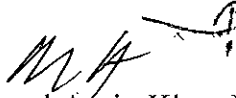


11.10.2017

None is present on behalf of the appellant. Mr. Ziaullah, Deputy District Attorney for the respondents present. Called several times till the last hours of the court but none appeared on behalf of the appellant. As such the appeal is dismissed in default. File be consigned to the record room.

ANNOUNCED

11.10.2017



(Muhammad Amin Khan Kundi)
Member



(Muhammad Hamid Mughal)
Member



21.11.2016

None present for the appellant. Mr. Muhammad Jan, GP for respondents present. Notice be issued to the appellant and his counsel. To come up for arguments on 30.3.2017.



(ABDUL LATIF)
MEMBER



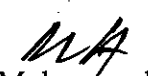
(MUHAMMAD AAMIR NAZIR)
MEMBER

30.03.2017

Appellant in person present. Mr. Kabirullah Khattak, Assistant AG for respondents also present. Appellant requested for adjournment. Adjourned. To come up for arguments on 26.07.2017 before D.B.



(Ahmad Hassan)
Member



(Muhammad Amin Khan)
Member

25.08.2017

None for the appellant present. Mr. Muhammad Jan, DDA for respondents present. Notices be issued to the appellant and his counsel. Adjourned. To come up for arguments on 11.10.2017 before D.B.



(Gul Zeb Khan)
Member

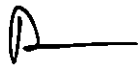


(Ahmad Hassan)
Member

29.10.2015

Appellant in person and Mr. Ziullah, GP for respondents present. Appellant requested for adjournment due to non-availability of his counsel. To come up for arguments on

31-3-16



Member



Member

31.03.2016

None for the appellant present. Mr. Muhammad Jan, GP for respondents present. To come up for arguments on 28.06.2016.



MEMBER



MEMBER

28.06.2016

Counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Counsel for the appellant requested for adjournment. To come up for arguments on 21.11.2016.



Member



Member

17.01.2014

Appellant with counsel and Mr. Khurshid Khan, SO for respondent with AAG present. Rejoinder has not been received, and learned counsel for the appellant stated that there was no need to file rejoinder, and that the case be fixed for arguments. To come up for arguments on 10.6.2014.



Chairman

10.6.2014

Appellant with counsel and Mr. Khurshid Khan, SO for respondent with AAG present. Arguments could not be heard due to incomplete bench. To come up for arguments on 27.11.2014.



Member

27.11.2014

Appellant with counsel and Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for arguments on 25.03.2015.



Reader

25.3.2015

Clerk of counsel for the appellant and Mr. Usman Ghani, Sr. GP for the respondents present. Counsel for the appellant is not available, therefore, case is adjourned to 29.10.2015 for arguments.



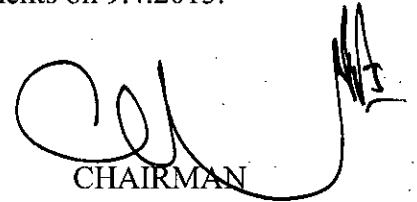
MEMBER



MEMBER

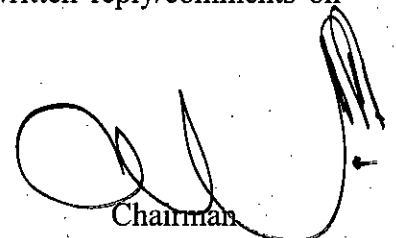
18.1.2013.

Appellant in person and Mr. Khurshid Khan, S.O for respondent with AAG present. To come up for written reply/comments on 9.4.2013.


CHAIRMAN

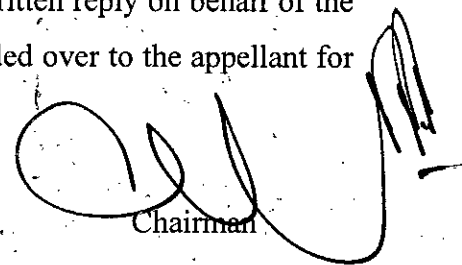
9.4.2013

Appellant in person and Mr. Khurshid Khan, SO for respondent with Mr. Noorullah, SGP present. Written reply has not been received, and request for further time made on behalf of the respondent. Another chance is given for written reply/comments on 13.6.2013.


Chairman

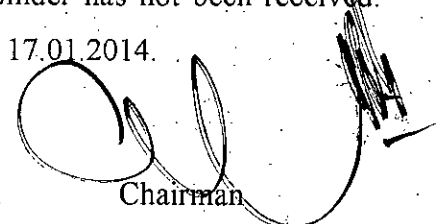
13.06.2013

Appellant in person and Khurshid Khan, SO for respondent with Mr. Usman Ghani, Sr.GP present. Written reply on behalf of the respondent received, copy whereof is handed over to the appellant for rejoinder on 02.10.2013.


Chairman

02.10.2013

Clerk of counsel for the appellant and Mr. Khurshid Khan, S.O for respondent with AAG present. Rejoinder has not been received. Another chance is given for rejoinder on 17.01.2014.


Chairman

Appeal No. 800/2012
Suleman Khan.

3. 31.8.2012

Munshi to counsel for the appellant present and requested for adjournment. Case adjourned to 9.10.2012 for preliminary hearing.

Member

4. 9-10-12

Appellant present and requested for adjournment - Case adjourned to 16-11-2012 for P-H.

Member.

5. 16.11.2012

Counsel for the appellant present and stated that the appellant was appointed as SET BPS-16 on 10.01.1990. The Govt issued notification dated:26.1.2008 vide which the appellant being SET and having the requisite length of ten years service was liable to be promoted to BPS-17. The appellant was upgraded from BPS-16 to BPS-17 vide notification dated.21.03.2009 with immediate effect i.e 21.03.2009 instead of 01.10.2007. The appellant preferred departmental appeal on 28.02.2012 but with no reply within the statutory period, hence this appeal on 28.06.2012. Counsel for the appellant also presented the judgment of this Tribunal where the persons were upgraded from the date as set out in the notification dated 26.01.2008. The appellant being similar case may also be given due right and upgraded from 01.10.2007. Points raised need consideration. Appeal is admitted to regular hearing. Process fee and security be deposited within 10 days. Notices be issued to the respondents for written reply on 18.01.2013.

MEMBER

Appellant deposited
Security & process fee
Rs 280/- Bank
receipt is attached
with file
Jhr

6. 16.11.2012

This case be put up before the Final Bench I for disposal.

CHAIRMAN

FORM "A"

FORM OF ORDER SHEET

Court of.....

Case No.....of.....


Serial No. of Order or Proceedings 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary 3
1-	11/07/2012	<p>The appeal of Mr. Suleman Shah resubmitted today by Mr. N. Inam Khan Adv; . may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR</p>
2-	19-7-2012	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>31-8-2012</u>.</p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>

The appeal of Mr. Saleman Shah son of Sadiq Shah SET, received today i.e. on 28/06/2012 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days:-

- 1- Appeal may be got signed by the appellant.
- 2- Annexures of the appeal may be attested.
- 3- Annexure-A of the appeal is illegible which may be replaced by legible one.

NO. 728 /S.T,

Dt. 29/06 /2012.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR.M.IMAM KHAN YOUSAFZAI ADV. PESH.

Respected Sir!

The instant appeal is re-submitted after doing the need full.


Advocate

BEFORE THE KHYBER PUKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Appeal no. 800/2012

Saleman Shah S/o Saddiq Shah Resident of Achini Payan,
Peshawar, S.E.T. G.H.S. Policy Colony, Peshawar. **Appellant**

Versus.

