3.1.2017

Counsel for the appellant and Mr. Muhammad Zubair, Senior Government Pleader alongwith Khursheed, Computer Operator for respondents present. Arguments heard. Record perused.

Vide our detailed judgment of today in connected service appeal No. 1157/2015, tiled Zahiq Hussain Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and 4 others", we dispose off the present appeal also as per detailed judgment. Parties are left to bear their own cost. File be consigned to the record room.

Member UNCED 03,1.2017

mp Court Swat

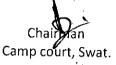
0.06.2016

Agent of counsel for the appellant and Mr. Muhammad Zubair, Sr.GP for the respondents present. Rejoinder submitted. Counsel for the appellant is not in attendance. To come up for final hearing on 05.09.2016 before D.B at camp court, Swat.

Member

Member

Member



Camp Court, Swat

Chairman Camp court, Swat

05.09.2016

Appellant Shamsher Ali, in person and Mr. Ismaeel, Secretary, Union Council alongwith Mr. Muhammad Zubair, Sr.GP for the respondents present. Due to strike of the bar counsel for the appellant is not in attendance. To come up for final hearing on 09.11.2016 before the D.B at camp court, Swat. The restraint order shall continue.

09.11.2016

Appellant in person and Mr. Muhammad Zubair, Sr.GP for respondents present. Learned counsel for the appellant has not turned-up from Peshawar. Seeks adjournment. Adjourned for final hearing to 03.01.2017 before D.B at Camp Court Swat. The restraint order shall continue.

13.01.2016

None present for appellant. Mr.Bakh Sher, Assistant alongwith Mian Amir Qadir, G.P for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for • written reply/comments on 3.2.2016 before S.B at Camp Court Swat. The restraint order shall continue.



3.2.2016

None present for appellant. Dr. Sardar-ul-Mulk alongwith and Mr. Ameer Qadir, GP for respondents present. Written statement by respondents No. 1 to 5 submitted. Learned Government Pleader requested for modification of the restraint order as the respondents have advertised 59 posts which are to be filled in by initial recruitment and against which the initial appointment could not be made due to restraint order of this Tribunal. The restraint order is, therefore, modified to the extent that one post out of the same be reserved for the appellant and in case of acceptance of appeal the appellant is to be considered for promotion against the same irrespective of other initial appointments.

The appeal is assigned to DB for rejoinder and final hearing for 7.6.2016 at Camp Court Swat.

Chairman Camp Court Swat

27.10.2015

Counsel for the appellant present. Learned counsel for the appellant argued that the appellant is serving as Naib Qasid in Local Government Department and was entitled to promotion as Junior Clerk on the strength of 20% quota reserved for promotion of Class-IV employees which was abolished in the devolution plan where-after appellant became entitled to be promoted as Secretary of the concerned village Union Council as held by this Tribunal in its judgment dated 31.10.2007 and 29.4.2008 and implemented by DCO Swat vide² office order dated 31.5.2008. That the appellant preferred departmental appeal on 6.7.2015 which was not responded and hence the instant service appeal on 13.10.2015.

That the respondents have advertised the said post of Village Secretary by ignoring the right of the appellant as he is entitled to be considered for promotion against the said post.

Points urged need consideration. Admit. Subject to deposit of security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 30.11.2015 before S.B. Notice of stay application for the date fixed. Meanwhile final appointment order shall not be made against the advertised post.

Chairman

30.11.2015

Counsel for the appellant and Mr. Sattar-ul-Mulk alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 13.1.2016 at Camp Court Swat as the matter pertains to the territorial limits of Malakand Division. The restraint order shall continue.



FORM-A

FORM OF ORDER SHEET

Court _

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S.

Case No. 1158/2015

	Date of order/	Order or other proceedings with signature of Judge/		
	proceedings	Magistrate		
1	2	3		
1.	13.10.2015	The appeal of Mr. Shamsher Ali presented to-		
		day by Mr. Noor Muhammad Khattak, Advocate may be		
		entered in the institution register and put up to the Worthy		
		Chairman for preliminary hearing.		
		REGISTRAR -		
		This case be put up before the S.B for		
		preliminary hearing on <u>27-10-15</u>		
		CHAIRMAN		
:				

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO 1158 /2015

Shamsher Ali

VS

Govt: of KPK

INDEA				
S.NO.	DOCUMENTS	ANNEXURE	PAGE	
1.	Memo of appeal		1-4.	
2.	Stay application		5.	
3.	Domicile	A	6.	
4.	Educational testimonials	B	7- 9.	
5. ¹⁰²	Appointment order	C .	10-13.	
6.	Promotion order	D	14.	
7.	Rules	E	15-18.	
8.	Advertisemnts	F & G	19-20.	
9.	Departmental appeal	H	21.	
10.	Vakalat nama		22.	

INDEX

APPELLANT

THROUGH: NOOR MUHAMMAD KHATTAK **ADVOCATE**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. <u>1158</u> /2015

Mr. Shamsher Ali, Naib Qasid (BPS-02),

O/O Assistant Director Local Government and Rural Development Department Malakand, District Malakand.

..... APPELLANT

Service Tribung

13.10.2

Diary No.

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director General Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
- 5- The Assistant Director Local Government and Rural Development Department Malakand, District Malakand

......RESPONDENTS

APPEAL UNDER SECTION-4 OF THE SERVICE TRIBUNAL ACT 1974 AGAINST THE INACTION OF THE **RESPONDENT** No.4 BY NOT PROMOTIING THE APPELLANT TO THE POST OF VILLAGE/ **NEIGHBORHOOD COUNCIL SECRETARY (BPS-07) AND** AGAINST THE SERVICE RULES OF THE RESPONDENT **DEPARTMENT NOTIFIED ON 26.1.1978 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL** OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER: That on acceptance of this appeal this appeal the impugned service Rules dated 26.1.1978 of the respondent Department may kindly be modify to the extent that promotion quota may very kindly be allocated for class-iv to the post of Secretary village Council and the respondent No.5 may further kindly be directed to consider the appellant for promotion to the post of Village/ neighborhood Council Secretary (BPS-07) in light of the order dated 31.5.20008. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH: ON FACTS:

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That after appointment the appellant started performing his duty as Naib Qasid's (BPS-02) quite efficiently and up to the entire satisfaction of his superiors.

