

05.10.2015

Appellant with counsel and Mr. Sultan Shah, Supdt. alongwith Mr. Ziaullah, GP for respondents present. Arguments heard and record perused. Vide detailed judgment of today in connected service appeal No. 470/2013 tilted "Muhammad Ayaz-vs-Govt. of KPK through Chief Secretary, Peshawar and others"; this appeal is also disposed of as per detailed judgment. Parties are left to bear their own cost. File be consigned to the record room.


(ABDUL LATIF)
MEMBER


(PIR BAKHSH SHAH)
MEMBER

ANNOUNCED
05.10.2015

5

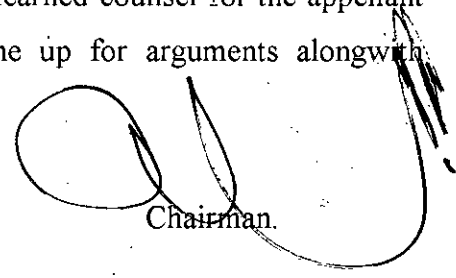
11.4.2014

Counsel for the appellant, M/S Irshad Muhammad, Supdt. for respondents No. 1 to 3 and Sultan Shah, Assistant for respondent No. 4 with AAG present. Rejoinder received on behalf of the appellant, copy whereof is handed over to the learned AAG for arguments alongwith connected appeals on 10.9.2014.


Chairman

10.09.2014

Counsel for the appellant (Syed Abdul Hafeez, Advocate) M/S Sultan Shah, Assistant for respondents No.1,2 and 4 and Hamad Ahmed, Assistant for respondent No. 3 with Mr. Muhammad Adeel Butt, AAG present. Arguments could not be heard due to non-availability of learned counsel for the appellant and incomplete Bench. To come up for arguments alongwith connected appeals on 10.03.2015.


Chairman.

10.3.2015

Junior to counsel for the appellant and Mr. Ziaullah, GP with Sultan Shah, Assistant for the respondents present. The learned senior counsel for the appellant was stated to be busy in the Hon'ble High Court. Therefore, case is adjourned to 5.10.2015.


MEMBER


MEMBER

10.6.2013

Counsel for the appellant present. Respondents No. 2 to 4 are not present despite their service through the concerned official, however, Mr. Usman Ghani Sr. GP is present and would be contacting them for submission of written reply/comments on 20.9.2013.


CHAIRMAN

20.9.2013

Counsel for the appellant and Mr. Irshad Muhammad, Supdt. for respondent No. 3 with AAG for the respondents present. Written reply has not been received, and request for further time made on behalf of the respondents. Another chance is given for written reply/comments, positively, on 13.1.2014.


Chairman

13.01.2014

Mr. Muhammad Ayaz Toru, appellant in the connected appeal, on behalf of the appellant, M/S Sultan Shah, Assistant for respondents No. 1,2 and 4 and Irshad Muhammad, Supdt. for respondent No. 3 with AAG for the respondents present. Written reply/para-wise comments received on behalf of the respondents, copy whereof is handed over to the appellant for rejoinder on 11.4.2014.


Chairman

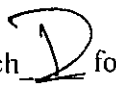
Appeal No. 472/2013.
Mr. Faizal Nadeem

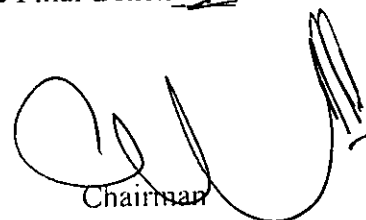
3. 10.4.2013

Counsel for the appellant present and heard. Contended that the appellant was promoted on 25.1.2010 as Section Officer (BPS-17) on acting charge basis but with immediate effect. He was promoted on regular basis on 12.12.2012. The appellant preferred a departmental appeal for the grant of ante-date promotion on 1.2.2012 from the date when he was promoted on acting charge basis but the same was rejected on 29.1.2013. Counsel for the appellant further contended that the appellant had earlier filed a writ petition which was decided on 22.11.2012 wherein, it was held that once the Supreme Court or the High Court enunciated a principle of law, then benefit of the same must be extended to all those similarly placed albeit they had not come to the court for seeking such relief. However, the writ petition was remanded to the respondent department for consideration. The department vide order dated 29.1.2013 refused the ante-date promotion of the appellant as being not covered under the rules. The learned counsel for the appellant in support of his arguments referred to this Tribunal judgment dated 13.3.2009 passed in Appeal No. 612/2008, Appeal No. 425/2005 by Abdul Latif, decided on 1.12.2005 and C.P No. 820/2004. 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, notices be issued to the respondents. Case adjourned to 19.6.2013 for submission of written reply.


Member.


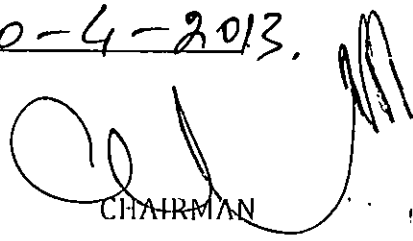
4. 10.4.2013

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


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____
Case No. 472/2013

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	25/02/2013	<p>The appeal of Mr. Fazal Nabi presented today by Mr. Nasir Mahmood 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	1-3-2013.	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>10-4-2013.</u></p> <p style="text-align: right;"> CHAIRMAN</p>

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

IN RE; Service Appeal NO.....472\2013

Fazal NabiAppellant

Versus

Chief Minister, KPK Peshawar and
others.....Respondents.

