


06.10.2017

Agent to counsel for appellant present. Mr. Muhammad Jan, Deputy District Attorney for respondents present. Agent to counsel for appellant seeks adjournment. Adjourn. To come up for arguments on 08.12.2017 before D.B.



Member
(Executive)


Member
(Judicial)

08.12.2017

None for the appellant present. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Khanzad Gul, SO (Lit) Establishment Department for the respondents also present. Notices be issued to the appellant and his counsel. To come up for arguments on 08.02.2018 before D.B.



(Ahmad Hassan)
Member (E)

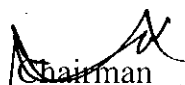

(Muhammad Amin Khan Kundi)
Member (J)

08.2.2018

None is present on behalf of the appellant. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Called several times but none appeared on behalf of the appellant. On previous date of hearing also none was present on his behalf.

In view of the above, the present appeal is dismissed for want of prosecution. File be consigned to the record room.


Member


Chairman

ANNOUNCED
08.02.2018

29.12.2016


None present for the appellant. Addl. AG for respondents present. Notice be issued to the appellant and his counsel. To come up for arguments on 15.05.2017 before D.B.


Chairman

15.05.2017

Clerk of the counsel for appellant and Mr. Ziaullah, Deputy District Attorney for the respondents present. Clerk of the counsel for appellant requested for adjournment. Adjourned for arguments to 06.09.2017 before D.B.


(GUL ZEB KHAN)
MEMBER


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

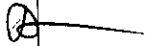
06.09.2017

Clerk of the counsel for appellant present. Mr. Muhammad Adeel Butt, Additional AG for respondent present. Arguments could not be heard due to incomplete bench. To come up for arguments on 06.10.2017 before D.B.

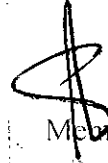

(Muhammad Hamid Mughal)
Member

11.12.2015

Counsel for the appellant and Mr. Ziaullah, GP for respondents present. Counsel for the appellant requested for adjournment. Therefore, the case is adjourned to 5.5.16 for arguments.



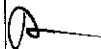
Member



Member

05.05.2016

None for the appellant, Mr. Ziaullah, GP for respondents present. Notices be issued to the appellant/counsel for the appellant. To come up for arguments on 26.08.2016.



Member



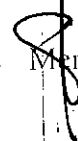
Member

26.08.2016

Agent to counsel for the appellant and Mr. Muhammad Jan, GP for respondents present. Due to non-availability of learned counsel for the appellant case is adjourned for arguments to 29.12.16 before D.B.



Member



Member

25.09.2014

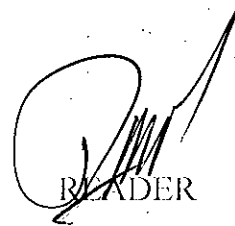
Junior to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Sultan Shah, Assistant for the respondents present. Request made on behalf of the appellant for rejoinder. To come up for rejoinder on 18.12.2014.



MEMBER

18.12.2014

Clerk to counsel for the appellant and Mr. Muhammad Jan, GP with Sultan Shah, Assistant for the respondents present. The Tribunal is incomplete. To come up for the same on 19.2.2015.



MEMBER

19.2.2015

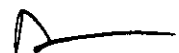
Counsel for the appellant and Mr. Muhammad Jan, GP for the respondents present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG. To come up for arguments on 26.08.2015.



Member

27.05.2015

None for the appellant present. Addl: AG for the respondents present. Since the learned Judicial Member is on tour to camp court D.I Khan, therefore the case is adjourned to 11.12.2015 for arguments before D.B.



Member

24.2.2014

Junior to counsel for the appellant and Muhammad Adeel Butt, AAG present. Notices be issued to the respondents. To come up for reply on 14.4.2014.


MEMBER

14.4.2014.

Counsel for the appellant and AAG with Sultan Shah, Assistant for the respondents present and requested for time. To come up for written reply on 10.6.2014.


MEMBER

10.6.2014.

Counsel for thje appellant and AAG with Sultan Shah, Assistant for the respondents present and requested for further time. To come up for written reply on 15.7.2014.


MEMBER


MEMBER

15.07.2014

Counsel for the appellant and Mr. Muhammad Jan, GP with Sultan Shah, Assistant for the respondents present and reply filed. Copy handed over to appellant for submission of rejoinder on 25.09.2014.


MEMBER


MEMBER

Appeal No. 581/2013.
Mr. Azizullah Mehsud

6.

07.10.2013

Counsel for the appellant present and heard on

preliminary. Contended that the appellant has not been treated in accordance with the law/rules. Junior to the appellant have been promoted, order against which he filed departmental appeal which has not been responded within the statutory period of 90 days, hence the present appeal on 31.03.2013. Points raised need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, notice be issued to the respondents. Case adjourned to 24.12.2013 for submission of written reply. Appellant also filed an application for condonation of delay of limitation. Notice of application should also be issued to the respondents for reply/arguments on the date fixed.

*Appellant deposited
Process fee & Security
of Rs. 130/- Bank Receipt
attached with file.*

~~Member.~~


Member.

7.

07.10.2013

This case be put before the Final Bench  for further proceedings.


Chairman

24.12.2013.

Clerk to counsel for the appellant and Mr. Muhammad Adeel Butt, AAG with Sultan Shah, Assistant for the respondents present and requested for time. To come up for written reply on 24.2.2014.


MEMBER

3.
22.05.2013

Munshi to counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment Ordinance, 2013) (Khyber Pakhtunkhwa Order II of 2013), the case is adjourned on note Reader for proceeding as before on 18.6.2013


Reader.

4.
18.6.2013

Munshi to Counsel for the appellant present. In pursuance of the Khyber Pakhtunkhwa Service Tribunals (Amendment) Ordinance 2013, (Khyber Pakhtunkhwa ord. II of 2013), the case is adjourned on note Reader for proceedings as before on 1.8.2013.


Reader

5.
01.08.2013



Mr. Kashan Abdullah, Advocate Junior to counsel for the appellant present and requested for adjournment. Case is adjourned. To come up for preliminary hearing on 07/10/2013.


Member

Form-A
FORM OF ORDER SHEET

Court of _____

Case No. 581/2013


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	28/03/2013	<p>The appeal of Mr.Azizullah Mahsud resubmitted today by Mr. Jehanzeb Mahsud Advocate may be entered in the Institution Register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;"> REGISTRAR</p>
2	3-4-2013	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>22-5-2013</u></p> <p style="text-align: right;"> CHAIRMAN</p>

The appeal of Mr. Azizullah Mahsud Finance Officer received today i.e. on 21/03/2013 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.

No. 444 /S.T,

Dt. 22/03/2013.


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

MR. JAHANZEB MAHSUD ADV. PESH.

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

Appeal No. 581 of 2013

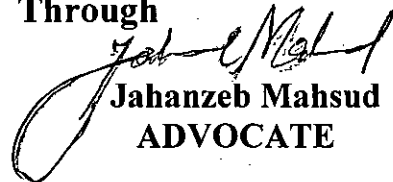
Aziz-ul-llah Mahsud Versus Province of KPK & Others,

I N D E X

S.No.	Description of documents	Annexures	Pages
1.	Appeal alongwith affidavit <i>alongwith Application for condonation</i>		1-8
2.	Memo of Addresses		9
3.	True copy the Notification dated 18.09.2012 & 24.09.2012	"A1-A2"	10-11
4.	True copy of the Notification dated 09.11.2012	"B"	12-14
5.	True copy Seniority list	"C"	15-19
6.	True copies of the Departmental Appeal & Dairy No	"D1-D2"	20-24
7.	True copy of the order dated 04.04.2012	"FFF"	25-28
8.	Vakalatnama		

Appellant

Through


Jahanzeb Mahsud
ADVOCATE

Jahanzeb Mahsud

4th Floor, Town Tower,
University Road,
Peshawar.
0333-9143005

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

Appeal No. 581 of 2013

Aziz-ul-llah Mahsud, Finance Officer, District Dera Ismail
Khan.

Aziz-ul-llah Mahsud
.....Appellant

Versus

N.W.F.P. Province
No. 568
Date 21-3-13

1. Province of Khyber Pakhtunkhawa,
Through Chief Secretary,
Civil Secretariat,
Peshawar.
2. Chief Secretary,
Khyber Pakhtunkhawa,
Civil Secretariat,
Peshawar.
3. Secretary,
Establishment,
Civil Secretariat,
Peshawar.

.....Respondents

APPEAL :

UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 AGAINST AN ORDER DATED
09.10.2012 WHEREBY THE APPELLANT HAS NOT BEEN
PROMOTED FROM BS-17 TO BS-18 AND MANY OFFICERS
JUNIOR TO THE APPELLANT HAVE BEEN PROMOTED.

Co-submitted to
and filed.

