

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Appeal No. 1387/2015

Date of Institution ... 14.12.2015

Date of Decision ... 11.07.2017

Shafiqur Rahman Ex-Executive District Officer  
Agriculture Extension Department, District Swat. ... (Appellant)

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary,  
Peshawar and others. ... (Respondents)

MR. MUHAMMAD ZAFAR TAHIRKHELI,  
Advocate --- For appellant.

MR. MUHAMMAD IAN,  
Deputy District Attorney. ... For respondents.

MR. NIAZ MUHAMMAD KHAN, ... CHAIRMAN  
MR. GUL ZEB KHAN ... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN.- Arguments of the learned  
counsel for the parties heard and record perused.

FACTS

2. The brief facts of this appeal are that the appellant was promoted to BPS-19 in the year 2012 but he was entitled for promotion from the date when the post fell vacant (15.10.2010). The departmental appeal was filed on 08.09.2015 and when the said appeal was not decided within the statutory period the present appeal filed on 14.12.2015. The departmental appeal was decided during pendency of the present appeal on 03.02.2016, rejecting the departmental appeal of the appellant.

ARGUMENTS.

3. The learned counsel for the appellant argued that another colleague of the appellant namely Fazle Rabi was given antedated promotion from 15.10.2010 and on the basis of rule of consistency involving similar point of law the appellant is also entitled for the same treatment. The learned counsel for the appellant in this respect relied upon a judgment entitled "*Hameed Akhtar Niazi Versus the Secretary, Establishment Division, Government of Pakistan and others*" reported as 1996-SCMR-1185.

4. On the other hand the learned Deputy District Attorney argued that the appellant was promoted in the year, 2012 but he preferred the departmental appeal in the year, 2015 which is clearly time barred. That no application for condonation of delay was preferred by the appellant to his departmental authority. That when the departmental appeal is time barred then the present appeal is also time barred. He also relied upon 2 judgments entitled "*Abdul Hameed Vs. Ministry of Housing and Works, Government of Pakistan Islamabad through Secretary and others*" reported as PLD 2008-Supreme Court-395 and "*Dilawar Ali and another Vs. General Manager Pakistan Railways, Lahore and others*" reported as 2006-PLC(C.S) 1034 wherein it is held that no antedated promotion can be given to a civil servant who has already retired from service.

CONCLUSION

5. After hearing the arguments of both the learned counsel for the parties and perusing the record this Tribunal reaches the conclusion that Mr. Fazle Rabi who was junior to the appellant and both were promoted on the same date, was given antedated promotion on the basis of a judgment dated 31.12.2012 of this Tribunal in service appeal No. 386/2012. In view of the judgments relied upon by the learned counsel for the appellant qua principle of consistency and fair play the present appellant should have been treated at par with said Fazle Rabi, though he was not a

party to the earlier judicial proceedings. So far as the limitation is concerned it was the stance of the learned counsel for the appellant that limitation arose from the date of notification of Mr. Fazle Rabi dated 25.08.2015. This Tribunal is inclined to agree with the learned counsel for the appellant because the appellant has approached this Tribunal on the basis of treatment meted out to said Fazle Rabi though he was junior to the present appellant. This Tribunal therefore holds that the departmental appeal was well within time. The objection of the learned Deputy District Attorney regarding the retrospectivity of promotion after retirement as laid down in the quoted judgments of the august Supreme Court, this Tribunal is of the view that the present appellant seeks his antedated promotion on the basis of a judgment already delivered in Fazle Rabi case. Secondly the judgment pressed into service by the learned DDA covered antedated promotion but in the present case the appellant was already promoted. The appellant seeks that his promotion should have been from the date when the seat fell vacant. Therefore the facts of that reported cases are distinguishable from the facts of the present case.

6. As a result of the above discussion this Tribunal reaches the conclusion that the appellant is entitled for the relief as prayed for. The appeal is therefore, accepted. Parties are left to bear their own costs. File be consigned to the record room.

  
(GUL ZEB KHAN)  
MEMBER

  
(NIAZ MUHAMMAD KHAN)  
CHAIRMAN

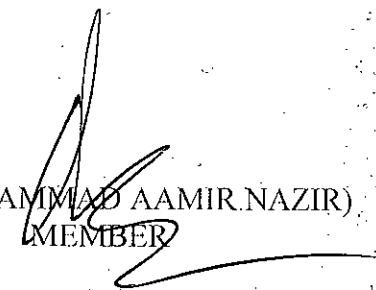
ANNOUNCED  
11.07.2017

08.12.2016

Appellant in person and Mr. Jalal ud Din, SMS' alongwith Mr. Ziaullah, GP for respondents present. Appellant requested for adjournment. Request accepted. To come up for arguments on

12.4.17


  
(ASHFAQUE TAJ)  
MEMBER

  
(MUHAMMAD AAMIR NAZIR)  
MEMBER

12.04.2017

Appellant alongwith his counsel present. Mr. Muhammad Khan, Assistant Account Officer with Kabirullah Khattak, Assistant AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 11.07.2017 before D.B.

  
(Ahmad Hassan)  
Member


  
(Muhammad Amin Khan Kundi)  
Member

11.07.2017

Counsel for the appellant and Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of to-day, this appeal is accepted. Parties are left to bear their own costs. File be consigned to the record room.

  
Member

  
Chairman

ANNOUNCED  
11.07.2017

23.5.2016

Counsel for the appellant, M/S Muhammad Khan, AAO and Anwar Ahmad, AAO alongwith Addl. AG for the respondents present. Written by respondent No. 6 submitted. Written reply by respondents No. 1 to 5 not submitted despite last opportunity. Requested for further adjournment on behalf of respondents No. 1 to 5. Last opportunity is extended subject to payment of cost of Rs. 1000/- which shall be borne by respondents No. 1 to 5 from their own pockets. To come up for written reply/comments of respondents No. 1 to 5 and costs on 21.06.2016 before S.B.

  
Chairman

21.06.2016

Appellant with counsel and Mr. Ziaullah, GP alongwith Mr. Jalal ud Din, Subject matter specialist present. Para-wise comments on behalf of respondents No. 1 to 5 submitted. Cost paid and receipt thereof obtained from the learned counsel for the appellant. The appeal is assigned to D.B for rejoinder and final hearing for 30.8.2016

  
member

31.08.2016

Counsel for the appellant and Usman Ghani Sr. GP for respondents present. Submitted rejoinder which is placed on file. To come up for arguments on 8.12.2016 before D.B.

  
Chairman

26.1.2016

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is a retired civil servant. That while serving he was promoted from BPS-18 to BPS-19 with immediate effect vide order dated 12.1.2012 though he was entitled to said promotion with the effect from 15.10.2010. That a similarly placed employee, Fazli Rabbi was also granted promotion with immediate effect vide the same order which was impugned by the said Fazli Rabbi before this Tribunal including the august Supreme Court of Pakistan and that on the strength of the judgment of the august Supreme Court of Pakistan he was granted ante-date promotion with effect from 15.10.2010. That the appellant was also entitled to alike treatment and, therefore, he preferred departmental appeal on 8.9.2015 which was not responded and hence the instant service appeal on 14.12.2015.

Appellant Deposited  
Security & Process Fee

That the appellant is entitled to pensionary benefits by granting him ante-date promotion with effect from 15.10.2010 as extended to one Fazli Rabbi a similarly placed employee.

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 31.3.2016 before S.B.

Chairman

30.03.2016




Appellant in person and Mr. Ansar Ahmad, AAO for respondent No. 6 alongwith Addl: A.G for respondents present. Written reply not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on 23.05.2016 before S.B.

