Excise & Taxation,
Khyber Pakhtunkhwa,
Peshawar.

THROUGH: PROPER CHANNEL:

Subject: **MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION COMMITTEE MEETING OF EXCISE & TAXATION DEPARTMENT HELD ON 20/03/2012 AT 11:00AM & PROMOTION AS SUPERINTENDENT IN OWN PAY SCALE/ ACTING SUPERINTENDENT TILL THE DECISION OF THE CASE**

Respected Sir,

I have honour to refer to the decision taken in the above subject meeting. The decision so taken is affecting the right of applicant in the following manner and that decision is liable to be reversed on the following: -

1. That the official at serial No.6 namely Mr. Waheed Khan is four step below than the applicant. The case of applicant for promotion has been deferred due to his alleged involvement in an anti-corruption case, although one regular post is reserved for him.

2. That Mr. Waheed Khan, who is performing his duties as PA to Director General Excise & Taxation, has got the working paper prepared in his favour for promotion to the post of Superintendent BPS-16, as the erstwhile Superintendent Mr. Muhammad Ali has been promoted as ETO from the post of Superintendent and the said post is lying vacant. In case, the said official succeeds in getting promotion as Superintendent, the right of applicant to be promoted as such would highly be infringed, therefore, till the decision in the case of petitioner / applicant, the promotion to the post of Superintendent may kindly be kept pending, .

3. That due to the expected promotions, when the alleged case against the petitioner is disposed off, he would definitely suffer irreparable loss, resulting into grave miscarriage of justice.

4. That petitioner has got no objection on the promotion of Mr. Waheed Khan as Senior Scale Stenographer, the seniority of the applicant may kindly be considered from the date his initial appointment and the period, for which the case of petitioner has been deferred, may graciously be considered as part and parcel of his whole service.

It is, therefore, humbly requested that the presentation / application may graciously be considered in view of the above submissions and the promotion to the post of superintendent may kindly be kept pending till the decision in the case of petitioner, appeal and or adjusted upon the post of superintendent on his own pay and scale and acting charge be given to appellant.

PERVAIZ AKHTAR 29/7/13
Stenographer
Excise & Taxation Office,
Haripur

The

The Worthy Secretary to Government of Khyber Pakhtunkhwa,
Excise & Taxation Department, Peshawar.

Subject: REPRESENTATION AGAINST DEFERRING THE PROMOTION OF THE APPELLANT AS SENIOR SCALE STENOGRAPHER FROM BPS-14 TO BPS-16 AND ONWARD AS SUPERINTENDANT BPS-17.

Respected Sir,

The appellant, submits most respectfully the following for your kind consideration and favour of acceptance,

1. That the applicant being qualified and eligible was selected and appointed as Junior Scale Stenographer BPS-12 (Now BPS-14) on 23/12/1989 and has been serving the department honestly and diligently to the utmost satisfaction of his superiors till date.

2. That on 20/03/2012, a meeting of Departmental Promotion Committee of Excise & Taxation Department was held between six(6) junior scale stenographers, whereby, the appellant was deferred for promotion from Junior Scale Stenographer (BPS-14) to Senior Scale Stenographer (BPS-16), due to his involvement in anti corruption case. However, one regular post was reserved for him as recorded in minutes of the said DPC meeting. Copy is attached as ***Annexure-I.***

3. That on 19/09/2013, the applicant was honourably acquitted, by the Honourable Special Judge Anti Corruption (Provincial), Peshawar Camp at Abbottabad. Copy of Acquittal Order is attached as ***Annexure-II.*** After that I requested a number of times for conducting a DPC for my promotion but with no fruitful results. And intentionally, I have been ignored till date. Copies of my requests are attached as ***Annexure-III*** and ***Annexure-IV***

4. That one Mr. Muhammad Ismail, placed at S .No. 1 of the seniority list of Junior Scale Stenographers, had earlier opted to forego his promotion, therefore the appellant was supposed to be placed at S. No. 1 of the list for promotion to next higher scale. However again intentionally, I my name was placed at S. No. 2. Copy of Seniority List is attached as ***Annexure-V.*** Similarly other persons who were in line of promotion also opted to forgo the promotion. Resultantly Mr. Waheed Khan who was at serial No. 6 of the seniority list of Junior Scale Stenographer was cleared for promotion as Senior Scale Stenographer and later a DPC was conducted again on 05.08.2013 and Mr. Waheed Khan was appointed as superintendent on acting charge basis by the Director General Excise and Taxation, Khyber Pakhtunkhwa Peshawar. Copies of the DPC Meeting and appointment order are attached as ***Annexure-VI*** and ***Annexure-VII***, respectively.

5. The promotion case in respect of Mr. Waheed Khan to the post of Superintendent(BPS-17) on regular basis is also under process and working papers have already been sent to your good office by the Director General Excise and Taxation Khyber Pakhtunkhwa.

6. Appellant after his honourable acquittal by the court of competent jurisdiction, is lawfully entitled to be considered for promotion to the next

7. The appellant is entitled to the benefit promotion as well as that of inter se seniority in terms of Para-V(b) & (d) of the Promotion Policy, Estacode 2011 and Explanation-I & II to Rule-17(1) of the NWFP Civil Servants(Appointment, Promotion and Transfer) Rules, 1989 and FR 54 Copies attached as ***Annexure-VIII, Annexure-IX & Annexure-X,*** respectively.

8. That a civil servant who has opted to decline the benefit of promotion under Rule 7 sub Rule 5, he would not be entitled to be considered for promotion for next four years. Copy attached as ***Annexure-IX.*** The option to forgo promotion by Mr. Muhammad Ismail, Junior Scale Stenographer is attached as ***Annexure-XII***. However, arbitrarily without considering the relevant provisions, Mr. Muhammad Ismail, Junior Scale Stenographer has not only been shown senior to me in the seniority list for 2013 but has also been cleared for promotion in the working papers submitted by the Director General Excise and Taxation Khyber Pakthunkhwa for promotion of the junior scale stenographers. Copy of working paper is attached as ***Annexure-XIII.***

9. The appellant in view of the service rules notified vide No. SO(Estt)E&T/1-41/2009 dated 30-03-2010, meets the requisite criteria for promotion to the post of Senior Scale Stenographer and then Superintendent BPS-17. Copy of the Notification/service rules is attached as ***Annexure-XIV.***

10. The appellant has been denied of his legitimate right to be considered for promotion in-spite of his seniority cum fitness.

11. The impugned omission is thus arbitrary, discriminatory, against the principles of natural justice, law and propriety, calling for interference by the worthy authority.

Prayer:

In view of the above, it is requested that by accepting this representation / appeal, the appellant may kindly be considered for promotion to the post of Senior Scale Stenographer BPS-16 w.e.f 20/03/2012, with all back benefits of continuous service and may also be allowed 2nd step promotion on the basis of his seniority to the post of Superintendent BPS-17 on regular basis with retrospective effect.