Aziz-ul-llah Mahsud
28/3/2013

2

PRAYER

On acceptance of the present Appeal, the Appellant should be promoted from BS-17 to BS-18 from the date when his promotion was due along with all back benefits.

Humbly Sheweth:

FACTS:

Facts leading to the institution of the instant Appeal are as under:

- 1- **That** the Appellant is presently serving as Finance Officer in the District Dera Ismail Khan.
- 2- **That** the Appellant was serving as Executive District Officer, Finance & Planning Department at District Dera Ismail Khan and he duly applied for ex-Pakistan Leave for performing Hajj which was allowed vide Order dated 18.09.2012 by the authority concerned. Resultantly, the Appellant relinquished charge as Executive District Officer, Finance & Planning Department on 24.09.2012 and proceeded to Makah.

True Copies of the Notification dated 18.09.2012 &
24.09.2012 are annexed herewith as mark "A1-A2"
- 3- **That** Provincial Selection Board ("PSB") was constituted by the Government of Khyber Pakhtunkhawa for promotion of officer (PCS EG) from BS-17 to BS-18.
- 4- **That** the Provincial Selection Board recommended 35 officers who were to be promoted from BS-17 to BS-18.
- 5- **That** consequent upon the recommendation of the Provincial Selection Board, the competent authority was pleased to notify the officers who are promoted from BS-17 to BS-18 through No.So (E-I) E&AD/4-2/2012 on 9.10.2012.

True Copy of the Notification dated 09.10.2012 is annexed is annexed herewith as mark " B"

- 6- **That** on assuming charge after availing ex-Pakistan Leave, the Appellant was shocked and bewildered, that he has not been promoted from BS 17 to BS 18, inspite of the fact that the Appellant was at Serial No 14 in the final Seniority list of PCS (EG) BS-17 Officer in the overall seniority as it existed on 25th July, 2012. It is pertinent to mention that many PCS (EG) BS-17 officers, whose names were much below the Appellant in the Seniority List, have been promoted to BS-18.

True Copy of the Notification dated 27.07.2012 is annexed herewith as mark " C"

- 7- **That** it would be appropriate to mention that regarding the Appellant the PSB has given the following Remarks **"he was awarded penalty of three increments and recovery of 11.1 Million jointly with others"**.
- 8- **That** the Appellant filed his Departmental Appeal before the Competent Authority through dairy 11919 dated 20.11.2012, but no order has yet been passed.

True Copies of the Appeal and Dairy Number are annexed herewith as mark " D1-D2"

- 9- **That** it is pertinent to mention that the Appellant has already deposited the disputed amount in the government treasury
- 10- **That** feeling aggrieved, the Appellant file the present appeal on the following amongst other grounds:-

GROUND:

- A- Because** the impugned Notification/Order whereby the name of the Appellant has been left out from promotion from BS-17 to BS-18 violates the right guaranteed and secured to him under the law.
- B- Because** it offends the provision of Art. 4 of the Constitution to enjoy the protection of the law and to be treated in accordance with law which is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.
- C- Because** the impugned order is discriminatory and in blatant violation of Articles 9, 14, and 25 of the Constitution of Pakistan. It is relevant to mention that other official who were also held accountable by the enquiry committee have been duly promoted.
- D- Because** the action of the Respondents is bad in law.
- E- Because** the PSB has committed a gross illegality by not recommending the Appellant for promotion and authority has proceeded to pass the impugned order on the wrong recommendation of the PSB and thereby depriving the Appellant from his lawful right of Promotion apparently on withholding of three increments and recovery of the afore-said amount.
- F- Because** the Superior Courts have held in plethora of judgments that minor penalties cannot come in the way of promotion. Furthermore, the Appellant has already filed a Service Appeal before the Honourable Service Tribunal, Khyber Pakhtunkhawa and the Honourable Tribunal was pleased to hold "the operation of the impugned order to the extent of recovery of the mentioned amount is suspended and the status quo be maintained in this respect".

True copy of the order dated 4.04.2011 is annexed herewith as mark "FFF"


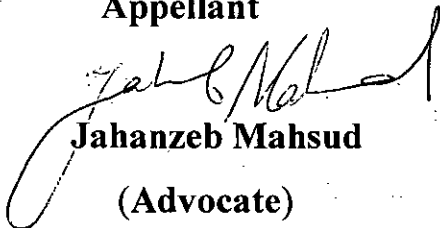
G- Because as mentioned above, the withholding of three increments was a minor penalty and it cannot be used to deprive the Appellant from Promotion and so far penalty regarding recovery of 11.1 Million Jointly is concerned, it has become infructuous as the Appellant has already deposited the disputed amount in the government treasury.

H- Because the Appellant crave for leave to add further grounds at the times of oral arguments highlighting further contravention of the law and constitution.

PRAYER:

In view of the foregoing submissions, the Appellant humbly prays that his appeal may be allowed and the Appellant should be promoted from BS-17 to BS-18 from the date when his promotion was due along with all back benefits.

Any further better relief may also kindly be granted in the circumstances of the Appellant's case.


Appellant
Through 
Jahanzeb Mahsud
(Advocate)

6

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

Appeal No. _____ of 2013

Aziz-ul-llah Mahsud Versus Province of KPK & Others,

AFFIDAVIT

I, **Aziz-ul-llah Khan Mahsud**, Finance Officer, District Dera Ismail Khan do hereby solemnly affirm & declare that the contents of the attached Appeal are true & correct to the best of my knowledge & belief and nothing has been concealed or with held from this Honorable Court.

Identified by

Jahanzeb Mahsud
Jahanzeb Mahsud

Deponent

Aziz-ul-llah Khan Mahsud

Accepted
No. _____
Date *21.3.2013*
Dist. Courts Peshawar

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

Appeal No. _____ of 2013

7

Aziz-ul-Ilah Mahsud Versus Province of KPK & Others,

**APPLICATION UNDER SECTION 5 OF THE LIMITATION ACT,
1908 FOR CONDONATION OF DELAY**

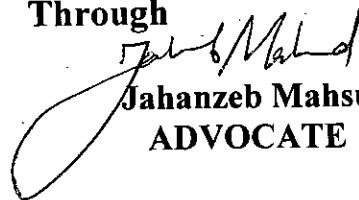
Respectfully Sir,

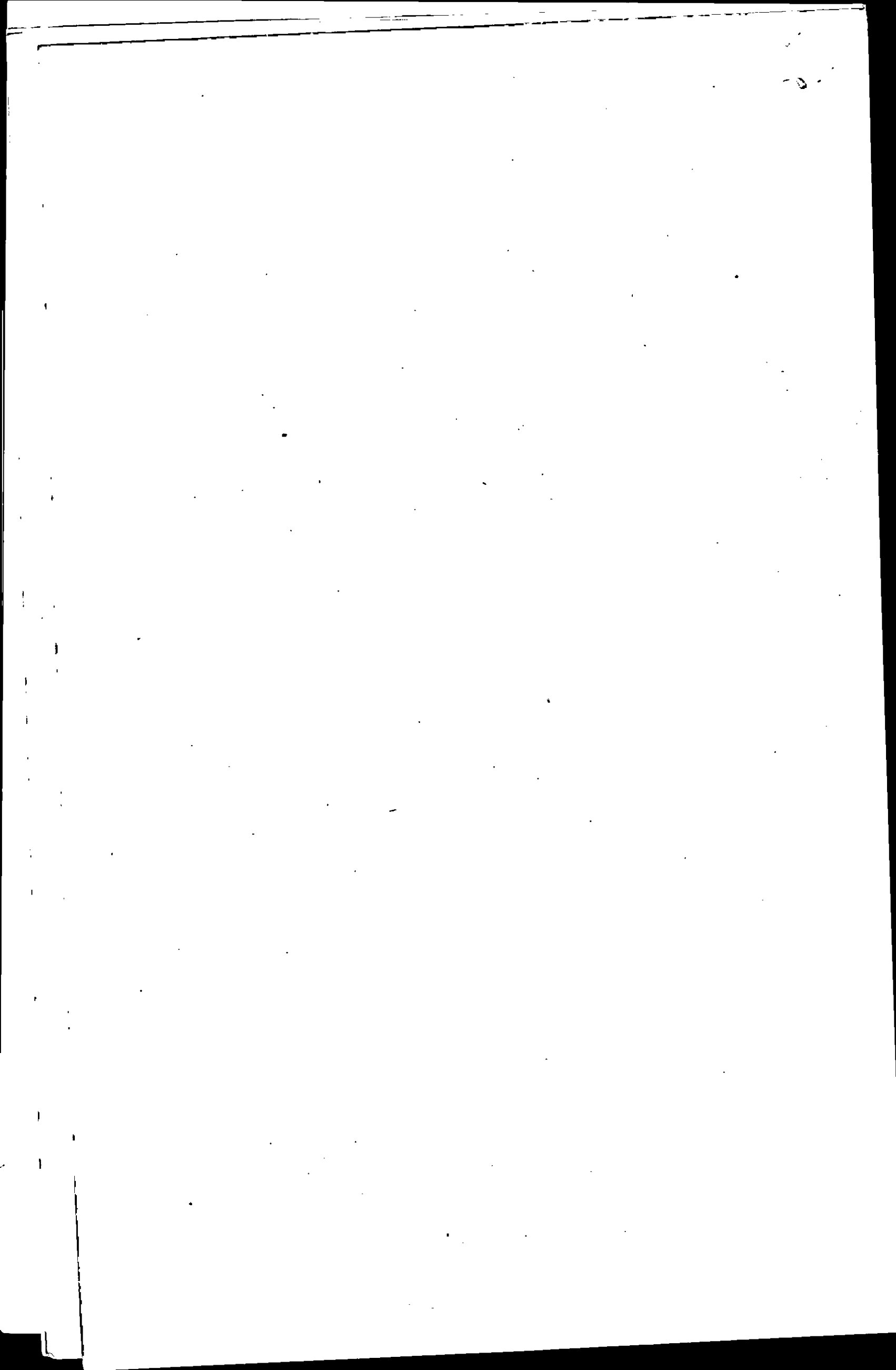
- 1- That the title appeal has been filed before the Honourable Tribunal in which no date of hearing has yet been fixed.
- 2- That the title appeal is filed within the statutory period, but in case the Honourable Tribunal is of the view that it is by limitation, then any such delay be condoned as the Appellant was seriously ill.
- 3- That propriety, fair play & justice demands that in case any delay has taken place, then it should be condoned.