- 5- That vide impugned advertisement dated 11/4/2015 and 27/6/2015 the respondents advertised the posts of Secretaries (BPS-7) for all the village/Neighborhood councils situated in District Malakand by ignoring and not considering the appellant for promotion to the post of Secretary (BPS-7). Copies of the advertisements are attached as annexure F and G.
- **6-** That feeling aggrieved the appellant submitted Departmental appeal for promotion to the post of Secretary (BPS-7) in light of the respondent No.3 Notification dated 21/12/1982 and on the analogy of the above mentioned employee who was promoted in light of the said rules/notification. Copy of

the Departmental appeal is attached as annexure **H**.

7- That no reply has been received so far on the Departmental appeal filed by the appellant for allocation of quota and promotion to the post of Secretary (BPS-7). Hence the instant appeal on the following grounds amongst the others.

GROUNDS:

- A- That the impugned advertisements dated 11/4/2015 and 27/6/2015 are against the law, facts and norms of natural justice hence not tenable and liable to be set aside.
- B- That the appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That according to Article 38 (e) of the Constitution of Pakistan 1973 the state is bound to reduce disparity in the income and earnings of individuals, including persons in the various classes of the service of Pakistan, therefore in light of the above quoted Article the appellant has the right to have prospects of promotion.
- D- That the respondent Department acted an arbitrary and malafide manner by not promoting the appellant to the posts of Secretary (BPS-7) despite of having eligibility and seniority.
- E- That according to the promotion orders already issued by the respondent Department the appellant is fully entitle to be promoted to the posts of Secretary (BPS-7) but the respondents discriminated the appellant and as such violated the principle of natural justice.
- F- That as per creation of village councils many posts of secretaries has been created and for the said posts the appellant has the requisite qualification and seniority to be promoted but inspite of that the respondents are not willing to do the same.
- G- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

APPELLANT



THORUGH:

NOOR MOHĂMMAD KHATTAK ADVOCATE

BEFORE THE KHYBER PAKHTUNKHEWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO____/2015

Shamsher Ali

VS

Govt: of KPK

APPLICATION FOR SUSPENSION OF OPERATION OF THE IMPUGNED ADVERTISEMENTS DATED 11-4-2015 & 27.6.2015 TILL THE DISPOSAL OF THIS APPEAL

<u>R/SHEWETH:</u>

- 1- That the appellant filed above mentioned appeal along with this application before this august service Tribunal in which no date has been fixed so for.
- 2- That all the three ingredients necessary for the stay is in favor of the appellant.
- 3- That the impugned advertisement dated 11.4.2015 and 27.6.2015 are against the Civil Servant Act 1973 as well as the appointment, promotion and transfer Rules 1989.
- 4- That the grounds of main appeal is also be considered as integral part of this application.

It is therefore humbly prayed that on acceptance of this application the impugned advertisements dated 11-4-2015 and 27.6.2015 may very kindly be suspended till disposal of this appeal.

APPELLANT

SHAMSHER ALI

THROUGH:

NOOR MOHAMMAD KHATTAK ADVOCATE

J.

Office of the District Coordination Officer Malakand No._____/DCO(AC) Dated 21/09/2001

(19)

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ORDER.

As per devolution plan and the guide-lines issued by the Provincial Government, the following surplus staff is hereby adjusted/posted against the vacant posts in the under mentioned Departments/Offices of the District Government Malakand with immediate effect.

DCO Office Malakand.

		······	
S.N	o. Name	Designation	n BS
1.	Mr.Iqbal Hussain (PA Office) Mr.Amir Hamza (Comm:Office)	1100.4	11 (in his own pay & scale) 11 (in his own pay & Scale)
2. 3.	Mr.Muamber Khan (PA Office)	Assistant	11 (in his own pay & Scale)

FINANCE & PLANNING Malakand.

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S.No. Name	Designation	BS
	Assistant Assistant/DEO Assistant J/Clerk. J/Clerk. J/Clerk. J/Clerk Driver. Driver N/Qasid N/Qasid N/Qasid	11 (in his own pay & Scale) 11 (in his own pay & Scale) 11 (in his own pay & Scale) 5 5 5 5 4 4 1 1 1 1 1 1 1 1 1 1 1 1 1