Dated: 23rd Dec, 2014

23-12-2014

PERVAIZ AKHTAR
Junior Scale Stenographer BPS-14
Excise & Taxation Office Haripur

200

MINISTER
FOR HIGHER EDUCATION & INFORMATION,
KHYBER PAKHTUNKHWA

No. PS/MIN/INFO&HE/KP/2015
Dated Peshawar the 08.07.2015

Subject: **REQUEST FOR PROMOTION TO THE POST SENIOR SCALE STENOGRAPHER/SUPERINTEDENT**

My Dear,

Enclosed please find herewith an application submitted by Pervez Akhtar Junior Scale Stenographer Excise & Taxation office Haripur, requesting for promotion as senior scale stenographer/superintendent.

I shall be grateful, if request of the above named official is considered and resolve his problems under relevant rules/policy of the department.

Yours sincerely,

(Mushtaq Ahmad Ghani)

Secretary, Excise & Taxation,
Khyber Pakhtunkhwa.

Diary No. 445
Dt. 08-7-2015
PS to Secy: E&T Deptt:

AS
DS
9/7/15
For necessary action

201

The Worthy Secretary to Government of Khyber Pakhtunkhwa,
Excise & Taxation Department, Peshawar,

Subject; **REPRESENTATION AGAINST DEFERRING THE PROMOTION OF THE APPELLANT AS SENIOR SCALE STENOGRAPHER FROM BPS-14 TO BPS-16 AND ONWARD AS SUPERINTENDENT BPS-17.**

Memorandum:

Kindly refer the representation of the Appellant dated 23/12/2014 received by your good Office vide diary No. 508 dated 24/12/2014 (copy enclosed)

Respected sir,

It is respectfully submitted that decision of the above cited refer representation was kept pending due to pedency of Service appeal of the appellant, however, the said service appeal is with drawn vide order dated 22/04/2015 of the Honourable Service Tribunal Court Peshawar Bench at Abbottabad (copy attached).

It is respectfully prayed that the representation of the appellant now may kindly be accepted/decided in interest of Justice of Law.

PERVAIZ AKHTAR
Junior Scale Stenographer BPS-14
Excise & Taxation Office Haripur

BEFORE THE SERVICE TRIBUNAL, KHYBER PUKHTUNKHWA
PESHAWAR

Service Appeal No. 465 /2014

Parvez Akhtar (Junior Scale Stenographer BPS-14)
Excise & Taxation Office Haripur

.....Appellant

VERSUS

1. Secretary Excise & Taxation,
Government of Khyber Pakhtunkhwa Peshawar

2. Director General, Excise & Taxation,
Government of Khyber Pakhtunkhwa Peshawar

3. Director Admin, Excise & Taxation,
Government of Khyber Pakhtunkhwa Peshawar

.....Respondents

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SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974, WHEREBY THE DEPARTMENTAL REPRESENTATION OF THE APPELLANT DATED 18-11-2013 (ANNEX "A") AGAINST THE DECISION OF D.P.C. (ANNEX "B") WHEREBY HE WAS DEFFERED FOR PROMOTION, WAS NOT DECIDED WITHIN THE STATUTORY PERIOD OF LIMITATION.

22.04.2015 Counsel for the appellant, Syed Hamad Ali Shah, Legal Adviser alongwith Mr.Arshad Javed, Inspector (lit) and Mr. Muhammad Tahir Aurangzeb, G.P for respondents present.

During the course of preliminary hearing learned counsel for the appellant, when confronted with the fact that no final order has yet been passed by the authority, requested for withdrawal of appeal with the submission that the appellant may sue afresh, if final order is passed by the authority.

In view of the above, the appeal is dismissed as withdrawn. The appellant may sue afresh in respect of the same cause of action if the competent authority passes any final order to the disadvantage of appellant. File be consigned to the record.

ANNOUNCED
22.4.2015

Chairman
Camp Court A/Abad

GOVERNMENT OF KHYBER PAKHTUNKHWA
EXCISE, TAXATION AND NORCOTICS CONTROL DEPARTMENT

NO. SO(Admn)E&T/1-12/2009/391-93
Dated Peshawar the 11.09.2015

To

The Director General,
Excise, Taxation & Narcotics Control,
Khyber Pakhtunkhwa, Peshawar.

Subject:- **APPEAL AGAINST THE IMPUGNED SENIORITY LIST ISSUED AND PREPARED BY DIRECTOR GENERAL EXCISE & TAXATION KPK DATED 31/08/2014 IN RESPECT OF MR. WAHEED KHAN, WHICH IS ILLEGAL UNLAWFUL, AGAINST THE PRINCIPLE OF NATURAL JUSTICE, INFECTIVE UPON THE RIGHTS OF APPELLANT AND LIABLE TO BE SET-ASIDE.**

I am directed to refer to the representation of Mr. Pervaiz Akthar, Jr. Scale Stenographer o/o ETO Haripur received on 08/07/2015 on the subject noted above and to say that the competent authority has filed his request in light of your letter No. 1500/Estb/P-File dated 19/08/2015.

SECTION OFFICER (ADMN)

Endst: No. & Date Even.

Copy forwarded to the:-

1. Mr. Pervaiz Akthar, Jr. Scale Stenographer o/o ETO Haripur alongwith copy of parawise comments submitted by Director General Excise, Taxation & Narcotics Control.
2. P.S to Secretary Excise, Taxation & Narcotics Control Department, Khyber Pakhtunkhwa, Peshawar.

SECTION OFFICER (ADMN)

Keep in the P.file of official concerned
16/9/15

Auqaf Complex, Shami Road, Peshawar. Phone No. 091-9212200

No. 1500 /Estb/P.File Peshawar dated 19 /08/2015

To Secretary to Govt. of Khyber Pakhtunkhwa,
Excise, Taxation & Narcotics Control Department, Peshawar.

SUBJECT:- **APPEAL AGAINST THE IMPUGNED SENIORITY LIST ISSUI AND PREPARED BY DIRECTOR GENERAL EXCISE, TAXATIC KPK DATED 31-08-2014 IN RESPECT OF MR.WAHEED KHA WHICH IS ILLEGAL UNLAWFUL AGAINST THE PRINCIPLE NATURAL JUSTICE, INFECTIVE UPON THE RIGHTS APPELLANT AND LIABLE TO BE SET-ASIDE.**

Kindly refer to your office letter No.SO(Admn)E&T/1-12/2009/57 49, Dated 03-08-2015 on the subject captioned above.

2) Para wise comments are given as under;-

1- Para-1, correct.