It is, therefore, requested that on accepting the present application, the Honourable Court be pleased to condone the delay in preferring the present appeal, if any.

Applicant

Through


**Jahanzeb Mahsud
ADVOCATE**



8

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

Appeal No. _____ of 2013

Aziz-ul-llah Mahsud Versus Province of KPK & Others,

AFFIDAVIT

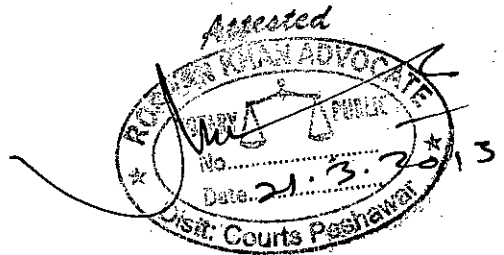
I, **Aziz-ul-llah Khan Mahsud**, Finance Officer, District Dera Ismail Khan do hereby solemnly affirm & declare that the contents of the attached Application are true & correct to the best of my knowledge & belief and nothing has been concealed or with held from this Honorable Court.

Identified by

Jahanzeb Mahsud
Jahanzeb Mahsud

Aziz-ul-llah Khan Mahsud

Deponent



9

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

Appeal No. _____ of 2013

Aziz-ul-Ilah Mahsud Versus Province of KPK & Others,

MEMO OF ADDRESSES

Aziz-ul-Ilah Mahsud, Finance Officer, District Dera Ismail
Khan.

.....Appellant

1- Province of Khyber Pakhtunkhawa,

Through Chief Secretary,

Civil Secretariat,

Peshawar.

2- Chief Secretary,

Khyber Pakhtunkhawa,

Civil Secretariat,

Peshawar.

3- Secretary,

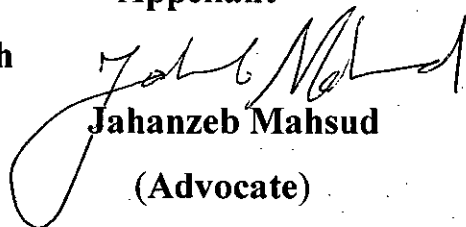
Establishment,

Civil Secretariat,

Peshawar.

Appellant

Through


Jahanzeb Mahsud
(Advocate)



Annexure A1
400

**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT**

Dated Peshawar, the September, 18, 2012

NOTIFICATION

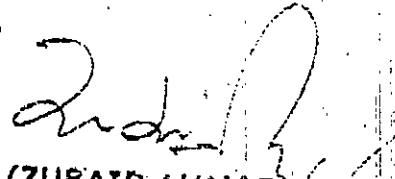
- NO.SO(E-I)E&AD/11-3/2012** Mr. Azizullah Khan Mensud (PCS EG BS-17) EDO(F&P) D.I.Khan, is granted (45-days) Ex-Pakistan Leave from the date of availing to proceed Saudi Arabia for performance of Hajj.
2. Certified that the officer, on the expiry of leave, is likely to return to the same post. This Provincial Government has no objection on proceeding abroad of the officer.
3. Consequent upon the above, Mr. Hamidullah Shah (PCS SG BS-18) ACO D.I.Khan is authorized to look after the post of EDO(F&P) D.I.Khan, during the said leave.

**SECRETARY ESTABLISHMENT
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst. No & Date Even.

Copy forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Commissioner D.I.Khan.
4. DCO, D.I.Khan.
5. District Accounts Officer, D.I.Khan.
6. PS to Chief Secretary, Khyber Pakhtunkhwa.
7. PS to Secretary, Establishment Department, Khyber Pakhtunkhwa.
8. Officers concerned.
9. Manager, Govt Printing Press, Peshawar.


(ZUBAIR AHMAD)
DEPUTY SECRETARY (ESTT)

So Khalik/**

*Attested
Act*

18
Annexure A2

CHARGE RELINQUISHING REPORT:

In compliance of Secretary to Government of Khyber Pakhtunkhwa Establishment Department Notification No. SO (E-I) E & AD/11-3/2012 dated 18.09.2012 I, AZIZ ULLAH Executive District Officer, Finance & Planning Department, DIKhan do hereby relinquish the charge of the post of EDO (F & P), DIKhan today on 24 (A.N) for performance of Hajj.

Azizullah

(AZIZULLAH)

Executive District Officer,
Finance & Planning Department,
Dera Ismail Khan.

No. 2687-9 Estt/FD/2012, dated 24 /09/2012.

Copy forwarded to:-

1. The Secretary to Government of Khyber Pakhtunkhwa Establishment Department Peshawar.
2. The District Coordination Officer, DIKhan.
3. The District Comptroller of Accounts, DIKhan.

Azizullah

(AZIZULLAH)

Executive District Officer,
Finance & Planning Department,
Dera Ismail Khan.

Attested
Awh

0333 ~~9142000~~

TO BE SUBSTITUTED WITH THE NOTIFICATION BEARING SAME NO. & DATE



**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT**

Annexure B

Dated Peshawar, the October 9, 2012

12

NOTIFICATION

NO.SO(E-I)E&AD/4-2/2012. Government of Khyber Pakhtunkhwa on the recommendations of the Provincial Selection Board is pleased to promote the following officers of (PCS EG) from BS-17 to BS-18, on regular basis with immediate effect:-

S. #.	NAME OF OFFICER
1.	Mr. Muhammad Farooq
2.	Mr. Ahmad Khan Orakzai ✓
3.	Mr. Muhammad Iqbal Khattak
4.	Mr. Muhammad Javed
5.	Mr. Azam Jan Khalil
6.	Mr. Ahmad Jan Afridi
7.	Mr. Tahir Muhammad
8.	Mr. Muhammad Fakhruddin
9.	Mr. Farzand Ali
10.	Mr. Qaiser Khan
11.	Mr. Naeem Anwar
12.	Mr. Damsaz Khan
13.	Mr. Habibullah Wazir
14.	Mr. Zafar Ali Khan
15.	Mr. Abdul Mateen
16.	Mr. Akbar Jalal
17.	Mr. Shams-ul-Alam
18.	Mr. Fazal Rehman
19.	Mr. Rashid Mehmood
20.	Mr. Muhammad Jamil
21.	Mr. Khurshid Anwar
22.	Mr. Perhezgar Khan
23.	Mr. Mushtaq Ahmad
24.	Syed Ismail Ali Shah
25.	Mr. Ahmad Khan ✓
26.	Mr. Jan Muhammad
27.	Mr. Saeed-ur-Rehman
28.	Mr. Arshad Naveed
29.	Mr. Said Ahmad Jan
30.	Mr. Abdul Hamid Jan
31.	Mr. Muhammad Siddique
32.	Mr. Fakh-uz-Zaman
33.	Mr. Muntazir Khan
34.	Mr. Atta-ur-Rehman
35.	Mr. Ghulam Habib

2. The officers on promotion, will remain on probation for a period of one year in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 except the officer mentioned at Sr. No. 20, who shall be on probation till his retirement.