Chairman

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_


Case No. 1387/2015

| S.No. | Date of order Proceedings | Order or other proceedings with signature of judge or Magistrate   |
|-------|---------------------------|--|
| 1     | 2                         | 3  |
| 1     | 14.12.2015                | <p>The appeal of Mr. Shafiq-ur-Rehman resubmitted today by Mr. Muhammad Zafar Tahirkheli Advocate may be entered in the Institution register and put up to the Worthy Chairman for proper order.</p> <p style="text-align: right;"><br/>REGISTRAR</p> |
| 2     |                           | <p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>23-12-15</u>.</p> <p style="text-align: right;"><br/>CHAIRMAN</p>   |
|       | 23.12.2015                | <p>Junior to counsel for the appellant. Seeks adjournment.<br/>Adjourned for preliminary hearing to 26.1.2016 before S.B.</p> <p style="text-align: right;"><br/>Member</p>   |

The appeal of Mr. Shafiq-ur-Rehman Ex-EDO Agriculture Department received today i.e. on 14.12.2015 is returned to the counsel for the appellant with the direction to submit Two spare copies/sets of the memorandum of appeal along with annexures i.e. complete in all respect within 10 days.

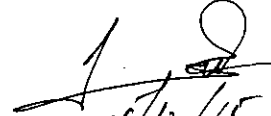
No. 1928 /S.T,

Dt. 14/12/2015.

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr.M.Zaffar Tahirkheli Adv. Pesh.

*Duty Completed and Resubmitted.*

  
15/12/15



BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA  
PESHAWAR

Service App. No: 1387/2015

Shafiq Ur Rahman

Versus

Govt. of KP etc

=====

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Peshawar, Dated  
10<sup>th</sup> Dec, 2015

  
(MUHAMMAD ZAFAR TAHIRKHELI)  
Advocate

  
(Ansar Ullah Khan)  
Advocate

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA  
PESHAWAR

Service App. No: 1387 /2015

Shafiq Ur Rahman s/o Abdul Baqi,  
Ex-Executive District Officer,  
Agriculture Extension Department,  
District Swat.

.....Appellant

Versus

1. Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar.
2. Secretary, Agriculture Livestock & Cooperative Department,  
Khyber Pakhtunkhwa, Peshawar.
3. Secretary, Finance Department,  
Khyber Pakhtunkhwa, Peshawar.
4. Secretary, Establishment Department,  
Khyber Pakhtunkhwa, Peshawar.
5. Director General, Agriculture Extension Department,  
Khyber Pakhtunkhwa, Peshawar.
6. Accountant General, Khyber Pakhtunkhwa, Peshawar. .... Respondents

**W.F. Province  
Service Tribunal**  
Diary No 1446  
Dated 14-12-2015

=====  
**SERVICE APPEAL U/S 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT,  
1974, WHEREBY THE DEPARTMENTAL REPRESENTATION OF THE APPELLANT  
DATED 08-09-2015 (ANNEX-A), FOR THE GRANT OF ANTI DATE PROMOTION  
W.E.F 15-10-2010 WAS NOT DECIDED TILL THE LAPSE OF STATUTORY PERIOD  
OF LIMITATION.**  
=====

**PRAYER IN APPEAL:**

- (a) By accepting the present appeal, directing the respondent department to consider / grant anti date promotion to the appellant from BPS-18 to BPS-19 w.e.f 15/10/2010 instead of 12/01/2012, as allowed to his junior colleague Mr. Fazli Rabbi, who was granted promotion with retrospective effect from 15-10-2010 vide order dated 25-08-2015, in view of the judgment of Supreme Court of Pakistan in CP NO. 584-P/2013 and judgment of Khyber Pakhtunkhwa Service Tribunal in Execution Petition No. 47/2013 in Appeal No. 386/2012.  
**(Copy annexed marked "B")**
- (b) Directing the respondent department to extend the benefit of promotion to BPS-19 to the appellant w.e.f 15-10-2010, in view of the dictum laid down in 1996 SCMR 1185.
- (c) Further directing the respondent department to amend / modify the appellant's promotion order dated 12-01-2012, whereby he was promoted from BPS-18 to BPS-19, from immediate effect, and allow / consider him for promotion w.e.f 15-10-2010. **(Copy annexed marked "C")**
- (d) Any other remedy deemed appropriate may also be granted in addition to the relief claimed above.

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**Filed to the  
Registrar**  
*[Signature]*

Respectfully Sheweth,

**Facts:**

1. The appellant was selected and appointed as Agriculture Officer on 01-05-1974. He was promoted to BPS-18 on 25-04-2008 and was allowed promotion to BPS-19 vide order dated 12-01-2012 with immediate effect.
2. That one Me. Fazli Rabbi, Ex-Director Co-Ordination / Planning & Monitoring (BPS-19) HQ of Agriculture Extension Wing, a junior colleague of the appellant, who was promoted from BPS-18 to BPS-19 vide same order dated 12-01-2012, with immediate effect, approached the Hon'ble Khyber Pakhtunkhwa Service Tribunal through Service Appeal No. 386 of 2012, requesting for promotion w.e.f 15-10-2010. (Copy annexed marked "D")
3. Mr. Fazli Rabbi's service appeal was allowed vide judgment of this Hon'ble Tribunal dated 31-12-2012, whereby the respondent department was directed to allow anti date promotion to him w.e.f 15-10-2010. (Copies annexed marked "E")
4. The respondent department approached the august Supreme Court of Pakistan through CP No. 584-P of 2013, which was dismissed vide judgment and order dated 18-04-2014. The Hon'ble Tribunal's judgment dated 31-12-2012 gained finality and resultantly in compliance with the directions of this Hon'ble Tribunal in Execution Petition No. 47/2013, the respondent department allowed / granted anti date promotion to Mr. Fazli Rabbi w.e.f 15-10-2010 **instead of** "with immediate effect" vide order dated 25-08-2015. (Annex "B")  
(Copy annexed marked "F").
5. That the appellant preferred his representation dated 08-09-2015 (Annex "A") on the same analogy for his anti date promotion w.e.f 15-10-2010, instead of 12-01-2012, which was not decided till the statutory period of limitation of 90 days.

Feeling aggrieved and finding no other remedy the appellant was constrained to approach this Hon'ble Service Tribunal for the redress of his grievance, inter-alia on the following:-

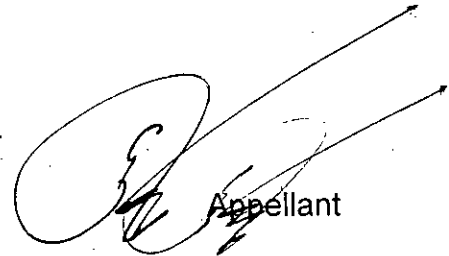
**GROUNDS**

- (a) The impugned omission is arbitrary and discriminatory on the part of the respondent department. The appellant's junior colleague who was promoted to BPS-19 along with the appellant vide order dated 12-01-2012 was allowed anti date promotion to BPS-19 w.e.f 15-10-2010, whereby the appellant was ignored for no apparent reason.
- (b) That this Hon'ble Tribunal has already allowed the benefit to one Me. Fazli Rabbi, Ex-Director Co-Ordination / Planning & Monitoring (BPS-19) HQ of Agriculture Extension Wing, a junior colleague of the appellant, vide judgment and order dated 31-12-2012. He was allowed anti date promotion with effect 15-10-2010 vide notification dated 25-08-2015.
- (c) The appellant has been ignored by the respondent department, who filed his representation for the grant of anti date promotion on the same analogy. The respondent department was bound to extend the benefit of anti date promotion to the appellant in view of the dictum laid down in 1996 SCMR 1185, which was however not allowed for any rhyme or reason.
- (d) The appellant being senior to one Mr. Fazli Rabbi, Ex-Director Co-Ordination / Planning & Monitoring (BPS-19) HQ of Agriculture Extension Wing, and fulfilling the requisite criteria for promotion, may also be allowed to anti date promotion on the same analogy w.e.f 15-10-2010. (Copy of seniority list annexed marked "G")

- (e) There is nothing against the appellant which could have deprived him of his legitimate right. The appellant fully meets the requisite criteria, therefore his appeal merits acceptance and may be treated at par with his other colleague in the same cadre / scale.
- (g) The impugned omission on the part of the Respondent department is in clear violation of the judgment of superior courts and is against the established principles of equity and justice, calling for interference by the Hon'ble High Court.
- (h) The petitioners seek leave of the Hon'ble Court to rely on additional grounds at the time of arguments.