INDEX

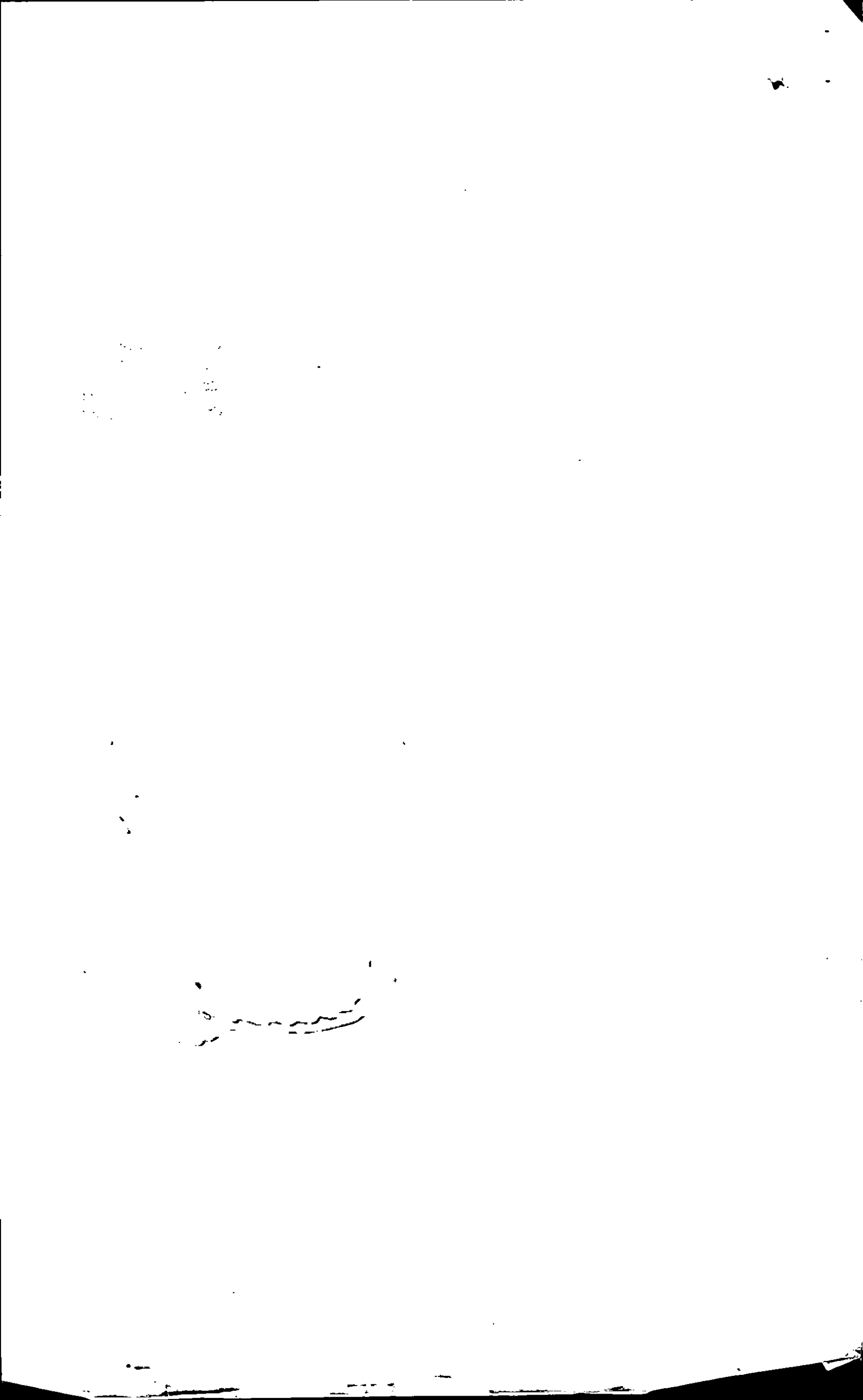
S.No.	Description of Documents	Annexure	Pages
1.	Appeal with affidavit		1-4
2.	Notification dt. 25.01.10	A	5-7
3.	Notification dt. 21.12.11	B	8-9
4.	Departmental Appeal	C	10-11
5.	Order in W.P	D	12-15
6.	Rejection Order	E	16
7.	Wakalat Nama		

Appellant

Through



Nasir Mahmood Advocate
13-D Haroon Mension
Peshawar.
Mob.0333-9176275



BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

IN RE; Service Appeal NO.....479.\2013

~~SECRET~~
488
25/2/13

Fazal Nabi Section Officer, IPC Dept. Civil Secretariat
Peshawar.....Appellant

Versus

- ①. The Chief Minister KPK Peshawar.
2. Govt. of KPK through Chief Secretary KPK Peshawar.
3. Secretary to Govt. of KPK Finance Dept. Govt. of KPK Civil Secretariat Peshawar.
4. Secretary Establishment \ Regulation Govt. of KPK Civil Secretariat Peshawar..... Respondents

Service Appeal U \ Section 4 of the KPK Service Tribunal Act, 1974 against the Notification dated 21-12-2011 passed by respondent no.1 whereby appellant services were regularized with immediate effect instead of giving ante-date promotion to appellant from 25.01.2010 and writ petition filed before High Court was treated as departmental appeal and the authority was directed to decide the appeal within two months which was regretted vide letter dated 29.01.13 hence the instant appeal.

Prayer in Appeal; To set-aside the Notification dated 21-12-2011 passed by respondent no.1 whereby appellant services were regularized with immediate effect instead of giving ante-date promotion to appellant from 25.01.2010.

~~SECRET~~
25/2/13

2

Respectfully Sheweth;

1. That appellant was serving as Private Secretary in BPS-16 in the Chief Minister's Secretariat (Establishment Department).
2. That the appellant is having long tenure of service extending for more than 27 years of service to his credit.
3. That through Notification dated 25th January 2010 upon the recommendations of Provincial Selection Board the appellant was promoted as Section Officer (B-17) on acting charge basis. (copy of the Notification dated 25.01.2010 is attached herewith as Annexure-A).
4. That later on upon the recommendations of Provincial Selection Board the appellant services were regularized through notification dated 21.12.2011. (copy of the notification is attached herewith as Annexure-B).
5. That the appellant being highly aggrieved from the notification dated 21.12.2011 preferred departmental appeal dated 01.02.12 to the Honourable Chief Minister Khyber Pakhtunkhwa, Peshawar (copy attached as Annexure-C) for giving antidate promotion to the appellant from the date when he was promoted on acting charge basis through notification dated 25.01.2010 which was unresponded and later on the appellant filed writ petition No.2707-P of 2012 which was treated as departmental appeal and departmental/^{authority} was directed to decide the appeal within two months, the competent authority has regretted the same through order 29.1.2013 (copy of the order in writ petition and order of the departmental authority is attached herewith as Annexure-D&E respectively) hence the present appeal against the order dated 21.12.2011 passed by respondent No. 1 inter alia on the following grounds;

F. That there cannot be two different scales for treating the some of the civil servants in one way and by extending to them the benefit of their regularization from the date of holding the charge on acting charge basis and leaving aside the other civil servants of the same category and being on the same footing by refusing them antedate promotion without any reasonable/plausible grounds.