Secretary Elementary and secondary education department
government of Khyber Pukhtunkhwa, Peshawar. **Respondent**

INDEX

S.No	Description	Annexure	Pages
1.	Appeal		1-4
2.	Copy of Notification dated 26/01/2008	"A"	5
3.	copy of notification dated 21/03/2009	"B"	6-8
4.	Copy of Departmental Appeal dated 28/02/2012	"C"	9
5.	copy of appeal and judgment dated 03/07/2007	"D" & "E"	10-12 13-15
6.	Wakalat Nama		16

Appellant

Through


MUHAMMAD INAM KHAN YOUSAFZAI

Advocate, High Court Peshawar

Cell # 0321 5836040

Office: Al-Mumtaz hotel, 209, G.T.Road Hashtnagri, Peshawar

①

BEFORE THE KHYBER PUKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Appeal no. 800/2012

Khyber Pukhtunkhwa
Services Tribunal
Peshawar
No. 711
Dated 28/6/12

Saleman Shah S/o Saddiq Shah Resident of Achini Payan,
Peshawar, S.E.T. G.H.S. Policy Colony, Peshawar **Appellant**

Versus

Secretary Elementary and secondary education department
government of Khyber Pukhtunkhwa, Peshawar. **Respondent**

**APPEAL UNDER SECTION 4 OF THE KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL 1974 AGAINST
THE NOTIFICATION NO: SO(PE)2-6/SET(B-
16)UPGRADATION TO B-17 DATED 21/03/2009 VIDE
WHICH THE DEPARTMENTAL PROMOTION
COMMITTEE ALLOWED ONE TIME UP GRADATION TO
THE APPELLANT ALONG WITH OTHERS FROM BPS 16
TO BPS 17, WITH IMMEDIATE EFFECT INSTEAD OF
01/10/2007 AS PER NOTIFICATION NO. FD/SO(FR) 10-
22-2007 DATED 26/01/2008**

Filed to-427

28/6/12

re-submitted to-427
and filed.

11/7/12
RESPECTED SIR,

1. That appellant was appointed as S.E.T (BPS-16) on 24/11/1987 and was regularized w.e.f. 10/01/1990 in the education department, government of Khyber Pukhtunkhwa.

2

2. That the appellant submitted documents for awarding BPS-17, w.e.f 01/10/2007 as per notification No. **FD/SO(FR) 10-22-2007**. (Copy of Notification is attached as annexure "A").
3. That on recommendation of D.P.O. the secretary / respondent No.1 allowed the aforesaid benefits to appellant with effect from 21/03/2009 instead of 01/10/2007 vide notification No. **SO(PE)2-6/SET(B-16)UPGRADATION TO B-17 DATED 21/03/2009**. (copy of notification is attached as annexure "B").
4. That the appellant proffered appeal to the respondent on 28/02/2012, which is still un responded. (Copy of Departmental Appeal is attached as annexure "C").
5. That feeling aggrieved from the same the appellant files the instant appeal before this Honourable Forum on the following grounds inter alia: -

GROUND: -

- A. That the impugned order is illegal against the principles of natural justice and is based on discrimination.
- B. That the impugned order is violation to the original notification dated 26/01/2008, mentioned above.

3

C. That the incumbents of other posts of teachers are granted the benefits in question from 01/10/2007, while the incumbents of S.E.T post including the appellant are discriminated.

D. That in the light of the original notification dated 26/01/2008. The incumbents of S.E.T post are also entitled to grant of the relevant benefits from 01/10/2007, including the appellant.

E. That in light of the judgment dated 03/07/2009 in appeal titled "Haroon ur Rasheed Versus Secretary elementary and secondary Education, K.P.K" the appellant deserves the relief as prayed for. (copy of appeal and judgment is attached as annexure "D" and "E").

F. That the appellant fulfilled the requisite terms and conditions for the grant of relevant benefits on 01/10/2007, also with the requisite length of service and qualification.

G. That the appellant seeks leave of this Honourable Tribunal to claim further grounds also.


Advocate

(4)

It is, prayed that on acceptance of this appeal the appellant may be granted the relevant benefits from 01/10/2007, with costs of this appeal against the respondents.

Dated: 28/06/2012

Suleman F.

Appellant

Through

Muhammad Inam Khan

MUHAMMAD INAM KHAN YOUSAFZAI

Advocate, High Court Peshawar

Certificate;-

it is certified that as per instruction of my client no such like appeal has earlier been filed before this Honourable Tribunal.

Muhammad Inam Khan
Advocate



Alotted
5
Amount

Annexure IA
R. J.

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

Dated Peshawar, the 26th January, 2008.

NOTIFICATION

NO.FD/SO(FR)10-22/2007. In supersession of this Department's letter No.SO(FR)10-22(3)/2005 dated 01-10-2007 and in pursuance of the decisions of the meeting held under the Chairmanship of Secretary Establishment on 2-1-2008, the Competent Authority is pleased to allow upgradation for the incumbents of the posts as per details given below w.e.f. 1-10-2007:-

S.NO	Existing Designation and Pay Scale	Qualification	Upgraded Scale
1	Primary School Teacher (PST) (BPS-07)	BA/FSc and are trained teachers.	BPS-09 (one time only)
2	Primary School Teacher (PST) with requisite experience renamed as Head Teacher/Head Mistress of Primary Schools (BPS-07)	Having 10 years service	BPS-12 (one time only)
3	CT (BPS-09)	BA/BSc and are trained teachers	BPS-15 (one time only)
4	SFTS (BPS-16)	With at least ten years service. Upgradation to the post shall be made through ETC as per laid down procedure.	BPS-17
5	Qari/Qaria (BPS-07)	Hafiz Quran with SSC	BPS-12

SECRETARY TO GOVT. OF NWFP
FINANCE DEPARTMENT

Encls. No. & Date even.

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

- 1) All the Secretaries in NWFP, Peshawar.
- 2) All the DCOs/EDOs Schools & Literacy Department, NWFP.
- 3) Accountant General, NWFP, Peshawar.
- 4) Director Schools & Literacy NWFP, Peshawar.
- 5) Director of Education FATA NWFP, Peshawar.
- 6) PSO to Chief Minister, NWFP.
- 7) PSO to Chief Secretary, NWFP.
- 8) PS to Secretary Finance Department, NWFP.
- 9) All District/Agency Accounts Officers in NWFP.
- 10) President All Primary Teacher Association NWFP.

Malik Khalid Khan
President
All Primary Teachers
Association N.W.F.P

Handwritten signatures and initials.

(NAIB KIAN)
SECTION OFFICER (FR)



BETTER COPY OF ANNEXURE "A"

SA
A

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

DATED PESHAWAR THE 26TH JANUARY 2008

NOTIFICATION:

No. FD/SO(FR)10-22/2007, in suppress on of this Department letter No. SO(FR)10-22(B)/2005, dated 01/10/2007 and in pursuance of the decision of meeting held under the chairmanship of Secretary Establishment on 02/01/2008, the competent authority is pleased to allow up gradation for the incumbents of posts as per details given below w.e.f. 01/10/2007.

S.No	Existing Designation and Pay Scale	Qualification	Up gradation
1.	Primary School Teacher (PST) (BPS-07)	F.A / F.Sc and are trained teachers	BPS -09 (One time only)
2.	Primary School Teacher (PST) with requisite experience remained as Head Masters / Head Teachers of Primary Schools (BPS-07)	Having 10 years service	BPS-12 (one time only)
3.	CT (BPS-09)	BA / B.Sc and are trained teacher	BPS-15 (One time only)
4.	SET's (BPS-16)	With at least ten years service. Up gradation to the SEC as per laid down procedure	BPS-17
5.	Qari / Qaria	Hafiz Quran	BPS-12

SECRETARY TO GOVERNMENT OF NWFP
FINANCE DEPARTMENT

Endst No & Date even

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

1. All the secretaries in NWFP, Pakistan.
2. All the DCO's / EDO's schools and literacy department NWFP.
3. Accountant General NWFP, Peshawar.
4. Director Schools and literacy NWFP, Peshawar.
5. Director of Education FATA, NWFP, Peshawar.
6. PSO to Chief Minister, NWFP.
7. PSO to Chief Secretary, NWFP.
8. PS to Secretary Finance Department of NWFP.
9. All District / Agency Account Officers in NWFP.
10. President all Primary Teachers Association, NWFP.

Attached to
True Copy
Adl.