In view of the above, it is requested that by accepting this appeal, the appellant may be allowed anti date promotion w.e.f 15-10-2010, as allowed to his junior colleague vide order dated 31-12-2012 in Service Appeal No. 386/2012 by this Hon'ble Tribunal

Any other relief deemed appropriate may also be granted in addition to the relief claimed above.



Appellant

Through

Peshawar, Dated  
10<sup>th</sup> Dec, 2015



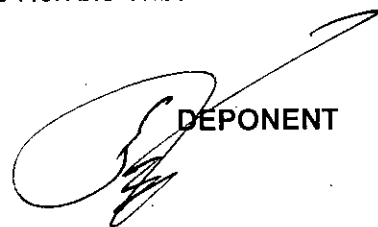
(MUHAMMAD ZAFAR TAHIRKHELI)  
Advocate



(Ansar Ullah Khan)  
Advocate

**Affidavit**

I, the appellant, do hereby stat on Oath that the contents of the above appeal are true and correct and nothing has been concealed or withheld from this Hon'ble Tribunal.



DEPONENT

To,

The Chief Secretary,  
Khyber Pakhtunkhwa,  
Peshawar.

Through: Proper Channel.

Subject: DEPARTMENTAL APPEAL FOR PROMOTION TO BS: 19 FROM 15.10.2010  
INSTEAD OF 12<sup>th</sup> January, 2012.

Respected Sir,

Kindly refer to the Notification issued vide Section Officer (Estt.), Agriculture Department Khyber Pakhtunkhwa No: SOE (AD) V-7/ 2011/ Ext dated Peshawar the 25.8.2015 through which my junior colleague Mr, Fazli Rabbi, Ex-Director Co-ordination/Planning and Monitoring was allowed promotion from 15.10.2010 instead of 12th January, 2012 in light of the Court Judgment (Copy of Notification attached).

It is pertinent to quote here that the Honorable Supreme Court of Pakistan in its Judgment in 1996 SCMR 1185 has dictated that,

*We may observe that if the Tribunal or this court besides appointment of law relating to the terms of reference of civil servant which covers not only the case of civil servant who litigated but also of the other civil servants, who may have not taken any legal proceedings, in such a case the dictates of justice and rule of good governance demands that the benefits of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the tribunal or any other legal forum.*

The above view was re-iterated in 2005 PLC CS 368 and followed in 2006 PLC CS 11 as well as SCMR 1.

In view of above it is humbly requested that my promotion from BS: 18 to BS: 19 may also be considered w.e.f 15.10.2010 instead of 12th January, 2012 on the precedent being followed in case of my junior colleague.

I will be extremely grateful for this act of kindness. Thanks

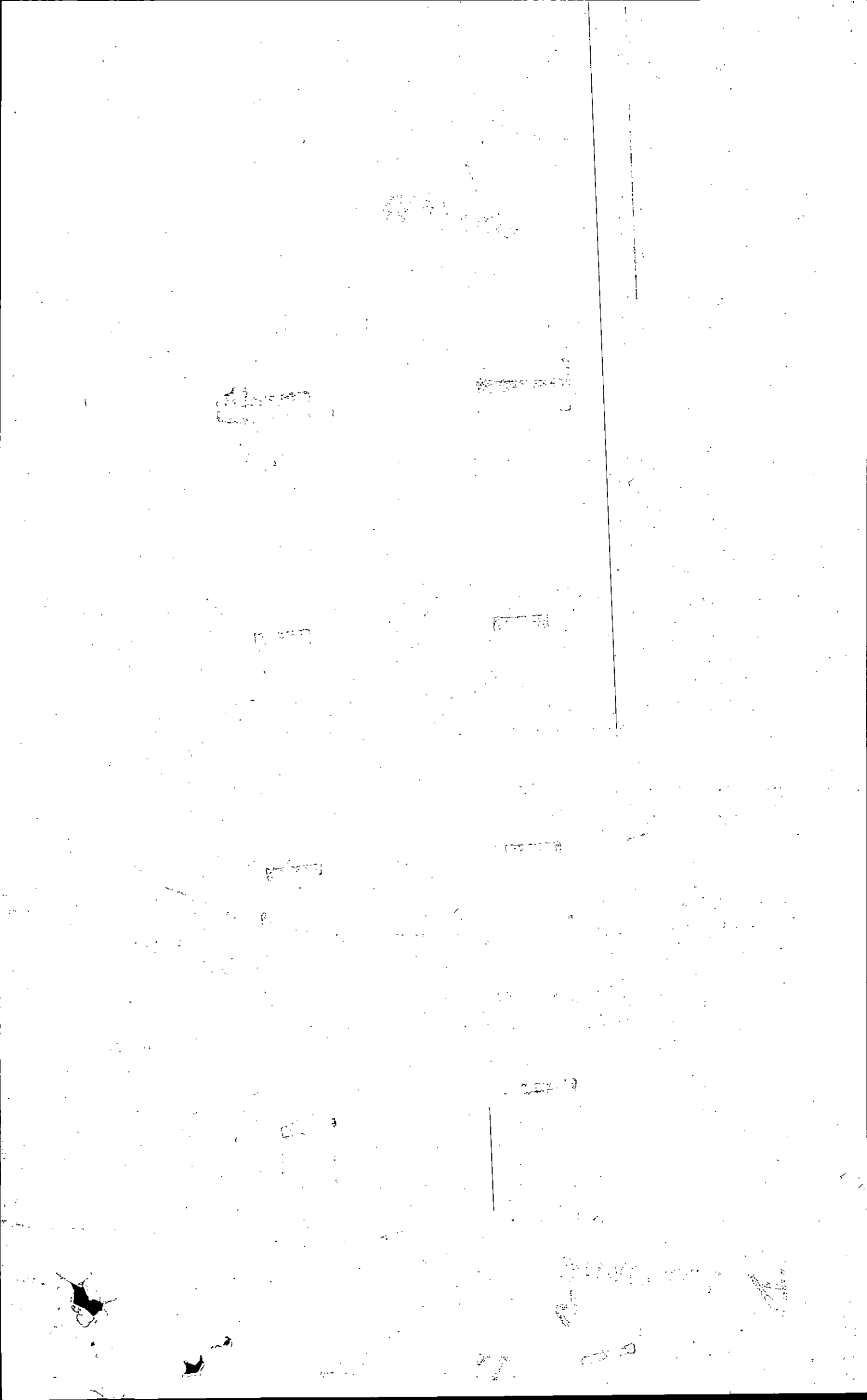
Yours Sincerely

*8/9/2015*  
Shafiq ur Rahman  
Ex- Executive District Officer  
Agriculture Extension Department  
District Swat.

*Dairy No-*

*6645*  
*8/9/2015*

*AT*





5  
AGRICULTURE B

GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
AGRICULTURE LIVESTOCK & COOPERATIVE  
DEPARTMENT

Dated Peshawar, the 25<sup>th</sup> August, 2015.