3. Consequent upon the above, the following postings/transfers are made henceforth:-

S.#	NAME OF OFFICERS	FROM	TO	REMARKS
1.	Mr. Muhammad Farooq (PCS EG BS-18)	District Officer (Finance) Battagram.	District Officer (Finance) Battagram.	Already holding BS-18 post.
2.	Mr. Ahmad Khan Orakzai (PCS EG BS-18)	Deputy Secretary, Home Department.	Deputy Secretary, Home Department.	Already holding BS-18 post.
3.	Mr. Muhammad Iqbal Khattak (PCS EG BS-18)	Deputy Secretary Environment	Deputy Secretary Environment	Already holding BS-18 post.

(CONTD.... On Page 2)

Attached
 Adv



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

PAGE-2

S.#	NAME OF OFFICERS	FROM	TO	REMARKS
4.	Mr. Muhammad Javed (PCS EG BS-18)	District Officer (Finance) Peshawar.	District Officer (Finance) Peshawar	Already holding BS-18 post.
5.	Mr. Azam Jan Khalil (PCS EG BS-18)	Director (Admn.) Excise & Taxation.	Director (Admn.) Excise & Taxation (OPS).	Already holding the post.
6.	Mr. Ahmad Jan Afridi (PCS EG BS-18)	EDO(F & P) Peshawar	EDO (F&P) Peshawar (OPS)	-do-
7.	Mr. Tahir Muhammad (PCS EG BS-18)	Land Acquisition Collector PDA	Deputy Secretary, Health Department	Against the vacant post.
8.	Mr. Muhammad Fakhruddin (PCS EG BS-18)	APA FR Kohat.	Deputy Secretary, Industries Department	Against the vacant post.
9.	Mr. Farzand Ali (PCS EG BS-18)	Asstt: to Comr. D.I.Khan.	District Officer (Finance) Tank.	Against the vacant post.
10.	Mr. Qaiser Khan (PCS EG BS-18)	Deputy District Officer (Rev.) Rodkahi D.I.Khan.	District Officer (Finance) D.I.Khan	Vice Sr. No. 11.
11.	Mr. Muhammad Aslam (Officer of Agr. Deptt.)	District Officer (Finance) D.I.Khan	Repatriated to his parent Department i.e. Agriculture Deptt.	
12.	Mr. Naeem Anwar (PCS EG BS-18)	Assistant Coordination Officer, Mardan	Assistant Coordination Officer, Mardan	Already holding the post.
13.	Mr. Damsaz Khan (PCS EG BS-18)	Asst. to Commissioner @ D.I.Khan	District Officer (Finance) Lakki Marwat.	Against the vacant post.
14.	Mr. Habibullah Wazir (PCS EG BS-18)	District Officer (R&E) Tank.	District Officer (R&E) Tank.	Already holding the post.
15.	Mr. Zafar Ali Khan (PCS EG BS-18)	D.O.(R & e) Tor Ghar.	Deputy Secretary, FATA Secretariat.	Against the vacant post.
16.	Mr. Abdul Mateen (PCS EG BS-18)	Assistant Coordination Officer, Chitral.	Assistant Coordination Officer, Chitral.	Already holding the post.
17.	Mr. Akbar Jalal (PCS EG BS-18)	Assistant Coordination Officer, Tank.	Assistant Coordination Officer, Tank.	-do-
18.	Mr. Shams-ul-Alam (PCS EG BS-18)	Assistant Coordination Officer, Dir Upper.	Assistant Coordination Officer, Dir Upper.	-do-
19.	Mr. Fazal Rehman (PCS EG BS-18)	District Officer (R&E) Swabi	District Officer (R&E) Swabi	-do-
20.	Mr. Rashid Mehmood (PCS EG BS-18)	District Officer (R&E) Battagram.	District Officer (R&E) Battagram.	-do-
21.	Mr. Muhammad Jamil (PCS EG BS-18)	Dy. District Officer @ Charsadda.	Deputy Secretary (Aviation Wing) Administration Deptt.	Against the vacant post.
22.	Mr. Khurshid Anwar (PCS EG BS-18)	HRDO Malakand	Deputy Secretary, FATA Secretariat.	Against the vacant post.
23.	Mr. Perhezgar Khan (PCS EG BS-18)	Assistant Coordination Officer, Buner.	Assistant Coordination Officer, Buner.	Already holding the post.
24.	Mr. Mushtaq Ahmad (PCS EG BS-18)	District Officer (R&E) Shangla	District Officer (R&E) Shangla.	Against the vacant post.
25.	Syed Ismail Ali Shah (PCS EG BS-18)	SO Agri: Deptt.	District Officer (R&E) Tor Ghar.	Vice Sr. No. 15.
26.	Mr. Ahmad Khan (PCS EG BS-18)	APA FR D.I.K.	District Officer (Finance) Hang	Against the vacant post.
27.	Mr. Jan Muhammad (PCS EG BS-18)	Secretary, District Public Safety Commission, Peshawar	Deputy Secretary, Public Health Engineering Deptt.	Against the vacant post.

Contd. On Page-3

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GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

PAGE...3

S.#	NAME OF OFFICERS	FROM	TO	REMARKS
28.	Mr. Saeed-ur-Rehman (PCS EG BS-18)	Land Acquisition Collector, SNGPL	Deputy Secretary, Social Welfare Department.	Against the vacant post.
29.	Mr. Arshad Naveed (PCS EG BS-18)	District Officer (R&E) Kohat.	District Officer (R&E) Kohat.	Already holding the post.
30.	Mr. Said Ahmad Jan (PCS EG BS-18)	Director, Local Government FATA	Director, Local Government FATA	-do-
31.	Mr. Abdul Hamid Jan (PCS EG BS-18)	HRDO, Peshawar.	EDO (F&P) Dir Lower (OPS).	Against the vacant post.
32.	Mr. Muhammad Siddique (PCS EG BS-18)	Asstt: Commissioner, Mardan.	District Officer (Finance) Charsadda	Against the vacant post.
33.	Mr. Fakhr-uz-Zaman (PCS EG BS-18)	District Officer (R&E) Mardan.	District Officer (R&E) Mardan.	Already holding the post.
34.	Mr. Muntazir Khan (PCS EG BS-18)	Deputy Secretary, Home Department	Deputy Secretary, Home Department.	Already holding the post.
35.	Mr. Atta-ur-Rehman (PCS EG BS-18)	Addl. Political Agent Khyber Agency.	Addl. Political Agent, Khyber Agency.	-do-
36.	Mr. Ghulam Habib (PCS EG BS-18)	Deputy Secretary, Home Department.	Deputy Secretary, Home Department.	Already holding the post.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA
Dated 10.10.2012

Endst. NO.SO(E-I)E&AD/4-2/2012.

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Additional Chief Secretary (FATA), FATA Secretariat.
4. All Administrative Secretaries in Khyber Pakhtunkhwa.
5. Secretary to Governor, Khyber Pakhtunkhwa.
6. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. All Commissioners in Khyber Pakhtunkhwa.
8. Accountant General, Khyber Pakhtunkhwa.
9. District Coordination Officers concerned.
10. Political Agents concerned.
11. District Accounts Officer concerned.
12. Agency Accounts Officer concerned.
13. PS to Chief Secretary, Khyber Pakhtunkhwa.
14. PS to Secretary Establishment, E&A Department.
15. PS to Secretary Establishment, PS to Special Secretary (E), Deputy Secretary (Estt.), Dy. Secretary (Admn),/ S.O. (E.II), S.O.(E.III), S.O.(Secret) E&AD, and P.A. to Addl. Secretary(Estt.)/PA to Director (Protocol) E&AD.
16. Officers concerned.
17. Controller, Govt. Printing Press, Peshawar.