NAIU KHAN
Section Officer (FR)



Annexure (B)

GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated 21-03-09

NOTIFICATION

No.SO(PE)2-6/SET(B-16)Upgradation to B-17: The Competent Authority on the recommendation of Departmental Promotion Committee and in consultation with Finance Department is pleased to allow one time up gradation from B-16 to B-17 (Personal) to the following 163 SETs Male, 132 SETs Female and 14 SETs (Technical) with immediate effect subject to the condition that the posts of SET shall be downgraded from B-17 to B-16 as and when vacated by the incumbents:

i) 163 SETs Male(General)

S.No	Seniority List No.	Name of Officer	Date of Appointment as Regular SET	Present Place of Posting
1.	736A	Pasham Khan	27-11-85	A.A.E.O Office F.R.D.I.Khan
2.	838	Muhammad Shoaib	04-11-86	GHS Billitang Kohat
3.	869	Mohabbat Khan	14-12-86	GHS Kam- Shalman Landi Kotal Khyber Agency
4.	870	Yousaf Hussain	01-11-86	GHS Shalozan Kurram
5.	879	Munir Hussain	16-12-86	GHS Zeran Kurram
6.	942	Javed Khan	24-02-87	GHS Dingi Haripur
7.	943	Bahadar Ali	24-02-87	GMS Alamganj Swat
8.	944	Mohammad Younis	25-02-87	GMS Afzal Abad Mansehra
9.	953	Shamsher ali	04-03-87	ADO S/L DIK Surkamar (Khyber)

*Attached to
Ad*



(2)

29.	1361	Rehmat Sher	12-09-88	GHS Shaghali Payan M. AS
30.	1374	Noor Wali Khan	06-10-88	GHS Barganetoo FR Bannu
31.	1378	Muhammad Zahiruddin	24-10-88	G.H.S Dosalli NWA
32.	1390	Hazir Khan	20-11-88	GHS Chumawan Haripur
33.	1485	Sabir Hussain Shah	29-07-89	GHS Lissan Nawab Mansehra
34.	1586	Abdul Wahab	07-09-89	GHS #-1 D.I.Khan
35.	1648	Purvez Khan	20-09-89	GHS Ladha Haripur
36.	1659	Malik Aman	21-09-89	GMS Bathal Mansehra
37.	1661	Abdul Majeed	21-09-89	GMS Kuladi D.I.Khan
38.	1677	Nasrullah Khan	25-09-89	gms Mangal D.I.Khan
39.	1692	Taj Ali	01-10-89	GMS Kalka Nawab Khan Laki
40.	1723	Sadiq Shah	01-10-89	GHSS Nawa Shaber A.Abad
41.	1752	Zahoor Akhtar	07-10-89	GHS Mnjla A.Abad
42.	1765	Hayatullah	16-10-89	GHS Harama Tala Lakki
43.	1798	Hazrat Ali	26-11-89	GHS Sararogha SWA
44.	1855	Kifayat Hussain Shah	09-12-89	GHS Pairan Mansehra
45.	1881A	Masood Jan	10-12-89	ADO Charsadda
46.	1901	Suleman Shah	24-11-87	GHS Hayatabad Peshawar
47.	1921	Jehanzeb	24-01-90	GHS Nassa D.I.Khan
48.	1952	Jaffar Khan	01-02-90	GMS Palal Tangi SET Mohmand Agency

Attested to
Bej

3

P-8

		Mehmood		
9.	96	Muhammad Iqbal	25-04-85	GCMS #-3 Mardan
10.	99	Muhammad Zahir Shah	01-07-86	GHSS TOTAKAN Mkd Agency
11.	102	Ayaz Khan	30-10-86	GCHSS Kohat
12.	103	Muhammad Hassan	04-11-82	GHSS Jamrud Khyber Agency
13.	111	Ibad Ullah	16-10-89	GTHSS Gulbahar Peshawar
14.	113	Naqib Ullah	16-10-90	GEC Mir Ali Miran Shah

SECRETARY TO GOVT. OF NWFP
ELEMENTARY AND SECONDARY
EDUCATION DEPARTMENT.

Endst No. No.SO(PE)2-G/SET(B-16)Upgradation to B-17: Dated 21-03-09

Copy Forwarded to the :

1. The Accountant General NWFP Peshawar
2. Secretary to Govt. of NWFP Establishment Department
3. Secretary to Govt. of NWFP Finance Department
4. Director Elementary & Secondary Education NWFP Peshawar
5. Director PITE NWFP Peshawar
6. Director Education FATA NWFP Peshawar
7. All EDOS E&SE in NWFP
8. All District /Agency Accounts Officers
9. PS to Chief Secretary NWFP
10. Officers concerned
11. PS to Minister Elementary & Secondary Education NWFP
12. PS to Secretary Elementary & Secondary Education NWFP
13. Office Order File

*Attestation to
Cham
Ad*

ARIF JAMIL

ARIF JAMIL
SECTION OFFICER (PRIMARY)

The Secretary,
(E & SE)
Govt. of K.P.K. Peshawar

Annexure
"C" 9

**SUBJECT: DEPARTMENTAL APPEAL FOR AWARDING BPS-17
W.E.F. 01-10-2007:**

Sir,

With due respect it is stated for your kind consideration and favour that I Mr. Sulman Shah S/O Sadiq Shah has been appointed as S.E.T. since 24.11.87 SET(U.T) vide EDST Number D.D.S, Pesh. No 26217-22 dt 23.11.87 (P-2) + regularised w.e.f. 10.01.1990 vide Dir. (S) H.W.P. Pesh. No 1406-26 dt 10.1.90 and was awarded BPS-17 through D.P.C w.e.f. 21-03-2009 (copy of notification on page 5 attached).

Dear Sir,

I submitted my documents for awarding BPS-17 personal w.e.f. 01-10-2007 as per notification No. FD/S0 (FR) 10-22-2007 dated 26-01-2008 (copy on Page No. 8 attached) which clearly declares that BPS-17 personal will be allowed to incumbents w.e.f. 01-10-2007. But unfortunately I were granted BPS-17 personal w.e.f. 21-03-2009 vide notification No. S0 (PE) 2-6/SET (B-16) up gradation to B-17 dated 21-03-2009. (Serial No. 46 seniority list No. 1001 (Page No 5) instead of 01-10-2007.

Therefore it is requested to please grant me B-17 w.e.f. 01-10-2007 in view of the

1. Notification No. FD/S0(FR) 10-22-2007 dated d26-01-2008. (P-8)
2. Notification No. S0(PE) 2-6 (DPC) upgradation S.E.Ts BPS-16 to BPS-17 Edst. No. S0(FR)ED 10-22 (3) 2007 Vol-II dated 03-11-2010. (P-9)
3. Judgment of KPK Service Tribunal Peshawar announced on 03-07-2009.

S. A. No. 2 14-/09 (Page No. 10)

Keeping in view the above few facts, I hope that it will be a constant kind of you to consider my appeal sympathetically and will give me BPS-17 w.e.f. 01-10-2007.

Forwarded to
F.D.O.
[Signature]

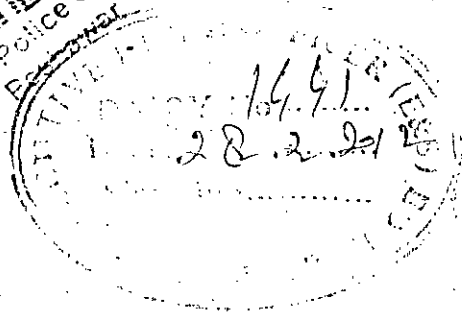
Yours obediently,

[Signature]

(SULEMAN SHAH)
S.E.T. G.H.S. Police Colony,
Peshawar.

Dated: 28.2.12

Head Master
G.H.S. Police Colony
Peshawar



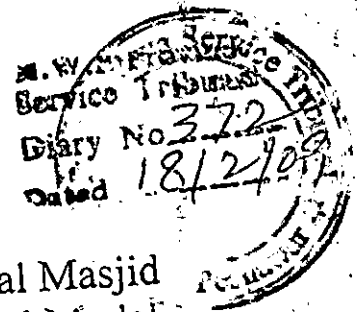
Attached to
[Signature]
A.O.

Surkamar (Khyber)

BEFORE THE N.W.F.P SERVICE TRIBUNAL, PESHAWAR.

Annexure 'D'

Appeal No. 266 /2009:



1. Mr Haroonurrashid S/o Ghulam Sarwar near Bilal Masjid Mohallah Ram Bagh mardan (S.E.T Govt; Cenital Model High School Bank Road Mardan).

Appellant.