2- In reply to para-2/N it is submitted that the appellant was involved a criminal case vide FIR No.03 dated 15-07-2011 charged un section 161 PPC/5(2) PC Act, by the Anti Corruption Departm Haripur. In result of **compromise** he was acquitted in the case.

3- Para -3, needs no reply.

4- In reply to Para-4/N, it is submitted that on the report of Mr.Nazik Khan S/o Noor Hussain R/o Bin Meraloli, District Harip The said criminal case was registered against the appellant wh was concluded on the basis of compromise. The Anti Corrupt Department District Haripur had no role as alleged in the para.

5- In reply to Para -5/N, it is submitted that the appellant was acquit in the said criminal case on the basis of compromise.

6- Para-6/N, is correct to the extent that the Departmental Promot Committee meeting was held on 20-03-2012, under the auspices Director General, Excise, Taxation & Narcotics Control and due pendency of said criminal case against appellant he was differed his case for promotion was not considered, accordingly.

7- Para-7/N, is also correct to the extent that the Departme Promotion Committee meeting was held on 05-08-2013 and in v of pendency of criminal case against appellant, his promotion was not liable to be considered under the Law. In response to stated representation reply was given to appellant, whereby the facts were intimated to him, copy attached at **(Flag-A)**.

8- Para-8/N, is correct to the extent of maintaining seniority list regarding Junior Scale Stenographer. The remaining para regarding incorrect shown seniority of the appellant is incorrect against the facts and law hence, denied.

9- In reply to Para-9, it is submitted that after acquittal in the criminal case the promotion of appellant is under consideration of the Departmental Promotion Committee, and in view of the relevant rules the appellant will be considered for appointment as Senior Scale Stenographer on acting charge basis, because of the fact, that appellant stands at S.No.2 of the relevant seniority list.

10- According to rules the final seniority list of Junior Scale Stenographer as it stood on 31-12-2014 issued on 08-01-2015, copy enclosed at **(Flag-B)** for ready reference accordingly. The allegation of incorrect seniority list are denied.

11- In correct Para-11, is against the facts and law, hence denied. Muhammad Ismail, Junior Scale Stenographer though had opted to forgo promotion but this was regarding the case of promotion on 11-04-2011 at **(Flag-C)**, thereafter the said Muhammad Ismail, Junior Scale Stenographer filed an application / affidavit the said ***"option of forgoing promotion"*** shall not be considered any more at **(Flag-D)**. Thereafter, Muhammad Ismail, Junior Scale Stenographer is at S.No.1, while the appellant is at S.No.2, of the seniority list regarding Junior Scale Stenographer, maintained at the time.

3) In view of aforementioned facts the appeal of appellant is devoid of any legal substance beside barred by time, therefore, it is liable to be **DISMISSED**.

Encls: 05 Nos.

18/8/15

DIRECTOR GENERAL,
EXCISE, TAXATION & NARCOTICS,
CONTROL KHYBER PAKHTUNKHWA,
PESHAWAR.

27

2013 S C M R 911

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali and Muhammad Ather Saeed, JJ

ABDUL SATTAR---Petitioner

Versus

FEDERATION OF PAKISTAN and others---Respondents

C.P.L.A. No.957-K of 2011, decided on 6th June, 2012.

(On appeal from order of Federal Service Tribunal, Islamabad (Karachi Bench) dated 27-12- passed in Appeal No.27(K)CS/2008.)

(a) Service Tribunals Act (LXX of 1973)---

----S. 4---Filing of appeal before Service Tribunal---Limitation---Successive departmental appeals ca extend period of limitation (for filing appeal).

1998 SCMR 882; 1999 PLC (C.S.) 510 and 1999 PLC (C.S.) 862 ref.

(b) Service Tribunals Act (LXX of 1973)---

----S. 4---Filing of appeal before Service Tribunal---Limitation---Significance---Question of limit should be considered seriously in service matters.

2010 SCMR 1982 rel.

(c) Service Tribunals Act (LXX of 1973)---

----S. 4---Filing of appeal before Service Tribunal---Limitation---Significance--- Question of limita cannot be considered a technicality simpliciter as it had its own significance and would have substa bearing on the merits of the case.

2011 SCMR 8 rel.

Ghulam Rasool Mangi, Advocate Supreme Court and Ghulam Qadir Jatoi, Advocate-on-Rec for Petitioner.

Sanaullah Noor Ghori, Advocate Supreme Court and A.S.K. Ghori, Advocate-on-Record Respondent No.1.

Ashiq Raza, D.A.-G. for Respondents Nos.2 and 3.

Date of hearing: 6th June, 2012.

28

ORDER

ANWAR ZAHEER JAMALI, J.---This petition for leave to appeal assails the order dated 27-10-2011, in Appeal No.27(K)CS/2008, passed by Federal Service Tribunal, Islamabad, Karachi Bench, whereby the said appeal before the Tribunal was dismissed on the ground that it was barred by time. Relevant discussion contained in the impugned order reads as follows:--

"6. We have considered the above arguments and carefully perused the record. Apparently, appeal is time barred, as the appellant has approached this Tribunal on 22-3-2008 against the order dated 15-6-2007 after filing a departmental appeal on 15-7-2007, which remained un-responded. An application for condonation of delay has also been filed along with the appeal wherein no reasonable ground has been taken except that the appellant has been continuously approaching the respondents fo promotion in the cadre of Commercial Inspector BS-16 as per merit, but the same remained unresponded Last application submitted on 20-11-2007, has not been responded to. It may be mentioned here tha successive departmental appeal cannot extend period of limitation. We rely on 1998 SCMR 882, 199 PLC (C.S.) 510 and 1999 PLC (C.S.) 862. Besides, it has been held in 2010 SCMR 1982 that, "civ servant remained in deep slumber for more than 20 years and it was too late in the day to question th legality of additional note. No plausible justification could be furnished by civil servant for the dela except that question of limitation was nothing more but a technicality which was an incorrect approac Question of limitation could not be taken lightly, as in service matters such question should be consider seriously." In 2011 SCMR 8, it was also held that, "Question of limitation cannot be considered "technicality" simpliciter as it has got its own significance and would have substantial bearing on mer of case."

2. Learned Advocate Supreme Court for the petitioner has not disputed that in fact the app preferred by the petitioner before the Tribunal was barred by time. This being the position, we find valid reason for interference in the impugned order. Besides, no question of law of public importa is involved in this petition. Dismissed. Leave refused.

Petition dismissed.

MWA/A-3/SC

2015 S C M R 269

[Supreme Court of Pakistan]

Present: Anwar Zaheer Jamali, Iqbal Hameedur Rahman and Qazi Faez Isa, JJ

GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and others---Appellants

Versus

MUHAMMAD JAVED and others---Respondents

Civil Appeals Nos.795 to 805 of 2014, decided on 24th November, 2014.

