

peal No. 316/2016

, Engr. Sher Bahadar vs Govt

11.07.2018


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

Vide our detailed judgment of today consisting of four pages placed in connected Service Appeal No. 315/2016 "titled Engineer Muhammad Sadiq Versus the Provincial Government through Chief Secretary, Civil Secretariat, Peshawar and two others, the <sup>Department</sup> present

*in appeal*  
appeal of the appellant is badly time barred. As such the present appeal is not maintainable hence, dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED

11.07.2018

  
(MUHAMMAD HAMID MUGHAL)  
MEMBER

  
(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

13.02.2018

Appellant in person present. Mr. Kabir Ullah Khattak, Addl: AG alongwith Shahab Khattak, Legal Officer for the respondents present. Due to general strike of the bar, counsel for the appellant is not in attendance today. To come up for arguments on 18.04.2018 before D.B.

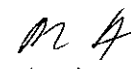
  
Member

  
Chairman

18.04.2018

Counsel for the appellant and Mr. Muhammad Jan, DDA for respondents present. New rules notified on 03.12.2010 contained a proviso regarding one year diploma to be possessed by the officers to become eligible for promotion as Asst: Professor. Respondents are directed to produce relevant record as to when the appellant got/obtained the relevant diploma? To come up for such record and arguments on 29.06.2018 before D.B.


  
(Amjad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

29.06.2018

Appellant alongwith his counsel and Mr. Muhammad Jan, Deputy District Attorney with Mr. Shahab-ud-Din, Deputy Director for the respondents present. Arguments heard. To come up for order on 11.07.2018.

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

25/09/2017

Since 22.09.2017 has been declared as a public holiday on account of first Muharram. Therefore cases adjourned to 20.12.2017, for the same.

  
READER

20.12.2017


Counsel for the appellant and Mr. Muhammad Jan DDA for the respondents present. Counsel for the appellant seeks adjournment. To come up for 17.1.2018 before the D.B.

  
Member

  
Chairman

17.01.2018

Learned counsel for the appellant present. Mr. Riaz Painsa Kheil, learned Assistant Advocate General along with Shahab Khattak, legal Officer for the respondents present. The present appeal has been submitted by the appellant for anti-dated promotion. Perusal of file would show that the respondent department has not annexed any working paper as well as minutes of P.S.B with reply. Respondent department is directed to furnish the same positively before 13.02.2018. To come up for argument on the date already fixed before D.B.

  
(Gul Zeb Khan)  
MEMBER

  
(Muhammad Hamid Mughal)  
MEMBER

24.01.2017

Appellant in person and Addl: AG alongwith Mr. Rasool Khan, AD for the respondents present. Written reply not submitted. Requested for adjournment. To come up for written reply/comments on 27.02.2017 before S.B.

  
(M. Aamir Nazir)  
Member


27.02.2017


Appellant in person and Mr. Rasool Khan, AD alongwith Mr. Muhammad Adeel Butt, Additional AG for respondents present. Written reply by respondents submitted and copies delivered to all concerned. To come up for rejoinder and arguments on 10.04.2017 before D.B.

  
(ASHFAQUE TAJ)  
MEMBER

10.04.2017


Junior counsel for the appellant present: Mr. Muhammad Adeel Butt, Additional AG for respondents also present. Rejoinder not submitted. Junior counsel for the appellant requested for adjournment on the ground that his senior counsel is not available. Adjourned. To come up for rejoinder and arguments on 28.07.2017 before D.B.


  
(Ahmad Hassan)  
Member

  
(Muhammad Amin Khan Kundi)  
Member

28.07.2017

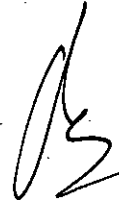
Clerk to counsel for the appellant and Mr. Ziaullah, Deputy District Attorney for respondents present. Clerk to counsel for the appellant submitted application for adjournment. Adjourned. To come up for rejoinder and arguments on 22.09.2017 before D.B.

  
(Ahmad Hassan)  
Member

  
(M. Amin Khan Kundi)  
Member

19.05.2016

None present for appellant. Notices could not be issued to respondents for written reply due to non-deposit of security and process fee, therefore, notice be issued to appellant/counsel for the appellant for depositing the security and process fee for ~~19.10.16~~ before S.B.

 Member

19.10.2016

Counsel for the appellant present. Security and process fee not deposited. Directed to deposit the same within a week there-after notices be issued to the respondents for written reply/comments for 13.12.2016 before S.B.

  
(PIR BAKHSH SHAH)  
MEMBER

Appellant Deposited  
Security & Process Fee

13.12.2016

Clerk to counsel for the appellant and Assistant AG for respondents present. Written reply not submitted. Learned Assistant AG requested for adjournment. To come up for written reply on 24-1-2017 before S.B.

  
Chairman

26.4.2016

Counsel for the appellant present. Learned counsel for appellant argued that the appellant was appointed as Assistant Professor BPS-18 on acting charge basis vide office order dated 01.3.2008 due to shortage of length of service. That he became eligible for regular appointment against the said post of BPS-18 on 17.3.2009 and was entitled to promotion w.e.f. the said date but vide notification dated 26.2.2013 appellant was promoted as Assistant Professor BPS-18 with immediate effect despite his entitlement to promotion with retrospective effect where-against he preferred departmental appeal which was rejected on 03.2.2016 and conveyed to the appellant on 16.02.2016 and hence the instant service appeal on 15.03.2016.

That the appellant is entitled to promotion to the post of Assistant Professor BPS-18 w.e.f. 17.3.2009 and as such the impugned notification dated 26.2.2013 is liable to be modified.




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 19.05.2016 before S.B.