**NOTIFICATION.**

NO. SOE (AD) V-7/2011/Ext.- In compliance with the judgment of Supreme Court of Pakistan dated 18/04/2014 in Civil Petition No.584-P of 2013 and Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 31/12/2012 in the Execution Petition No.47/2013 in the Appeal No.386/2012 and upon the recommendations of the Provincial Selection Board (PSB) and Government of Khyber Pakhtunkhwa, Finance Department, the competent authority is pleased to antedate promotion of Mr.Fazli Rabbi ex-Director Coordination/Planning and Monitoring (BS-19) HQ of Agriculture Extension Wing at Sr.No.2 of this department Notification of even number dated 12/01/2012 with effect from 15.10.2010 **instead of** with immediate effect.

Sd/-

**SECRETARY AGRICULTURE**

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. The DG, Agriculture (Extension), Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The Chairman, Khyber Pakhtunkhwa Service Tribunal, Peshawar w/r to his notice dated 13/08/2015 in the Execution Petition 47/2013 in the Appeal No.386/2012 for information.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Budget Officer-VII, Government of Khyber Pakhtunkhwa, Finance Department w/r to his letter No.BOVII/FD/2-3/DGA(E)/2015-16 for information.
6. Officer concerned through DG, Agriculture Extension, Khyber Pakhtunkhwa Peshawar.
7. PS to Secretary Agriculture, Khyber Pakhtunkhwa.
8. Personal file.

*(Signature)*  
**(DILAWAR KHAN)**  
SECTION OFFICER-ESTT:

TRUE COPY

*(Signature)*



6

C

**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
AGRICULTURE LIVESTOCK & COOPERATIVE  
DEPARTMENT**

Dated Peshawar, the January 12, 2012

**NOTIFICATION.**

NO. SOE (AD) V-7/2011/Ext.- On the recommendations of the Provincial Selection Board (PSB), the competent authority is pleased to promote the following officers of Extension Wing of Agriculture, Livestock and Cooperative Department from BS-18 to BS-19 on regular basis with immediate effect except in case of officer at Sr. No.i Mr. Shafiq-ur-Rehman with effect from one day before his retirement i.e 27.12.2011 for actualization of his promotion:-

- i. Mr. Shafiq-ur-Rehman
- ii. Mr. Fazli Rabbi

2. The officers at Sr.No.ii will be on probation for a period of one year in terms of section 6(2) of the NWFP Civil Servants Act, 1973 read with rule 15 (1) of NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1981.

3. On their promotion, the following postings/transfers are ordered in the best public interest:-

| Sl.No. | Name of Officer      | From  | To   |
|--------|----------------------|---|--|
| 1.     | Mr. Shafiq-ur-Rehman | Executive District Officer (Agriculture) (BS-19) Swat (in his own pay scale).   | EDO (Agriculture) BS-19 Swat for one day before his retirement i.e 27.12.2011 for actualization of his promotion |
| 2.     | Mr. Fazli Rabbi      | Director Coordination/Planning and Monitoring (BS-19) HQ (in his own pay scale) | Director Coordination/Planning and Monitoring (BS-19) HQ   |

Sd/-

**SECRETARY AGRICULTURE**

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. The DG, Agriculture (Extension), Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officers Swat.
4. PS to Chief Minister, Khyber Pakhtunkhwa.
5. PS to Chief Secretary, Khyber Pakhtunkhwa.
6. PS to Minister for Agriculture, Khyber Pakhtunkhwa.
7. PS to Secretary Agriculture, Khyber Pakhtunkhwa.
8. Personal file.

*[Signature]*  
**SECTION OFFICER-ESTT:**

*[Handwritten marks]*  
13/11

200  
14/1/12



7

ANNEXURE

D

BEFORE THE SERVICE TRIBUNAL, KHYBER  
PAKHTUNKHWA, PESHAWAR.

In re  
Service Appeal No. 386 /2012

Fazal Rabi .....V/S.....Govt. of Khyber Pakhtunkhwa through  
Chief Secretary Peshawar and others.

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Appellant

Through

Rooh-ul-Amin  
&

Ayub Khan Shinwari  
Advocates, Peshawar

Dated: 17.03.2012

4512 DS  
02-05-12 20 UET

*[Handwritten signature]*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 386 /2012

Fazal Rabbi,

Director Coordination, Directorate General,

Agriculture (Ext) Peshawar.

.....Appellant

Versus

1. Chief Secretary, Government of Khyber Pakhtunkhwa, Peshawar.
2. Secretary Agriculture, Livestock and Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General Agriculture (Extension), K.P, Peshawar.
4. Secretary Establishment, Khyber Pakhtunkhwa, Peshawar. ... Respondents

Service Appeal under Section 4 of the Khyber  
Pakhtunkhwa Service Tribunal Act, 1974.

Prayer:

On acceptance of this Service Appeal the impugned Notification No SOE(AD)V-7/2011/Ext dated 12 Jan, 2012 to the extent whereby the Appellant was promoted with immediate effect i.e., 18-10-2011 may kindly be set aside and the respondents may kindly be directed to promote the Appellant with effect from 15-10-2010.

Respectfully Sheweth,

Brief but relevant facts of the case are as follows:

1. That the Appellant was appointed as Agriculture Officer in the respondent Department on 29-04-1974.
2. That on 15-10-2010 the respondent Department held its PSB meeting wherein the agenda of promoting the Appellant was schedule wherein the Appellant was recommended for promotion to BPS-19 but the respondent Department did not promoted the Appellant due to the fact that one Mr

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*J*

Faham Dil, Senior Instructor, Agricultural Training Institute, Peshawar had already filed a Service Appeal No 504/2008 pertaining to the seniority before the NWFP now Khyber Pakhtunkhwa Service Tribunal, Peshawar wherein the learned Tribunal had ordered Status Quo vide order dated 28-04-2011.

- 3. That later on the learned tribunal was pleased to vacate the Status Quo order and subsequently another PSB meeting was held on 18-10-2011 by the respondent Department wherein the respondents promoted the Appellant from BPS-18 to BPS-19 with immediate effect vide Notification No SOE(AD)V-7/2011/Ext dated 12 January, 2012.
- 4. That it is pertinent to mention here that the Appellant was eligible for promotion to BPS-19 since long and in the first PSB meeting held on 15-10-2010 the Appellant was recommended for promotion to BPS-19 but due to the pendency of the Service Appeal No 504/2008 the Appellant was not promoted.
- 5. That aggrieved of the aforesaid Notification dated 12 January, 2012 the appellant filed Departmental Appeal on 25-01-2012 which was considered and rejected vide order No SOE(AD)21-114/81 dated 29 February, 2012. Hence the Appellant is constrained to approach this learned Tribunal on the following amongst other grounds:

Grounds:

- a. That the impugned Notification No SOE(AD)V-7/2011/Ext dated 12 Jan, 2012 to the extent whereby the Appellant was promoted with immediate effect i.e., 18-10-2011 and not from the date of recommendations made in the first PSB meeting held on 15-10-2010, is against the law, illegal, unlawful, with lawful authority and with out jurisdiction, hence liable to be set aside to that extent.
- b. That the impugned order has not been passed in accordance with the law, rules and policy thus calling interference of this learned Tribunal.
- c. That in the first PSB meeting the Appellant was recommended for promotion to BPS-19 but due to the pendency of the Service Appeal No 504/2008 the Appellant was not promoted, furthermore not only the post in BPS-19 was vacant but the Appellant was also eligible for promotion since long.
- d. That the appellant was eligible for promotion to BPS-19 since long but due to the pendency of the Service Appeal No 504/2008 the Appellant was not promoted without any fault on his part.
- e. That it is a well settled principle established by the dictums of Supreme Court of Pakistan that a Civil Servant will be promoted to the higher post from the date when the post becomes vacant and the Civil Servant becomes

COPIES COPY J

- f. That the respondent Department fell in err while holding that promotion of Civil Servant to higher scale is permissible from immediate effect and not from retrospective effect because the Appellant was not only fit and eligible for promotion but was also recommended by first PSB meeting held on 15-10-2010, thus the Appellant is being deprived of his vested right.
- g. That the respondent Department has passed the impugned order with out applying an independent mind on the basis of mala fide and extraneous considerations.