G. That in similar facts and circumstances this honorable Tribunal was pleased to accept appeal of Muhammad Iqbal Khattak and the case of the appellant is at par with that case so the impugned order is illegal on this ground also.

For the aforesaid reasons it is, therefore, respectfully prayed that on acceptance of this appeal, this honorable tribunal may be pleased to declare office orders dated 21.12.2011 passed by respondent no.1 to be null and void and thus cancelled and ante-date promotion be given to appellant from 25-01-2010.

Any other remedy not specifically asked for but appropriate in the circumstances of the case may also be awarded to the appellant.

Appellant

Through

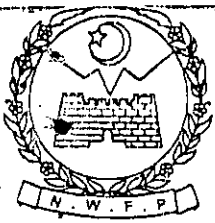
Nasir Mahmood Advocate,
13-D Haroon Mansion
Peshawar.

Affidavit

I, do hereby declare, and affirm on oath that the contents of accompanying writ petition are true and correct to the best my knowledge and belief and nothing has been concealed from this hon'ble court.

Deponent

Attested
FIDA MOHAMMAD BANGASH
Advocate
Notary Public
Date 22-2-13
Distt. Court Peshawar



GOVERNMENT OF NWFP
ESTABLISHMENT DEPARTMENT

Amazk-A

Dated Peshawar the 25th January, 2010

NOTIFICATION:

No: SOE-II(ED)3(45)2010: Consequent upon the recommendations of the Provincial Selection Board, the competent authority is pleased to appoint the following Section Officers (Section Officer (Current Charge) / Superintendents / Private Secretaries as PMS Officers (BS-17) on acting charge basis with immediate effect:-

Sr. #	Name of officer
1.	Mr. Diwalar Shah
2.	Mr. Rahim Badshah
3.	Mr. Jamroz Khan
4.	Mr. Muhammad Jehan
5.	Mr. Sher Akbar
6.	Mr. Wamiq
7.	Mr. Said Wali Khan
8.	Mr. Munir Jan
9.	Mr. Bashir Khan
10.	Mr. Zar Gul Khan
11.	Mr. Syed Rasool
12.	Mr. Muhammad Afzal
13.	Mr. Aurangzeb Awan
14.	Mr. Noor Muhammad
15.	Mr. Amir Muhammad
16.	Mr. Ghulam Hussain
17.	Mr. Wazir Muhammad
18.	Mr. Muhammad Ishaq
19.	Mr. Shabbir Ahmad
20.	Mr. Wazir Gul
21.	Mr. Farooq Ahmad
22.	Mr. Khurshid Ali Khan
23.	Mr. Ghulam Muhammad
24.	Mr. Fazal Nabi
25.	Mr. Abdul Qadcer
26.	Mr. Muhammad Saeed
27.	Mr. Muhammad Ayaz
28.	Mr. Zarimullah

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2. **6** On their promotion the above officers will be on probation for a period of one year in terms of section-6(2) of NWFP Civil Servants Act 1973 read with Rule-15(1) of NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

3. Resultantly the following postings / transfers are ordered with immediate effect:-

Sr. #	Name of officer	From	To
1.	Mr. Diwalar Shah	Section Officer, CM's Secretariat.	Retained on the same post.
2.	Mr. Rahim Badshah	Section Officer, C & W Deptt:	Retained on the same post.
3.	Mr. Jamroz Khan	Section Officer, Finance Deptt:	Retained on the same post.
4.	Mr. Muhammad Jehan	Section Officer, Governor's Sectt:	Retained on the same post.
5.	Mr. Sher Akbar	Section Officer, Higher Education	Retained on the same post.
6.	Mr. Wamiq	Section Officer, ST&IT Deptt:	Retained on the same post.
7.	Mr. Said Wali Khan	Section Officer, Mineral Dev. Deptt:	Retained on the same post.
8.	Mr. Munir Jan	PS, FATA Dev. Authority	Section Officer(R-1), Establishment Deptt: as substitute of Mr. Tehsinullah
9.	Mr. Bashir Khan	Section Officer, P&D Deptt:	Retained on the same post.
10.	Mr. Zar Gul Khan	Section Officer, Finance Deptt:	Retained on the same post.
11.	Mr. Syed Rasool	Section Officer, Home & TAs Deptt:	Retained on the same post.
12.	Mr. Muhammad Afzal	Section Officer, Establishment Deptt:	Retained on the same post.
13.	Mr. Aurangzeb Awan	Section Officer, Health Deptt:	Retained on the same post.
14.	Mr. Noor Muhammad	Section Officer, Housing Deptt:	Retained on the same post.
15.	Mr. Amir Muhammad	Section Officer, CM's Secretariat	Retained on the same post.
16.	Mr. Ghulam Hussain	PS to Minister for Agriculture	Retained on the same post.
17.	Mr. Wazir Muhammad	Section Officer, Finance Deptt:	Retained on the same post.
18.	Mr. Muhammad Ishaq	Section Officer, ST&IT Deptt:	Retained on the same post.
19.	Mr. Shabbir Ahmad	Supdt. STI, E&AD	Home & TAs Deptt: against the vacant

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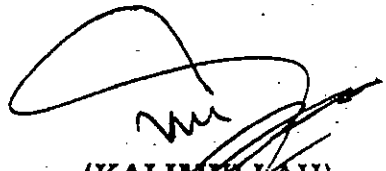
20	Mr. Wazir Gul	Section Officer, Industries Deptt:	post Retained on the same post
21	Mr. Farooq Ahmad	PS, ST&IT Deptt:	Higher Education Deptt: against the vacant post.
22	Mr. Khurshid Ali Khan	Section Officer, Elementary & Secondary Education Deptt:	Retained on the same post
23	Mr. Ghulam Muhammad	PS Food Deptt:	Finance Deptt: against the vacant post.
24	Mr. Fazal Nabi	Section Officer, STI, E&AD	Retained on the same post
25	Mr. Abdul Qadeer	Section Officer, Aqal Deptt:	Retained on the same post
26	Mr. Muhammad Saeed	Section Officer, Social Welfare Deptt:	Retained on the same post
27	Mr. Muhammad Ayaz	PS CM Secretariat	Finance Deptt: against the vacant post.
28	Mr. Zarimullah	Section Officer, IPC Deptt:	Retained on the same post

CHIEF SECRETARY, N.W.F.P.