  
Chairman

Form- A  
FORM OF ORDER SHEET

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

Case No. 316/2016

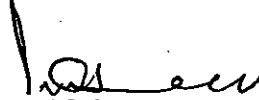
S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	30.03.2016	<p>The appeal of Engr. Sher Bahadar resubmitted today by Mr. Shahid Naseem Khan Chamkani Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2	31-3-16	<p>This case is entrusted to S. Bench for preliminary hearing to be put up thereon <u>12.4.16</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	12.04.2016	<p>None present for appellant. Notice be issued to counsel for the appellant for preliminary hearing on 26.04.2016 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Engineer Sher Bahadar Assistant Professor GCT Peshawar received to-day i.e. on 10.03.2016 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of promotion order dated 26.2.2013 mentioned in the heading of the appeal is not attached with the appeal which may be placed on it.


No. 446 /S.T,

Dt. 16/3 /2016

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Shahid Naseem Khan Chamkani  
Advocate Peshawar.

*Returned after Compliance*

  
30/3/16. *Adv.*



**BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR**

Service Appeal No. 316 /2016

Engineer Sher Bahadar.....Appellant

**VERSUS**

Govt of KPK and others.....Respondents

**I N D E X**

S.No	Description of Documents	Annex	Pages
1.	Service Appeal		1-5
2.	Affidavit		6
3.	Addresses of Parties		7
4.	Copy of Notification dt.27.02.2008		8-11
5.	Copies of Departmental Appeal		12-13
6.	Copy of letter dated 20.11.2015		14
7.	Copy of letter dated 30.12.2015		15
8.	Copy of letter dated 16.02.2016		16-17
9.	Wakalat Nama		18

Through Appellant



Date: 13 / 3 /2016

**Shahid Naseem Khan Chamkani**  
Advocate, Peshawar  
Cell: 0302-8588888

(1)

**BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR**

Service Appeal No. 316 /2016

**K.P. Province  
Service Tribunal  
Diary No. 219  
Date 15-03-2016**

Engineer Sher Bahadar,  
Assistant Professor GCT, Peshawar.....Appellant

**V E R S U S**

1. The Provincial Govt  
Through Chief Secretary,  
Civil Secretariat, Peshawar
2. The Secretary to Govt of KPK,  
Industries, Commerce & Technical Education Deptt,  
Civil Secretariat, Peshawar
3. The Manager Director KP-TEVTA,  
3-A, Chinar Road, University Town, Peshawar

.....**Respondents**

**Service appeal u/s 4 of KPK Services Tribunal Act, 1974 against order dated 03.02.2016 and conveyed to the appellant on 16.02.2016, whereby Notification No.SOIII(I&D)/TE/1-6/2012PSB/1886 dated 26.02.2013 was maintained and departmental appeal for grant of ante-dated promotion was dismissed.**

**Filed to-day**  
*[Signature]*  
**Registrar**  
15/3/16

**Respectfully Sheweth:**

1. That the appellant had been serving in KPK Technical Education and Manpower Training Department as Lecturer (Electric) BPS-17 since 18.03.2004.

**Re-submitted**  
**to-day**  
*[Signature]*  
20/3/16

2. That after having served some length of time, the appellant was considered for promotion on Acting Charge Basis by Provincial Selection Board not having the required length of service.
3. That the appellant however, took the charge of the post of Assistant Professor (BS-18) on 01.03.2008. It may be mentioned, however, that the required length of service of the appellant was terminated on 17.03.2009. (Copy of Notification is annexed).
4. That the respondents however, showed inaction and ignorance to their duties by not preparing the case of the appellant for promotion on regular basis against the equity and fairplay and legitimate exceptions of the appellant.
5. That after a deep slumber of four years, finally vide Notification No.SOIII(I&D)/TE/1-6/2012PSB/1886 dated 26.02.2013 the respondents promoted the appellant with immediate effect.
6. That such a belated promotion of the appellant was taken-up by the appellant with the department, who orally satisfied that needful would be done, but no action again was taken and the appellant was only directed to wait, however, finally the appellant was

constrained to file departmental appeals. (Copies of appeals are annexed).

7. That the departmental appeal of the appellant was referred to the Authority vide letter dated 20.11.2015. (Copy of letter dt.20.11.2015 is annexed).
8. That finally, on 30.12.2015, the departmental appeal of the appellant was dismissed and conveyed to appellant on 16.02.2016. (Copy of letter dt.30.12.2015 and letter dt.16.02.2016 are annexed).
9. That the appellant being aggrieved from the aforesaid letter, approaching this Honourable Tribunal by filing the instant service appeal, inter alia, on the following grounds:

### **GROUND S:**

- A. That the order of respondents rejecting the departmental appeal, is against the facts and merits of the case of the appellant.
- B. That dictates of justice and rule of good governance demand that the respondents should have observed the law on the subject by allowing ante-dated promotion to the appellant.

- C. That after having completed the requisite length of service, the appellant was under legitimate expectancy to have received the benefits, privileges and perks of the post on which they had been working on Acting Charge Base.
- D. That the appellant could not suffer because of inaction, incompetency and non-observance of rules and laws by the responsible respondents, who have not only turned deaf-ear but also blind eyes.
- E. That the belated promotion of the appellant has deprived them from all its legal consequential benefits of service and even and not only the past pay, existing pay but also the pension of the appellant will also be effected adversely without any fault on his part.
- F. That actions/ inaction of the respondents are based malafide intentions and ulterior motives.
- G. That the appellant has not been treated in accordance with law and have been discriminated against.
- H. That by considering the appellant promotion w.e.f. 18.03.2009 will neither affect the seniority position of the appellant viz-a-viz nor any financial implications are involved therein.

I. That any other ground may taken at the time of arguments, with the kind permission of this Honorable Tribunal.

It is, therefore, humbly prayed that on acceptance of this service appeal, the respondents may graciously be directed to promote the appellant as Assistant Professor (BPS-18) w.e.f 18.03.2009 instead of 26.02.2009 with all consequential benefits.