(MUHAMMAD JAVED SIDDIQI)
SECTION OFFICER (ESTT-I)
PHONE & FAX # 091-9210529

ZIA.UL.HAQ/**

Attested
Adm



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Annexure C (15)

Annexure C

NOTIFICATION

Dated Peshawar the July, 27.2012

NO.SOE-II(ED)2(8)/2012:-

In pursuance of Section-8 (1) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, final seniority list of PCS(EG) BS-17 Officers, as it stood on 25.07.2012 is notified/circulated:-

FINAL SENIORITY LIST OF PCS(EG) BS-17 OFFICERS

S. #	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF IST ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT / PROMOTION IN BS-16	REGULAR APPOINTMENT / PROMOTION TO PRESENT POSTS.			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
1.	Mr. Muhammad Farooq, BA	9.3.1955 Mansehra	26.3.1979	28.12.1988	27.12.2005	17	Do	Distt: Officer(F), Battagram, 19.06.2012	
2.	Mr. Ahmad Khan Orakzai, BA	21.3.1956, Orakzai Agency	14.6.1979	28.12.1988	01.05.2000	17	DO	DS, Home & TAs, 28.09.2010	
3.	Mr. Muhammad Iqbal Khattak, BA	29.2.1956, Kohat	14.6.1979	28.12.1988	07.05.2000	17	By Promotion	ACO, Hangu 18.10.2011	
4.	Mr. Muhammad Javed, BA	10.3.1956, Charsadda	14.6.1979	28.12.1988	10.01.2001	17	Promotion	DO(F) Charsadda, 11.02.2012	
5.	Mr. Azam Jan Khalil, MA	15.6.1957, Peshawar	14.6.1979	28.12.1988	10.02.2001	17	Promotion	Magistrate, PESCO, Pesh. 17.10.2011	
6.	Mr. Ahmad Jan Afridi, MSC	18.4.1955, Khyber Age	14.6.1979	30.9.1989	08.04.2001	17	Promotion	DO (F) Peshawar, 21.7.2010	

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S. #	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF 1ST ENTRY INTO GOVT: SERVICE	DATE OF APPOINTMENT / PROMOTION IN BS-16	REGULAR APPOINTMENT / PROMOTION TO PRESENT POSTS.			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
7.	Mr. Nazar Gul Mohmand, BSC	31.8.1956, Mohmand. Agy	14.6.1979	30.9.1989	09.04.2001	17	Promotion	DO(R), Mansehra 26.12.2011	
8.	Mr. Tahir Muhammad, BA	24.12.1954, Swabi	14.6.1979	28.12.1988	27.12.2005	17	Promotion	At the disposal of DG, PDA 06.07.2012	
9.	Mr. Muhammad Fakhruddin, B.Sc.	15.3.1956 Kohat	9.8.1979	12.8.1991	13.11.2001	17	By promotion	APA, FR Kohat, 06.07.2011	
10.	Mr. Farzand Ali, MA, LLB	13.1.1954, Lakki	1.7.1980	12.8.1991	03.03.2005	17	Promotion	Asstt to CMR(Pol/Dev) D.I. Khan 28.06.2012.	
11.	Mr. Rehmatullah Khan Wazir, MA(Pashto)	03.02.1957, N.W.A	2.7.1981	2.12.1992	13.11.2001	17	Promotion	DCO, Chitral 07.10.2009	
12.	Mr. Qaiser Khan, FA	23.5.1955, D.I.Khan	2.7.1981	2.12.1992	13.11.2001	17	Promotion	DO(R & E), DIKhan, 29.02.2012	
13.	Mr. Abdul Shakoor Dawar, F.Sc.	15.02.1956 N.W.Agency	01.07.1980	02.12.1992	26.12.2001	17	By Promotion	SO, Food Deptt (21.04.2012)	
14.	Mr. Azizullah Khan Mehsood, MA, LLB	19.10.1956, S.W.A	2.7.1981	2.12.1992	13.01.2002	17	Promotion	EDO(F&P), D.I.Khan 23.04.2010	
15.	Mr. Naeem Anwar, MSC (Botany)	5.5.1957, Bannu	1.7.1980	5.1.1993	09.04.2002	17	Promotion	ACO, Mardan 16.04.2012	
16.	Mr. Damsaz Khan, BA	20.6.1955, Lakki	2.7.1981	2.12.1992	29.05.2004	17	Promotion	Asstt: to Commissioner(R), D.I.Khan	
17.	Mr. Habibullah Wazir, BA	16.2.1956, S.W.A	01.07.1980*	2.12.1992	23.05.2002	17	Promotion	DO(R), Tank 15.12.2011	
18.	Mr. Zafar Ali Khan, BA	10.5.1957, Bannu	2.7.1981	2.12.1992	29.05.2004	17	Promotion	District Officer(R &E), Tor Ghar 28.06.2012	
19.	Mr. Abdul Mateen, M.A.	4.1.1955 Chitral	1.7.1981	2.12.1992	13.11.2002	17	By promotion	ACO, Chitral 05.05.2011	
20.	Mr. Akbar Jalal, MA	1.8.1955, Chitral	1.7.1981	2.12.1992	04.03.2003	17	Promotion	ACO, Tank 19.05.2011	
21.	Mr. Khaista Rehman, BA	5.5.1960, Dir	1.7.1981	2.12.1992	24.03.2003	17	Promotion	Asstt to Commissioner, Hazara, Abbottabad 26.06.2012	

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Mr. Akbar Jalal

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S. #	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF IST ENTRY INTO GOVT: SERVICE	DATE OF APPOINTMENT / PROMOTION IN BS-16	REGULAR APPOINTMENT / PROMOTION TO PRESENT POSTS.			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
22.	Mr. Shams-ul-Alam, BA	15.12.53, Dir Upper	1.7.1981	2.12.1992	27.12.2005	17	Promotion	ACO, Dir Upper 05.07.2011	
23.	Mr. Fazal Rehman, MA	6.2.1958, Swat	1.7.1981	2.12.1992	29.05.2004	17	Promotion	DO(R&E) Swabi 05.03.2011.	
24.	Mr. Rashid Mehmood M.P.A	4.4.1953 Swat	1.7.1981	2.12.1992	29.05.2004	17	By promotion	DO(R&E) Battagram, 15.5.2008	
25.	Mr. Muhammad Jamil, MA	4.4.1954, Swat	1.7.1981	5.1.1993	29.05.2004	17	Promotion	ACO, Kohat, 10.05.2012	
26.	Mr. Khurshid Anwar, FA	23.7.1954, Malakand Agency	1.7.1981	5.1.1993	29.05.2004	17	Promotion	HRDO, Malakand, 25.06.2012	
27.	Mr. Perhezgar Khan, BA	1.7.1954, Dir Lower	1.7.1981	5.1.1993	29.05.2004	17	Promotion	ACO, Buner 13.09.2011	
28.	Mr. Mushtaq Ahmad, BA	20.1.1958, Swat	1.7.1981	5.1.1993	29.05.2004	17	Promotion	DO (R&E) Shangla, 10.1.2009	
29.	Syed Ismail Ali Shah, MA	26.6.1958, Peshawar	22.12.1980	5.1.1993	26.05.2007	17	Promotion	SO, Agriculture Livestock & Cooperative Deptt. 04.05.2012	
30.	Mr. Ahmed Khan, MA	1.4.1958, N.W.A	8.5.1985	24.6.1993	09.01.2006	17	Promotion	APA FR D.I.Khan 08.06.2010	
31.	Mr. Jan Muhammad, BA	7.2.1958, N.W.A	21.7.1986	24.6.1993	01.02.2005	17	Promotion	Secretary, DPSC 31.03.2012	
32.	Mr. Saeed-ur-Rehman, BA	24.12.1954, Mansehra	1.11.1976	5.1.1993	09.01.2006	17	Promotion	LAC, SNGPL, 31.05.2010	
33.	Mr. Ashraf Naveed, MA	6.1.1959, Peshawar	4.6.1975	10.8.1993	26.03.2005	17	Promotion	DO(R), Kohat 13.06.2011	
34.	Mr. Hidayatullah, BA	17.4.1957, Kurrum Agency	23.12.1985	22.5.1995	09.01.2006	17	By promotion	Research Officer, P & D Deptt FATA Sectt 29.03.2012	
35.	Mr. Said Ahmad Jan, BA	8.5.1954, Bajaur Agy	22.11.1975	22.5.1995	17.05.2005	17	Promotion	Additional Political Agent, Mohmand Agency, 11.05.2012	
36.	Mr. Abdul Hamid Jan, BA	30.09.1955, Bajaur Age	20.3.1978	22.5.1995	13.01.2006	17	Promotion	HRDO, Peshawar, 15.1 1.2010	