ENDST:NO: SOE-II(ED)3(45)2010 Dated Pesh the 25 January, 2010

A copy is forwarded to :-

1. All Administrative Secretaries to Govt of NWFP.
2. Secretary to Governor, NWFP.
3. Principal Secretary to Chief Minister, NWFP.
4. Accountant General, NWFP, Peshawar.
5. Accountant General(PR), NWFP, Peshawar.
6. Secretary, FATA Dev. Authority, Peshawar.
7. Director, STI, E&A Department.
8. S.O.(Secret)/(Admn)/E-IV/E.O/Programmer/Librarian, E&A Dept.
9. Officers concerned.
10. P.S. to Chief Secretary NWFP.
11. P.S. to Secretary Establishment NWFP.
12. PS to Special Secretary (Regulations) Establishment Dept.
13. PS to Minister Agriculture, NWFP.
14. PA to AS (E)/ DS (E) Establishment Department.
15. Personal files of the officers concerned.
16. Office Order file.
17. Manager, Govt Printing Press, Peshawar.


(KALIMULLAH)
SECTION OFFICER (E-II)


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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar the December, 21, 2011

NOTIFICATION

NO.SOE II(ED)3(45)2011- Consequent upon the recommendations of the Provincial Selection Board, the competent authority is pleased to order the promotion of the following Private Secretaries/Superintendents/Section Officer(OPS)/PMS BS-17 (acting charge), to Provincial Management Service (BS-17), on regular basis with immediate effect:-

S.#	Name of Officer
1.	Mr. Saïd Rasool
2.	Mr. Muhammad Afzal
3.	Mr. Aurangzeb Awan
4.	Mr. Noor Muhammad Awan
5.	Mr. Amir Muhammad
6.	Mr. Ghulam Hussain
7.	Mr. Wazir Muhammad
8.	Mr. Mohammad Ishaq
9.	Mr. Shabbir Ahmad
10.	Mr. Wazir Gul
11.	Mr. Khurshid Ali
12.	Mr. Ghulam Muhammad
13.	Mr. Akbar Khan
14.	Mr. Fazal Nabi
15.	Mr. Muhammad Saeed
16.	Mr. Muhammad Ayaz
17.	Mr. Zarimullah
18.	Mr. Waheed Khan
19.	Mr. Jehanzeb Khan

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

3. Resultantly the following postings/transfers are ordered with immediate effect:-

S.#	Name of Officer	From	To
1.	Mr. Saïd Rasool	Section Officer, Home Deptt.	Retained on the same post
2.	Mr. Muhammad Afzal	Section Officer, E&AD	Retained on the same post
3.	Mr. Aurangzeb Awan	Section Officer, Health Deptt.	Retained on the same post
4.	Mr. Noor Muhammad	Section Officer, Housing	Retained on the same post

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	Awan	Deptt:	
5.	Mr. Arrir Muhammad	Section Officer, CM Sectt	Retained on the same post
6.	Mr. Ghulam Hussain	PS to Minister Agriculture	Retained on the same post
7.	Mr. Wazir Muhammad	Section Officer, Finance Deptt:	Retained on the same post
8.	Mr. Mohammad Ishaq	Section Officer, ST&IT Deptt:	Retained on the same post
9.	Mr. Shabbir Ahmad	Section Officer, Higher Education Deptt:	Retained on the same post
10.	Mr. Wazir Gul	Section Officer, Industries Deptt:	Retained on the same post
11.	Mr. Khurshid Ali	Section Officer, E&S Edu Deptt	Retained on the same post
12.	Mr. Ghulam Muhammad	Section Officer, Finance Deptt:	Retained on the same post
13.	Mr. Akbar Khan	Section Officer, Information Deptt:	Retained on the same post
14.	Mr. Fazal Nabi	Section Officer, IPC Deptt:	Retained on the same post
15.	Mr. Muhammad Saeed	Section Officer, Social Welfare Deptt:	Retained on the same post
16.	Mr. Muhammad Ayaz	Section Officer, Finance Deptt:	Retained on the same post
17.	Mr. Zarimullah	Section Officer, IPC Deptt:	Retained on the same post
18.	Mr. Waheed Khan	Section Officer, Higher Educ. Deptt:	Retained on the same post
19.	Mr. Jehanzeb Khan	Section Officer, Industries Deptt	Section Officer, Population Welfare Deptt. against the vacant post.

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

INDEX NO. & DATE EVEN

A copy is forwarded to:-

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. Accountant General, Khyber Pakhtunkhwa.
6. Accountant General (PR), Sub- Office, Peshawar.
7. SO(Secret)/SO(E-IV)/SO(Admn)/ EO/Librarian, E&A Department.
8. PS to Minister for Agriculture, Khyber Pakhtunkhwa.
9. PS to Chief Secretary, Khyber Pakhtunkhwa.
10. PS to Secretary Establishment.
11. PS to Special Secretary(Regulation), E&AD
12. PAs to AS(E)/DS(I) Estab: Deptt:
13. Officers concerned
14. Office order file.
15. Personal file of the officers concerned.

(FARYAL KAZIM)
SECTION OFFICER(E-II)

MSA/AFRID/

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Annex e

10

The Hon'ble Chief Minister,
Khyber Pakhtunkhwa,
Peshawar.

Ps / Secy to E. B. AD
Diary No. 605
Dated 01/12/2012

Through: Secretary Establishment.

Subject: APPOINTMENT ON ACTING CHARGE BASIS/ANTEDATION OF PROMOTION.