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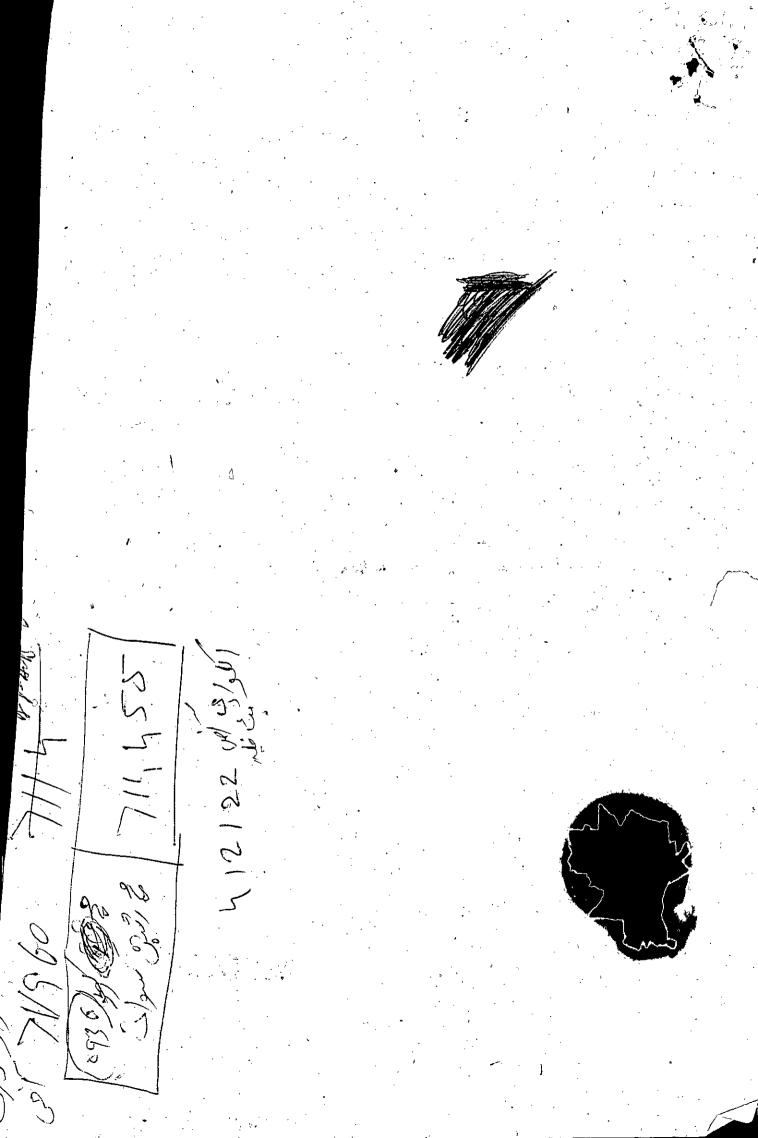
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S.No.	Name	Designatio	on BS
<u>U/C K</u>	<u>OPER</u>		
1. ·	Mr.Fazal Azim (Printing Press)	V/Secretary)	6 (in his own pay & Scale
<u>U/C H</u>	<u>EROSHAH</u>		
1.	Mr.Anwar Iqbal (C & W)	V/Secretary	6 (in his own pay & Scale
<u>U/C B</u>	ADRAGA	· · · · ·	
1.	Mr.Ghani Akbar (C & W)	V/Secretary	6 (in his own pay & Scale
	Ĭ		-Sd ORDIANTION OFFICER LAKAND
COPY 1. 2. 3.	Secretary to Government of NW	/FP [*] Finance De /FP LG & RDI	epartment Peshawar.) Peshawar.
4. 5. 6. 7. 8-15. 16. 17. 18.	(FOR INFOR District Coordination Officer S 71/06/DCO/Accountant dated 1	VFP Board of R Wing Peshawar VFP Peshawar. MATION PLE wat with refere 4.01.2001. n Malakand. cand. ela and Dargai	evenue Peshawar. r. (ASE) nce to his Memo No.1766-

ASSISTANT COORDINATING OFFICER MALAKAND ATTECTED





EXPERIENCE CERTIFICATE

Certified that <u>Mr. Shamsher Ali</u> S/O <u>Muhammad Wali</u> was serviced in commissioner Malakand Division Saidu Sharif Swat as Naib Qasid since 09-06-1992, now working in union council wartair since 21-09-2001.

He is very punctual and performs his duty regularly and he is very cooperative with the staff. He is also very well experienced in the clerical works of the Union Council.

More ever he is talented and eligible for the post of secretary Union Council. He is Good moral character.

Secretary Union Council wartair

Disttrict Malakand

Becreiary Union Council

ATTESTED



OFFICE OF THE DISTRICT COORDINATION OFFICER SWAT AT GULKADA

No. 5896 /50/DCO/Estt. Dated the 31-5 /2008.

<u>ORDER</u>

In pursuance of the Judgement passed

by the Hontable Services Tribunal N.W.F.P. dated 31/10/2007,

and 29/4/2008, Mr. Ayub Khan, Naib Qasid (EPS-02) of Union Council is hereby selected/promoted as Secretary (B-06) against the vacant post at Union Council Tindodag,

swat on regular basis with immediate effect.

NNW

DISTT: COORDINATION OFFICER SWAT.

No. 5897-5900 150/ DCO/Estt.

copy forwarded to:-

1- The Registrar NWFP Services Tribunal, Peshawar,

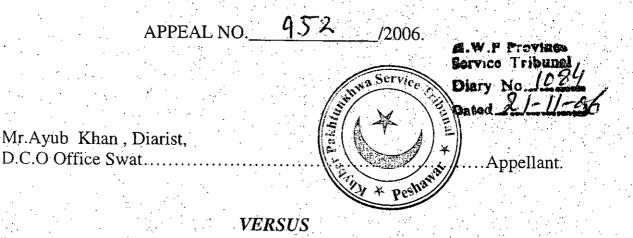
2- The District Accounts Officer, Swate

3- Nazar(Local Office).

4- Official concerned for information and compliance's

ATTE STED AT DISTT: COORDINATION OFFICER SWAT.

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



- 1- The D.C.O, Distt: Swat.
- ~ 2- The DOR&EC, Distt: Swat.
 - -3- Mr. Mohammad Iqbal, Telephone Operator, DC.O office
 - Steno branch, Swat..... ...Respondents.

Filed to-day 111/06

APPEAL UNDER SECTION - 4 OF N.W.F.P
SERVICE TRIBUNAL ACT 1974 AGAINST THE
ORDER DATED. 30.6.2006 WHERE BY THE
PRIVATE RESPONDENT NO.4 WAS
PROMOTED/APPOINTED AS JUNIOR CLERK
IN VIOLATIONS OF RULES AND SENIORITY
AGAINST WHICH THE APPELLANT
REPRESENTED BUT NO ACTION HAS BEEN
TAKEN ON THAT APPEAL.