Attested Add

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S. #	NAME OF OFFICER WITH ACADEMIC QUALIFICATION	DATE OF BIRTH AND DOMICILE	DATE OF IST ENTRY INTO GOVT. SERVICE	DATE OF APPOINTMENT / PROMOTION IN BS-16	REGULAR APPOINTMENT / PROMOTION TO PRESENT POSTS.			PRESENT APPOINTMENT	REMARKS
					DATE	BPS	METHOD OF RECRUITMENT		
37.	Mr. Muhammad Siddique, MA	12.9.1959,	25.1.1988	4.2.1998	25.05.2006	17	Promotion	Asstt: to Commissioner(R), Mardan 13.8.2009	
38.	Mr. Fakhr-uz-Zaman, BSC	15.1.1962, Mardan	25.1.1988	4.2.1998	11.09.2006	17	Promotion	DO(R), Mardan, 14.04.2011.	
39.	Mr. Ibadat Khan, BA	10.7.1954, Buner	20.10.1973	22.5.1995	11.09.2006	17	Promotion	HRDO, Shangla 17.03.2011	
40.	Mr. Mian Asfandyar, BA	18.2.1956, Charsadda	4.6.1979	22.5.1995	26.05.2007	17	Promotion	DO(R) Charsadda, 05.07.2007	
41.	Mr. Rasool Khan, FA	1.9.1955, N.W.A	8.7.1975	22.5.1995	26.05.2007	17	Promotion	APA; Ghallanai, Mohmand Agency, 03.12.2011	
42.	Mr. Muntazir Khan, MA	8.5.1961, Mohmand Agency	25.1.1988	7.2.1996	23.12.2006	17	Promotion	Deputy Secretary Home Department	
43.	Mr. Atta-ur-Rehman, MA(IR)	15.2.1960, Orakzai Agency	25.1.1988	7.2.1996	31.12.2006	17	Promotion	Asstt: to Commissioner (Political/Dev) Peshawar, 19.10.2010	
44.	Mr. Shahao Hamid Yousafzai, BA, LLB	15.2.1961, Swabi	25.1.1988	7.2.1996	16.02.2007	17	Promotion	Programme Manager, DRU, Manshera, in his own pay & Scale, on deputation basis 19.06.2012	
45.	Mr. Ihsanullah, MA	24.5.1964, Charsadda	25.1.1988	4.2.1998	16.02.2007	17	Promotion	DO(R) & E, Lakki Yawar, in his own pay scale, 31.03.2012	
46.	Mr. Ghulam Habb, MA, LLB	1.4.1962, Lakki	25.1.1988	7.2.1996	16.02.2007	17	Promotion	Dy. Secretary Home & TAs Dept 25.10.2010.	

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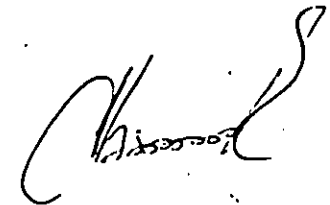
ENDST: NO & DATE EVEN.

Copy forwarded to the:-

1. Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
4. Secretary (Admn & Coord), FATA Secretariat.
5. All Divisional Commissioners in Khyber Pakhtunkhwa.
6. All District Coordination Officers in Khyber Pakhtunkhwa.
7. All Political Agents in FATA.
8. All Section Officers in E&AD.
9. PS to Chief Secretary, Khyber Pakhtunkhwa.
10. PS to Secretary Establishment.
11. PS to Special Secretary (Estt), Establishment Department.
12. PAs to Additional Secretary (Estt)/AS(HRD)/ Dy. Secretary (Estt) E&A Department.

Attest
Adv

UNSAN ALI



(TABASSUM)
SECTION OFFICER(E-II)

Annexure 01
20

The Chief Secretary/Appellate Authority,
Province of Khyber Pakhtunkhawa,
Peshawar.

Through Proper Channel

DEPARTMENTAL REPRESENTATION UNDER THE ENABLING PROVISIONS OF THE N.W.F.P CIVIL SERVANT ACT, 1973 AGAINST AN ORDER DATED 09.10.2012 WHEREBY THE APPLICANT HAS NOT BEEN PROMOTED FROM BS-17 TO BS-18 AND MANY OFFICERS JUNIOR TO THE APPLICANT HAS BEEN PROMOTED.

PRAYER:

On acceptance of the present Representation, the Applicant should be promoted from BS-17 to BS-18 from the date when his promotion was due alongwith all back benefits.

Respectfully Submitted,

Facts leading to the filing of present Representation are as following:-

- 1- That the Applicant is presently serving as Executive District Officer, Finance & Planning Department at District Dera Ismail Khan.
- 2- That the Applicant duly applied for ex-Pakistan Leave for performing Hajj which was allowed vide Order dated 18.09.2012 by the authority concerned. Resultantly, the Applicant relinquished charge as Executive District Officer, Finance & Planning Department on 24.09.2012 and proceeded to Makah.

True Copies of the Notification dated 18.09.2012 &
24.09.2012 are annexed

or the

Attested
AOLV

- (21)
- 3- That a Provincial Selection Board ("PSB") was constituted by the Government of Khyber Pakhtunkhawa for promotion of officer (PCS EG) from BS-17 to BS-18.
 - 4- That the Provincial Selection Board recommended 35 officers who were to be promoted from BS-17 to BS-18.
 - 5- That consequent upon the recommendation of the Provincial Selection Board, the competent authority was pleased to notify the Officers who are promoted from BS-17 to BS-18 through No.So (E-I) E&AD/4-2/2012 on 9.10.2012.

True Copy of the Notification dated 09.10.2012 is annexed

- 6- That after assuming charge after availing ex-Pakistan Leave, the Applicant was shocked and bewildered, that he has not been promoted BS 17 to BS 18, inspite of the fact that the Applicant was at Serial No 14 in the final Seniority list of PCS (EG) BS-17 Officer in the over all seniority as it existed on 25th July, 2012. It is pertinent to mention that many PCS (EG) BS-17 officers, whose names were much below the Applicant in the Seniority List, have been promoted to BS-18.

True Copy of the Notification dated 27.07.2012 is annexed

- 7- That it would be appropriate to mention that regarding the Applicant the PSB has given the following Remarks " he was awarded penalty of three increments and recovery of 11.1 Million jointly with others".
- 8- That the PSB has committed a gross illegality by not recommending the Applicant for promotion and authority has proceeded to pass the impugned order on the wrong recommendation of the PSB and thereby depriving the Applicant from his lawful right of Promotion apparently on withholding of three increments and recovery of the afore-said amount.

Attested
Adv

- 9- That the Superior Courts have held in plethora of judgments that minor penalties cannot come in the way of promotion. Furthermore, the Applicants has already filed a Service Appeal before the Honourable Service Tribunal, Khyber Pakhtunkhwa and the Honourable Tribunal was pleased to hold "the operation of the impugned order to the extent of recovery of the mentioned amount is suspended and the status quo be maintained in this respect".

22

True copy of the order dated 4.04.2011 is annexed

- 10- That as mentioned above, the withholding of three increments was a minor penalty and it can not be used to deprive the Applicant from Promotion and so far penalty regarding recovery of 11.1 Million jointly is concerned, the Applicant has already approached the Honourable Service Tribunal and the order to the extent of recovery has been suspended by the Honourable Tribunal.
- 11- That propriety, fair play and justice demands that Applicant should be promoted from BS-17 to BS 18 from the date when his promotion was due alongwith all back benefits.

In wake of the above submissions, it is very humbly prayed that the Applicant should be promoted from BS-17 to BS-18 from the date when his promotion was due and should be given all the benefits of BS-18 retrospectively.

YOURS HUMBLY,



Azizulah Mahsud
Executive District Officer,
Finance & Planning Department,
Dera Ismail Khan

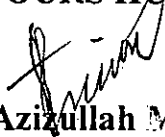
Attested
Adv

23

Verification:

It is solemnly affirm that the contents of the above Representation are true and correct to the best of my knowledge and belief and no concealment whatsoever has been made.

YOURS HUMBLY,



**Azizullah Mahsud
Executive District Officer,
Finance & Planning Department,
Dera Ismail Khan**

*Attested
Adv*

Annex (D2)