Dear Sir,

With due regard, it is stated that the undersigned's were appointed as Section Officers on Acting Charge Basis with effect from January 25, 2010 vide Notification No. SOE-II(ED)3(45)2010 dated January 25, 2010 (**Annex-I**) and then promoted on regular basis with effect from December 21, 2011 vide Notification No. SOE-II(ED)3(45)2011 dated December 21, 2011 (**Annex-II**).

2. Under Rule-9 of Appointment, Promotion and Transfers Rules 1989, the appointment on Acting Charge Basis is made in those cases where length of service is required. Under Rule-5 (ii) of Civil Servants (Secretariat Group) Rules 1997, no length of service is mentioned therein. Therefore, the promotion cannot be considered as on Acting Charge Basis.

3. It is submitted that the Acting Charge promotion is made against a temporary vacant post liable to reversion till the arrival of the lien holder of the post against which a person is promoted, but the undersigned have served regularly and without reversion to their original post uptill issuance of Notification No. SOE-II(ED)3(45)2011 dated December 21, 2011 on regular basis.

4. More-over, the Provincial government has allowed us one pre-mature increment and pay fixation on our promotion to higher scale i.e. BPS-17 on Acting Charge Basis. Hence our promotion cannot be considered as on Acting Charge basis but should be considered as on regular basis.

5. The Service Tribunal has decided similar cases as is evident from Service Appeal No. 734 and 735 on 2009 filed by Dr. Nadeem Khawar and Dr. Azmat Talaat, Professors of Paediatrics (BS-20) of Hayatabad Medical Complex V/S Chief Secretary, Government of Khyber Pakhtunkhwa, where-in it has been decided that both the appeals are accepted and the appellants shall be deemed to have been promoted on regular basis with effect from the date of their promotion of Acting Charge basis i.e. October 21, 2003 instead of January 09, 2009 with all consequential benefits.

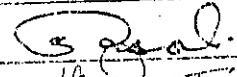
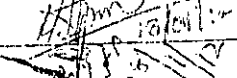
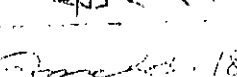
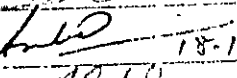
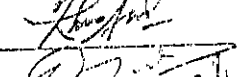
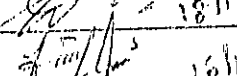
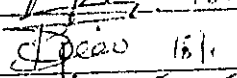
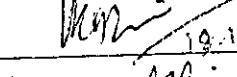
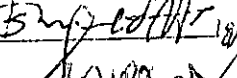

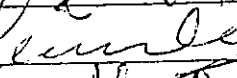

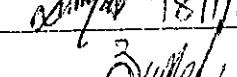
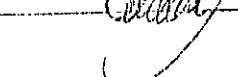



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6. It may further be submitted that the Supreme Court of Pakistan in a Civil petition No. 820-P of 2004 dated March 10, 2011 (**Annexure-III**) while accepting the view points of the Petitioner has ordered this restoring his seniority over those who were appointed against the initial recruitment quota. Mr. Abdul Wahab Petitioner V/S Government of Khyber Pakhtunkhwa through Chief Secretary for antedation of his promotion from August 09, 1993 the date from which he was promoted as Section Officer on stop-gap arrangement instead of the date in which he has been promoted on regular basis.

7. In light of the Judgment referred to above, it is requested that our case may kindly be considered sympathetically and consider our regular promotion from the date i.e. 25.01.2010²⁰¹¹ which we were appointed on acting charge basis.

With profound regard.

Yours faithfully.

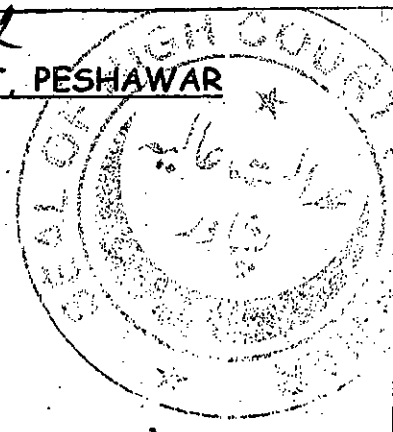
S#	Name	Designation	Signature
1.	Mr. Said Rasool	Section Officer (Home)	 8/1/2011
2.	Muhammad Afzal	Section Officer(E&AD)	 18/1/2011
3.	Mr. Aurangzeb Awan	Section Officer(Health)	 18/1/2011
4.	Mr. Noor Muhammad Awan	Section Officer(Housing)	 18/1/2011
5.	Mr. Amir Muhammad	Section Officer(CM Sect)	 18-1-2012
6.	Mr. Ghulam Hussain	Section Officer(PS Min: Agril)	 18/1/2011
7.	Mr. Wazir Muhammad	Section Officer(FD)	 18/1/2011
8.	Muhammad Ishaq	Section Officer(ST&IT)	 18/1/2011
9.	Mr. Shabbir Ahmad	Section Officer(HE)	 18/1/2011
10.	Mr. Wazir Gul	Section Officer(Ind)	 19.1.2011
11.	Mr. Khurshid Ali	Section Officer(E&SE)	 18/1/2011
12.	Mr. Ghulam Muhammad	Section Officer (FD)	 18/1/2011
13.	Mr. Akbar Khan	Section Officer(Inf)	 18/1/2011
14.	Mr. Fazal Nabi	Section Officer(IPCD)	 18/1/2011
15.	Muhammad Saeed	Section Officer(SW)	 18/1/2011
16.	Muhammad Ayaz	Section Officer(FD)	 18/1/2011
17.	Mr. Zarimullah	Section Officer(IPCD)	 18/1/2011

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Annex-D

12

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



W.P.No. 2707/2012

1. Muhammad Ayaz Toru Section Officer,
Finance Department, Govt. of K.P.K.,
Civil Secretariat, Peshawar.
2. Jamroz Khan Section Officer,
Finance Department, Govt. of K.P.K.,
Civil Secretariat, Peshawar.
3. Muhammad Jehan Section Officer,
Governor Secretariat, Govt. of K.P.K.,
Governor Secretariat, Peshawar.
4. Sher Akbar Section Officer,
Home & Tribal Affairs Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
5. Wamiq Section Officer,
Science & Technology & Information Technology
Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
6. Munir Jan Section Officer,
E&AD Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
7. Bashir Khan Section Officer,
P&D Department, Govt. of K.P.K.,
Civil Secretariat, Peshawar.
8. Zar Gul Khan Section Officer,
Finance Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.