It is, therefore, prayed that on acceptance of this Service Appeal the impugned Notification No SOE(AD)V-7/2011/Ext dated 12 Jan, 2012 to the extent whereby the Appellant was promoted with immediate effect i.e., 18-10-2011 instead from the date of recommendations of the first PSB meeting held on 15-10-2010 may kindly be set aside and the respondents may kindly be directed to promote the Appellant with effect from 15-10-2010.

Appellant,  
Through  
  
Rooh ul Amin  
&  
M Ayub Khan Shinwari  
Advocates Peshawar

**AFFIDAVIT**

I, Fazal Rabbi, Director Coordination, Directorate General, Agriculture (Ext) Peshawar do hereby solemnly affirm and declare on oath that the contents of the instant Service Appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from this Learned Tribunal.

*[Signature]*  
17-3-12

ATTESTED  
VALID MAHMOOD ADVOCATE  
OATH COMMISSIONER  
PESHAWAR HIGH COURT

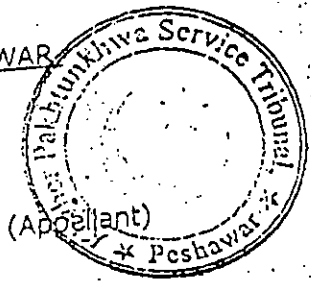
*[Signature]*  
DEPONENT

*[Signature]*

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No. 386/2012

Fazal Rabbi, Director Coordination, Directorate General Agriculture (Extention) Peshawar.



VERSUS

1. Chief Secretary, Government of Khyber Pakhtunkhwa Peshawar.
2. Secretary Agriculture, Livestock and Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General Agriculture (Extension) Khyber Pakhtunkhwa, Peshawar.
4. Secretary Establishment, Khyber Pakhtunkhwa, Peshawar. (Respondents).

| S.No. | Date of Hearing | Order/other proceedings with signature of Judge/Magistrate  |
|-------|-----------------|---|
| 1     | 2<br>31.12.2012 | <p style="text-align: center;">3</p> <p>Appellant with counsel, and Mr. Sherafgan Khattak alongwith Muhammad Khan, Superintendent for the respondents present. Arguments heard and record perused.</p> <p>2. This appeal has been filed by the appellant Fazal Rabbi, under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974 against the notification dated 12.1.2012, whereby the appellant has been promoted with immediate effect instead of 15.10.2010. It has been prayed that on acceptance of the appeal, the notification dated 12.1.2012 may be modified to the extent his promotion may be ante-dated w.e.f. 15.10.2010 instead of with immediate effect.</p> <p>3. The learned counsel for the appellant argued that the appellant was appointed as Agriculture Officer in the respondent department on 29.4.1974. On 15.10.2010 the respondent department held its PSB meeting for consideration promotion cases of the appellant alongwith others. He was considered fit for promotion but due to status quo order dated 28.4.2011, granted by this Tribunal in Execution Petition No. 3/2010 in Service Appeal No. 504/2008 in favour of Faham Dil, Senior Instructor. Later on the status quo was vacated and another PSB meeting was held on 18.10.2011 and the appellant was promoted from BPS-18 to BPS-19 with immediate effect instead of ante-dation of his promotion w.e.f. 15.10.2010. He further argued that the appellant was entitled to be promoted from the date of availability of the post under</p> |

**ATTESTED**  
 Khyber Pakhtunkhwa Service Tribunal  
 Peshawar

*[Handwritten signature]*

the law. In support of his arguments, the learned counsel for the appellant relied on 2006-SCMR-1938 and unreported judgment dated 24.5.2012 of the august Supreme Court of Pakistan in Civil Appeals No. 860 to 861 of 2010. He stated that the appellant is also entitled to the same treatment under the law. He requested that the appeal may be accepted as prayed for.

4. The learned AAG argued that the case of appellant for promotion to BPS-19 was submitted to the Provincial Selection Board well in time but due to status quo order issued by this Tribunal in Execution Petition No. 3/2010, he could not be promoted. After vacation of status quo, he has been considered by the PSB and promoted vide notification dated 12.1.2012 with immediate effect. He requested that the appeal may be dismissed.

5. The Tribunal observes that the appellant while serving in BPS-18 in the respondent department was eligible for promotion to BPS-19. He was considered and found fit for promotion by the PSB in its meeting held on 15.10.2010. Due to status quo order granted in Execution Petition No. 3/2010, he could not be promoted. On vacation of status quo order, the appellant alongwith others, was again considered and found fit for promotion. The appellant was entitled for promotion with effect from 15.10.2010 under the law and in light of judgments as referred to above but vide notification dated 12.1.2012, he has been promoted with immediate effect. The Tribunal agrees with the arguments advanced by the learned counsel for the appellant.

6. In view of the above; the appeal is accepted and the respondents are directed to ante-date promotion of the appellant w.e.f. 15.10.2010. Parties are left to bear their own costs. File be consigned to the record.

ANNOUN:  
31.12.20:

Date of Presentation of Notice: 1-1-2013  
Number: 6-1  
Case: 3-1  
Trib: 4  
No: 2012

*Sd/- Syed Manzoor Ali Shah* Member  
*Sd/- Faeed Ullah Khan* Member

Certified to be true copy  
EM  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

Director Plant Protection  
Directorate General Agriculture  
(Ext), Khyber Pakhtunkhwa  
Peshawar

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13 ANNEXURE 'F'

AG, KPK SC 15B

FAX NO. : 0092 51 9214390

82 May. 2014 10:29AM P1

Annexure-F

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja —  
Mr. Justice Iqbal Hameedur Rahman  
Mr. Justice Mushir Alam

Civil Petition No.584-P of 2013  
(Against the judgment dated  
31.12.2012 of the Khyber Pakhtunkhwa  
Service Tribunal, Peshawar passed in  
Appeal No.386/2012)

Chief Secretary Govt. of KPK, etc. ... Petitioner(s)  
Fazal Rabbi Versus ... Respondent(s)  
For the appellant(s) ... Mr. Naveed Akhtar, Addl. AG, KPK  
For the respondent(s) ... N. R.  
Date of hearing: 18.04.2014

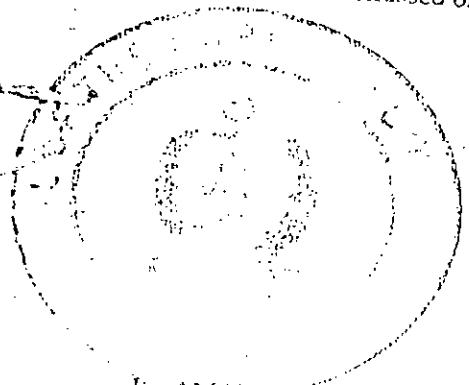
ORDER

Jawwad S. Khawaja, J.- This petition admittedly is barred by 226 days. It is unfortunate that the interests of the Province have not been adequately safeguarded. Other instances have also come to our notice where cases of the Province are not filed within time. An application for condonation of delay (CMA-877-P/13) has been submitted but the same does not disclose any valid reason which would justify such an inordinate delay. The application is, therefore, dismissed. As a consequence, the civil petition is also dismissed on the ground of limitation.

Sd/- Jawwad S. Khawaja, J  
Sd/- Iqbal Hameedur Rahman, J  
Sd/- Mushir Alam, J

Certified to be True Copy

*[Signature]*  
18/04/14  
Sup. Court  
Supreme Court of Pakistan  
Islamabad



ISLAMABAD  
18 April, 2014

6224/14  
Civil/Criminal  
18-04-14  
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5-00  
1-88  
6-88  
2-304  
CWS

TRUE COPY

*[Signature]*

Note: 1. The hours of attendance in the court are the same that of the High Court except Sudda...  
2. Always quote Case No. While making any correspondence.