That on acceptance of this appeal the impugned order may be **PRAYER:** set-aside and the respondents may be directed to consider the appellant for promotion to the post of junior clerk being senior most and eligible. Any other remedy which this august Tribunal deems fit that may also be granted in favour of appellant.

<u>R.SHEWETH.</u>



That the appellant was appointed as mali in the D.C office Swat. vide order dated.5.12.1995. Since then the appellant has been performing his duty with full devotion and without any compliant to the superiors. Copy of the order is attached as Annexure-A.

APPeal No. 952/2000 Ayub Khan vis Govt

Appellant with counsel, Shah Jena Asstt: with AGP for respondent department and private respondent No.3 in person are present. Heard. Record perused.

This appeal u/s 4 of the NWFP Service Tribunals Act, 1974 arises against an order dated 30.6.06, whereby private respondent No.3 was promoted/appointed as Junior Clerk in violation of the rules and seniority against which the appellant represented, but no action has been taken on his appeal, with the prayer that on acceptance of this appeal, the impugned

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31.10.2007

Serial No. of Order or

Fraceeding

Tibunul

^{cahawar}

Date of Order or

Proceedings

GS&PD.NWFP.-457 F.S.-2,000 Pads of 100-21.2.2004(13)/HD1(Disk-10)

Order or other Proceedings with Signature of Judge or Magi_atc and that of parties or counsel where necessary

order may be set aside and the respondentdepartment be directed to consider the appellant for promotion to the post of Junior Clerk being senior most and eligible Any other remedy which this Tribunal deems fit that may also be granted in favour of the appellant.

It appears that the appellant was appointed as Mali in the D.C's office Swat way-back on 5.12.95. Vide order dated 16.01.2002 he was transferred to TMO, Swat, but was directed to serve as Diarist in the office of DCO,Swat. Respondent No.3 (Muhammad Iqbal) was promoted on 30.6.06 as Junior Clerk regarding which the appellant filed his representation which elicited no response, hence this appeal.

The main plea of the appellant is that he should be promoted as Junior Clerk as and when a vacancy in his department i.e. TMO, Swat occurs. The opposite side has got no objection. In view of the above, it is directed that the appellant be considered for promotion as Junior Clerk against the post of Junior Clerk as and when falls vacant in his department. The instant appeal stands disposed of in the

(FP L(Criminal) No. 210 GS&PD.NWFP.-457 F.S.-2,000 Pads of 100-21.2.2004(13)/HD1(Disk-10) Serial No. of Order or Date of Order or Order or other Proceedings with Signature of Judge or Magistrate and Proceeding Proceedings that of parties or counsel where necessary 2 above terms. No order as to costs. File be consigned to the record. DUNCED 10.2007 Sof-Abdul Sattas Khan, px. Chairman Sof-Do. Abdus Rauf, Member ANNOUNCED 31.10.2007 Certified to be true copy. Peshawar Tribunal hw_a Date of Presentation of Application 29-12-2016 1500 Number of Words. n Copying Fee. 6 Urgent -2 Total: Name of Copylest. Date of Complection of Co Date of Delivery of Copy

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

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 18/2008 In appeal No. 952/2006

Mr. Ayub Khan, Diarist, DCO Office, Swat.

(Petitioner)

VERSUS

1. The District Coordination Officer, Swat.

2. The District Officer (Revenue & Estate) Swat. ...

(Respondents)

ORDER DATED 14.06.2008

Petitioner in person and A.G.P for the respondents present. The D.C.O has sent a reply to the effect that the vacancy of Junior Clerk does not exist in the concerned Union Council in the department of the petitioner, while a vacancy of Secretary Union Council (BPS-6) exists for which the petitioner is eligible for promotion. He requested for amendment of the order of this Tribunal to this extent. The A.G.P is of the view that the post of Junior Clerk is in BPS-5 while the post of Secretary U.C is in BPS-6 and the judgment/order of this Tribunal is regarding promotion of the petitioner/appellant to the post of Junior Clerk only.

In the circumstances of the case, when the vacancy of Junior Clerk does not exist at all and when the D.C.O Swat is willing to promote the appellant/petitioner, who is a disabled person, to BPS-6 post, and the order of this Tribunal was passed on the consent of the official respondents, we deem it in the interest of full justice to the parties to amend our order to the extent that, if no vacancy of a Junior Clerk is still available in the Union Council concerned/department of the petitioner, the petitioner may be promoted to the post of Secretary Union Council (BPS-6) as highlighted by the D.C.O Swat. We order accordingly. The petition is disposed of in the above terms.

ANNOUNCED 14.06.2008

Sd/= Justice (R) Salim Khan, Chairman Sd/- Dr. Abdur Rauf, Member.

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE LOCAL GOVT: COOPERATION, SOCIAL WELFARE, TOURISM AND RURAL DEVELOPMENT DEPARTMENT.

ttx B

Dated Peshewar the 26the January, 1978.

NOTIFIC / TION.

No.DG(RWP)7(2)/73. In exercise of the powers conferred by Sub-Rule(2) of rule 3 of the North-West Frontier Province Civil Servants (Appointment, promotion and Transfer) Rules, 1975, and in consultation with the Information, Services and General Administration Department and the Finance Department, the Local Government Cooperation, Social Welfare, Tourism and Rural Development Department is pleased to lay down the method of appointment, qualifications and other conditions specified in column 3 to 6 of the Appendix to this Notification, which shall be applicable to posts borne on the Rural Development Department specified in column 2 of the said appendix.