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ATTESTED
Peshawar High Court

9. Syed Rasool Section Officer,
Home & Tribal Affairs Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
10. Aurangzeb Awan Section Officer,
Health Department Gov. of K.P.K.,
Civil Secretariat, Peshawar.
11. Wazir Muhammad Afghar
Section Officer,
Finance Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
12. Shabir Ahmad
Section Officer Higher Education Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
13. Khurshid Ali Khan Section Officer,
Elementary & Secondary Education Department, Govt.
of K.P.K., Civil Secretariat, Peshawar.
14. Fazal Nabi Section Officer,
Inter Provincial Coordination Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.
15. Muhammad Saeed Section Officer,
Social Welfare Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
16. Rahim Badshah Section Officer,
C& W Department Govt. of K.P.K.,
Civil Secretariat, Peshawar.
17. Zarimullah Section Officer,
Inter Provincial Coordination Department,
Govt. of K.P.K.,
Civil Secretariat, Peshawar.

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18. Akbar Khan Section Officer, Information & Public Relations Department, Govt. of K.P.K., Civil Secretariat, Peshawar

.....Petitioners

Versus

1. Govt. of K.P.K., through Chief Secretary, Civil Secretariat, Peshawar

2. Secretary to Govt. of K.P.K., Finance Department, Civil Secretariat, Peshawar.

3. Secretary Establishment/Regulation Govt. of K.P.K., Civil Secretariat, Peshawar

.....Respondents

W.P. under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973

Respectfully Sheweth:

1. That the petitioners are serving as Section Officer (BPS-17) Govt. of K.P.K., in Civil Secretariat, Peshawar whom are serving at the posts as mentioned against their names in the heading of the petition.

2. That all the above said petitioners have got at their credit a long tenure of service extending more than 25/30 years.

3. That the petitioners were previously serving as Superintendent/Private Secretaries (BPS-16) in the various departments, whereby through a notification

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ATTEN
Peshawar

PESHAWAR HIGH COURT, PESHAWAR.

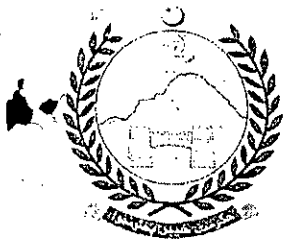
FORM 'A'
FORM OF ORDER SHEET

Date of order.	Order or other proceedings with the order of Judge
22.11.2012.	<p><u>W.P. 2707-P of 2012.</u></p> <p>Present: Ghulam Nabi, advocate for petitioners.</p> <p><u>DOST MUHAMMAD KHAN, C.J.-</u> Contends that similarly placed persons were granted relief by the Services Tribunal and the decision of the same was upheld by the apex court granting certain benefits to those employees placed similar to the petitioners, therefore, on the strength of dicta laid down by the apex court in the case of <u>Hameed Akhtar Niazi Vs. The Government (1996 SCMR 1185)</u> where it was held that once the Supreme Court or the High Court enunciated a principle of law, then benefit of the same must be extended to all those similarly placed albeit they had not come to the court for seeking such relief.</p> <p>2. Accordingly, this petition is sent to the Departmental Appellate Authority to be treated as Departmental Appeal and decision be made keeping in view the dicta laid down by the apex court. The needful be done within two months.</p> <p>Petition disposed of.</p> <p>sd/ DOST Mub sd/ Waqar Ahmad</p> <p>RESERVED TO BE TRUE COPY SR</p>

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SR
29-11-12
The Government of Peshawar 1994



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Annex-E

16

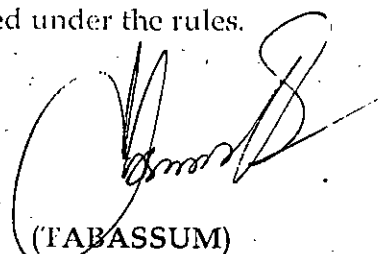
NO.SOE-II(ED) 3(855)/2008
Dated Peshawar the January, 29. 20' 3

To

1. Mr. Muhammad Ayaz Toru, Section Officer, Finance Deptt.
2. Mr. Jamroz Khan, Section Officer, Finance Deptt.
3. Mr. Muhammad Jehan, Section Officer, H&TAs Deptt
4. Mr. Sher Akbar, Section officer, H&TAs Deptt
5. Mr. Wamiq, Section Officer, ST&IT Deptt.
6. Mr. Munir Jan, Assistant Manager (Procurement & Inventory) FATA
Dev. Authority,
7. Mr. Muhammad Bashir Khan, Section Officer, P&D Deptt.
8. Mr. Zar Gul Khan, Section Officer, Finance Deptt.
9. Syed Rasool, Section officer, H&TAS Deptt
10. Mr. Aurangzeb Awan, Section Officer, Local Govt. Deptt
11. Mr. Wazir Muhammad, Section Officer, Finance Department
12. Mr. Shabir Ahmad, Section Officer, Health Deptt.
13. Mr. Khurshid Ali Khan, Section Officer, E&S Edu Deptt.
14. Mr. Fazal Nabi, Section Officer, IPC, Deptt.
15. Mr. Muhammad Saeed, Section Officer, Social Welfare, Deptt.
16. Mr. Rahim Badshah, Section Officer, C&W Deptt.
17. Mr. Zarimullah, Section Officer, IPC, Deptt.
18. Mr. Akbar Khn, Section Officer, Information Deptt.

Subject:- WRIT PETITION NO. 2707-P/2012 - MUHAMMAD AYAZ AND OTHERS VS GOVT. OF KHYBER PAKHTUNKHWA AND OTHERS

I am directed to refer to Additional Registrar (J), Peshawar, High Court, letter No. 18892/Judl. dated 09.11.2012 on the subject noted above and to inform that after thorough examination of your appeal/representation in this Department, the competent authority has regretted the same being not covered under the rules.