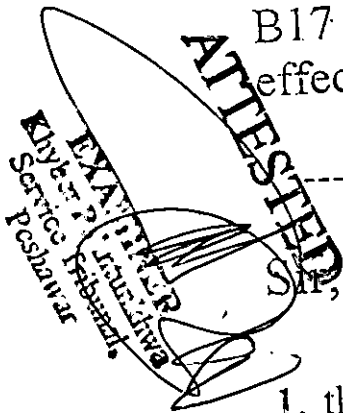
V/S

1. The Secretary Elementary and Secondary Education Deptt; Govt; of N.W.F.P, Peshawar.
2. The Chief Secretary, Govt; of N.W.F.P Peshawar.

Respondent.

Appeal under Section-4 of The N.W.F.P Service Tribunal-1974, to the effect that Notification No. SO (PE) 2-6 / E & S / upgradation / SET dated 27.09.2008 to the extent of allowing one time upgradation from B-16 to B17 to the S.E.Ts including Appellant with immediate effect i.e; 27.09.2008 instead of 01.10.2007.

ATTESTED
S.P.



1. that Appellant was appointed as S.E.T (BPs-16) on 24.05.1995, in the Education Department, Government of N.W.F.P.

2. that the Govt; of N.W.F.P Finance Department vide Notification No. FD/SO(FR)10-22(B) /2005 dated 26.01.2008, allowed to up-grade various posts of Teachers in the Education Department including the incumbents of post of S.E.T, with at least ten years service, subject to recommendation of D.P.C.

Filed to-day

18/2/09

Copy is Annexure- "A"

2

3. that on recommendation of D.P.C, The Secretary/Respondent No.1 allowed the aforesaid benefits to Appellant with effect from 27.09.2008 instead of 01.10.2007 vide Notification No. SO(PE) 2-6 / E & S / up- gradation / S.E.T dated 27.09.2008.

Copy is Annexure-"B"

4. that grieved there from the Appellant preferred Appeal to the Chief Secretary / Respondent No.2 on 24.10.2008, which is still unresponded.

Copy are Annexure-"C & D"

Grounds:-

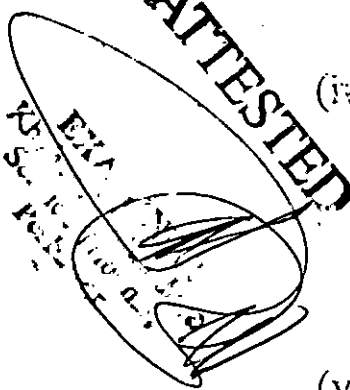
- (i) that the impugned order is illegal against the principles of natural justice and based on discrimination.
- (ii) that the impugned order is in violation to the original notification dated 01.10.2007, (Copy Annexure-"B" above).
- (iii) That the incumbents of other posts of Teachers are granted the benefits inquestion from 01.10.2007. while, the incumbents of S.E.T posts including the Appellant, are discriminated.

Copy Annexure-"E"

(iv) that in the light of the original notification dated 01.10.2007 (Annexure-B, above), the incumbents of S.E.T post are also entitled to the grant of the relevant benefits from 01.10.2007, including the Appellant.

(v) that the Appellant fulfilled the requisite terms and condition for the grant of relevant benefits on 01.10.2007, also, with the requisite length of service and qualification.

(vi) that the Appellant seeks leave of this Honourable Tribunal to claim further grounds also.



It is prayed that on acceptance of this Appeal, the Appellant may be granted the relevant benefits from 01.10.2007, with costs of this Appeal against the Respondents.

Dated:- 18.02.2009.

Appellant

[Signature]
(Haroon ur rashid)

through:-

[Signature]
Muhammad Adam Khan
Advocate Mardah.

ADAM KHAN
B. A. LL. B, Advocate
HIGH COURT MARDAN

[Diagonal Stamp and Handwritten Notes]
Date of Presentation of Petition
No. ...
Date of ...
No. of ...
Date of ...
No. of Copy

Certificate to be true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Annexure 'E'

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Appeal No. 266 of 2009

Date of Institution. ... 18.02.2009
Date of Decision ... 03.07.2009



Haroonur Rashid S/O Ghulam Sarwar near Bilal Masjid Mohallah Ram Bagh Mardan
(SET Government Cential Model High School Bank Road, Mardan). (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education Department Government of NWFP, Peshawar.
2. The Chief Secretary, Government of NWFP Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE NWFP SERVICE TRIBUNAL ACT, 1974, TO THE EFFECT THAT NOTIFICATION NO. SO(PE)2-6/E&S/UPGRADATION/SET DATED 27.9.2008 TO THE EXTENT OF ALLOWING ONE TIME UPGRADATION FROM B-16 TO BPS-17 TO THE SETS INCLUDING APPELLANT WITH IMMEDIATE EFFECT I.E. 27.9.2008 INSTEAD OF 01.10.2007.

ATTESTED
Khyber Pakhtunkhwa Service Tribunal
Peshawar

MR. ADAM KHAN,
Advocate.

For appellant.

MR. JAMAL ABDUL NASIR,
Addl. Government Pleader,

For respondents.

MR. JUSTICE (R) SALIM KHAN,
MR. ABDUL JALIL KHAN,

CHAIRMAN
MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN.- The legal issues in Service Appeals Nos. 266 to 282 of 2009 (17 cases), in Service Appeals Nos. 213 to 219 and 429 to 431 of 2009 (10 cases) as well as in Service Appeal No. 200 of 2009, are similar, and need discussion and disposal at the same time. The learned counsel for the appellants in the first set of 17 cases, the learned counsel for the appellants in second set of 10 cases and the special attorney of the appellant in single case No. 200 of 2009 and the A.G.P explained the cases.

2. Haroon Rashid, appellant contended that he was SET BPS-16. The Finance Department issued the Notification No. FD/SO(FR)10-22(B)/2005, dated 26.1.2008, vide which upgradation of various posts of teachers in the Education Department was ordered. It included the incumbents of posts of S.E.T with atleast 10 years service, subject to the recommendations of the Departmental Promotion

Committee. Vide order dated 27.9.2008, upgradation was allowed to the appellant with immediate effect instead of 1.10.2007. The cases of the other appellants are almost the same, though the cases in the second set also contained the contention that imposition of restriction of one time and personal was illegal, against law and facts. The appellant of Service Appeal No. 200 of 2009 contended that she was posted as SET (BPS-17) but grant of upgradation was delayed upto 27.9.2008, and it was granted to her with immediate effect, instead of the due date.

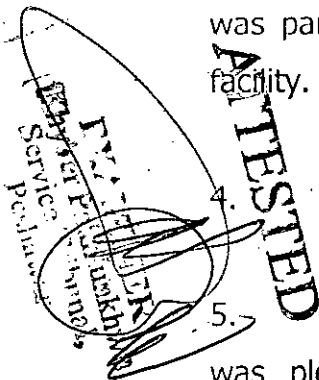
3. The respondents contested the appeal. They submitted that the grant of upgradation was for one time only with atleast 10 years service, and the condition of processing the cases through the Departmental Promotion Committee was part and parcel of the notification, vide which the appellants claimed the facility.

We heard the arguments and perused the record as aforementioned.

4. The notification dated 26.1.2008 clearly shows that the Authority was pleased to allow upgradation for the incumbents of the posts w.e.f. 01.10.2007. Vide order dated 27.9.2008, certain persons were granted upgradation, but with immediate effect and subject to the condition that these upgradations were personal, and the posts shall be degraded from BPS-17 to BPS-16 when these are vacated by the present incumbents.

5. It was the prerogative of the Government to grant upgradation for one time only, though to all civil servants of the Education Department who had the requisite qualification on the date of issue of the above mentioned notification dated 26.1.2008. It was also the prerogative of the Provincial Government to withdraw the said order on the same date for the purposes of all those persons who were not qualified for upgradation of their posts on 26.1.2008. The Government had the power to declare that the posts shall stand upgraded for the purposes of their incumbents only, and not perpetually.