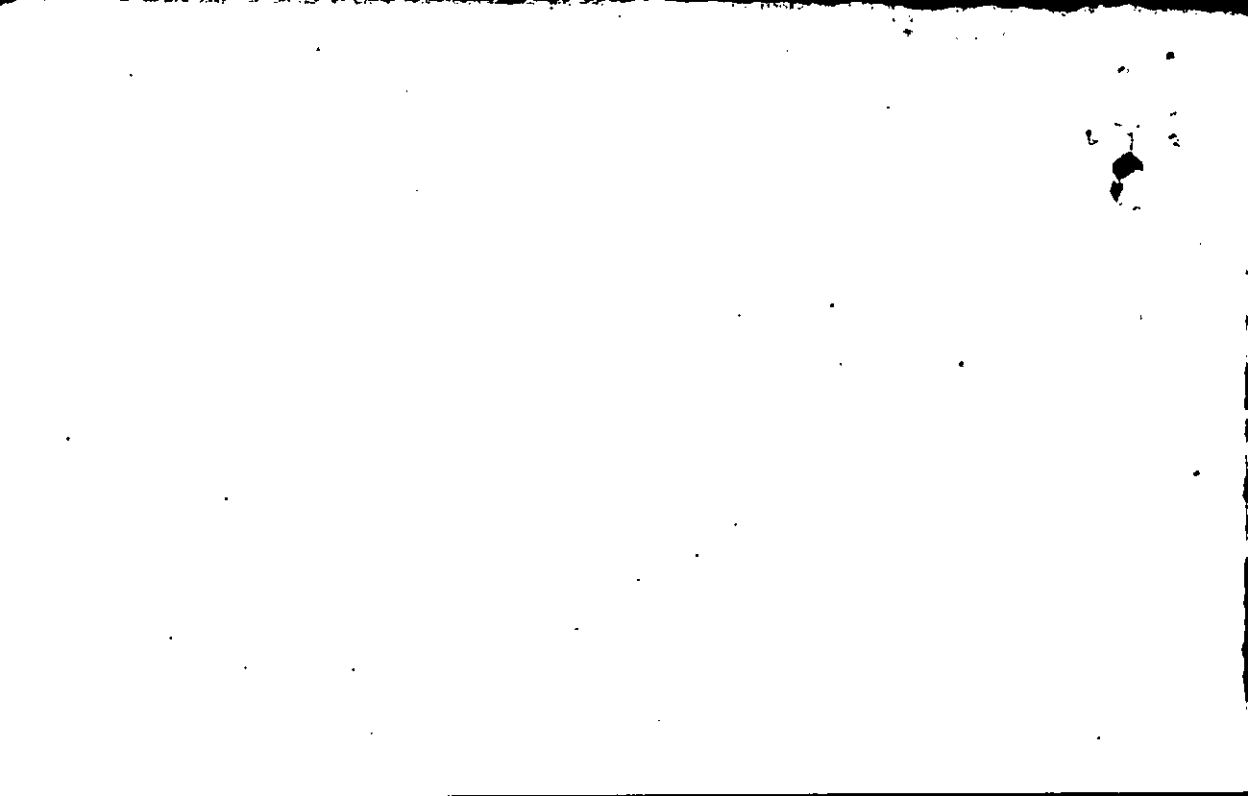
29

PS/As. Kalyan P. Chitambar

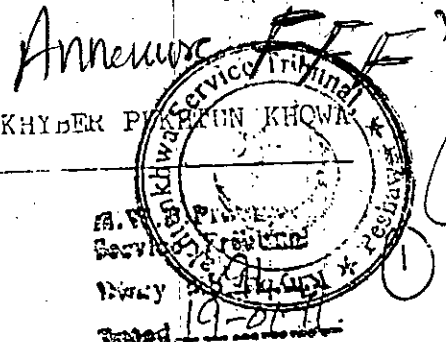
Diary No. 11919

Date. 20/11/12

Attested
Adv



BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR.



25

S.T.A No. 233 / 2011

Aziz Ullah Khan Mahsud (Ex.D.O.R.E) D.I.Khan
Now Executive District Officer (Finance & Planning)
Dera Ismail Khan. APPELLANT.

(19)

V/S

1. The Govt:of Khyber Pakhtunkhwa Province Through Secretary Establishment & Admn: Department, Peshawar, Under the auspices of their Chief Executive Officer.
 2. The Commissioner, D.I.Khan Division, D.I.Khan.
 3. The Distt:Co-Ordination Officer, D.I.Khan
- RESPONDENTS.

REPRESENTATION/APPEAL AGAINST THE ORDER DATED.
23.12.2010 BEARING NO.30 (E-I) E & AD /4-416/2010
OF THE RESPONDENT NO.1 (COMMUNICATED ON 23.12.2010)
VIDE WHICH THE DEPARTMENTAL REPRESENTATION DATED.
12.11.2010 AGAINST PENALTIES IMPOSED VIDE ORDER
NO.30 (E-I) E & AD /4-416/2010 DATED.26.10.2010 OF
THE RESPONDENT NO.1 HAS BEEN KEPT INTACT WITHOUT
AFFORDING ADEQUATE OPPORTUNITY OF PERSONAL HEARING
OR LEGAL REPRESENTATION BEFORE THE COMPETENT
AUTHORITY.

Filed to-DOJ
19/11/11

PRAYER.

ON ACCEPTANCE OF THE INSTANT APPEAL UNDER
8-10 OF THE ORDINANCE -V OF 2000 OF THE
K.P.K. PROVINCE, THE IMPUGNED ORDER DATED.
23.12.2010 AND ORDER DATED.26.10.2010 OF
THE RESPONDENT NO.1 (COMPETENT AUTHORITY) MAY
KINDLY BE SET ASIDE.

re-submitted to-DOJ
and filed.

Registrar 3/1/11

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Attested
Adv

13/1/11



(20) 26

04.4.2011

Counsel for the appellant present and heard. The learned counsel for the appellant, inter-alia, argued that the appellant alongwith other appellants in connected three appeals and Syed Muhsin Shah, the then DCO D.I.Khan, presently DCO Haripur, were jointly charged for making improper and unauthorised disbursement of compensation to blast/terrorism victims out of funds allocated both by the Federal as well as Provincial Government and proceeded departmentally. They were charge sheeted and statement of allegation was also served on them, but inquiry was conducted through the Additional Commissioner of the Section of the Commissioner, D.I.Khan, though the Additional Commissioner was junior to the then DCO and therefore he could not lawfully conduct inquiry against an officer senior to him. The inquiry proceedings were also conducted in a manner not provided for by the law, as neither opportunity of defence and cross examination was provided to the appellant nor he was heard in support of his own case. The learned counsel further contended that a committee comprising five elites belonging to Shia community was constituted for overseeing and verification of payment of compensation, who have approached the High Court in writ jurisdiction, thereby challenging the impugned action against the appellant as well. The learned counsel for the appellant mentioned that the impugned action is result of bureaucratic tussle between Commissioner and DCO; and the former settled his score with latter by initiating departmental action, to which the appellant also fell victim being part of the process. The learned counsel contended that the appellant was deprived of the opportunity of hearing not only by the inquiry officer and authority but also by the appellate authority, who rejected the appeal in summary and cursory way without furnishing any reason for his order.

The points raised at the bar, need consideration. The appeal is admitted for regular hearing. Process fee and security be deposited within 10 days. Thereafter, notices be issued to the respondents for written reply/comments on 2.5.2011 at camp court, D.I.Khan.

The learned counsel for the appellant also moved application for restraining the respondents from realizing/recovery of the amount mentioned in the impugned order and maintaining status quo in respect thereto. Since the appeal has been admitted to regular hearing, the operation of the impugned order to the extent of recovery of the mentioned amount is suspended, and status quo be maintained in this respect, subject to notice till the date fixed.

Certified to be true copy

INER
Khan Sahib
Secty. Tribunal,
Peshawar

CHAIRMAN
CAMP COURT, D.I.KHAN

Date of Presentation of Application 16-4-2011
Number of Pages 800
Copying Fee 6-00
Urgent 2-00
Total 8-00
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Date of Certification of Copy 16-4-2011
Date of Delivery of Copy 16-4-2011

Attested
Adw

VAKALATNAMA

IN THE SERVICE TRIBUNAL KHYBER PAKHTUNKHAWA,
PESHAWAR

Azizullah Khan Mahsud

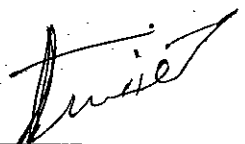
...Versus...

Province of KPK & Others

I, **Azizullah Khan** do hereby appoint **Syed Arshad Ali & Jahanzeb Mahsud, Advocates** in the above-mentioned case, to do all or any of the following acts, deeds and things: -

- 1- To appear, act and plead for me in the above-mentioned case in this Hon'ble Court in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
- 2- To sign and verify and file or withdraw all proceedings, petitions, appeals, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other documents, as may be deemed necessary or advisable by them for the conduct, prosecution or defence of the said case at all its stages.
- 3- To receive payment of, and issue receipts for, all moneys that may be or become due and payable to me during the course of the proceedings.

In witness whereof I have signed this Vakalatnama hereunder, the contents of which have been read/explained to me and fully understood by me this 21 day of March, 2013.




Signature of Executant

Attested & Accepted by:



SYED ARSHAD ALI



JAHANZEB MAHSUD

1

BEFORE THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 581/2013

MR. AZIZ ULLAH MAHSUD

(Appellant)

VERSUS

1. CHIEF SECRETARY, KHYBER
PAKHTUNKHWA

2. SECRETARY ESTABLISHMENT PESHAWAR

(Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1, 2 & 3

Preliminary Objections

1. The appellant has got no cause of action.
2. The appellant has not come to the tribunal with clean hands.
3. The appeal is bad for mis-joinder and non-joinder of necessary parties.
4. The appeal is badly time barred.
5. That the appellant is estopped by his own conduct to file the appeal.
6. That the appeal is not maintainable in its present form.

FACTS

Para-1

Correct as per record.

Para-2

Correct as per record.

Para-3

Correct as per record.

Para-4

Correct as per record.

Para-5

Correct as per record.

Para- 6

Contention of the appellant is not correct. In fact the name of the appellant was included in the working paper placed before Provincial Selection Board in its meeting held on 5.9.2012. Since meanwhile he had been awarded minor penalty of withholding of three increments and recovery of losses of Rs. 11.1 million (jointly) which the appellant deposited, the Board considered and recommended that the appellant be superseded. The Board also directed for ascertainment of the factual position regarding depositing of the amount by the appellant with NAB. On contact the NAB has confirmed that the amount was deposited by the appellant. However, it has not been confirmed by NAB whether the amount deposited was under Voluntary Return facility provided for in Section 25 (a) of the NAB Ord: 2000 or as a result of Plea bargaining availed under Section 25 of the law *ibid*. The name of the appellant was again placed before the PSB in its meeting held on **7.1.2014** and the Board recommended to defer his promotion.