(On appeal from the judgment dated 26-2-2014 passed by the Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals Nos.1175 to 1184 of 2012)

(a) Khyber Pakhtunkhwa Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979---

----Appendex---Khyber Pakhtunkhwa Service Tribunals Act (I of 1974), S. 3--- Promotion quota, reduction in---Provincial Government changing promotion criteria by prescribing higher education qualification--- Service Tribunal, jurisdiction of---Sub-Engineers (BPS-11) (respondents) were appointed in Irrigation Department on the basis of having a diploma in Associate Engineering and enjoyed 20% reserved quota for promotion to the post of Assistant Engineer (BPS-17) as provided in the Khyber Pakhtunkhwa Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979---Said Rules were amended and stipulated promotion quota of appellants was reduced to 15% and a new category (for promotion) was created for those Sub-Engineers who possessed a degree in B.Tech. (Hons.) and who had passed Grade A and Grade B examinations with a minimum service of five years---Appellants contended that carving out of such new 'category' of degree holders had reduced the promotion prospects of diploma holders—Service Tribunal directed the Provincial Government to reconsider the amendments made to the Rules and in the meantime put on hold promotions under the amended Rules---Legality---Amendment made to the Rules in question was not with a view to accommodate specific individuals or for any other ulterior motive---Service Tribunal appeared to have been impressed by the fact that there were one hundred and thirty diploma holders whereas there were only thirteen graduates having B.Tech (Hons.) degrees, therefore, in the opinion of the Tribunal it was necessary to preserve the quota of the diploma holders---Concern of the Tribunal effectively meant that if there were many less qualified persons they should have greater prospects for advancement and those who had higher qualifications or who had improved their qualifications should not have an advantage---Such anxiety and concern of the Tribunal was misplaced---Amendment made to the Rules in question was a policy matter and the Government was empowered to reduce the promotion quota of Sub-Engineers holding diploma, and also to create a separate promotion quota for those holding B.Tech (Hons.) degree; the same was also not justiceable---Service Tribunal had clearly exceeded its jurisdiction in issuing directions to Provincial Government for reconsideration of the impugned amendment and by putting on hold the promotions under the amended Rules---Appeal was allowed accordingly and judgment of Service Tribunal was set aside.

Dr. Alyas Qadeer Tahir v. Secretary M/o Education 2014 SCMR 997 ref.

(b) Civil service---

----Promotion, criteria for---Educational qualification---Government changing promotion criteria by prescribing higher educational qualification---Effect---When talent, skill and capability was rewarded, it provided opportunity to ambitious employees, and if those amongst them who were better qualified received a differential focus it benefited the department and the people of the country, as all civil servants were there to serve the people---Similarly, if the bar to aspire to higher positions (i.e. promotion) was raised, it encouraged and motivated employees to take ownership of their careers and personal development---Moreover, when higher educational qualification and talent was appreciated it made for a more transparent system of advancement and may also help to retain talented individuals in an organization.

(c) Service Tribunals Act (LXX of 1973)---

----S. 3---Constitution of Pakistan, Art. 212(1)(a)---Service Tribunal, jurisdiction of---Civil service---Promotion criteria---Educational qualification---Government changing promotion criteria by prescribing higher educational qualification---Policy matter---Where the Government, as a policy matter, wanted to restrict promotion to those having degrees, or create another category of such persons, it was not ultra vires of any law nor was it unreasonable---Such matter fell within the exclusive domain of the Government, which, in the absence of demonstrable mala fides could, not be assailed.

Executive District Officer (Revenue) v. Ijaz Hussain and another 2012 PLC (C.S.) 917 and Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division PLD 1995 SC 701 ref.

(d) Service Tribunals Act (LXX of 1973)---

----S. 3---Constitution of Pakistan, Art. 212(1)(a)---Civil service---Promotion, right of---Promotion criteria---Justiciability---Neither promotion nor the criteria set out to aspire for promotion could be categorized as a 'right' that could be justiceable.

Zafar Iqbal v. Director, Secondary Education 2006 SCMR 1427 ref.

Mian Arshad Jan, Additional A.-G., Khyber Pakhtunkhwa for Appellants (in Civil Appeal No.795 of 2014).

Ghulam Mohy-ud-Din Malik, Advocate Supreme Court for Respondents Nos. 2 - 4 (in Civil Appeal No.795 of 2014).

Nemo for Respondents Nos.1, 5 - 8 (in Civil Appeal No.795 of 2014).

Ghulam Mohy-ud-Din Malik, Advocate Supreme Court for Appellants (in Civil Appeals Nos.796, 797, 799 - 801, 804 and 805 of 2014).

Mian Arshad Jan, Additional A.-G., Kyber Pakhtunkhwa for Respondents Nos.1 - 4 (in Civil Appeals Nos.796, 797, 799 - 801, 804 and 805 of 2014).

Ijaz Anwar, Advocate Supreme Court and M.S. Khattak, Advocate-on-Record for Respondent No.5 (in Civil Appeals Nos.796, 797, 799 - 801, 804 and 805 of 2014).

Nemo for Respondents Nos.6 to 9 (in Civil Appeals Nos.796, 797, 799 - 801, 804 and 805 of 2014).

Ghulam Mohy-ud-Din Malik, Advocate Supreme Court for Appellants (in Civil Appeals Nos.798, 802 and 803 of 2014).

Mian Arshad Jan, Additional A.-G., Khyber Pakhtunkhwa for Respondents Nos.1 to 4 (in Civil Appeals Nos.798, 802 and 803 of 2014).

Nemo for Respondents Nos.5 to 9 (in Civil Appeals Nos.798, 802 and 803 of 2014).

Date of hearing: 11th November, 2014.

JUDGMENT

QAZI FAEZ ISA, J.---These appeals arise out of a judgment dated 26th February, 2014 of the Hon'ble Khyber Pakhtunkhwa. Service Tribunal ("Tribunal") whereby through a common judgment ten service appeals were disposed of in the following terms:--

"(14) Having said that, there can possibly be no cavil with the legal propositions that the Government has the authority to frame rules and also introduce amendments in the relevant rules to enhance qualification for a particular post; but the issue here is not that of amendments in the rules for enhancement of the qualification, rather dispute is with regard to unilaterally curtailing of quota of a particular class of employees to their detriment. One can also make no bones about the fact that jurisdiction of the Service Tribunal is barred in cases of promotion; but primarily the appeals have been lodged against amendments introduced in the service rules, which, according to the appellants, did not meet the ends of law and justice.

(15) As a sequel to the foregoing discussion, on the partial acceptance of the appeals, the case of amendments in question is referred to the competent authority i.e. Secretary to Government of Khyber Pakhtunkhwa, Irrigation Department (respondent No.2) for reconsideration of the impugned amendments in the light of above discussion and observations made in the judgment for a just decision and further necessary action, under intimation to the Registrar of the Tribunal, within reasonable time. In order to avoid further legal complications and frustration of the spirit of this judgment, promotions under the amended rules be put on hold in the meantime. There shall, however, be no order as to costs."