6. The above mentioned notification had clearly declared that the upgradation would be effected from 01.10.2007. The Departmental Promotion Committee had to take time in processing the cases of incumbents of the posts in order to check whether they had the required length of service, and they were otherwise eligible for upgradation through their service record. But it did not mean



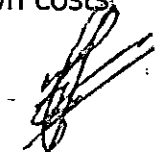
that the Departmental Promotion Committee could change the contents of the notification itself, specially with respect to its effectiveness. It is not the job of the Departmental Promotion Committee to fix the date of promotion/upgradation prospectively, when the notification had declared the date of effectiveness from a previous certain date, or when a vacancy was available for a certain civil servant from a previous date. It was the authority of the Appointing Authority to antedate the upgradation ~~as~~, as the case may be, to the respective date mentioned by the notification, or availability of the vacancy. That date is 01.10.2007 in the present cases, which could not be changed by the D.P.C, or, even, by the Appointing Authority.

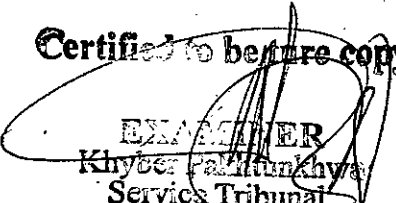
8. In the light of the above, we accept all the above mentioned appeals to the extent that the upgradation of their respective posts and their appointment to those posts shall be declared effective from 01.10.2007, though such upgradation and posting shall be one time only and shall be personal to the appellants, and their similarly placed colleagues, as per the contents of the notification quoted above. Parties are left to bear their own costs.

ANNOUNCED.

03.7.2009

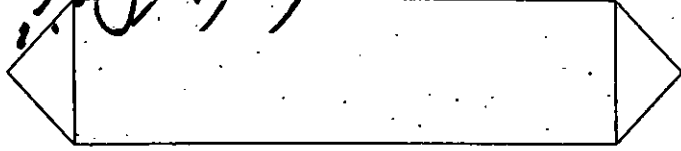

(ABDUL JALIL KHAN)
MEMBER


(JUSTICE (R) SALIM KHAN)
CHAIRMAN

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Services Tribunal,
Peshawar

Date of presentation of Application: 26.6.2012
Number of Posts: 10
Class: 10
Usual: 10
Total: 10
Name: 10
Date of Completion of Copy: 26.6.2012
Date of Delivery of Copy: 26.6.2012

بعدالت مسردکنز نر پیوٹل گمر جنرل ڈیو



2 مخانب اپیلانے
سپیمان سنک ولسا دی قشاہ بنام مسکر رسی

مورخہ
مقدمہ
دعوی
جرم

باعث تحریر آنکہ

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

آن مقام **محمد عمر انعام خان پوسٹوف** کیلئے **ایڈووکیٹ صاحب دادا بیک**
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 و تقرر ثالث و فیصلہ پر حلف دینے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زر میں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی 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 با اختیار حاصل ہوں گے
اور اس کا ساختہ پر داختم منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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۔ لہذا وکالت نامہ لکھد یا کہ سندر ہے۔

Julenar

*is tested
and Accepted
C.M.*

2012

المرقوم **رسمائیں** ماہ جون

العبد گواہ العبد
مقام

BEFORE THE KHYBER PUKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Appeal no. 800 /2012

Member's
copy

Saleman Shah S/o Saddiq Shah Resident of Achini Payan,
Peshawar, S.E.T. G.H.S. Policy Colony, Peshawar. **Appellant**

Versus.

Secretary Elementary and secondary education department
government of Khyber Pukhtunkhwa, Peshawar. **Respondent**

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3.	copy of notification dated 21/03/2009	"B"	6-8
4.	Copy of Departmental Appeal dated 28/02/2012	"C"	9
5.	copy of appeal and judgment dated 03/07/2007	"D" & "E"	10-12 13-15
6.	Wakalat Nama		16

Appellant

Through


MUHAMMAD INAM KHAN YOUSAFZAI

Advocate, High Court Peshawar

BEFORE THE KHYBER PUKHTUNKHWA SERVICES TRIBUNAL PESHAWAR

Appeal no. ____/2012

Saleman Shah S/o Saddiq Shah Resident of Achini Payan,
Peshawar, S.E.T. G.H.S. Policy Colony, Peshawar **Appellant**

Versus

Secretary Elementary and secondary education department
government of Khyber Pukhtunkhwa, Peshawar. **Respondent**

**APPEAL UNDER SECTION 4 OF THE KHYBER
PUKHTUNKHWA SERVICES TRIBUNAL 1974 AGAINST
THE NOTIFICATION NO. SO(PE)2-6/SET(B-
16)UPGRADATION TO B-17 DATED 21/03/2009 VIDE
WHICH THE DEPARTMENTAL PROMOTION
COMMITTEE ALLOWED ONE TIME UP GRADATION TO
THE APPELLANT ALONG WITH OTHERS FROM BPS 16
TO BPS 17, WITH IMMEDIATE EFFECT INSTEAD OF
01/10/2007 AS PER NOTIFICATION NO. FD/SO(FR) 10-
22-2007 DATED 26/01/2008**

RESPECTED SIR,

1. That appellant was appointed as S.E.T (BPS-16) on 24/11/1987 and was regularized w.e.f. 10/01/1990 in the education department, government of Khyber

2. That the appellant submitted documents for awarding BPS-17, w.e.f 01/10/2007 as per notification No. **FD/SO(FR) 10-22-2007**. (Copy of Notification is attached as annexure "A").
3. That on recommendation of D.P.O. the secretary / respondent No.1 allowed the aforesaid benefits to appellant with effect from 21/03/2009 instead of 01/10/2007 vide notification No. **SO(PE)2-6/SET(B-16)UPGRADATION TO B-17 DATED 21/03/2009**. (copy of notification is attached as annexure "B").
4. That the appellant proffered appeal to the respondent on 28/02/2012, which is still un responded. (Copy of Departmental Appeal is attached as annexure "C").
5. That feeling aggrieved from the same the appellant files the instant appeal before this Honourable Forum on the following grounds inter alia: -

GROUNDS: -

- A. That the impugned order is illegal against the principles of natural justice and is based on discrimination.
- B. That the impugned order is violation to the original notification dated 26/01/2008, mentioned above.

C. That the incumbents of other posts of teachers are granted the benefits in question from 01/10/2007, while the incumbents of S.E.T post including the appellant are discriminated.

D. That in the light of the original notification dated 26/01/2008. The incumbents of S.E.T post are also entitled to grant of the relevant benefits from 01/10/2007, including the appellant.

E. That in light of the judgment dated 03/07/2009 in appeal titled "Haroon ur Rasheed Versus Secretary elementary and secondary Education, K.P.K" the appellant deserves the relief as prayed for. (copy of appeal and judgment is attached as annexure "D" and "E").

F. That the appellant fulfilled the requisite terms and conditions for the grant of relevant benefits on 01/10/2007, also with the requisite length of service and qualification.

G. That the appellant seeks leave of this Honourable Tribunal to claim further grounds also.

It is, prayed that on acceptance of this appeal the appellant may be granted the relevant benefits from 01/10/2007, with costs of this appeal against the respondents.

Dated: - 28/06/2012

Appellant


Through

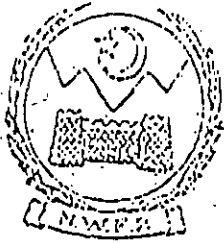

MUHAMMAD INAM KHAN YOUSAFZAI

Advocate, High Court Peshawar

Certificate;-

it is certified that as per instruction of my client no such like appeal has earlier been filed before this Honourable Tribunal.


Advocate



GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

Dated Peshawar, the 26th January, 2008.

NOTIFICATION

NO.FD/SO(FR)10-22/2007. In supersession of this Department's letter No.SO(FR)10-22(B)/2005 dated 01-10-2007 and in pursuance of the decisions of the meeting held under the Chairmanship of Secretary, Establishment on 2-1-2008, the Competent Authority is pleased to allow upgradation for the incumbents of the posts as per details given below w.e.f. 1-10-2007:-

S.NO	Existing Designation and Pay Scale	Qualification	Upgraded Scale
1	Primary School Teacher (PST) (BPS-07).	BA/BSc and are trained teachers.	BPS-09 (one time only)
2	Primary School Teacher (PST) with requisite experience renamed as Head Teacher/Head Mistress of Primary Schools (BPS-07).	Having 10 years service	BPS-12 (one time only)
3	CT (BPS-09).	BA/BSc and are trained teachers	BPS-15 (one time only)
4	SFTs (BPS-16)	With at least ten years service. Upgradation to the post shall be made through LDC as per laid down procedure.	BPS-17
5	Qari/Qaria (BPS-07)	Hafiz Quran with SSC	BPS-12

SECRETARY TO GOVT. OF NWFP
FINANCE DEPARTMENT

Enclst No. & Date even.