Para-7

Correct.

Para-8

Incorrect. His departmental appeal was processed and filed being not covered under the rules.

Para-9

Correct to the extent that as per intimation of the NAB the appellant has deposited the recoverable sum of Rs. 15,75,000/- with NAB on their direction as his share of the gratification taken by him from the illegal transaction. Hence it also signifies his involvement in the commission of the offence and violative conduct.

Para-10


Incorrect. The appellant ~~has~~ got no cause of action to file instant appeal


GROUND

- A.** **Incorrect.** As explained in para-6 on **FACTS** above.
- B.** **Incorrect.** During his posting as District Officer (Revenue & Estate) D.I.Khan the appellant had embezzled/misappropriated the funds allocated for bomb blast victims at D.I. Khan and himself not only violated the provisions of Art. 4 of the Constitution of Islamic Republic of Pakistan but also that of the Khyber Pakhtunkhwa Government Servants Conduct Rules, due to which he was awarded a penalty mentioned above. The position has also been explained in Para-6 and 9 on **FACTS** above.
- C.** **Incorrect** as no one other accused had been promoted.
- D.** **Incorrect.** The action of the respondent is according to law.
- E** **Incorrect.** As explained earlier in Para-6 read with Para-9 on **FACTS above**, the case was placed before the Provincial Selection Board in its meeting held on 5.9.2012 and 7.1.2014. Since he was awarded a penalty of withholding of 3-annual increments and recovery of Rs. 11.1 million and an enquiry by NAB was/is also underway, the Provincial Selection Board considered the appellant and then deferred his case.
- F & G** Contention of the petition is not tenable. Despite the fact that the appellant had filed an appeal in Service Tribunal and stay was granted, yet the appellant deposited the recoverable funds amounting to Rs. 15,75,000/- on the directions of NAB for having committed the offence. Moreover, the inquiry in Bomb Blast case is under way in NAB. The entire position was placed before the PSB in its meeting held on 7.1.2014. Thereupon, the Board considered the case and decided to defer the same.
- H-** The respondents seek permission of this Tribunal to raise additional grounds at the time of engagements.

PRAYERS

It is, therefore, respectfully prayed that the appeal being devoid of merits, may please be dismissed with costs.


Chief Secretary
Govt: of Khyber Pakhtunkhwa
(Respondent No. 1)


Secretary
Establishment Department
(Respondent No. 2)

Appeal No. 581/ 2013

AZIZULLAH MAHSUD.

Versus

Province of Khyber Pukhtunkhwa & Others

**RE-JOINDER FOR AND ON BEHALF OF APPELLANTS
TO THE COMMENTS/REPLY FILED BY THE
RESPONDENT NO 1 & 2**

Preliminary Objections:

1 Appellant has got a locus standii to file the present Appeal. All the Preliminary Objections raised by the Respondents are unfounded and without any substance and specifically denied. The Appellant has got cause of action as his promotion was due and his juniors have been promoted and his promotion has been deferred without any legal justification. The Appeal has been filed within the statutory period.

Moreover, the Respondents have raised baseless Preliminary Objections just to delay the matter and willfully ignoring the legal and fundamental right of the Appellant. The appeal of the Appellant is very much competent and maintainable. Even the comments have been filed in complete ignorance of the Service law and NAB Ordinance on the subject.

Respectfully Sheweth.

- 1- Para** No 1, 2, 3, 4 & 5 of the reply are admitted as correct by Respondents, hence need no reply.
- 2- Reply** of the Respondents to Para No 6 of the Appeal is in-correct, hence denied.

The PSB has committed gross illegality by superseding the Appellant on account of minor penalties of withholding of three increments and recovery of 11.1 million (Jointly with others). The said action of the Respondents is without any lawful authority for following reasons:-

- (i)- The** stoppage of the promotion of the Appellant on the basis of impugned order is baseless because the same has become infructuous as the disputed amount has been deposited in the government treasury under protest and in accordance with law. Moreover, the impugned order of the competent

authority regarding recovery of 11.1 Million (jointly with others) is not in the field it has been suspended by the Khyber Pakhtunkhwa service tribunal, relevant portion is reproduced below:

“The operation of the impugned order to the extent of recovery of the mentioned amount is suspended and the status quo be maintained in this respect”

- (ii) **There** are plethora of Judgments of Superior Courts that **“minor penalties cannot come in the way of promotion”** so withholding of three increments cannot create any hurdle in the promotion of the Appellant.
- (iii) **It** is noteworthy that the Respondent No 1 & 2 have miserably failed or lack basic knowledge to understand the express provision i.e Section 25 (a) of the NAB Ordinance, 2000. Section 25(a) is reproduced below

“Notwithstanding anything contained in Section 15 or in any other law for the time being in force, where a holder of public office or any other person, prior to the authorization of investigation against him, voluntary comes forward and offers to return the assets or gains acquired or made by him in the course, or as the consequence, of any offence under this Ordinance, the Chairman NAB may accept such offer and after determination of the amount due from such person and its deposit with the NAB discharge such person from all his liability in respect of the matter or transaction in issue”

In view of the above, it is crystal clear that **Voluntary Return** offer is accepted by Chairman NAB before the authorization of investigation and it carries statutory protection of being exonerated from the liability/allegation. It is abundantly clear from the above that the Appellant alongwith other accepted the offer of the Chairman and before the authorization of investigation deposited the disputed amount in government treasury under Voluntary Return.

Moreover, Respondents failed to understand that **Plea Bargain** under the **NAB Ordinance** is with the approval of the Accountability Court after authorization of investigation and before or after commencement of trial. Once it is accepted/approved by the Court, it carries with it penalty of disqualification from holding the public office. It is also note worth that civil servants facing similar charges were promoted and, infact one of them is posted as Commissioner Bannu while the other one was promoted to BPS-17, who deposited the disputed amount with Chairman

NAB then why this discriminatory treatment is meted out to the Appellant.

Furthermore, the admittedly Appellant promotion was again deferred by the PSB held on 07.01.2014 which is also challenged before this Honourable Tribunal.

3- **Para No 7** is admitted, hence, needs no reply.

4- **Reply to Para No 8** is incorrect.

The Respondents are bound by rules to decide the departmental appeal within the statutory period i.e. 90 days. After expiry of statutory period the appellant file the instant appeal before the august Tribunal within the specified time.

5- **Reply to No 9** is incorrect.

As discussed in preceding paragraphs, the appellant deposited the recoverable amount through voluntary return (VR) which carries with it statutory protection. Hence, any action on the part of the Respondents against the Appellant on the basis of deposit of disputed amount is illegal and against the law on the subject.

6- **Reply to para No 10** of the Appeal is incorrect.

Reply to Grounds of Comments filed by Respondent No 1 & 2.

A-H **Reply** filed in response to the grounds of the Appeal is vague and baseless. Respondents No 1 & 2 are trying to conceal their illegal and discriminating treatment towards the Appellant. The acts of the Respondents are in utter disregard of Civil Servant Act and the NAB ordinance. The Appellant was wrongly implicated in inquiry for no wrong of his own and then left with no other choice but to deposit the disputed amount under Voluntary Return under protest. Once the disputed amount is deposited in government treasury in accordance with law, the Respondents have got no legal justification to defer his promotion especially when other civil servants facing similar charges have been given beneficial treatment. Moreover, the deposit of disputed amount under Voluntary Return carry with it exoneration from the charge. The assertions made in reply of the Respondents are specifically denied. The stance taken in the preceding paragraphs is reiterated.

Appellant
Through 
Jahanzeb Mahsud

IN THE KPK SERVICE TRIBUNAL, PESHAWAR

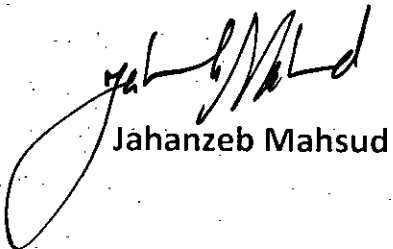
Appeal No. _____ of 2013

Aziz-ul-Ilah Mahsud Versus Province of KPK & Others,

AFFIDAVIT:

I, Aziz-ul-Ilah Khan Mahsud, Finance Officer, District Dera Ismail Khan do hereby solemnly affirm & declare that the contents of the attached rejoinder are true & correct to the best of my knowledge & belief and nothing has been concealed or with held from this Honorable Court.

Identified by


Jahanzeb Mahsud


Deponent

Azizullah Mahsud