2. That in the appeals before the Tribunal it was contended that the appellants therein were working in the Irrigation Department as Sub-Engineers (BPS-11) and were appointed on the basis of having a diploma in Associate Engineering and enjoyed 20% reserved quota for promotion to the post of Assistant Engineer (BPS-17) as provided in the Khyber Pakhtunkhwa Irrigation and Public Health Engineering Department (Recruitment and Appointment) Rules, 1979 ("the Rules"), which were amended by reducing their stipulated quota as a new category was created for those Sub-Engineers who possessed a degree in B.Tech. (Hons.) and who had passed Grade A and Grade B examinations with a minimum service of five years. It is stated that carving out of this new 'category' of degree holders had reduced the promotion prospects of the appellants who were diploma holders.

3. That with regard to the post of Assistant Engineers, both in respect of initial recruitment and promotion, it would be appropriate to reproduce the applicable requirements mentioned in the Appendix of the Rules as it originally stood and as it was amended from time to time, as under:--

As originally stood vide Notification dated 30th April, 1979:

(32)

(a) Seventy per cent by initial recruitment and

(b) Ten per cent by selection on merit with due regard to seniority from amongst sub-engineers of the Deptt: concerned in which the vacancy occurs, who hold a degree: and

(c) Twenty per cent by selection on merit with due regard to seniority from amongst officiating Assistant Engineers of the vacancy occurs, who hold a diploma."

As amended vide Notification dated 27th February, 1999:

"(a) Sixty five percent of the total posts by initial recruitment;

(b) Ten percent of the total posts by promotion, on the basis of seniority-cum-fitness from amongst the Sub-Engineers possessing Diploma at the time of their induction into service but acquired degree in Engineering during service;

(c) Ten percent of the total posts by Promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers who joined service as Degree holders in Engineering; and

(d) Fifteen percent of the total posts by selection on merit with due regard to seniority, from amongst the officiating Assistant Engineers/Senior Scale Sub-Engineers, the [sic] who hold a Diploma in Engineering and have passed Departmental Examination;

Provided that where a candidate under clause (b) above is not available, the vacancy shall be filled from amongst Diploma holders Sub-Engineer;

Provided further that where a candidate under clause (c) above is not available, the vacancy shall be filled by initial recruitment."

As further amended by Notification dated 17th February, 2011:

"(a) Sixty five percent by initial recruitment.

(b) ten percent by promotion, on the basis of seniority cum fitness, from amongst the Sub-Engineer's who has acquired during service degree in Civil or Mechanical Engineering from a recognize university.

(c) five percent by promotion, on the basis of seniority cum fitness, from amongst the Sub-Engineer's who joined service as degree holders in Civil/Mechanical Engineering and

(d) twenty percent by promotion, on the basis of seniority-cum-fitness from amongst the Sub-Engineer's, who hold a diploma of Civil, Mechanical, Electrical or Auto Technology and have passed Departmental Grade A examination with ten years service as such.

Note: Provided that where candidate under Clauses (b) and (c) above is not available for promotion, the vacancy shall be filled in by initial recruitment."

As finally amended by Notification dated 25th June, 2012:

"(b) twenty percent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub Engineers, having degree in Civil Engineering or Mechanical Engineering from a recognized university and have passed departmental grade B&A examination with five year service of such.

(33)

Note:- For the purpose of Clause (b), a Joint seniority list of the Sub-Engineers having Degree in Civil Engineering or Mechanical Engineering shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub-Engineer.

(c) eight per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers, having Degree in B.Tech. (Hons.) and have passed departmental Grade B and A examination with five years service as such; and

Note:- For the purpose of clause (c), a seniority list of Sub-Engineers having Degree in B.Tech. (Hons.) shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub-Engineer.

(d) fifteen per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Engineers, who hold a Diploma of Associate Engineer in Civil, Mechanical, Electrical or Auto Technology and have passed departmental Grade B and A examination, within five years service as such.

Note:- For the purpose of clause (d), a seniority list of Sub-Engineers having Diploma of Associate Engineering in Civil Mechanical, Electrical or Auto Technology shall be maintained and their seniority is to be reckoned from the date of their 1st appointment as Sub-Engineer.

Note:- The, quota of clauses (b), (c) and (d), above respectively shall be filled in by initial recruitment, if no suitable Sub-Engineer is available for promotion;"

The grievance of the appellants before the Tribunal was that their promotion quota had been curtailed from 20% to 15% vide clause (d) of the Notification dated 25th June, 2012. They had further prayed that the Government be restrained from processing the promotion cases on the basis of such Notification and in particular of those who had obtained the B.Tech. (Hons.) degree.

4. Mr. Arshad Jan, Additional Advocate-General, Khyber Pakhtunkhwa, and Mr. Ghulam Mohy-ud-Din Malik, Advocate Supreme Court (on behalf of private appellants, who possessed B.Tech. (Hons.) degree) have assailed the impugned judgment on the following grounds:-

(1) That the Hon'ble Tribunal had no jurisdiction as the Rules were amended by the Government and not by any 'departmental authority' and in this regard reliance was placed upon section 4 read with section 7 of the Khyber Pakhtunkhwa Service Tribunals Act, 1974;

(2) That the amendment was made to ensure that the higher positions are held by those who were competent and possessed the requisite qualifications;

(3) That the diploma holders could also obtain degree in B.Tech. (Hons.) and then they too could also avail of the benefit of clause (c) as lastly amended;

(4) That the amendment made in the Rules was not person specific nor had any element of mala fide;

(5) That promotion or reserving a certain quota for promotion cannot be claimed as a vested right; and

(6) That the matter was within the domain of policy and beyond the jurisdiction of the Tribunal.

(34)

dgement

Reliance was also placed upon the following precedents:--

Dr. Alyas Qadeer Tahir v. Secretary M/o Education (2014 SCMR 997)

Executive District Officer, (Revenue) v. Ijaz Hussain (2012 PLC (C.S.) 917)

Zafar Iqbal v. Director, Secondary Education (2006 SCMR 1427)

Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division (PLD 1995 SC 701)

5. That Mr. Ijaz Anwar, learned counsel appearing for the respondents (appellants before the Service Tribunal), urged that the Tribunal had jurisdiction to decide the matter as the amendment to the Rules had affected their terms and conditions of service and in this regard placed reliance upon the cases of Muhammad Mubeen-us-Salam v. Federation of Pakistan (PLD 2006 SC 602) and I. A. Sharwani v. Government of Pakistan (1991 SCMR 1041).