Any other remedy which deems fit by this Honourable Court may also be granted in favour of appellant.

  
Appellant

Through



**Shahid Naseem Khan Chamkani**  
Advocate, Peshawar

Date: 13/3/2016

(6)

**BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2016

Engineer Sher Bahadar.....**Appellant**

**VERSUS**

Govt of KPK and others.....**Respondents**

**AFFIDAVIT**

I, **Shahid Naseem Khan Chamkani** Advocate (counsel for appellant), as per instructions of my client, do hereby solemnly affirm and declare that contents of **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



*Shahid Naseem Khan Chamkani*  
**DEPONENT**

**BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR**

Service Appeal No. \_\_\_\_\_/2016

Engineer Sher Bahadar.....Appellant

**V E R S U S**

Govt of KPK and others.....Respondents

**ADDRESSES OF PARTIES**

**APPELLANT:**

Engineer Sher Bahadar,  
Assistant Professor GCT, Peshawar

**RESPONDENTS:**

1. The Provincial Govt  
Through Chief Secretary,  
Civil Secretariat, Peshawar
2. The Secretary to Govt of KPK,  
Industries, Commerce & Technical Education Deptt,  
Civil Secretariat, Peshawar
3. The Manager Director KP-TEVTA,  
3-A, Chinar Road, University Town, Peshawar

Appellant  
Through



**Shahid Naseem Khan Chamkani**  
Advocate, Peshawar

Date: <sup>13</sup>\_\_\_/3\_\_\_/2016



(8)

Government of N.W.F. Province,  
Industries, Commerce, Min: Dev.  
Labour & Tech: Edu: Department.

Dated Peshawar, February 27, 2008.

**NOTIFICATION**

No. SO/II(IND)TE/1-6/2005. On recommendation of the Provincial Selection Board, the Competent Authority has been pleased to promote/appoint on acting charge the following Assistant Professor/Instructors (Technical Subjects) Govt. Polytechnic Institutes/Govt. Colleges of Technology (BPS-17, 18) to the posts of Assistant Professors/Heads of Department (Technical Subjects) (BPS-18) in the Directorate General of Technical Education & Manpower Training, NWFP with immediate effect:-

S. No	Name/Designation	Promoted/Appointed on Acting Charge Basis as
1.	Mr. Ahmad Saeed, Assistant Professor (BPS-13) on Acting Charge Basis	Assistant Professor/Head of Department (BPS-18) (On regular basis)
2.	Mr. Abid Iqbal, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On regular basis)
3.	Mr. Niaz Ali, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
4.	Mr. Sher Bahadur, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
5.	Mr. Muhammad Zubair, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
6.	Mr. Muhammad Sadiq, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
7.	Mr. Muhammad Nazir, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
8.	Mr. Muhammad Kalim, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
9.	Mr. Raza Ullah, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
10.	Mr. Mashal Khan, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
11.	Mr. Ikhtiar Ahmad, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
12.	Mr. Muhammad Khalid, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
13.	Mr. Nasir Khan, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
14.	Mr. Aleem John, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)

**AWAILED**  
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**AWAILED**

15.	Mr. Asad Ullah, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
16.	Mr. Asif Iltaf, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
17.	Mr. Sami Ullah, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)
18.	Mr. Muhammad Iqbal, Instructor (BPS-17)	Assistant Professor/Head of Department (BPS-18) (On acting charge basis)



2. The officers will remain 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. Consequent upon their promotion, the following transfers/postings of officers are hereby ordered:-

S.No.	Name of officer with present posting	Posted as
1.	Engr. Ahmad Saeed, Assistant Professor (Mechanical) (BPS-18) (on Acting Charge Basis), Govt. College of Technology, Swat	Assistant Professor (Mechanical) (BPS-18) Govt. College of Technology, Swat (on Regular Basis)
2.	Engr. Abid Iqbal, Instructor (Mechanical) (BPS-17) Govt. College of Technology, Peshawar	Assistant Professor (Mechanical) (BPS-18) Govt. College of Technology, Abbotabad (Against the vacant post)
3.	Engr. Niaz Ali, Instructor (Mechanical) (BPS-17) Govt. College of Technology, Bannu	Assistant Professor (Mechanical) (BPS-18) Govt. College of Technology, Bannu (Against the vacant post)
4.	Engr. Sher Bahadur, Instructor (Electrical) (BPS-17) Govt. College of Technology, Peshawar	Assistant Professor (Electrical) (BPS-18) Govt. College of Technology, Peshawar (Against the vacant post)
5.	Engr. Muhammad Zubair, Instructor (Civil) (BPS-17) Govt. Technical & Vocational Centre (Boys), Tank.	Assistant Professor (Civil) (BPS-18) Govt. College of Technology, D.I. Khan. (Against the vacant post)
6.	Engr. Muhammad Sadiq, Instructor (Electrical) (BPS-17) Govt. College of Technology, Peshawar	Assistant Professor (Electrical) (BPS-18) Govt. College of Technology, Peshawar (Against the vacant post)
7.	Engr. Muhammad Nazir, Instructor (Electrical) (BPS-17) Govt. Technical & Vocational Centre (Boys) Mansehra	Assistant Professor (Electrical) (BPS-18) Govt. College of Technology, Abbotabad. (Against the vacant post)
8.	Engr. Muhammad Kalim, Instructor (Mechanical) (BPS-17) Govt. College of Technology, Peshawar	Assistant Professor (Mechanical) (BPS-18) Govt. College of Technology, Peshawar (Against the vacant post)