> Sd/- (ATTAUR REHMAN KHAN) Secretary to Govt: of N.W.F.P. Local Govt:, Cooperation, Social Welfare, Tourism and R Rural Development Department.

No.DG(RWP)7(2)/73.

Copy of the above forwarded to the :-All Administrative Secretaries to Govt: of N.W.F.P. All Divisional Commissioner in N.W.F.P. Secretary to Governor, N.W.F.P. Secretary, Public Service Commission, NWFP, Peshawar. All Heads of Attached Departments in NSFP. All Deputy Commissioner/Political Agents in NaFP. All District and Session Judges in N.W.F.P. Registrer, Peshewer High Court Peshewer. Deputy Secretary-II, I S&GAD. All Section Officers in S&GAD. Section Officer(Legis) Government of NWFP, Law Deptt:

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Section Officer(Inform:) Govt: of NWFP, IS&GAD with ref: to his letter No.SOS-III(S&GAD)4-6/75, dated 21st July, 1978.

with reference to his U.O. No. Reg: 1(4)76/452, deted

The Manager, Govt: Printing Press, Peshawar for publication in the next Govt: Gezette Notification. 30 copies of the Notification may be sent to this Deptt:

Deputy Director (PWP), Rural Development, NWFP, Peshawar ATTESTED 1978. for information with reference to SO-Services-III, IS&GAD No.SOS-III (S&GAD) 4-6/75, dated 21st January,

ATTESTED. 4 11 11 1

8th October, 1977.

Sd/- is above.

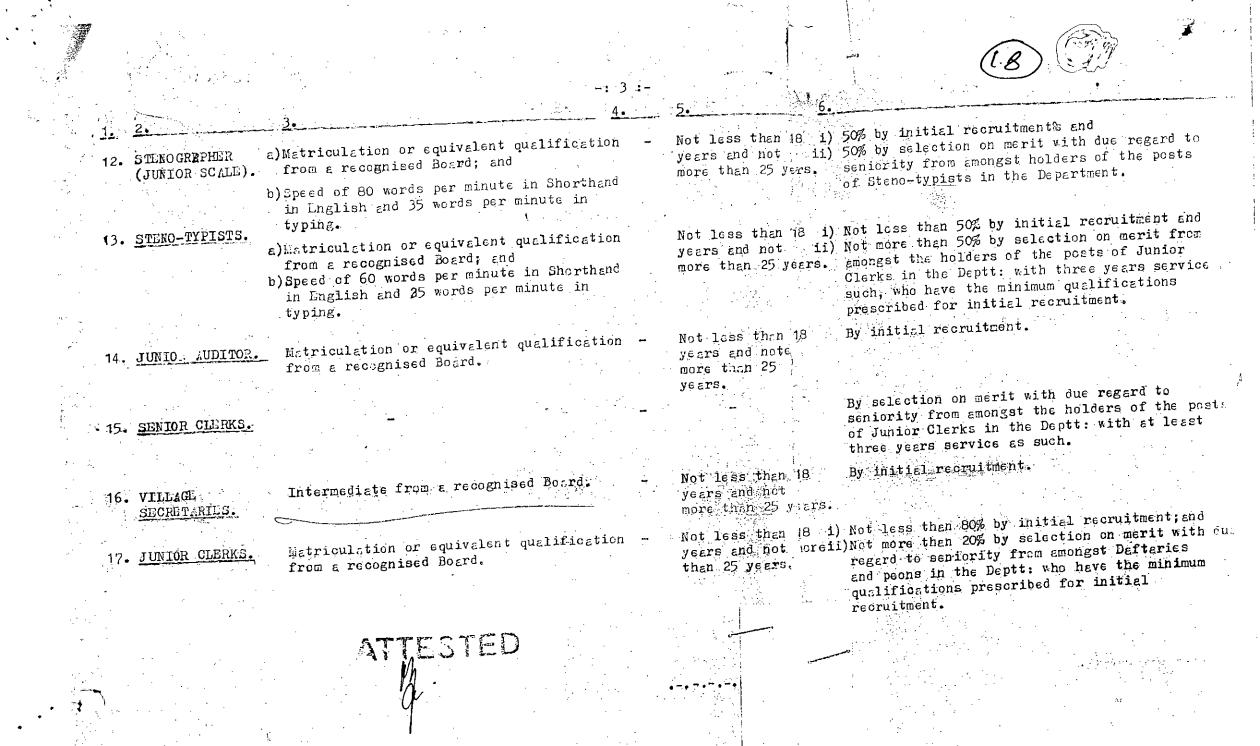
METHOS OF APPOINTMENT, QUALIFICATIONS AND OTHER CONDITICES APPLICABLE TO TOULD IN RURAL DEVELOPMENT DEPARTMENT.