He further stated that, at the time when the appellants before the Tribunal joined service the Rules prescribed a certain quota for promotion to the next higher grade of Assistant Engineer and such quota could not be reduced as it would adversely affect their prospects of advancement. It was lastly contended that there were a large number of diploma holder Sub-Engineers whereas only a few possessed B.Tech. (Hons.) degree.

6. That the appeal against the judgment of the Tribunal lies to this Court if it involves a substantial question of law of public importance (sub-article (3) of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973) and if leave has been granted. In these cases leave was granted by this Court vide order dated 29th May, 2014, relevant portion whereof is reproduced hereunder:--

"Having heard the learned counsel for the petitioners in Civil Petitions Nos.592 to 601 of 2014 and learned Advocate-General, Khyber Pakhtunkhwa in Civil Petition No.230-P of 2014, leave to appeal is granted in all these petitions inter alia to consider whether the rules for promotion of Assistant Engineers (BS-17), Irrigation Department, could be subjected to judicial review before the Service Tribunal..."

The question whether the Tribunal can impinge upon the right of the Government to make rules stipulating the criteria for promotion, and having done so the Government cannot change the same, is undoubtedly a substantial question of law of public importance.

7. With the help of the learned counsel we have examined the Appendix to the Rules and we have not been able to detect that the amendment finally made thereto was with a view to accommodate specific individuals or for any other ulterior motive. We have also gone through the contents of the service appeals wherein no allegation of mala fide was levelled. Therefore, the only questions for our consideration are, firstly, whether the Hon'ble Tribunal exceeded its jurisdiction and, secondly, whether the quota of any class of employees (diploma holders herein) could not be reduced, and to create from amongst them a separate quota of degree holders who would also be eligible for promotion as Assistant Engineers.

8. The Tribunal appears to have been impressed that there were one hundred and thirty diploma holders whereas there were only thirteen graduates having B.Tech. (Hons.) degrees, therefore, in the opinion of the Hon'ble Tribunal it was necessary to preserve the quota of the diploma holders. The concern of the Tribunal effectively meant that if there are many less qualified persons they should have greater prospects for advancement and those who had higher

qualifications or who had improved their Qualifications should not have an advantage. The anxiety of the Tribunal in this regard was misplaced. In the reported case of Dr. Alyas Qadeer Tahir v. Secretary M/o Education (2014 SCMR 997), it was held:--

"Its right to improve and update its service structure to keep pace with modern age which is indisputably the age of specialization cannot be restrained or restricted on the ground that at the time of appointment of one or a few civil servants, such qualification was not a requirement for promotion. Higher qualification or a more specialized qualification for a post in a higher scale is a need of the hour which has to be taken care of. The vires of validity of Rules or amendments therein attending to such aspects, cannot, therefore, be looked askance at. The more so when there is absolutely nothing in the Rules to show that they are either person specific or an off shoot of mala fides."

9. That where talent, skill and capability is rewarded it provides opportunity to ambitious employees and if those amongst them who are better qualified receive a differential focus it benefits the department and the people of Pakistan, as all civil servants are there to serve the people. Similarly, if the bar to aspire to higher positions is raised it encourages and motivates employees to take ownership of their careers and personal development. Moreover, when higher educational qualification and talent is appreciated it makes for a more transparent system of advancement and may also help to retain talented individuals in an organization.

10. That it was not a case of the appellants before the Tribunal that they were prevented from improving their qualifications, therefore, if the government, as a policy matter, wants to restrict promotion to those having degrees, or create another category of such persons it is not ultra vires of any law (even though no law was cited in this regard) nor is it unreasonable. The matter fell within the exclusive domain of the Government, which, in the absence of demonstrable mala fides could, not be assailed as held in the case of Executive District Officer (Revenue) v. Ijaz Hussain and another (2012 PLC (C.S.) 917), as under:--

"If the said power is exercised in a mala fide manner, it is the particular mala fide act which can be challenged and struck down."

"The framing of the recruitment policy and the rules thereunder, admittedly, fall in the executive domain. The Constitution of Islamic Republic of Pakistan is based on the well known principle of trichotomy of powers where legislature is vested with the function of law making, the executive with its enforcement and judiciary of interpreting the law. The Court can neither assume the role of a policy maker or that of a law maker."

Similarly, in the case of Fida Hussain v. The Secretary, Kashmir Affairs and Northern Affairs Division (PLD 1995 SC 701), it was held, that:--

"It is exclusively within the domain of the government to decide whether a particular qualification will be considered sufficient for promotion from a particular Grade to a higher Grade and it is also within the domain of the Government to change the above policy from time to time as nobody can claim any vested right in the policy."

11. That neither promotion nor the criteria set out to aspire for promotion can be categorized as a 'right' that could be justiceable. In this regard reference may be made to Zafar Iqbal v. Director, Secondary Education (2006 SCMR 1427), wherein we had held, that:--

"The Government is always empowered to change the promotion policy and the domain of the Government to prescribe the qualification for a particular post through amendment in the relevant rules, is not challengeable. This is also a settled law that notwithstanding fulfillment of

the requirement qualification and other conditions contained in the rules, the promotion cannot be claimed as a vested right."

12. The Tribunal had directed the Government, "for reconsideration of the impugned amendments" and further directed that, "promotions under the amended rules be put on hold in the meantime." The Hon'ble Tribunal had clearly exceeded its jurisdiction in issuing such directions.

13. In conclusion, since it was a policy matter the Government was empowered to reduce the said quota of diploma holder Sub-Engineers for promotion to the post of Assistant Engineers and also to create a separate quota of B.Tech. (Hons.) degree holders for promotion to the post of Assistant Engineers; the same was also not justiceable, and in directing the Government to reconsider the same and to hold in abeyance the promotions made in accordance with the Rules as finally amended the Tribunal exceeded its jurisdiction.

14. That we had allowed these appeals vide our short order dated 11th November, 2014 reproduced hereunder:--

"We have heard the arguments of the learned ASCs representing different parties in these connected appeals. For the reasons to be recorded separately, these appeals are allowed, the judgment dated 26-2-2014 is set aside and consequently the service appeals filed by the respondents before the Service Tribunal are dismissed."

The aforesaid are the reasons for doing so.

MWA/G-7/SC

Appeal allowed.

BEFORE THE HONORUABLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service appeal No. 1207/2015

Parvez Akhtar Junior Scale Stenographer (BPS-14) Excise & Taxation Office, District Haripur.

(APPELLANT)

Versus

1. Secretary to Govt of Khyber Pakhtunkhwa, Excise, Taxation & Narcotics Control, Khyber Pakhtunkhwa, Peshawar.
2. Director General, Excise, Taxation & Narcotics Control, Khyber Pakhtunkhwa, Peshawar.
3. Director (Administration) Directorate General Excise, Taxation & Narcotics Control, Khyber Pakhtunkhwa, Peshawar.
4. Mr. Waheed Khan, Stenographer, Excise, Taxation & Narcotics Control, Khyber Pakhtunkhwa, Peshawar.