ATTESTED

ATTESTED



9.	Engr. Raza Ullah, Instructor (Civil) (BPS-17) Govt. College of Technology, Nowshera	Assistant Professor (Civil) (BPS-18) Govt. College of Technology, Nowshera. (Against the vacant post)
10.	Engr. Mashal Khan, Instructor (Mechanical) (BPS-17) Govt. Technical & Vocational Centre (Boys), Bannu	Assistant Professor (Mechanical) (BPS-18) Govt. College of Technology, Bannu. (Against the vacant post)
11.	Engr. Ikhtiar Ahmad, Instructor (Mechanical) (BPS-17) Govt. Technical & Vocational Centre (Boys), Ghazi.	Assistant Professor (Mechanical) (BPS-18) Govt. Polytechnic Institute, Haripur. (Against the vacant post)
12.	Engr. Muhammad Khalid, Instructor (Civil) (BPS-17) Govt. College of Technology, D.I. Khan,	Assistant Professor (Civil) (BPS-18) Govt. College of Technology, D.I. Khan. (Against the vacant post)
13.	Engr. Nasir Khan, Instructor (Mechanical) (BPS-17) Govt. College of Technology, Tangi	Assistant Professor (Mechanical) (BPS-18) Govt. College of Technology, Tangi. (Against the vacant post)
14.	Engr. Aleem John, Instructor (Civil) (BPS-17) Govt. College of Technology, Peshawar.	Assistant Professor (Civil) (BPS-18) Govt. College of Technology, Peshawar. (Against the vacant post)
15.	Engr. Asad Ullah, Instructor (Electrical) (BPS-17) Govt. Polytechnic Institute, Takht Bhai.	Assistant Professor (Electrical) (BPS-18) Govt. Polytechnic Institute, Takht Bhai. (Against the vacant post)
16.	Engr. Asif Altaf, Instructor (Electrical) (BPS-18), Govt. College of Technology, Peshawar.	Assistant Professor (Electrical) (BPS-18) Govt. College of Technology Kohat. (Against the vacant post)
17.	Engr. Samiullah Durrani, Instructor, (Mechanical)(BPS-17), Govt. College of Technology, Peshawar.	Assistant Professor (Mechanical) (BPS-18) Govt. College of Technology Nowshera. (Against the vacant post)
18.	Engr. Myhammad Iqbal, Instructor (Civil), (BPS-17), Govt. Polytechnic Institute, Karak	Assistant Professor (Civil), (BPS-18) Govt. Polytechnic Institute Karak. (Against the vacant post)

**ANNEXED**

**ANNEXED**

Sd/-

Secretary to Govt of NWFP,  
Industries, Commerce, Min: Dev.  
Labour & Tech: Edu: Department.

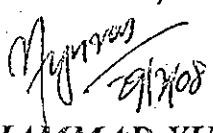
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Endst.No.SOIII(IND)TE/1-6/2005, Dated Pesh: the February 27, 2008.

Copy is forwarded to: -

- 1) The Accountant General, NWFP, Peshawar.
- 2) The District Accounts Officers, Abbottabad, DIKhan, Dir (Lower), Nowshera, Kohat and Agency Accounts Officer Miranshah..
- 3) The Director General, Technical Education & Manpower Training, NWFP.
- 4) The Principals concerned.
- 5) The Officers concerned.
- 6) O/O file.

  
(MUHAMMAD YUNAS)  
SECTION OFFICER-III

**ATTENDED**  


To

(122)

(122)

The Chief Secretary,  
Govt: of Khyber Paktunkhwa,

**SUBJECT: DEPARTMENTAL APPEAL FOR THE GRANT OF ANTIDATED PROMOTION:**

Respectfully Sheweth:

The appellant submits as under:

**ATTESTED**  
/s/

1. That the appellant had been serving in the Khyber Paktunkhwa, Technical Education and Manpower Training Department as Lecturer(Electrical)BPS-17 since 18-3-2004.
2. That the appellant was considered for promotion on Acting Charge Basis by the Provincial Selection Board, for having deficient length of service vide Govt: of Khyber Paktunkhwa Notification No.SOIII(IND)TE/1-6/2005 dated.27-2-2008.(ANNEX-A)
3. That the appellant took over the charge of the regular post of Assistant Professor BS-18 on 01-3-2008.
4. That the requisite length of service of the appellant was completed on 17-3-2009.
5. That as a matter of equity and fair play, the appellant case of promotion on regular basis should have been made just after the completion of requisite length of service .
6. That the respondent department extra-ordinarily delayed the regular charge promotion of the appellant for the next four years and at last finalized the same vide its Notification No.SOIII(IND)TE/1-6/2012/PSB/1886 dated. 26-2-2013.(ANNEX-B)
7. That the Honorable NWFP Service Tribunal in Service Appeal No.733/2009 decided on 09-12-2009 has granted identical relief to the appellants therein by stating that the delay of six years in finalizing the regular promotion was not on the part of the appellants, rather was attributed to the official apathy and red-tapism. The honorable court in this regard have also referred to 2004 PLC(CS)835(Supreme Court (AJ&K)1997 SCMR 515 (Supreme Court of Pakistan) and 2006 SCMR 1938 (supreme Court of Pakistan).(ANNEX-C)
8. The Honourable Supreme Court of Pakistan in the case of Hamid Akhtar Niazi Vs Establishment Division etc. reported as 1996 SCMR 1185 has held that in case this Court or Service Tribunal decides a point of law, it would be applicable to all civil servants who have not approached the Court or Tribunal and departments should implement the same without compelling the other servants for litigation.(ANNEX-D)
9. That the belated promotion of the appellant has deprived the appellant from its legal consequential benefits of service specially the countable service length of the appellant on the existing post.



10. That by considering the appellant promotion w.e.f:18-3-2009 will neither affect the seniority position of the appellant vis-à-vis others nor any financial implications is involved therein.

In view of the above, it is prayed that on acceptance of this appeal, the appellant promotion as Assistant Professor BPS-18 may be considered w.e.f. 18-3-2009 instead of 26-2-2013.