Peshawar.

## SENIORITY LIST OF BPS-18 OFFICERS OF AGRICULTURE EXT: DEPTT: AS IT STOOD ON 01.06.2008.

| S.No | Name & designation                        | Educational qualification         | Date of birth & domicile  | Date of 1 <sup>st</sup> entry into Govt. service | 1 <sup>st</sup> regular appointment to the service / cadre |     |                  | Promotion to the present post/BPS |     | Remarks |
|------|---|-----------------------------------|---------------------------|--|--|-----|------------------|-----------------------------------|-----|---------|
|      |   |                                   |                           |  | Date   | BPS | Method of Rectt. | Date of promotion                 | BPS |         |
| 1    | Hamidullah, ✓<br>EDO Agriculture, Swabi.  | M.Sc(Hons) Agri<br>Agronomy       | 14.9.1951<br>Charsadda    | 5.8.1976<br>Agril Officer                        | 5.8.1976   | 17  | -do-             | 15.6.2006                         | 18  | --      |
| 2    | ✓ Muhammad Anwar, ✓<br>EDO Agri: Buner.   | M.Sc. (Hons) Agri<br>Horticulture | 1.10.1949<br>Swat         | 5.8.1976<br>Agril Officer                        | 5.8.1976   | 17  | -do-             | 15.6.2006                         | 18  | --      |
| 3    | ✓ Dost Muhammad,<br>DOA, Upper Dir.       | B.Sc. (Hons) Agri<br>Entomology   | 12.4.1951<br>Swabi        | 5.8.1976<br>Agril Officer                        | 5.8.1976   | 17  | Direct           | 15.6.2006                         | 18  | --      |
| 4    | ✓ Hussain Ahmad Jan<br>DOA, Nowshera.     | M.Sc. (Hons) Agri<br>Entomology   | 20.12.1949<br>Charsadda   | 5/8/1976<br>Agril Officer                        | 5.8.1976   | 17  | -do-             | 15.6.2006                         | 18  | --      |
| 5    | ✓ Attaullah Khan,<br>Sr. Instructor, ATI. | B.Sc (Hons) Agri<br>Horticulture  | 20.3.1949<br>Peshawar     | 15.11.72<br>Agril Officer                        | 5.8.1976   | 17  | -do-             | 15.6.2006                         | 18  | --      |
| 6    | ✓ Sher Afzal,<br>DOA, Mardan.             | M.Sc (Hons) Agri<br>Soil Science  | 8.1.1949<br>Mardan        | 1.10.1976<br>Agril Officer                       | 1.10.1976  | 17  | -do-             | 15.6.2006                         | 18  | --      |
| 7    | ✓ Asmatullah Khan,<br>EDO Agri: Shangla.  | B.Sc. (Hons) Agri:                | 20.7.1949<br>Mkd: Agency  | 1.6.1973<br>Agril: Asstt.                        | 1.10.1976  | 17  | -do-             | 27.2.2007                         | 18  | --      |
| 8    | ✓ Mehmood Khan,<br>DOA, Chitral.          | B.Sc. (Hons) Agri:<br>Agronomy    | 3.10.1949<br>Mohmand Agy. | 1.6.1973<br>Agril: Asstt.                        | 1.10.1976  | 17  | -do-             | 27.2.2007                         | 18  | --      |
| 9    | ✓ Inayat ur Rehman,<br>DOA, Peshawar      | M.Sc. Hons. Agri:<br>Soil Science | 1.4.1950<br>Charsadda     | 30.4.74<br>Agril: Asstt.                         | 1.10.1976  | 17  | -do-             | 27.2.2007                         | 18  | --      |
| 10   | ✓ Inamullah,<br>DDA (E&M) HQ.             | M.Sc. Hons. Agri:<br>Economics    | 3.4.1950<br>Charsadda     | 15.11.1972<br>Agril: Asstt.                      | 1.10.1976  | 17  | -do-             | 27.2.2007                         | 18  | --      |
| 11   | ✓ Majeedullah,<br>DOA, Malakand.          | B.Sc.(Hons) Agri.<br>Agronomy     | 15.4.1950<br>Mkd Agency   | 1.6.1973<br>Agril: Asstt.                        | 1.10.1976  | 17  | -do-             | 27.2.2007                         | 18  | --      |
| 12   | ✓ Gul Muhammad,<br>EDO Agri: Kohistan.    | B.Sc. Hons. Agri:                 | 8.6.1950<br>Dir           | 1.10.1976<br>Agril: Asstt.                       | 1.10.1976  | 17  | -do-             | 27.2.2007                         | 18  | --      |
| 13   | ✓ Muhammad Hanif,<br>DDA (FATA) DIKhan.   | B.Sc (Hons) Agri                  | 15.6.1950<br>DIKhan       | 1.6.1973<br>Agril: Asstt.                        | 1.10.1976  | 17  | -do-             | 27.2.2007                         | 18  | --      |
| 14   | ✓ Ihsanullah Khan,<br>DOA, Tank.          | M.Sc. Hons.<br>Agri: Entomology   | 7.8.1951<br>DIKhan        | 1.5.1974<br>Agril: Asstt.                        | 1.10.1976  | 17  | -do-             | 17.3.2008                         | 18  | --      |


TRUB

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|          |   |                                  |                         |                            |                    |    |      |           |    |    |
|----------|---|----------------------------------|-------------------------|----------------------------|--------------------|----|------|-----------|----|----|
| 15/<br>4 | Shafiqur Rehman,<br>EDO Agri., Lower Dir. | M.Sc Hons Agri:<br>Entomology    | 28.12.1951<br>Lower Dir | 1.5.1974<br>Agri: Asstt.   | 1.10.1976          | 17 | -do- | 25.4.2008 | 18 | -- |
| 16       | Fazli Rabbi,<br>PPO (FATA) Pesh.          | M.Sc Hons Agri:<br>Agronomy      | 8.2.1952<br>FR Kohat    | 1.5.1974<br>Agri: Asstt.   | 1.10.1976          | 17 | -do- | 25.4.2008 | 18 | -- |
| 17       | Shadi Khan,<br>DOA, DIKhan.               | B.Sc Hons:<br>Agri: Soil Science | 24.6.1954<br>DIKhan     | 11.1.1977<br>Agri: Officer | 30.11.83<br>Direct | 17 | -do- | 25.4.2008 | 18 | -- |

  
DIRECTOR GENERAL  
AGRICULTURE (EXTENSION)  
NWFP, PESHAWAR

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PANEL OF OFFICERS FOR CONSIDERATION

| S.No. | Name of officer | Remarks                      |
|-------|-----------------|------------------------------|
| 1.    | Shafiqur Rehman | Eligible for promotion BS-19 |
| 2.    | Fazli Rabbi     | -do-                         |
| 3.    | Shadi Khan      | -do-                         |
| 4.    | Nazimud Din     | -do-                         |
| 5.    | Saadullah Khan  | -do-                         |
| 6.    | Abbas Khan      | -do-                         |
| 7.    | Ameer Khan      | -do-                         |
| 8.    | Muhammad Younas | -do-                         |

Certificate

1. Certified that the officers included in the panel are eligible in all respects and possess the requisite length of service required for promotion.
2. Also certified that no disciplinary action / proceedings or criminal charges in any court of law are pending against any of the officers included in the panel.