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

- 1) All the Secretaries in NWFP, Peshawar.
- 2) All the DCOs/EDOs Schools & Literacy Department, NWFP.
- 3) Accountant General, NWFP, Peshawar.
- 4) Director Schools & Literacy NWFP, Peshawar.
- 5) Director of Education FATA NWFP, Peshawar.
- 6) PSO to Chief Minister, NWFP.
- 7) PSO to Chief Secretary, NWFP.
- 8) PS to Secretary Finance Department, NWFP.
- 9) All District/Agency Accounts Officers in NWFP.
- 10) President All Primary Teacher Association NWFP.

Malik Khalid Khan
President
All Primary Teachers
Association N.W.F.P

(NAIIB KHAN)
SECTION OFFICER (FR)

BETTER COPY OF ANNEXURE "A"

GOVERNMENT OF NWFP
FINANCE DEPARTMENT

(REGULATION WING)

DATED PESHAWAR THE 26TH JANUARY 2008

NOTIFICATION:

No. FD/SO(FR)10-22/2007, in suppress on of this Department letter No. SO(FR)10-22(B)/2005, dated 01/10/2007 and in pursuance of the decision of meeting held under the chairmanship of Secretary Establishment on 02/01/2008, the competent authority is pleased to allow up gradation for the incumbents of posts as per details given below w.e.f. 01/10/2007.

S.No	Existing Designation and Pay Scale	Qualification	Up gradation
1.	Primary School Teacher (PST) (BPS-07)	F.A / F.Sc and are trained teachers	BPS-09 (One time only)
2.	Primary School Teacher (PST) with requisite experience remained as Head Masters / Head Teachers of Primary Schools (BPS-07)	Having 10 years service	BPS-12 (one time only)
3.	CT (BPS-09)	BA / B.Sc and are trained teacher	BPS-15 (One time only)
4.	SET's (BPS-16)	With at least ten years service. Up gradation to the SEC as per laid down procedure	BPS-17
5.	Qari / Qaria	Hafiz Quran	BPS-12

SECRETARY TO GOVERNMENT OF NWFP
FINANCE DEPARTMENT

Endst No & Date even

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

1. All the secretaries in NWFP, Pakistan.
2. All the DCO's / EDO's schools and literacy department NWFP.
3. Accountant General NWFP, Peshawar.
4. Director Schools and literacy NWFP, Peshawar.
5. Director of Education FATA, NWFP, Peshawar.
6. PSO to Chief Minister, NWFP.
7. PSO to Chief Secretary, NWFP.
8. PS to Secretary Finance Department of NWFP.
9. All District / Agency Account Officers in NWFP.
10. President all Primary Teachers Association, NWFP.

NAIU KHAN
Section Officer (FR)

Handwritten notes:
All the copies
The Copy
[Signature]
[Signature]



Amendment (B)
GOVERNMENT OF NWFP
ELEMENTARY & SECONDARY EDUCATION
DEPARTMENT

Dated 21-03-09

NOTIFICATION

No.50(PE)2-6/SET(B-16)Upgradation to B-17: The Competent Authority on the recommendation of Departmental Promotion Committee and in consultation with Finance Department is pleased to allow one time up gradation from B-16 to B-17 (Personal) to the following 163 SETs Male, 132 SETs Female and 14 SETs (Technical) with immediate effect subject to the condition that the posts of SET shall be downgraded from B-17 to B-16 as and when vacated by the incumbents:

i) 163 SETs Male(General)

S.No	Seniority List No.	Name of Officer	Date of Appointment as Regular SET	Present Place of Posting
1.	736A	Pasham Khan	27-11-85	A.A.E.O Office F.R.D.I.Khan
2.	838	Muhammad Shoaib	01-11-86	GHS Billitang Kohat
3.	869	Mohabbat Khan	14-12-86	GHS Kam- Shalman Landi Kotal Khyber Agency
4.	870	Yousaf Hussain	01-11-86	GHS Shalozan Kurram
5.	879	Munir Hussain	16-12-86	GHS Zeran Kurram
6.	942	Javed Khan	24-02-87	GHS Dingi Haripur
7.	943	Bahadar Ali	24-02-87	GMS Alamganj Swat
8.	944	Mohammad Younis	25-02-87	GMS Afzal Abad Mansehra
9.	953	Shamsher ali	24-03-87	ADO S/L DIK Surkamar (Khyber)

2

29.	1361	Rehmat Sher	12-09-88	GHS Shaghali Payan M. AS.
30.	1374	Noor Wali Khan	06-10-88	GHS Barganetoo FR Bannu
31.	1378	Muhammad Zahiruddin	24-10-88	G.H.S Dosalli NWA
32.	1390	Hazir Khan	20-11-88	GHS Chumawan Haripur
33.	1485	Sabir Hussain Shah	29-07-89	GHS Lissan Nawab Mansehra
34.	1586	Abdul Wahab	07-09-89	GHS #1 D.I.Khan
35.	1648	Pervez Khan	20-09-89	GHS Ladha Haripur
36.	1659	Malik Aman	21-09-89	GMS Bathal Mansehra
37.	1661	Abdul Majood	21-09-89	GMS Kuladi D.I.Khan
38.	1677	Nasrullah Khan	25-09-89	gms Mangal D.I.Khan
39.	1692	Taj Ali	01-10-89	GMS Katka Nawab Khan Laki
40.	1723	Sadiq Shah	01-10-89	GHSS Nawa Shaber A. Abad
41.	1752	Zahoor Akhtar	07-10-89	GHS Mnjia A. Abad
42.	1765	Hayatullah	16-10-89	GHS Harama Tala Lakki
43.	1798	Hazrat Ali	26-11-89	GHS Sararogha SWA
44.	1855	Kifayat Hussain Shah	09-12-89	GHS Pairan Mansehra
45.	1881A	Masood Jan	10-12-89	ADO Charsadda
46.	1901	Suleman Shah	24-11-87	GHS Hayatabad Peshawar
47.	1921	Jehanzeb	24-01-90	GHS Nassa D.I.Khan
48.	1952	Jaffar Khan	01-02-90	GMS Palal Tangi SET Mohmand Agency

3

P-8

9.	96	Mehmood Muhammad Iqbal	25-04-85	GCMS #3 Mardan
10.	99	Muhammad Zahir Shah	01-07-86	GHSS TOTAKAN Mkd Agency
11.	102	Ayaz Khan	30-10-86	GCHSS Kohat
12.	103	Muhammad Hassan	04-11-82	GHSS Jamrud Khyber Agency
13.	111	Ibad Ullah	16-10-89	GTHSS Gulbahar Peshawar
14.	113	Naqib Ullah	16-10-90	GEC Mir Ali Miran Shah

SECRETARY TO GOVT. OF NWFP
ELEMENTARY AND SECONDARY
EDUCATION DEPARTMENT.

Enclst No. No.SO(PE)2-G/SET(B-16)Upgradation to B-17: Dated 21-03-09

Copy Forwarded to the :

1. The Accountant General NWFP Peshawar
2. Secretary to Govt. of NWFP Establishment Department
3. Secretary to Govt. of NWFP Finance Department
4. Director Elementary & Secondary Education NWFP Peshawar
5. Director PITE NWFP Peshawar
6. Director Education FATA NWFP Peshawar
7. All EDOS E&SE in NWFP
8. All District /Agency Accounts Officers
9. PS to Chief Secretary NWFP
10. Officers concerned
11. PS to Minister Elementary & Secondary Education NWFP
12. PS to Secretary Elementary & Secondary Education NWFP
13. Office Order File

ARIF JAMIL
SECTION OFFICER (PRIMARY)

The Secretary,
(F & SE)
Govt. of K.P.K. Peshawar

Annexure
"C" 9

**SUBJECT: DEPARTMENTAL APPEAL FOR AWARDING BPS-17
W.E.F. 01-10-2007.**

Sir,

With due respect it is stated for your kind consideration and favour that I Mr. Sulernan Shah S/O Sadiq Shah has been appointed as S.E.T. since 24.11.87 SET(U.T) vide EDST Number D.D.S, Pesh. No 26217-22 dt 23.11.87 (P-2) + regularised w.e.f. 10.01.1990 vide Dir. (S) NWFP Pesh. No 1406-26 dt 10.1 and was awarded BPS-17 through D.P.C w.e.f. 21-03-2009 (copy of notification on page 5 attached).