... RESPONDENTS

REPLY ON BEHALF OF RESPONDENT NO.4

Respectfully Sheweth,

Preliminary objection:

1. That the appellant has got no cause of action, locus standi to file the present appeal in hand.

2. That the present appeal is not maintainable in its present form.

3. That the appellant has been estopped from filing the present appeal by his own conduct.

4. That the present appeal is badly time barred as the promotion order dated 20/03/2015 of the respondent no.4 was not challenged by any departmental representation nor in the present appeal before this Honourable Tribunal by the appellant, hence the present appeal is liable to be dismissed summarily.

5. That the appellant has not come to this Honoruable Tribunal with clean hands and he has suppressed the material facts, hence not entitled for any relief, it is also pertinent to mention here that the appellant before the present appeal filed another services appeal No.965/2014 before this honoruable Tribunal which was dismissed on 22/04/2015.

6. That the appeal in hand is bad for mis joinder of necessary parties and non joinder of unnecessary party.

7. That this Honourable Tribunal has got no jurisdiction to entertain the appeal in hand.

ON FACTS:

1. Pertinent to record.

2. Contents needs no reply, however appellant was involved in FIR No.3, dated 15/07/2011 under section 161 PPC, 5(2) PC Act.

3. Pertinent to record. Needs no reply.

4. Para no.4 of the appeal is correct to the extent that the appellant was on serial no.2 and present respondent was on serial no.6 in the same seniority list, as the present appellant was differed due to involvement in criminal case against him, while Muhammad Ismail, Faqir Khan Ali Gohar and Fida Muhammad as placed in the same seniority list at serial No. 1, 3, 4 and 5 respectively also opted to forgo in favour of present respondents, as a result the respondent no.4 promoted as senior scale stenographer in BP (15) on 20/03/2012 from Junior Scale stenographer, letter on it was upgraded by the Government of KPK in BPS 16, the present respondent then further appointed as Superintendent BPS 17 on acting charge basis under the rules against the post vacated by Muhammad Ali, the then Superintendent who appointment was also made as Excise and Taxation office BPS 17 on acting charge basis.

5. In reply to para no.5 the present appellant admitting by himself that in the said DPC the promotion of the appellant was deferred due to involvement in a criminal case, and Muhammad Ismail, at serial no.1, Mr. Faqir Khan S.No.3, Ali Gohar S No.4 and Fida Muhammad, SNo.5, who opted

to forgo promotion. Resultantly the present respondent was promoted.

6. Needs no reply, as the present respondent has no concern with it.

7. Needs no reply, as the present respondent has no concern with it.

8. Needs no reply, as the present respondent has no concern with it. However admitting by the appellant himself that his promotion was deferred due to criminal case pending against him.

9. Pertained to record, however as the appellant is still junior scale stenographer while the present respondent no.4 is a senior scale stenographer whose promotion order has never been challenged by the appellant.

10. The reply has been given in the above noted paras, however the present appellant has got no locus standi for any relief against the present respondent No.4, as he never challenged the promotion order dated 20/03/2012 of the respondent no.4 in any appeal.

11. Incorrect, the detailed reply has already been given in above noted paras.

12. Needs no reply, detailed reply has been given in above noted paras.

Grounds: -

A. The appellant admitting by himself that his promotion was deferred, while the present respondent was promoted according to the rule as a senior stenographer with the rest of the para the present respondent has no concern.
B. Needs no reply, as the present respondent has no concern with it.
C. Incorrect. Complete reply has already been given in above preceding paras.
D. Incorrect, complete reply has been given in above noted paras. However the present respondent has no concern with the promotion of the appellant, the appellant has no locus standi to pray for any relief against the present respondent.
E. Incorrect, the present appeal is badly time barred.

It is, therefore, most humbly requested that the present appeal may kindly be dismissed with costs.

Respondent No.4,

Through

SOPHIA NOUREEN,
Advocate, High Court Peshawar

AFFIDAVIT

All the contents are correct

Waheed Khan
Respondent No 4

BEFORE THE HONORUABLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Service appeal No. 1207/2015

Parvez Akhtar

Versus

Secretary to Govt of Khyber Pakhtunkhwa etc

REPLY TO THE APPLICATION ON BEHALF OF RESPONDED NO.4

Respectfully Sheweth,

Preliminary objection:

1. That the applicant has got no cause of action, locus standi to tile the present application in hand.

2. That the present application is not maintainable in its present form.

3. That he applicant has been estopped from filing the present application by his own conduct.

4. That the present application is badly time barred as the promotion order dated of the respondent no.4 was not challenged by any departmental representation nor in the present application before this Honourable Tribunal by the applicant, hence the present application is liable to be dismissed summarily.

5. That the applicant has not come to this Honoruable Tribunal with clean hands and he has suppressed the material facts.

6. That the application in hand is bad for mis joinder of necessary parties and non joinder of unnecessary party.

7. That this Honourable Tribunal has got no jurisdiction to entrain the application in hand.

On facts; -

1. Needs no reply.

2. Incorrect. There is no likely hood ~~to~~ that appeal be succeeded in favour of the applicant as the applicant has got no cause of action to file the present appeal / application.

3. Incorrect, the petitioner / appellant admitting by himself that the promotion was deferred due to some criminal case against him, so balance of convenience does not lie in his favour and there is no legal bar that he DPC for the promotion of the petitioner / appellant must be constituted before the promotion of the present respondent no.4 to superintendent. The petitioner / appellant be promoted according to the policy of there ~~is~~ no question of irreparable loss. However in case of acceptance of this application public at large will suffer irreparable loss.

It is, therefore, most humbly prayed that on acceptance of the present reply the application may kindly be dismissed.

Waheed Khan
Respondent no.4

Through

SOPHIA NOREEN,
Advocate, High Court Peshawar

بعدالت جناب سروس ٹریبونل کیمپ ایبٹ آباد

مورخہ Appeal

مقدمہ کا 20ء منجانب وحید خان Stenographer Exercise and Taxation سیکرٹری ریکارڈ وغیرہ

دعویٰ بنام پرویز اجن

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ آن مقام ایبٹ آباد کیلئے موسیہ لودین ایڈووکیٹ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط وکرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا مختار 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 بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جوخرچہ ہرجانہ 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 پیروی مذکور کریں۔ لہٰذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم 16 ماہ نومبر کا 20ء

العبد گواہ العبد

مقام ایبٹ آباد کے لئے منظور ہے۔

Accepted

Waheed Khan

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 1207/2015

PARVEZ AKHTER Junior Scale Stenographer (BPS-14) EXCISE & Taxation Office, DISTRICT Haripur. (APPEALLANT)

VERSUS

Secretory to Govt, of Khyber Pakhtunkhwa,
Excise, and taxation & Narcotics Control Department,
Peshawar & others ..... Respondents.