*M. Y. Khan*  
 DIRECTOR GENERAL  
 AGRICULTURE (EXTENSION)  
 KHYBER PAKHTUNKHWA  
 PESHAWAR

TRUE COPY

17

# VAKALATNAMA

In the Court of Khyber Pakhtunkhwa Service Tribunal, PESHAWAR

\_\_\_\_\_ No. \_\_\_\_\_ of 2015

Petitioner  
Plaintiff  
Applicant  
Appellant  
Complainant  
Decree-Holder

Shafiq Ur Rahman

**V**ERSUS

Respondent  
Defendant  
Opponent  
Accused  
Judgment-Debtor

Govt. of KP etc.

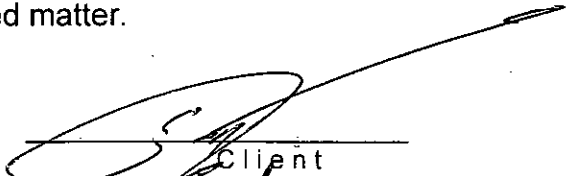

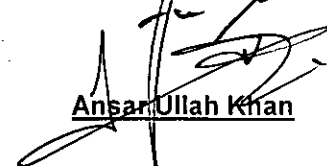
I / We Shafiq Ur Rahman, the above noted appellant do hereby appointed and constitute, **Muhammad Zafar Tahirkheli & Ansar Ullah Khan, Advocates High Court**, to appear, plead, act, compromise, withdraw or refer to arbitration for me / us as my / our counsels / advocates in the above noted matter, without any liability for his default and with the authority to engage any other Advocate / Counsel at my / our cost.

The Client / Litigant will ensure his presence before the Court on each and every date of hearing and the counsel would not be responsible if the case is proceeded ex-parte or is dismissed in default of appearance. All cost awarded in favour shall be the right of Counsel or his nominee, and if awarded against shall be payable by me/us.

I / We authorize the said Advocates to withdraw and receive on my / our behalf all sums and amounts payable or deposited on my / our account in the above noted matter.

Dated 9-12-15

Office **ATIQ LAW ASSOCIATES,**  
87, Al-Falah Street, Besides State Life Building,  
Peshawar Cantt, Phone: 091-5279529  
E-mail : [zafark.associate@gmail.com](mailto:zafark.associate@gmail.com)

  
Client  
M. Zafar Tahir  
Attested & Accepted (Advocates)  
  
Ansar Ullah Khan  


**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,**  
**PESHAWAR**

Appeal No. 1387/2015

Mr. Shafiq-ur-Rehman s/o,  
Abdul Baqi Ex-Executive District Officer  
Swat

**APPELLANT**

**VERSUS**

- 1- Government of Khyber Pakhtunkhwa,  
Through Chief Secretary Peshawar.
- 2- Secretary Agriculture Livestock &  
Cooperative Department Government of  
Khyber Pakhtunkhwa Peshawar.
- 3- Secretary to Government of Khyber Pakhtunkhwa  
Finance Department Peshawar
- 4- Secretary to Government of Khyber Pakhtunkhwa  
Establishment Department Peshawar
- 5- Director General,  
Agriculture (Extension)  
Khyber Pakhtunkhwa, Peshawar.
- 6- Accountant General Khyber Pakhtunkhwa Peshawar.

**RESPONDENTS**

**PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1, 2, 3, 4 & 5**

**PRELIMINARY OBJECTIONS**

- 1. That the appellant has got no locus standi to file the instant appeal.
- 2. That the appeal is not maintainable in its present form and liable to be dismissed.
- 3. That the appellant has no cause of action to file the instant appeal.
- 4. That the appellant has deliberately concealed the material fact from this Hon'ble Services Tribunal.
- 5. That the appellant has not come to this Honorable Service Tribunal with clean hands.
- 6. That the appeal is time barred.
- 7. That the Honorable Service Tribunal has no jurisdiction to entertain this appeal as the appellant has already been retired from Government Service.

**ON FACT PARA-WISE COMMENTS**

Para-1 Pertains to record.

30

Para-2 Incorrect the Government of Khyber Pakhtunkhwa Agriculture Livestock & Cooperative Department issued promotion order of the appellant as well as Mr. Fazle Rabi from BS-18 to BS-19 Posts on regular basis vide Government of Khyber Pakhtunkhwa Agriculture Livestock & Cooperative Department Peshawar, Notification No SOE (AD) V-7 / 2011 / EXT dated 12-01-2012, (Annexure-A), but the appellant not submitted any appeal/request to the Department as well as to the honorable Tribunal against the promotion orders within the prescribed time limit. At present the appellant retired from service on superannuation w.e from 27-12-2011 (AN), vide Notification No SOE(AD)21-113/1980, dated 21-03-2012, (Annexure-B).

Para-3 That the appellant was promoted from BS-18 to BS-19 posts, the appellant not challenge <sup>d</sup> the promotion order <sup>before</sup> any Court of Law for ante-date promotion, but the appellant <sup>kept</sup> silent till the decision of the Honorable Service Tribunal in the Court case of Mr. Fazle Rabi.

Para-4 Correct.

Para-5 According to Para-1 (VI) of promotion policy 2009 of the Provincial Government which provides that promotion will always be notified with immediate effect and there is no provision with regard to ante-date promotion in the policy, (Annexure-C).

## GROUNDS

Para-a The ante-date promotion was allowed to Mr. Fazle Rabi in service appeal No 386/2012 vide judgment dated 31-12-2012, by the Honorable Service Tribunal Khyber Pakhtunkhwa Peshawar, whereby the appellant has neither file <sup>d</sup> any appeal in the Khyber Pakhtunkhwa, Service Tribunal nor to the Department, against the promotion orders issued by the Government of Khyber Pakhtunkhwa within prescribed time limit.

Para-b Detail reply is given in Para-2 of the facts.

Para-c The Departmental appeal of the appellant is time barred and not entertain-able.

Para-d Incorrect. The promotion order <sup>was</sup> issued by the Government of Khyber Pakhtunkhwa on 12-01-2012 of the appellant as well as Mr. Fazle Rabbi, but the appellant <sup>was</sup> not challenged the above order in the Honorable Service Tribunal & any other Court. After the decision arrived in favour of Mr. Fazle Rabi, then the appellant submitted Departmental appeal and requested to allow ante-date promotion on the same analogy with effect from 15-10-2010, as the appellant has

*[Signature]*


already retired from service on superannuation with effect from 27-12-2011, afternoon.

Para-e Incorrect. That the appeal of the appellant is time barred and not according to the Para-1 (VI) of promotion policy 2009.

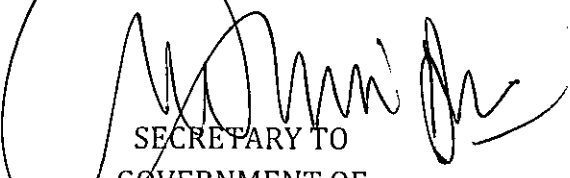
Para-g Incorrect Detail reply is given in Para- d & e.

Para-h No Comments hence denied.

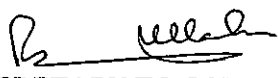
It is hereby humbly prayed that on acceptance of the instants comments, the appeal of the appellant may kindly be dismissed.