(FABASSUM)
SECTION OFFICER (E-II)

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بعدالت جناب خیر محترمخواہ لیتا اور سرواں ڈیپوٹ



2013ء پنجاب ایبلٹ

فضیل بی بنام چیف منسٹر و غیرہ

مورخہ
مقدمہ
دعویٰ سرواں ایبل
جرم

باعث تحریر آنکے

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

آن مقام لیتا اور کیلئے ناہنر محمود اینڈ سید عبد الحفیظ اینڈ وٹھرس

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 تقررات ہ فیصلہ بر حلف دیئے جواب دہی اور اقبال دعویٰ اور

بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق

زرائیں 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 نظربانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور

کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار

ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ

پرواختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ ہر جائے التوائے مقدمہ کے سبب سے دہوگا۔

کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوگی گے۔ کہ پیروی کی

مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سندر ہے۔

Accepted by
Accepted by

(Handwritten signature)

(Handwritten signature)

فضیل بی

20 _____ ماہ _____ المرقوم

(Handwritten signature)

_____ کے لئے منظور ہے۔ _____ بمقام

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 472/2013

Fazal Nabi, PMS BS-17, Section Officer, Inter Provincial Coordination Department,
Civil Secretariat, Peshawar

..... (Appellant)

Versus

1. The Chief Minister, Khyber Pakhtunkhwa, Peshawar.
2. The Govt. of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa Peshawar.
3. The Secretary to Govt. of Khyber Pakhtunkhwa Finance Department, Govt. of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary Establishment / Regulation Govt. of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.

..... (Respondents)

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO.1,2,3 & 4

PRELIMINARY OBJECTIONS:

1. That the appellant has got no cause of action/locus standi to file the instant appeal against he respondents.
2. That the appeal is not maintainable.
3. That the appellant has presented the facts in manipulated form which disentitles him for any relief whatsoever.
4. That the appeal is barred by law/time.
5. That this Honourable Tribunal lacks jurisdiction in the matter.
6. That the appellant has concealed material facts from the Tribunal.
7. That the appellant has not come to the Tribunal with clean hands.
8. That the appellant is estopped to file the instant appeal due to his own conduct.
9. That the appeal is bad for non-joinder of necessary party.
10. That the instant appeal is hit by Section 4(1) (b) of the Khyber Pakhtunkhwa, Services Tribunal Act, 1974.

ON FACTS:

1. Pertains to record, hence no comments.
2. Subject to proof.
3. Incorrect. The appellant was not promoted as Section Officer (BS-17) on acting charge basis rather he was appointed alongwith others as PMS BS-17 on acting charge basis vide Notification dated 25.01.2010.

4. Correct.
5. The departmental appeal of the appellant was processed and filed being not covered under the rules. Moreover, the writ petition No. 2707-P of 2012 which was treated as departmental appeal was also processed and was regretted by the competent authority being not covered under the rules. The appellants were informed accordingly.


ON GROUNDS

- A. Incorrect. The appellant has got no vested right for his ante-dated promotion w.e.f. 25.01.2010 as under the rules promotion is always with immediate effect and there were no posts of PMS BS-17 falling in the promotion share quota of Supdt: / PS.
- B. Incorrect. In December 2009, 18 posts of PMS BS-17 were available in the promotion share quota of appellant. However, appellant was at S.No.50 of the panel and he was appointed as PMS BS-17 on acting charge basis against vacant posts of PMS BS-17 meant for initial recruitment under Section 9 (3) of Khyber Pakhtunkhwa Civil Servants (APT) Rules 1989(working paper, minutes of the meeting held on 15.12.2009 are at Annex-I & II). Similarly in May 2011, 11 posts were available in the promotion share quota of appellant and the appellant was at S. No. 28 and was not considered for regular promotion to the post of PMSBS-17 as no vacancy in the promotion share quota was available, (working paper, minutes of the meeting held on 27.05.2011 are at Annex-III & IV).
- C. Incorrect. The respondents acted according to law/rules.
- D. Incorrect. No fundamental right of the appellant has been violated. Moreover, the position has been explained in Para-B above.
- E. Incorrect. Each and every case has its own merits. Moreover, no discrimination has been made with the appellant and the impugned Notification is according to rules/law.
- F. Incorrect. As explained in the preceding Paras.
- G. Incorrect. The case of the appellant is not identical to the cases of those PMS BS-17 officers i.e. Muhammad Iqbal Khattak and others whose promotion was ante-dated from the date of occurrence of vacancies or the date of acting charge appointment whichever was later as there were vacancies available in the promotion share quota of PCS(EG) BS-17. While in December 2009, 18 posts of PMS BS-17 were available in the promotion share quota of appellant. However, appellant was at S.No.50 of the panel and he was appointed as PMS BS-17 on acting charge basis against vacant posts of PMS BS-17 meant for initial recruitment under Section 9 (3) of Khyber Pakhtunkhwa Civil Servants (APT) Rules 1989. Similarly in May 2011, 11 posts were available in the promotion share quota of appellant and the appellant being at S.No.28 was not considered for regular promotion to the post of PMS BS-17 as no vacancy in the promotion share quota was available.

It is, therefore, most humbly prayed that on acceptance of these parawise comments, the instant Appeal may very graciously be dismissed with costs.

Principal Secretary to
Chief Minister, Khyber Pakhtunkhwa
(Respondent No.1)


(RESPONDENTS NO. 2 & 4)


Secretary to Govt. of Khyber Pakhtunkhwa
Finance Department
(Respondent No.3)

BEFORE THE SERVICE TRIBUNAL KPK, PESHAWAR

IN RE; Service Appeal NO.479/2013

Fazal Nabi.....Appellant

Versus

The Chief Minister KPK and others.....Respondents

Rejoinder on behalf of appellant

Preliminary objections;

1. All other preliminary objections have been taken in routine. The appellant is having a cause of action. The appeal is maintainable and true facts have been presented before the tribunal. The appeal is not time barred. This honorable tribunal is having jurisdiction in the matter and no facts have been concealed. The appellant has come to this honorable tribunal with clean hands. All the necessary parties have been arrayed as respondents and it has not been shown how the appellant is estopped by his conduct. The appeal is not hit by section 4(1) (b) of KPK Services Tribunal Act, 1974.