*shadr*  
APPELLANT.  
Engr. Sher Bahadar  
Assistant Professor  
GCT, Peshawar

**ATTESTED**  
*[Signature]*

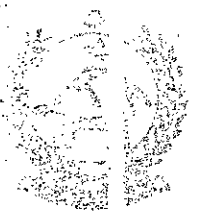
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No.SOIII(IND)1-6/2015  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
INDUSTRIES, COMMERCE AND TECHNICAL  
EDUCATION DEPARTMENT



Dated Peshawar, the November 20, 2015

To

The Secretary to Govt; of Khyber Pakhtunkhwa,  
Establishment Department, Peshawar.


Subject: - DEPARTMENTAL APPEALS FOR THE GRANT OF  
ANTEDATED PROMOTION

Dear Sir,

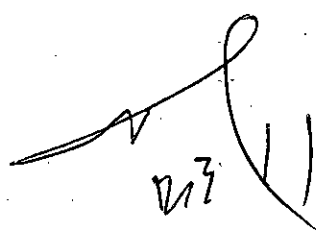
I am directed to refer to the subject noted above and to forward herewith photo copies of appeals addressed to Chief Secretary, Khyber Pakhtunkhwa in respect Mr.Muhammad Sadiq, Assistant Professor (BS-18), GATTC, Peshawar and Engr;Sher Bahadar, Assistant Professor (BS-18), GCT, Peshawar with the request that advice into the matter may kindly be provided to this Department for further necessary action, please.

Yours fathfully,

(Encl; as above)

  
(ZAHIR SHAH)  
SECTION OFFICER-III

ATTESTED  


  
2/3



(15)

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(REGULATION WING)

No. SOR-VI/E&AD/8-17/2015/Advice-opinion/Vol:I  
Dated Peshawar, the December 30, 2015

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Industries, Commerce & Technical Education Department.

Attention: Section Officer (III), Industries Department.

SUBJECT: DEPARTMENTAL APPEALS FOR THE GRANT OF ANTEDATED PROMOTION

Dear Sir,

I am directed to refer to your letter No.E&A(IND)I-6/2015/15140 dated 20.11.2015 on subject noted above and to state that the case has thoroughly been examined and it is to point out that according to promotion policy, 2009, promotion will always be notified with immediate effect and not retrospectively. The Board has never considered any officer for antedated promotion up-till-now except on the orders of Courts.

Yours faithfully

(SAIFULLAH KHAN)  
SECTION OFFICER (REG-VI)

*Handwritten signature*  
**ATTENDED**

*Received  
today on  
01-2-16  
P  
01-2-16*





(16)

KHYBER PAKHTUNKHWA TECHNICAL  
EDUCATION & VOCATIONAL TRAINING  
AUTHORITY 3-A, CHINAR ROAD  
UNIVERSITY TOWN, PESHAWAR



No.KP-TEVTA /Estt-I/2-279/ 628

Dated. 16/02/2016.

To

The Principal,  
Govt, Advance Technical Training Center,  
Hayatabad Peshawar.

Subject: - DEPARTMENTAL APPEAL FOR THE GRANT OF ANTEDATED PROMOTION.

I am directed to enclose herewith a copy of letter No.SOIII (IND) 1-6/2015/1335 dated 03-02-2016 received from Section Officer-III, Industries Commerce & Technical Education Department, Peshawar on the subject noted above for information please.

DA/As above.

*M. H. Khan*  
DEPUTY DIRECTOR  
(ADMN/HR)

**ATTENDED**  
*[Signature]*

(17)

No.SOIII(IND)1-6/2015 / 1435

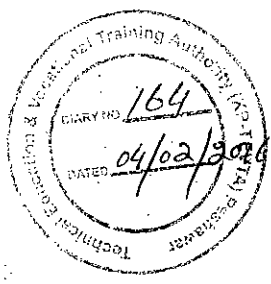
**GOVERNMENT OF KHYBER PAKHTUNKHWA  
INDUSTRIES, COMMERCE AND TECHNICAL  
EDUCATION DEPARTMENT**



3<sup>rd</sup> February, 2016

*Dated Peshawar, the* \_\_\_\_\_

Tele: \_\_\_\_\_



To

The Managing Director,  
KP-TEVTA, 3-A Chinar Road,  
University Town, Peshawar.

Subject: DEPARTMENTAL APPEAL FOR THE GRANT OF ANTEDATED PROMOTION

I am directed to refer to your letter No.KP-TEVTA/Accounts/2-279/3015 dated 10.11.2015 on the subject noted above and to state that according to promotion policy 2009 promotion will always be notified with immediate effect and not retrospectively. The Board has never considered any officer for antedated promotion up-till-now except on the orders of Courts.

*Z*  
*Zahir Shah*  
(ZAHIR SHAH)  
SECTION OFFICER-III

**ATTESTED**  
*altru*  
*[Signature]*

*[Signature]*  
Dd(F/A)  
04/02

*[Signature]*  
Div(A&M)  
10/2

*[Signature]*  
for 2/2  
3/2/16



75 79  
GOVERNMENT OF KHYBER PAKHTUNKHWA  
INDUSTRIES, COMMERCE AND TECHNICAL  
EDUCATION DEPARTMENT

Dated Peshawar, the \_\_\_\_\_

**NOTIFICATION**

**No. SOII(IND)TE/1-6/2012/PSB**

On the recommendations of the Provincial Selection Board, the Competent Authority is pleased to promote the following lecturers (Electrical) (BPS-17) (Degree Holders) to the post of Assistant Professor(Electrical)(BPS-18) in the Directorate of Technical Education, Khyber Pakhtunkhwa on regular basis with immediate effect:-

- i. Mr. Sher Bahadar ✓
- ii. Mr. Muhammad Sadiq ✓
- iii. Mr. Asif Altaf ✓
- iv. Mr. Mehmood Ahmed ✓
- v. Mr. Habib ur Rehman ✓
- vi. Mr. Sajawal Shah ✓
- vii. Mr. Muhammad Asif ✓