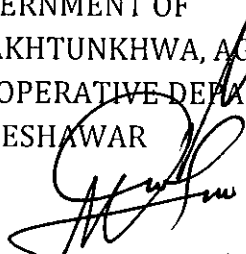
GOVERNMENT OF  
KHYBER PAKHTUNKHWA,  
THROUGH CHIEF SECRETARY  
PESHAWAR




SECRETARY TO  
GOVERNMENT OF  
KHYBER PAKHTUNKHWA, AGRI.  
LIVESTOCK & COOPERATIVE DEPARTMENT  
PESHAWAR



SECRETARY TO GOVERNMENT  
OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
PESHAWAR



SECRETARY TO GOVERNMENT  
OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
PESHAWAR



DIRECTOR GENERAL,  
AGRICULTURE (EXTENSION)  
KHYBER PAKHTUNKHWA, PESHAWAR

Annex = A  
29

GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
AGRICULTURE LIVESTOCK & COOPERATIVE  
DEPARTMENT

Dated Peshawar, the January 12, 2012

**NOTIFICATION.**

NO. SOE (AD) V-7/2011/Ext.- On the recommendations of the Provincial Selection Board (PSB), the competent authority is pleased to promote the following officers of Extension Wing of Agriculture, Livestock and Cooperative Department from BS-18 to BS-19 on regular basis with immediate effect except in case of officer at Sr. No.i Mr. Shafiq-ur-Rehman with effect from one day before his retirement i.e 27.12.2011 for actualization of his promotion:-

- i. Mr. Shafiq-ur-Rehman
- ii. Mr. Fazli Rabbi

2. The officers at Sr.No.ii will be on probation for a period of one year in terms of section 6(2) of the NWFP Civil Servants Act, 1973 read with rule 15 (1) of NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1981.

3. On their promotion, the following postings/transfers are ordered in the best public interest:-

| Sl.No. | Name of Officer      | From  | To   |
|--------|----------------------|---|--|
| 1.     | Mr. Shafiq-ur-Rehman | Executive District Officer (Agriculture) (BS-19) Swat (in his own pay scale).   | EDO (Agriculture) BS-19 Swat for one day before his retirement i.e 27.12.2011 for actualization of his promotion |
| 2.     | Mr. Fazli Rabbi      | Director Coordination/Planning and Monitoring (BS-19) HQ (in his own pay scale) | Director Coordination/Planning and Monitoring (BS-19) HQ   |

Sd/-

**SECRETARY AGRICULTURE**

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. The DG, Agriculture (Extension), Khyber Pakhtunkhwa, Peshawar.
2. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officers Swat.
4. PS to Chief Minister, Khyber Pakhtunkhwa.
5. PS to Chief Secretary, Khyber Pakhtunkhwa.
6. PS to Minister for Agriculture, Khyber Pakhtunkhwa.
7. PS to Secretary Agriculture, Khyber Pakhtunkhwa.
8. Personal file.

SECTION OFFICER-ESTT:

200  
1/12/12

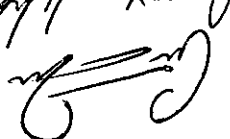
PTO

Before the Wajin Palitumbhara Service Tribunal Restoran

Shafiq bin Rahman Vs Govt. etc

Receipt of Cost Deposited  
By Respondent

The cost of Rs. 1000/- imposed upon respondent  
vide order dated 23/5/2016, has duly been  
received by counsel for appellant -

  
Answer when  
Addressed

Dated: 21/6/2016

✓  
21.06.16



**Before the Service Tribunal Khyber Pakhtunkhwa Peshawar**

Appeal No. 1387/2015

Shafiq Ur Rehman ..... Appellant.

Vs

Government of Khyber Pakhtunkhwa,  
Through Chief Secretary Peshawar and others ..... Respondents.

(Para-wise reply on behalf of respondent No. 6)

**Respectfully Sheweth:-**

Para 1 to 5: No Comments.

Being an administrative matter, the case in hand totally relates with respondent No. 2, 3, 4, & 5 and they are in better position to redress the grievances of the appellant. Besides, the Appellant has raised no grievances against respondent No.6.

Keeping in view the above mentioned facts, it is humbly prayed that the Appellant may be directed to approach the above mentioned respondents for the satisfaction of his grievances and the appeal in hand may be dismissed with cost.



ACCOUNTANT GENERAL  
KHYBER PAKHTUNKHWA

Before the Service Tribunal Khyber Pakhtunkhwa Peshawar

Appeal No. 1387/2015

Shafiq Ur Rehman ..... Appellant.

Vs

Government of Khyber Pakhtunkhwa,  
Through Chief Secretary Peshawar and others ..... Respondents.

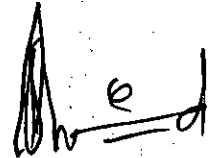
(Para-wise reply on behalf of respondent No. 6)

**Respectfully Sheweth:-**

Para 1 to 5: No Comments.

Being an administrative matter, the case in hand totally relates with respondent No. 2, 3, 4, & 5 and they are in better position to redress the grievances of the appellant. Besides, the Appellant has raised no grievances against respondent No.6.

Keeping in view the above mentioned facts, it is humbly prayed that the Appellant may be directed to approach the above mentioned respondents for the satisfaction of his grievances and the appeal in hand may be dismissed with cost.



ACCOUNTANT GENERAL  
KHYBER PAKHTUNKHWA

**BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA  
PESHAWAR**

Service App. No: 1387 / 2015

Shafiqu Ur Rahman

**Versus**

Govt. of Khyber Pakhtunkhwa etc

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**APPELLANT'S REJOINDER**

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**REPLY TO PRELIMINARY OBJECTIONS:**

1. All the seven preliminary objections taken in the reply are incorrect and are hence liable to be rescinded as such.

**PARAWISE REPLY:**

1. Para 1 of the appeal is not denied by the respondent department.
2. Para 2 of the appeal is correct and that of the reply is incorrect. The facts regarding the service appeal No. 386 / 2012 of Fazle Rabbi Ex. Director Coordination / Planning, requesting promotion w.e.f 15/10/2010 has not been denied.
3. Para 3 of the appeal is correct and that of the reply is incorrect. That the facts regarding acceptance of Mr. Fazle Rabbi service appeal vide judgment dated 31-12-2012 by the Hon'ble Tribunal are not denied by the respondent department.
4. Para 4 of the appeal has been admitted correct by the respondent department.
5. Para 5 of the appeal is correct and that of the reply is incorrect. That the respondent department has failed to allow ante dated promotion to the appellant, on the analogy of ante date promotion allowed to Fazle Rabbi by this Hon'ble tribunal and then by august Supreme Court of Pakistan vide CP No. 584-P / 2013 vide judgment dated 18-04-2014.

**REPLY TO THE GROUNDS:**

1. The grounds taken in the appeal are correct, whereas that of the reply are incorrect.

The appellant has been ignored by the respondent department, who filed his representation for the grant of anti date promotion on the same analogy. The respondent department was bound to extend the benefit of anti date promotion to the appellant in view of the dictum laid down in 1996 SCMR 1185, which was however not allowed for any rhyme or reason.

The appellant being senior to one Mr. Fazli Rabbi, Ex-Director Co-Ordination / Planning & Monitoring (BPS-19) HQ of Agriculture Extension Wing, and fulfilling the requisite criteria for promotion was entitled to be allowed anti date promotion on the same analogy w.e.f 15-10-2010.

There is nothing against the appellant which could have deprived him of his legitimate right. The appellant fully meets the requisite criteria, therefore his appeal merits acceptance and may be treated at par with his other colleague in the same cadre / scale.

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

Peshawar, dated  
30<sup>th</sup> Aug, 2016

Through,

  
Appellant,

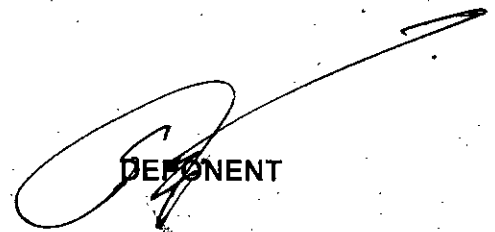
  
(Muhammad Zafar Tahirkheli)  
Advocate



**Affidavit**

I, the appellant, do hereby state on Oath that the contents of the above rejoinder are true and correct to the best of my knowledge and belief, and nothing has been kept concealed from this Hon'ble Tribunal.



  
DEPONENT