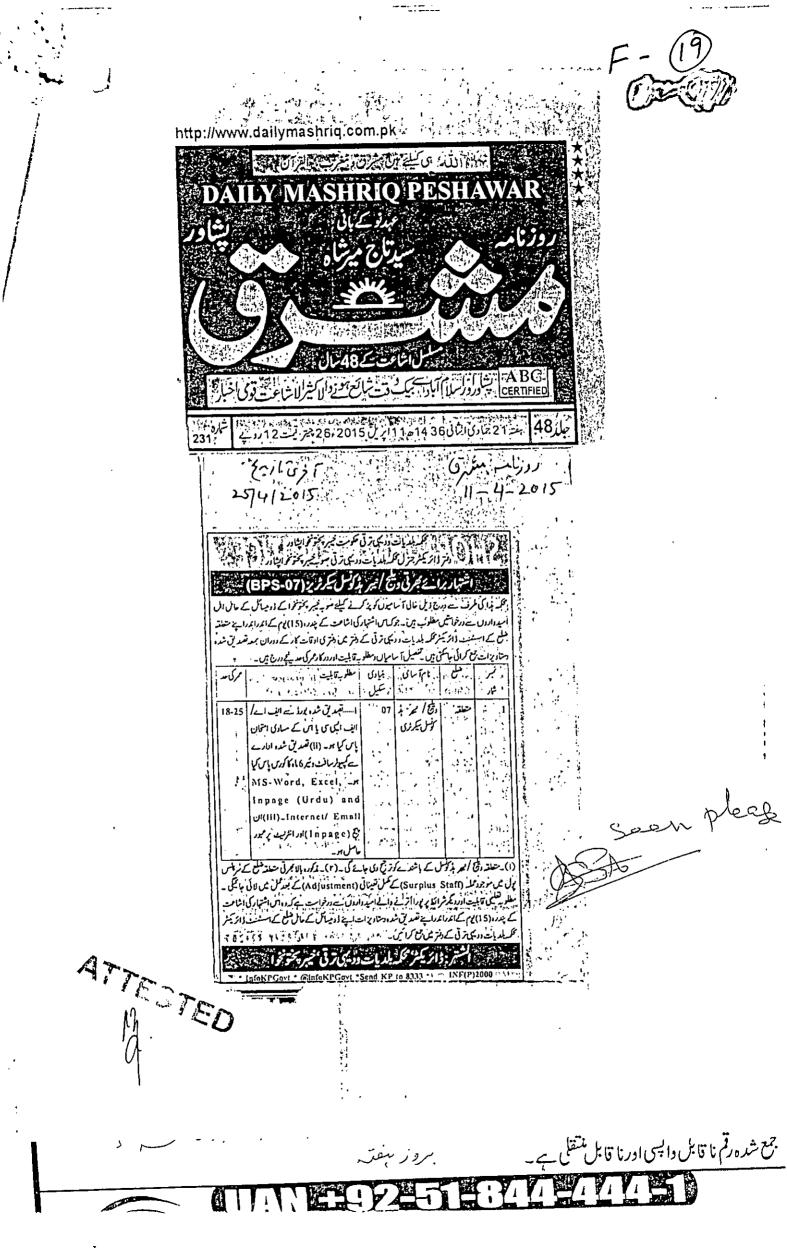
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Nomenclature Qua Sl. fof post.	lification for initial for initial for the second s	for promotion.	Age limit for initial recr- uitment.	Method of appointment.
1. <u>DEPUTY DIRECTORS.</u> a) 21 1. <u>DEPUTY DIRECTORS.</u> a) 21 E S P G b) F u S F PROJECT MANAGER/ PROJECT MANAGER/ PROGRESS OFFICER. 3. <u>ACCOUNTS OFFICER.</u> 4. <u>DEVELOPMENT OFFICER.</u> A A	3. nd Class Master's Degree from recognised University in conomics, Statistics, Social Work ocialogy, AnihalHusbandry, Agril: olitical Science, Public Admn: eography or Social Psychology: ive years experience in Agric- lture, Animal Husbandry Education ocial Welfare, Planning & Dev: of orest in Grade-16 or above. nd Class Master's Degree from a ecognised University in Economi- tatistics, Social Works/Social nimal Husbandry, Agriculture, Po- cience, Public Administration, eography or Social Psychology, hysics, Chemistry, Mathematics. nd Class Master's Degree in ommerce/Business Administration r G.A.S. qualified persons of akistan Audit Deptt: or Provin- ocal Audit Department. nd Class Master Degree from a ecognised University in Economi- tatistics, Social Works/Socialo r diats Master Degree from a ecognised University in Econom- tatistics, Social Works/Socialo nimal Husbandry, Agriculture, ublic Admn:Political Science, Hommer Political Science, Hom	end on, or e ics, bgy, litical cial ics, gy,	Not less than 30 years and not more than 40 years, Not less than 21 years and not more than 30 years. Not less than 21 years and not more than 30 years.	 i) 50% by initial recruitment and bevelopment (including the defunct Basic Democracies Deptt:) Project Managers & Progress Officers, with at least years experience as such. i) 50% by selection on merit with dum regard seniority from amongst holders of the post Development Officers and Sub-Divisional Of (Assistant Engineers). i) 50% by selection on merit with due regard seniority holders of posts Superintendents the Deptt: with a least three years servic such. i) 50% by initial recruitment, and seniority holders of posts three years servic such. jo% by initial recruitment, and seniority from amongst holders of the post seniority from amongst holders of the post of Supervisors, RD in the DepttLwith at least ten years service.

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	3	1.2:-	
5. SUB-DIVISIONAL OFFICER/ASSTT: ENGINEER.	Degree in Engineering or equivelent qualification from a recognised University.	- Not less then 2 years and not more then 30 years.	 i) 75% by initial recruitment and ii) 25% by selection on merit with due regard to seniority from amongst holders of the posts of Overseers.
6. <u>SUPERINTENDENT</u> .	 		By selection on merit with due regard to seniority from amongst holders of the posts (Asstts:/Accountents/Senior Stenographers/ Senior Auditors, with at least five years experience as such.
7. ASSISTANT/ ACCOUNTANT.	Degree from a recognised University.	 Not less than 21 years and not more than 25 years. 	 i) 25% by initial recruitment and ii) 75% by selection on merit with due regard to seniority from amongst holders of the posts of Senior Clerks, Junior Auditors in the Dept with at least five years service as such.
E. STENOBRAPHERS. (SENIOR SCALE).	 a)Matriculation or equivalent qualification from a recognised Board and b)Speed of 100 words per minute in Shorthand in English and 40 words per minute in typing. 	 Not less than 18 years and not more than 25 years. 	 i) 25% by initial recruitment; and ii) 75% by selection on merit with due regard seniority from amongst holders of the posts Stenographers (Junior Scale).
S. <u>OVERSEER.</u>	Diplome in Engineering from a recognised Institutes.	 Not less then 24 years and not more than 25 years. 	By initial recruitment.
10. SUPERVISOR, <u>RURAL DEV:</u>	Degree from a recognised University.	- Not less than 21 years and not more than 25 year	ii) 75% by selection on merit with due regard to
11. <u>SENIOR AUDITOR</u> . Note	Degree from a recognised University. Preference will be given to persons holding Degree with Commerce as one of the subjects or equivelent qualification in Accounts.		 i) 50% by initial recruitment; and ii) 50% by selection on merit with due regard to seniority from emongst holders of the posts Junior Auditors/Senior Clerks in the Deptt: at least (3) years service as such.
AFTESTED			Contd: on pige3