415  
28/2/13

2. The officers will remain on probation for a period of one year extendable for another 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. Consequent upon their promotion, the following transfers/postings of officers are hereby ordered:-

S.No	Name, Designation & Present posting of the Officer.	Proposed Posting.
1	Mr. Sher Bahadar, Working on acting charge basis as Assistant Professor(Elect:)(BPS-18), GCT Peshawar	As Assistant Professor(Elect:) (BPS-18) GCT Peshawar on regular basis against the vacant post.
2 ✓	Mr. Muhammad Sadiq Working on acting charge basis as Assistant Professor(Elect:)(BPS-18), GCT Peshawar	As Assistant Professor(Elect:) (BPS-18) GCT Peshawar on regular basis against the vacant post.
3	Mr. Asif Altaf, Working on acting charge basis as Assistant Professor(Elect:)(BPS-18), GCT Peshawar	As Assistant Professor(Elect:) (BPS-18) GCT Peshawar on regular basis against the vacant post.
4	Mr. Mehmood Ahmed, Lecturer(Elect:) (BPS-17), GPI Haripur.	As Assistant Professor(Elect:) (BPS-18), GPI Haripur on regular basis against the vacant post.
5	Mr. Habib ur Rehman Lecturer(Elect:). (BPS-17), GCT Peshawar	As Assistant Professor(Elect:) (BPS-18), GCT Peshawar on regular basis against the vacant post.

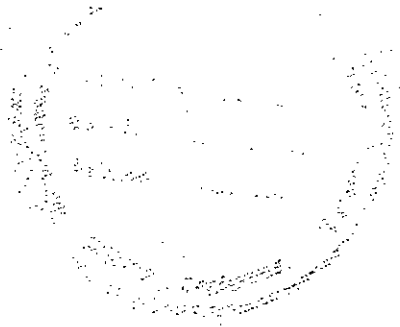
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2-279

Cont/D-2

S.No	Name, Designation & Present posting of the Officer.	Proposed Posting.
6	Mr. Sajawal Shah, Lecturer(Elect:), (BPS-17), GCT, Swabi.	As Assistant Professor(Elect:) (BPS-18), GCT Swabi on regular basis against the vacant post.
7	Mr. Muhammad Asif, Lecturer(Elect:), (BPS-17), GCT Peshawar	As Assistant Professor(Elect:) (BPS-18), GCT Peshawar on regular basis against the vacant post.



-Sd-  
Secretary to Govt. of Khyber Pakhtunkhwa,  
Industries, Commerce & Technical Education  
Department.

Endst: No. SOIII(IND)TE/1-6/2012/PSB

1886

Dated Pesh, the 26<sup>th</sup> Feburary, 2013

Copy is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, Technical Education & Manpower Training, Khyber Pakhtunkhwa, Peshawar.
3. The District Accounts Officers, Haripur, Swabi.
4. The Principal, Govt. College of Technology, Peshawar.
5. The Principal, Govt. College of Technology Swabi.
6. The Principal, Govt. Polytechnic Institute Haripur.
7. The Officers concerned.
8. O/O file.

(ANWAR-UL-HAQ)  
DEPUTY SECRETARY-I

بعدالت

سرین ٹریبونل سہیل

20

منجانب

شہید نسیم

مقدمہ

مگر صاحب حق نسیم خان چکنی ایڈووکیٹ ہائی کورٹ پشاور

دعویٰ

علت نمبر

مورخہ تھانہ

جرم

### باعث تحریر آئندہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے اسے پیروی و جواب دہی وکل کارروائی متعلقہ  
آن مقام ..... کیلئے شاہد نسیم خان چکنی ایڈووکیٹ ہائی کورٹ پشاور  
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز وکیل  
صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف کرنے، جواب دہی اور اقبال دعویٰ اور بصورت ڈگری  
کرنے، اجراء اور وصولی چیک و روپیہ از عرضی دعویٰ اور درخواست ہر قسم کی تصدیق زراس پر دستخط کرانے کا  
اختیار ہوگا۔ نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر  
ثانی و پیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کارروائی 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  
اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ و ہرجانہ  
التوائے مقدمہ کے سبب سے ہوگا۔ وکیل صاحب وصول کریں گے۔ اور یہ کہ وصول کی گئی فیس ناقابل واپسی  
ہوگی۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے۔ کہ پیروی مذکور  
کریں۔ لہذا وکالت نامہ لکھد یا تاکہ سندر ہے۔

شاہد نسیم خان چکنی ایڈووکیٹ ہائی کورٹ پشاور

المرقوم 7 مارچ 2016

العد

العد

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

**Appeal No.316/2016**

~~Mr. M. A. Bhatti, Assistant~~  
Engineer Sher Bahadar, Assistant Professor,  
Government College of Technology, Peshawar.....**APPELLANTS.**

**VERSUS**

- 1) Government of Khyber Pakhtunkhwa through Chief Secretary,  
Civil Secretariat, Peshawar.
- 2) Government of Khyber Pakhtunkhwa through Secretary Industries, Technical  
Education & Manpower Training K. P. Peshawar.
- 3) The Managing Director General, (KP-TEVTA) Technical & Vocational Training  
Authority, of Khyber Pakhtunkhwa.....**RESPONDENTS**

**Reply on behalf of Respondents No.1 to 3**

**Respectfully Sheweth:**

Respondents 1 to 3 submit their reply as under:-

**PRELIMINARY OBJECTIONS:**

- A- That the Departmental appeal is badly time barred.
- B- That the appellant has no cause of action.
- C- That the appellant is estopped by his own conduct to file the appeal.
- D- That this Honorable Tribunal has no jurisdiction to entertain the instant appeal.