Dear Sir,

I submitted my documents for awarding BPS-17 personal w.e.f. 01-10-2007 as per notification No. FD/S0 (FR) 10-22-2007 dated 26-01-2008 (copy on Page No. 8 attached) which clearly declares that BPS-17 personal will be allowed to incumbents w.e.f. 01-10-2007. But unfortunately I were granted BPS-17 personal w.e.f. 21-03-2009 vide notification No. S0 (PE) 2-6/SET (B-16) up gradation to B-17 dated 21-03-2009. (Serial No. 46 seniority list No. 1401 (Page No 5) instead of 01-10-2007.

Therefore it is requested to please grant me B-17 w.e.f. 01-10-2007 in view of the

1. Notification No. FD/S0(FR) 10-22-2007 dated d26-01-2008. (P-8)
2. Notification No. S0(PE) 2-6 (DPC) upgradation S.E.Ts BPS-16 to BPS-17 Edst. No. S0(FR)ED 10-22 (3) 2007 Vol-II dated 03-11-2010. (P-9)
3. Judgment of KPK Service Tribunal Peshawar announced on 03-07-2009.

S. A. No. 2 14-/09 (Page No. 10)

Keeping in view the above few facts, I hope that it will be a constant kind of you to consider my appeal sympathetically and will give me BPS-17 w.e.f.

01-10-2007.

Forwarded to
F.D.O.
[Handwritten signature]

Yours obediently,

[Handwritten signature: Suleman Shah]

(SULEMAN SHAH)
S.E.T. G.H.S. Police Colony,
Peshawar.

Dated: 28.4.12

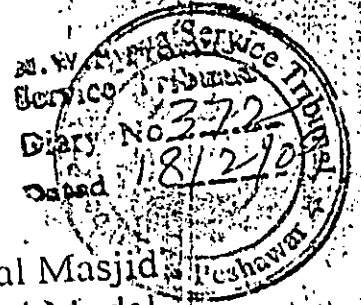
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Surkamar (Nhyber)

BEFORE THE N.W.F.P SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 266 /2009.



1. Mr Haroonurrashid S/o Ghulam Sarwar near Bilal Masjid, Mohallah Ram Bagh mardan (S.E.T Govt; Cenital Model High School Bank Road Mardan).

Appellant.

V/S

1. The Secretary Elementary and Secondary Education Dept; Govt; of N.W.F.P, Peshawar;
2. The Chief Secretary, Govt; of N.W.F.P Peshawar.

Respondent.

Appeal under Section-4 of The N.W.F.P Service Tribunal-1974, to the effect that Notification No. SO (PE) 2-6 / E & S / upgradation / SET dated 27.09.2008 to the extent of allowing one time upgradation from B-16 to B17 to the S.E.Ts including Appellant with immediate effect i.e; 27.09.2008 instead of 01.10.2007.

1. that Appellant was appointed as S.E.T (BPs-16) on 24.05.1995, in the Education Department, Government of N.W.F.P.

2. that the Govt; of N.W.F.P Finance Department vide Notification No. FD/SO(FR)10-22(B) /2005 dated 26.01.2008, allowed to up-grade various posts of Teachers in the Education Department including the incumbents of post of S.E.T, with at least ten years service, subject to recommendation of D.P.T.

Copy is Annexure- "A"

Filed to ds?

18/2/09

ATTESTED
SIP

2

3. that on recommendation of D.P.C, The Secretary/Respondent No.1 allowed the aforesaid benefits to Appellant with effect from 27.09.2008 instead of 01.10.2007 vide Notification No. SO(PE) 2-6 / E & S / up- gradation / S.E.T dated 27.09.2008.

Copy is Annexure-"B"

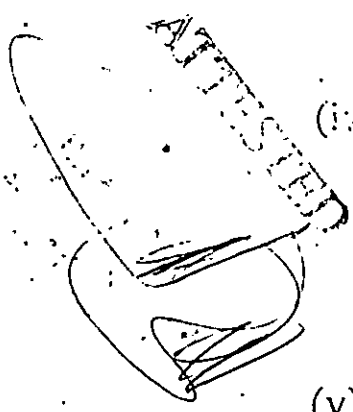
4. that grieved there from the Appellant preferred Appeal to the Chief Secretary / Respondent No.2 on 24.10.2008, which is still unresponded.

Copy are Annexure-"C & D"

Grounds:-

- (i) that the impugned order is illegal against the principles of natural justice and based on discrimination.
- (ii) that the impugned order is in violation to the original notification dated 01.10.2007, (Copy Annexure-"B" above).
- (iii) That the incumbents of other posts of Teachers are granted the benefits inquestion from 01.10.2007 while, the incumbents of S.E.T posts including the Appellant, are discriminated.

Copy Annexure-"E"

- 
- (iv) that in the light of the original notification dated 01.10.2007 (Annexure-B, above), the incumbents of S.E.T post are also entitled to the grant of the relevant benefits from 01.10.2007, including the Appellant.
 - (v) that the Appellant fulfilled the requisite terms and condition for the grant of relevant benefits on 01.10.2007, also, with the requisite length of service and qualification.
 - (vi) that the Appellant seeks leave of this Honourable Tribunal to claim further grounds also.

It is prayed that on acceptance of this Appeal, the Appellant may be granted the relevant benefits from 01.10.2007, with costs of this Appeal against the Respondents.

Dated:- 18.02.2009.

Appellant

[Signature]
(Haroon ur rashid)

through:-

[Signature]
Muhammad Adam Khan
Advocate Mardan

ADAM KHAN
B. A. LL. B, Advocate
SIGH ECUST MARDAN

Certified to be true copy
[Signature]
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

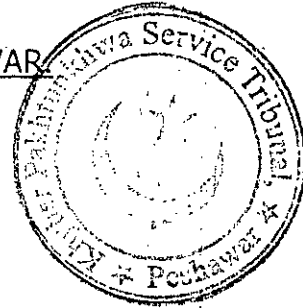
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Date of Filing of Copy
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Annexure E

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Appeal No. 266 of 2009

Date of Institution. ... 18.02.2009
Date of Decision ... 03.07.2009



Haroonur Rashid S/O Ghulam Sarwar near Bilal Masjid Mohallah Ram Bagh Mardan
(SET Government Cenital Model High School Bank Road, Mardan). (Appellant)

VERSUS

1. The Secretary Elementary & Secondary Education Department Government of NWFP, Peshawar.
2. The Chief Secretary, Government of NWFP Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE NWFP SERVICE TRIBUNAL ACT, 1974, TO THE EFFECT THAT NOTIFICATION NO. SO(PE)2-6/E&S/UPGRADATION/SET DATED 27.9.2008 TO THE EXTENT OF ALLOWING ONE TIME UPGRADATION FROM B-16 TO BPS-17 TO THE SETS INCLUDING APPELLANT WITH IMMEDIATE EFFECT I.E. 27.9.2008 INSTEAD OF 01.10.2007.

MR. ADAM KHAN,
Advocate.

For appellant.

MR. JAMAL ABDUL NASIR,
Addl. Government Pleader,

For respondents.

MR. JUSTICE (R) SALIM KHAN,
MR. ABDUL JALIL KHAN,

CHAIRMAN
MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN. The legal issues in Service Appeals Nos. 266 to 282 of 2009 (17 cases), in Service Appeals Nos. 213 to 219 and 429 to 431 of 2009 (10 cases) as well as in Service Appeal No. 200 of 2009, are similar, and need discussion and disposal at the same time. The learned counsel for the appellants in the first set of 17 cases, the learned counsel for the appellants in second set of 10 cases and the special attorney of the appellant in single case No. 200 of 2009 and the A.G.P explained the cases.