H-(21 الفور منام المشك در المردنين محل عبد دادي الله مشريق لو نور) وسلز ait de vi saif adai درو است مرار فعمان ترق نانب قاصر من مسلم ثري ديلج لو سل 16 200 جطابق هديت هير اي توجواه آرد سيسس (ددار) بر دن آردر عز 23/10/25/55R < even 210/25/55R < ترارش صب ذبل يع. مد مع جد سر نین آب صلحیان که زیر سایر مذلف لونی كو صلي مرهم دراز سي بحثيث خامر ابن قاهد ابن قرالفي منعى S. 1 لي ور د ر در ال و و بیم جد معلی نظام با خد ، ایر ست با خد ، یونی کو سل تح جد أتور سرانجام دين في واقعف و مام جوا -کر بد کر از سامان کے ذہر سایر فتلف ویلج کو شاہر میں ساری ته زسامیا ی خالی بر ی بن . جس 22 م جد سانلین کن S. م میدی مرد م میں اور حکی می غیر ای کی میں مرد م مرد رائع مردم ردند 2 مطابق تشتی فی مد (232) تو عاصی ناب کامد سے سیرشی جماد ترقی کر طقدار میں (ارڈ مرغابی لف م لنذا اسرعابه . 2 جنطور درفواست طوزا بم عبر سا تلين 2 192 مردع فرمائر باللب خاصر سے میکرٹری و لیج کو ۔ ان محکما در ثرق کے احکام مسر خالط جاری زمانی سند و زمانی ESTED 0/C ، دُعین دازت یوتی ملح فتوازيا ره، راب المرفر المرفر المرفر الم KART. مشرعی دا تصروبی ساف ورتیب خاصر لونین کو سل ورتیج

VAKALATNAMA

IN THE COURT OF KPK Service Tribunal Peshowar

OF 2015

Shamsher Mi

(APPELLANT) __(PLAINTIFF) (PETITIONER)

VERSUS

sout: & KPK

(RESPONDENT) ___(DEFENDANT)

lamsher Mi I/We

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated.____/2015

ACCEPTED NOOR MOHAMMAD KHATTAK (ADVOCATE)

OFFICE: Room No.1, Upper Floor, Islamia Club Building, Khyber Bazar, Peshawar City. Phone: 091-2211391 Mobile No.0345-9292144

<u>OFFICE OF THE ASSISTANT DIRECTOR LG&RDD MALAKAND</u> BEFORE THE KHYBER PAKHTUNKHWA PESHAWAR SERVICE TRIBUNAL PESHAWAR</u>

Appeal No. (1158)/2015

MR. SHAMSHER ALI -----APPELLANT

<u>Versus</u>

Government of Khyber Pakhtunkhwa Peshawar through Chief Secretary, Khyber Pakhtunkhwa Peshawar and others ------ respondents

WRITTEN STATEMENT ON BEHALF OF RESPONDENTS NO.1 TO 5

RESPECTFULLY

Preliminary Objections:

- A. That the appellant has got no cause of action
- B. That the instant appeal is barred by law
- C. That the instant appeal is not maintainable
- D. That the appellant has got no locus standai

FACTS:

- 1. Pertain to record need no comments.
- 2. Correct to the extent that the government has allocated 33% promotion quota for the class- IV employees only for their promotion from the post of Naib Qasid/class- IV to the erstwhile post of junior clerk (BPS-5) and there exist no rules in the Local Government & RDD, Khyber Pakhtunkhwa, under which the Naib Qasids can be promoted to the post of secretary village/Neighborhood council. It is pointed out that the present post of Juniour Clerk is in BPS-11 has now been created most recently in this year supplementary Financial Budget.
- 3. Correct to the extent that the post of secretaries of village / Neighborhood councils are lying vacant posts in the office of respondents No.5 after the publication of an advertisement from LG&RDD Khyber Pakhtunkhwa in the leading news papers. Candidates (other than appellants) for such posts have qualified the NTS and the recruitment process have already been completed but the appointment orders have so for not been issued due to the filing of appeals by the appellants in the honorable service tribunal Peshawar and the whole appointment process have been stayed by the court .
- 4. As regards the promotion of MR. Ayub khan Naib Qasid (BPS-02), the post of Secretary UC (BPS-06) new in BPS-07 this official was serving as Naib Qasid in the office of the then DC Swat, after devolution, he applied to the DCO Swat for his promotion to the post of Junior Clerk at that time his request was not exceeded to because the post of junior Clerk did not exist in the office of the DCO Swat. Aggrieved from the refuse, he approached the service tribunal for the purpose of redressed. After considering his appeal an order was passed for his adjustment, promotion against the post of Junior Clerk later on the then DCO Swat requested the honorable tribunal presently a post of Secretary UC BPS-6 vacant against which he can be adjusted. The Service Tribunal later on passed an order Dated 31/10/2007 whereby the then DCO Swat

selected/promoted Mr. Ayub Khan as Secretary UC in BPS-06 in the capacity of Administrator Union Councils.