On Facts;

1. Para-1 of the reply needs no rejoinder.
2. In reply to para-2 it is stated that first appointment of the appellant is attached for ready reference.
3. Para-3 of the reply is refuted with all the forces at the command of the appellant. The appellant was promoted alongwith others to PMS BPS-17 on acting charge basis because clearly vacancies were available to the promotion quota of the appellant otherwise the Provincial Selection Board would not have promoted the appellant, because according to Rule-9 of APT Rules civil servant can be promoted to a higher post only if promotion quota post is available otherwise the initial post according to 14 of APT Rules 1989 can only be filled on adhoc basis (copy attached as Annexure-A).
4. Para-4&5 of the reply needs no rejoinder.

GROUNDS

A. Ground-A&B of the reply is incorrect and that of the appeal is correct. Vested rights have been accrued in favor of appellant. 434 vacancies in BPS-17 were available in 2001 and the share\quota allocated to each cadre as mentioned in the working paper placed before the Provincial Selection Board for consideration in its meeting held on 09.01.2008 was as under:

S.NO.	QUOTA	SHARE	REMARKS
1.	Promotion of Superintendents/ Private Secretaries	87	63 Superintendents/Private Secretaries were appointed as Section Officers (BPS-17) on current charge basis with effect from 23-1-2001, 22-8-2001, 11-3-2003 and 26-6-2003. 93 Supdts: /P.Ss were appointed as Section Officers(BPS-17) on acting charge basis w.e.f. 2-12-2003, 10-7-2004 and 25-1-2010. 155 Superintendents/Private Secretaries were promoted as Section Officers(BPS-17) on regular basis in 2005,2006,2007,19-2-2008,7-11-2008,3-3-2009, 25-1-2010, 30-5-2011 and 21-12-2011.
2.	Promotion of Tehsildars	87	62 Tehsildars appointed on acting charge and on officiating basis in their own pay scales during 2000 to 2004 and then promoted on regular basis w.e.from 19-2-2008. They have been allowed anti date promotion from 2000 and 2001 etc instead of 19-2-2008 in light of Supreme Court of Pakistan judgment dated 24-5-2012 vide Notification No.SOE-II(ED)2(423)/ 2010/Vol-II dated 25-7-2012.
3.	Direct recruitment	217	230 PMS (BPS-17) officers have been appointed through Public Service Commission during the period from 2002 to 2010.
4.	Selection from Ministerial staff (i.e. below BPS-16) through Public Service Commission.	43	No one has been appointed so far.

87 posts in BPS-17 were vacant in 2001 while about 64 posts of S.Os BPS-17 caused vacant before 25.01.2010 on account of retirement and promotion of SOs (BPS-17) to the post of Deputy Secretaries BPS-18. Copy attached as Annexure-B.

Keeping in view the aforesaid explanation, 64 further posts in BPS-17 were made available in promotion quota while the appellant was shown at S.No. _____ of the panel and it is pertinent to mention here that as per circular letter No. SORI(S&GAD)1-29/75 (a), dated 13-2-1993 appeared at Page-79 of Esta Code, no appointment to higher post on acting charge basis can be made. However, against the posts meant for initial quota, adhoc appointment can be made for a period not exceeding one year under Rule-14 of Civil Servants (APT) Rules, 1989. Hence, appointment on acting charge basis instead of regular basis is illegal and based on malafide intention.

The respondent department has filled in the vacancies meant for initial quota on regular basis through Public Service Commission, filled the vacancies meant for promotion of Tehsildars on regular basis through PSB as well as through judgment of Supreme Court of Pakistan but unfortunately filled the vacancies meant for promotion of Superintendents/Private Secretaries on acting charges basis instead of regular basis in violation of rules and judgment of Supreme Court of Pakistan as mentioned above.

- B. Ground-C of the reply is incorrect and that of the appeal is correct.
- C. Ground -D of the reply is incorrect and that of the appeal is correct.
- D. Ground-E of the reply is incorrect and that of the appeal is correct. The appellant has been discriminated.
- E. Ground-F of the reply is incorrect and that of the petition is correct.

- F. Ground-G of the reply is incorrect and that of the appeal is correct. Further the position has been explained in reply to ground-A&B.

The Provincial Government has promoted many officers to next higher grades with retrospective effect. The following few cases are quoted as examples :-

1. Mr.Khalid Khan Umerzai has been promoted to BPS-20 post with retrospective effect vide Notification No.SO(E-I)S&GAD/4-2/2007 dated 3-11-2007.
2. Mr.Umer Hayat, Director Fisheries has been promoted to BPS-19 with retrospective effect vide Notification No.SO(E-I)/S&GAD/9-112/2010 dated 10-05-2010.
3. 19 Superintendents/Private Secretaries have been promoted to B-17 vide Notification No.SOS-II(S&GAD)3(122)/92 dated 10-7-1995.
4. 62 Tehsildars have been promoted to BPS-17 with retrospective effect vide Notification No.SOE-II(ED)2(423)/2010 dated 25-7-2012.

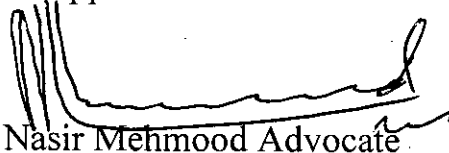
Copies of the notifications attached as Annexure-C,D,E & F.

The post was available in promotion quota of the appellant against which he had been appointed on acting charge basis instead of regular basis. The Supreme Court of Pakistan has already decided a similar law point in an identical case in C.As. Nos.860 and 861 of 2010 that "there is also no dispute with the proposition that if the respondents were to hold a post on acting charge basis, they could also hold the same on regular basis".

It is therefore respectfully prayed that while considering the above rejoinder the appeal may kindly be accepted.

Through

Appellant



Nasir Mehmood Advocate

11/4/14

Supreme Court of Pakistan

13-D Haroon Mansion Peshawar.

Affidavit

I do hereby declare and affirm on oath that the contents of above rejoinder are true and correct to the best of my knowledge and belief and noting has been concealed from this honorable court.


Deponent