.....,

REJOINDER ON BEHALF OF APPELLANT

.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

(1-7) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

1. No comments.

2. Not replied, according to Para-3 of the appeal and the Para -2 of appeal is correct. Moreover, the appellant is later on acquitted from the case, mention by respondent's department.

3. Admitted para-3 is correct by the respondent's department. Moreover, the allegation which is mentioned by the respondent's department. After his being the appellant is acquitted from that

allegation of corruption by the Anti-corruption judge and he after his acquittal in the case was legally entitled to be promoted as par observation made in DPC minutes, So the issue of allegation has no more remained.

4. Incorrect. While Para-4 of the appeal is correct. Moreover, the appellant is 4 step senior than the private respondent no.4.Which is clearly mentioned in seniority list which is (Annexure as "A") in the Appeal. It is pertinent to mention here that said seniority list remained the same being not challenged by any of the junior scale stenographer. It is well settled that no one shall suffer on account of inaction and non-action of public functionaries, thus, appellant under the circumstances no way can be deprived of his right of being promoted.

5. Incorrect. While Para-5 of appeal is correct.

6. Incorrect. While Para-6 of appeal is correct. Moreover, that, it is settled law, if any Government Servant whose promotion is deferred for some reason and other are earlier promoted in the same meeting, will be promoted after the removal of deficiency w.e.f the date on which other have been promoted. As such, under the same principal of law the respondents are under obligation to first constitute DPC for the promotion of appellant with effect from 20.303.2012 and then do the needful for the promotion of Senior Scale Stenographer as Superintend. AS the appellant from the date of promotion of respondent no.4 as Senior Scale Stenographer was four step senior to him. As under the settled principle of law and justice he cannot be deprived of the right of becoming Senior Scale Stenographer and rank senior to respondent no.4.

7. Incorrect. While the Para-7 of appeal is correct. Moreover, appellant does not deal with the law, facts, and norms of justice.

8. Incorrect. While Para-8 of appeal is correct. Moreover, that The appellant has a valid case to plead for her legal right.

9. Incorrect. While para-9 of appeal is correct. Moreover, that respondent no.1 instead of constituting a DPC for its meeting for the

promotion of appellant with effect from 20.3.2012, is trying to promote respondent no.4 who is admittedly junior to appellant.

10. Incorrect. While Para-10 of appeal is correct.

11. Incorrect. While Para-11 of the appeal is correct. Moreover, the appellant filed a departmental appeal against the impugned seniority list issued and prepared by DG Excise and Taxation department KPK dated 31/8/2014 in respect of MR WAHEED KHAN which was illegal, unlawful. Against the principle of natural justice, ineffective in the right of appellant. And on which impugned order is passed on 11.9.2015. Appeal against such impugned order on dated: 26/10/2015. Hence appeal is well in time.

12. Not replied, according to the para-12 of appeal.

GROUNDS:

A) Incorrect. While Para-A of ground of the appeal is correct. Moreover, the appellant is no treated according to the law and rules and this is against the norms and justice.

B) Incorrect. While Para-B on the grounds of the appeal is correct. Moreover, the allegation which is mentioned by the respondent's department. After being acquitted from that allegation of corruption by the Anti-corruption judge, The appellant is legally entitled to be promoted. So the issue of allegation has no more remained in the field.

C) Incorrect. While Para-C on the grounds of the appeal is correct. Moreover, as explained above.

D) Admitted correct by the respondent's department to the extent of the differed official. Moreover, the deferment issue is due to allegation, so allegation is removed. Then there is no further

ground is remained for deferment. Therefore As under the settled principle of law and justice, appellant cannot be deprived from the right of becoming Senior Scale Stenographer and rank senior to respondent no.4.

E) Incorrect. While Para-C on the grounds of the appeal is correct. Moreover, that appeal is within time as explained in above Para-11 of appeal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT
PARVEZ AKHTER

Through:

(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of the appeal and the rejoinder are true and correct to the best of my knowledge and belief and nothing has been concealed from Hon'ble Tribunal.

DEPONENT

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

No. 134 ST Dated 26 / 1 / 2016

To

The Secretary,
Excise and Taxation
Peshawar.

Subject: - Judgement.

I am directed to forward herewith certified copy of Judgement dated 19.1.2016 passed by this Tribunal on subject for strict compliance.

Encl: As above

REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

Ph: 9082235
Fax:9220406

REGISTERED
No.C.P. 418/2016 – SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 4th October, 2016.

From

The Registrar,
Supreme Court of Pakistan,
Islamabad.

To

The Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

The Additional Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Camp at Abbottabad.

Subject: **CIVIL PETITION NO. 418 OF 2016.**
Waheed Khan
VERSUS.
Pervez Akhtar & others

On appeal from the Judgment/Order of the Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 19.01.2016 in S.A. No. 1207/2015.

Dear Sir,

I am directed to enclose herewith a certified copy of the Order of this Court dated 27.09.2016 **dismissing** the above cited civil petition **in the terms stated therein** for information and further necessary action.

Please acknowledge receipt of this letter alongwith its enclosure immediately.

Yours faithfully,

Encl: Order

(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Submitted for Perusal pls.
24/10/16
Hon'ble Chairman Sahib
24.10.16

Kaami/***

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE KHILJI ARIF HUSSAIN

CIVIL PETITION NO.418 OF 2016
(On appeal from judgment dated 19.1.2016, passed by the Khyber Pakhtunkhwa Service Tribunal Peshawar, Camp Court Abbottabad in Service Appeal No.1207/2015)

Waheed Khan ... Petitioner (s)

Versus

Pervez Akhtar and 3 others ... Respondent (s)

For the Petitioner (s) : Mr. Ijaz Anwar, ASC with
Mr. M.S. Khattak, AOR

Respondent (s) : N.R.

Date of Hearing : 27.09.2016

ORDER

SH. AZMAT SAEED, J.- We have heard the learned counsel for the Petitioner at some length and have examined the impugned judgment dated 19.01.2016 of the learned Khyber Pakhtunkhwa Service Tribunal Peshawar, Camp Court Abbottabad. No substantial question of law of public importance has been raised justifying the exercise of our jurisdiction under Article 212(3) of the Constitution of the Islamic Republic of Pakistan, 1973

2. Consequently, this Civil Petition is dismissed and leave declined. Sd/- Sh. Azmat Saeed, J
Sd/- Manzoor Ahmad Malik, J
Sd/- Khilji Arif Hussain, J

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad

Bench-V
Islamabad, the
27th September, 2016
Mahtab/*