- 5. Correct to the extent that advertisement 11-04-2015 was published in the newspapers for the post of Secretary in BPS-07 for Village/Neighbourhood Councils by the provincial Govt. of Khyber Pakhtunkhwa in LGE&RDD but nothing regarding the promotion quota in respect of the Niab Qasids to the post of Secretary Village/Neighbourhood Council was mentioned therein because the service rules in Local Govt.& RDD, Khyber Pakhtunkhwa does not permit promotion of Class-iv employees of LGE&RDD to the post of Village Secretary/Neighbourhood Council.
- 6. Correct to the extent that the appellants had filed Departmental Appeal before the respondent NO. 5 but the promotion of appellants was beyond the jurisdiction of respondent No.5, because the advertisement had been pushed by the LGE&RDD Govt. of Khyber Pakhtunkhwa, Peshawar in the leading Newspapers and on the other hand, no service rules of this department exist for the promotion of the appellants to the post of Secretary (BPS-07) village/Neighbourhood Council e in LGE&RDD, Khyber Pakhtunkhwa.
- 7. As explained in the Para No. 6 above.

Ground:

- A. In-correct. Both the Advertisements are pushed by the Provincial Govt. in LGE&RDD; whereby, it was ordered that all the candidates will face NTS for the purpose.
- B. In-Correct. Article (4) and (25) of the constitution of the Islamic Republic of Pakistan have not been violated in this regard.
- C. As explained in Para no. 6 above.
- D. In-Correct. No. malafide has been committed in this regard.
- E. The point of view of parent department has been explained in Para No. 6 above
- F. Correct to the extent that the post of Secretaries in Village/Neighbourhood Council have been created but no service rules for the promotion of Naib Qasid to the post of Secretary of Village/Neighbourhood Council exist in LG&RDD govt. of Khyber Pakhtunkhwa
- G. The respondents seek promotion through additional grounds at the time of arguments

<u>Prays:</u>

The instant appeal of the appellants is not based on facts and not maintainable; therefore, it is humbly requested that the instant appeal of the appellants may kindly be dismissed with cost, please.

Respondents No. 1

the Govt. of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar

the Secretary LGE&RDD, Govt. of Khyber Pakhtunkhwa Peshawar

the Secretary Establishment Deptt: Govt. of Khyber Pakhtunkhwa, Peshawar

the DŇ & RDD, Khyber Pakhtunkhwa,

the Assistant Director LG&RDD, Malakand

Peshawar

Respondents No. 3

Respondents No. 2

Respondents No. 4

Respondents No. 5

BEFORE THE KHYBER PAKHTUNKHUWA SERVICE TRIBUNAL

APPEAL NO.1158/2015

SHAMSHER ALI

VS

GOVT: OF KPK

REJOINDER ON BEHALF OF PETITIONER IN RESPONSE TO THE REPLY SUBMITTED BY THE RESPONDENTS

<u>R/SHEWETH:</u> <u>PRELIMINARY OBJECTIONS:</u> (A to D):

All the objections raised by the respondents are in correct and baseless and not in accordance with law and rules rather the respondent is estopped due to their own conduct to raise any objection at this stage of the writ petition.

ON FACTS:

- 1- Admitted correct hence denied.
- 3- Incorrect and not replied accordingly. That the appellant can be promoted to the post of village secretary (BPS-7) on the analogy of this august Service Tribunal judgment dated 31-10-2007 and 29-04-2008 which was implemented by the concerned authority vide order dated 31-05-2008. That as per rules of consistency reported in 2009 SCMR page 1 the appellant is also deserve to be promoted to the post of village secretary by making necessary amendments in the Rules. Copy of the implementation order is already attached with the memo of appeal.

. 4-

Incorrect and not replied accordingly. That in light of the said promotion orders of his colleagues the appellant also filed Departmental appeal for his promotion to the post of Secretary (BPS-07) but till now the respondents are not willing to do the same.

- 5- Incorrect and not replied accordingly. That as explained above the appellant can be promoted to the post of Village secretary in light of the above mentioned orders. Moreover the respondents are duty bound to allow prospects of promotion to employees in light of Article 38(e) of the Constitution of Pakistan 1973.
- 6- Incorrect and not replied accordingly hence denied.

7- Incorrect and not replied accordingly hence denied.

GROUNDS:

All the grounds of main appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. That the impugned advertisement dated 11-04-2015 and 27-06-2015 is against the law, facts and norms of natural justice. That the respondent Department acted in arbitrary and malafide manner by not promoting the appellant to the post of Secretary BPS-07 despite having eligibility and seniority. That the promotion orders already issued by the respondent Department , the appellant is fully entitle to be promoted to the post of Secretary (BPS-07) but respondents discriminated the appellant and as such violated the principle of natural justice.

It is therefore most humbly prayed that on acceptance of this rejoinder the writ petition of the petitioner may be accepted as prayed.

APPELLANT SHAMSHER ALL THROUGH: NOOR MOHAMMAD KHATTAK

ADVOCATE

OFFICE OF THE.

All Nazim Union Council, in District Malakand DISTRICT COORDINATION OFFICER. MALAKAND. No. <u>2732 -53</u>7. Dated <u>75</u>/05/2007.

in District Malakand.

Subject: <u>APPLICATION FOR PROMOTION AS VILLAGE SECRETARY.</u>

Memo:

Τо,

The Service Documents of those Naib Qasid of your Union Council who passes Matric/ FA/ F.Sc/ D.Com Examination, may be sent to this office for further proceed and necessary action in the matter.

Human Resource Dev: Officer. Malakand.

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Committee in due source. The promotion of Mr.Mushted Ahmed. The popartmental section Departmental the popartmental section Departmental the popartmental section Departmental

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