2. Haroon Rashid, appellant contended that he was SET BPS-16. The Finance Department issued the Notification No. FD/SO(FR)10-22(B)/2005, dated 26.1.2008, vide which upgradation of various posts of teachers in the Education Department was ordered. It included the incumbents of posts of S.E.T with atleast 10 years service, subject to the recommendations of the Departmental Promotion

Committee. Vide order dated 27.9.2008, upgradation was allowed to the appellant with immediate effect instead of 1.10.2007. The cases of the other appellants are almost the same, though the cases in the second set also contained the contention that imposition of restriction of one time and personal was illegal, against law and facts. The appellant of Service Appeal No. 200 of 2009 contended that she was posted as SET (BPS-17) but grant of upgradation was delayed upto 27.9.2008, and it was granted to her with immediate effect, instead of the due date.

3. The respondents contested the appeal. They submitted that the grant of upgradation was for one time only with atleast 10 years service, and the condition of processing the cases through the Departmental Promotion Committee was part and parcel of the notification, vide which the appellants claimed the facility.

We heard the arguments and perused the record as aforementioned.

4. The notification dated 26.1.2008 clearly shows that the Authority was pleased to allow upgradation for the incumbents of the posts w.e.f. 01.10.2007. Vide order dated 27.9.2008, certain persons were granted upgradation, but with immediate effect and subject to the condition that these upgradations were personal, and the posts shall be degraded from BPS-17 to BPS-16 when these are vacated by the present incumbents.

5. It was the prerogative of the Government to grant upgradation for one time only, though to all civil servants of the Education Department who had the requisite qualification on the date of issue of the above mentioned notification dated 26.1.2008. It was also the prerogative of the Provincial Government to withdraw the said order on the same date for the purposes of all those persons who were not qualified for upgradation of their posts on 26.1.2008. The Government had the power to declare that the posts shall stand upgraded for the purposes of their incumbents only, and not perpetually.

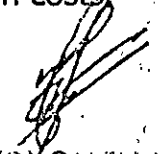
6. The above mentioned notification had clearly declared that the upgradation would be effected from 01.10.2007. The Departmental Promotion Committee had to take time in processing the cases of incumbents of the posts in order to check whether they had the required length of service, and they were otherwise eligible for upgradation through their service record. But it did not mean

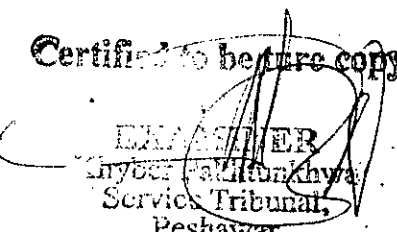
that the Departmental Promotion Committee could change the contents of the notification itself, specially with respect to its effectiveness. It is not the job of the Departmental Promotion Committee to fix the date of promotion/upgradation prospectively, when the notification had declared the date of effectiveness from a previous certain date, or when a vacancy was available for a certain civil servant from a previous date. It was the authority of the Appointing Authority to antedate the upgradation ~~as~~, as the case may be, to the respective date mentioned by the notification, or availability of the vacancy. That date is 01.10.2007 in the present cases, which could not be changed by the D.P.C, or, even, by the Appointing Authority.

8. In the light of the above, we accept all the above mentioned appeals to the extent that the upgradation of their respective posts and their appointment to those posts shall be declared effective from 01.10.2007, though such upgradation and posting shall be one time only and shall be personal to the appellants, and their similarly placed colleagues, as per the contents of the notification quoted above. Parties are left to bear their own costs.

ANNOUNCED.
03.7.2009


(ABDUL JALIL KHAN)
MEMBER


(JUSTICE (R) SALIM KHAN)
CHAIRMAN

Certified to be true copy

EXAMINER
Hyber Pakhtunkhwa
Services Tribunal,
Peshawar

Date of presentation of Application: 26.6.2007
 Number of appeals: 26
 Copy of copies: 26
 Total: 26
 Name of Officer: 26
 Date of Completion of Copy: 26.6.2007
 Date of Delivery of Copy: 26.6.2007

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal # 800/2012

Saleman Shah SET, GHS Police Colony, Peshawar.....**Appellant**

VERSUS

Secretary Elementary & Secondary Education Department and Others.....**Respondents**

Written reply/ Para wise comments for & on behalf of Respondents.

Respectfully Sheweth:

Preliminary Objections:

1. The appellant has no cause of action/ locus standi.
2. The instant appeal is badly time barred.
3. The appellant has concealed the material facts from this Hon 'able Tribunal, hence liable to be dismissed.
4. The appellant has not come to this Hon 'able court with clean hands.
5. The appellant has filed the instant appeal just to pressurize the Respondents.
6. The present appeal is liable to be dismissed for non-joinder/ misjoinder of necessary parties.
7. That appellant has filed the instant appeal on malafide motives.
8. The instant appeal is against the prevailing law and rules.
9. The appellant is estopped by his own conduct to file the instant appeal.
10. That the instant appeal is not maintainable in the present form and also in the present circumstances of the issue.

ON FACTS.

1. This para is related to the appellant. However, it would not be out of context to mention here that according to annexure-A of the appeal the appellant was appointed on fixed pay. While the appellant did not mention, when did appellant complete ten years regular service against the SET (B-16) post i.e the date of promotion to (B-17).
2. The appellant was allowed up-gradation to (B-17) with immediate effect according to the rules on the subject (**Annexure-A**).
3. This para pertains to court record, hence no comments.
4. Incorrect. The appellant has no reason to be aggrieved. While the departmental appeal (annexed with the appeal) not diarized. Hence the whole para is denied.
5. The present appeal is liable to be dismissed interalia on the following grounds:-

ON GROUNDS.

- A. Incorrect and not admitted. The granting the benefits of up-gradation to appellant is in accordance with law, rules, facts, natural justice and materials on the record.
- B. Incorrect. The appellant has not accrued valuable rights as claimed in the present appeal. Hence denied.
- C. Incorrect and not admitted. The appellant has been treated in accordance with law and rules on the subject, mentioned above. While other contents of this para is false against facts, law, rules on the subject and based on malafide intentions.
- D. Incorrect and not admitted. The statement of the appellant in this para is without any legal documentary proof, hence denied.
- E. That the respondents seek the permission of this Honourable Tribunal to adduce more grounds and proofs at the time of hearing.

In view of the above made submissions, it is requested that Honourable Court may very graciously be pleased to dismiss the present appeal with cost in favour of the Respondents.


Secretary to Govt. of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department.

within a period of six months from such recommendations, they would lapse. The case of such civil servant would require placement before the PSB/DPC afresh.

→ VI.

Date of Promotion:

Promotion will always be notified with immediate effect.

VII.

Notional Promotion:

In respect of civil servants who retire (or expire) after recommendation of their promotion by the PSB/DPC, but before its approval by the competent authority, their promotion shall be deemed to have taken effect from the date of recommendation of the PSB/DPC, as the case may be, and their pension shall be calculated as per pay which they would have received had they not retired/expired.

VIII.

Promotion of Civil Servants who are awarded minor penalties.

- (a) The question of promotion to BS-18 and above in case of civil servants who have been awarded minor penalties has been settled by the adoption of quantification of PERs and CEI which allows consideration of such cases for promotion subject to deduction of 5 marks for each major penalty, 3 marks for each minor penalty and 1 mark for each adverse PER from the quantified score and recommendation for promotion on attaining the relevant qualifying threshold.
- (b) However, the CEI policy is not applicable to civil servants in BS-16 and below. In this case, the concerned assessing authorities will take into consideration the entire service record with weightage to be given for recent reports and any minor penalty will not be a bar to promotion of such a civil servant.

IX.

Promotion in case of pending investigations by NAB:

If there are any NAB investigations being conducted against an officer, the fact of such investigations needs to be placed before the relevant promotion fora which may take a considered decision on merits of the case.

2. All the existing instructions on the subject shall stand superseded to the above extent, with immediate effect.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

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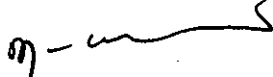
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