**ON FACT**

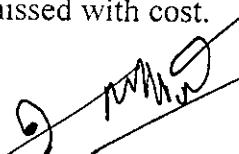
- 1) Para 1 of the appeal is correct.
- 2) Para 2 of the appeal pertains to record.
- 3) Para 3 of the appeal pertains to record.
- 4) Para 4 of the appeal is incorrect, with further clarification that promotion of the appellants was made on 26.2.2013. The respondents are not ignorant of their duties According to promotion policy 2009, promotion will be notified with immediate effect and not retrospectively. (copy of order is attached) at **Annexure-"A"**.
- 5) Para 5 of the appeal is also incorrect. The Departmental appeal of the appellants for grant of antedated promotion was sent to Administrative Department vide letter No.TEVTA/Estt:-1/2-279/2782, dated 20.10.2015 (copy attached) at **Annexure-"B"** and also submitted to Establishment Department for opinion (copy attached at **Annexure-"C"**). The Administrative Department vide its letter No. SO.III(IND)1-6/2015/1435 dated 3.2.2016 informed that under the promotion policy, 2009 promotion will always be notified with immediate effect and not retrospectively. The Board has never considered any officer for antedated promotion up-till now except by the orders of Courts (copy is attached) at **Annexure-"D"**.

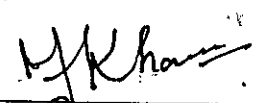
- 6) Para 6 of the appeal is incorrect. The case of appellants was earlier take-up with Administrative Department, and they were promoted as Assistant Professors, on acting charge basis due to deficient length of service, vide Govt: Notification dated 27.2.2008. There after the appellant completed their required length of service on 17.3.2009 and their promotion case on regular basis were not materialized till time the new Service Rules, 2010 were notified on 3.12.2010, where as mandatory one year technical teacher training Diploma was included theiron. Thereafter, the promotion of appellant & others on regular basis were thus materialized on 26.2.2013.
- 7) Correct as explained above.
- 8) Correct as explained above.
- 9) Needs no comments, except that appellants have no cause of action.

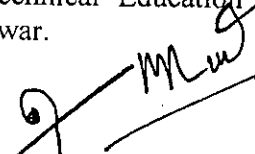
### **G R O U N D S**

- a) Ground "a" of the appeal is incorrect. Besides, the departmental appeals of the appellant were not filed within time.
- b) As explained in detail in paras-5&6 above.
- c) ground "c" of the appeal is incorrect, According to the promotion policy, 2009 promotion will always be notified with immediate effect and not retrospectively. The Board has never considered any officer for antedated promotion up-till now except on the order of Courts.
- d) Ground "d" of the appeal also is denied as explained in detail in the above paras.
- e) Ground "e" of the appeal is baseless, Detailed reply has already been given above.
- f) Ground "f" of the appeal is denied, as the respondents have acted in acceding with law and promotion policy.
- g) Ground "g" of the appeal is incorrect. The respondents Department have treated the appellants in accordance with law & did not discriminate against them.
- h) Ground "h" of the appeal is also baseless, as promotion from the retrospective date 18.3.2009 will effect the seniority of their senior colleagues and financial implication is also involved.
- i) Needs no comments.

It is, therefore, requested that the instant appeal may be dismissed with cost.

RESPONDENT NO.1)   
Government of Khyber Pakhtunkhwa through  
Chief Secretary, Peshawar.

RESPONDENT NO.2)   
Secretary Industries and Technical Education  
Khyber Pakhtunkhwa, Peshawar.

RESPONDENT NO.3)   
Managing Director, (KP-TEVTA) Technical &  
Vocational Training Authority.

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

**Appeal No.315/2016**

- 1) Engineer Muhammad Sadiq, Assistant Professor,  
GATTC, Peshawar.
- 2) Engineer Sher Bahadar, Assistant Professor,  
Government College of Technology, Peshawar.....**APPELLANTS.**

**VERSUS**

- 4) Government of Khyber Pakhtunkhwa through Chief Secretary,  
Civil Secretariat, Peshawar.
- 5) Government of Khyber Pakhtunkhwa through Secretary Industries, Technical  
Education & Manpower Training K. P. Peshawar.
- 6) The Managing Director General, (KP-TEVTA) Technical & Vocational Training  
Authority, of Khyber Pakhtunkhwa.....**RESPONDENTS**

**AFFIDAVIT.**

I Muhammad Rasool, Assistant Director, Technical Education and Vocational Training Authority Khyber Pakhtunkhwa, in the above titled appeal do hereby solemnly affirm and confirm that the contents of the connected reply is true and correct to the best of our knowledge and belief and nothing has been concealed from this august court.

  
(MUHAMMAD RASOOL)  
Assistant Director (Litigation)





**Annex-71**

GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT  
(REGULATION WING)

No. SOR-V/E&AD/8-17/2015/Advice-opinion/Vol:1  
Dated Peshawar, the December 30, 2015

To

The Secretary to Govt. of Khyber Pakhtunkhwa,  
Industries, Commerce & Technical Education Department.

Attention: Section Officer (III), Industries Department.

SUBJECT: DEPARTMENTAL APPEALS FOR THE GRANT OF ANTEDATED PROMOTION

Dear Sir,

I am directed to refer to your letter No.F&A(IND)1-6/2015/15140 dated 20.11.2015 on subject noted above and to state that the case has thoroughly been examined and it is to point out that according to promotion policy, 2009, promotion will always be notified with immediate effect and not retrospectively. The Board has never considered any officer for antedated promotion up-till-now except on the orders of Courts.

Yours faithfully

(SAIFULLAH KHAN)  
SECTION OFFICER (REG-VI)

*a. Verbs*

Received  
study on  
01-2-16  
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01-2-16



**Annex - 'B'**

KHYBER PAKHTUNKHWA TECHNICAL  
EDUCATION & VOCATIONAL TRAINING  
AUTHORITY 3-A, CHINAR ROAD  
UNIVERSITY TOWN, PESHAWAR



No. TEVTA / Estt-1/2-279/ 2782  
To

Dated. 20 / 10 / 2015.

The Section Officer - III,  
Govt: of Khyber Pakhtunkhwa,  
Industries Commerce & Technical Edu: Department,  
Peshawar.


Subject:- **DEPARTMENTAL APPEAL FOR THE GRANT OF ANTIDATED PROMOTION.**

I am directed to refer to your letter No.SOIII(IND)1-6/2015/12497 dated 29-9-2015 on the subject noted above and to state that the appellant and others were promoted as Assistant Professor on Acting Charge Basis( due to deficient length of service) vide Governemnt Notification dated 27-2-2008. The appellant completed his length of service on 17-3-2009. Yet the promotion case of the appellant and others were not materialized till time the new amended Service Rules , 2010 were notified<sup>ed</sup> on 03-12-2010, whereas mandatory one year Technical Teachers Training Diploma was included therein. Thereafter, the appellant and others accordingly completed the said training. The promotion cases of the appellant and others on regular basis were thus materialized on 26-2-2013.

The contention of the appellant and others is that their promotion cases should have been processed by the department before the Notification of Service Rules, 2010 when they had acquired the length of service as per requirements of the previous rules. The appellant has referred to Service Tribunal Judgement dated 09-12-2009 in an Appeal No. 733/2009 wherein identical question of law is involved. The observations of the honorable tribunal are in favor of the contention of the appellant. Further, the appellant has referred to SCMR 1996,1185 which also demand the authority to consider the case of the appellant and others in light of the aforementioned Honorable Service Tribunal judgment.

It is pertinent to mention that in case appeal of the appellant is accepted, neither any financial implication is involved nor it will effect otherwise seniority positions of the other officers therein.

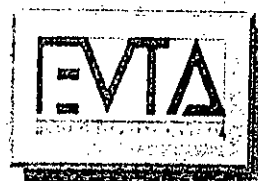
Detailed views/comments are submitted for consideration of the authority as desired and for further necessary action please.

  
DEPUTY DIRECTOR  
(TEVTA/IND)

Annex-C



KHYBER PAKHTUNKHWA TECHNICAL  
EDUCATION & VOCATIONAL TRAINING  
AUTHORITY 3-A, CHINAR ROAD  
UNIVERSITY TOWN, PESHAWAR



No.KP-TEVTA/Accounts/2-279/3015  
To

Dated. 10/11/2015.

The Section Officer-III,  
Govt. of Khyber Pakhtunkhwa,  
Industries & Technical Education Department,  
Peshawar.

Subject: - DEPARTMENTAL APPEAL FOR THE GRANT OF ANTIDATED PROMOTION:

I am directed to refer to your letter No. SOIII(IND)1-6/2015/113812 dated 28-10-2015 on the subject noted above and to state that the case was earlier sent with explicit clarification of the matter. However, as far views of this office on the matter is concerned, it is submitted that in view of the position explained in this office letter dated 20-10-2015, the contention of the appeal has considerable substance for due consideration, however in that case, the case of the officers is required to be forwarded to Establishment Department (Regulation Wing ) for their advice in the matter.

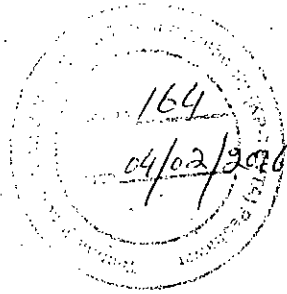
*[Handwritten Signature]*  
DEPUTY DIRECTOR  
(ADMN/HR)

**Amir-74**

No.SOIII(IND)1-6/2015 / 1435

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
INDUSTRIES, COMMERCE AND TECHNICAL  
EDUCATION DEPARTMENT**

Tele: \_\_\_\_\_



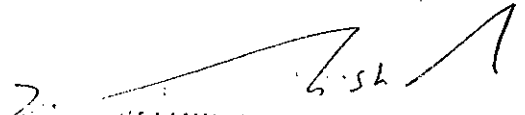
Dated Peshawar, the 3<sup>rd</sup> February, 2016


To


The Managing Director,  
KP-TEVTA, 3-A Chinara Road,  
University Town, Peshawar.

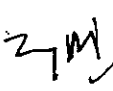
Subject: DEPARTMENTAL APPEAL FOR THE GRANT OF ANTEDATED PROMOTION

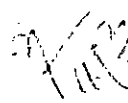
I am directed to refer to your letter No.KP-TEVTA/Accounts/2-279/3015 dated 10.11.2015 on the subject noted above and to state that according to promotion policy 2009 promotion will always be notified with immediate effect and not retrospectively. The Board has never considered any officer for antedated promotion up-till-now except on the orders of Courts.

  
(ZAHIR SHAH)  
SECTION OFFICER-III

  
DD(F/A)  
04/02

DD(AHR)  
  
10/2

for n/a  
  
10/2

DD(AHR)  
  
10/2  
MAGDAN

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

S. No 316/16

Sher Bahadar.....Appellant

**V E R S U S**

Govt. of KPK & others .....Respondents

**APPLICATION FOR ADJOURNMENT**

**Respectfully Sheweth:**

1. That the above titled case is pending adjudication before this Hon'ble Court and is fixed for today i.e. 28/07/2017.
3. That the counsel for appellant is going to the Saudi Arabia for Performing **Hajj** therefore would not be able to assist and appear before this Hon'ble Court on the date fixed.

It is, therefore, respectfully prayed that on acceptance of this application, the titled case may kindly be adjourned, convenient to this Hon'ble Court.

**Shahid Naseem Khan Chamkani**  
Advocate High Court

Through

  
**Zia ur Rehman**  
Clerk of Counsel

Dated 28/07/2017