

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

Service Appeal No. 492/2018

BEFORE: RASHIDA BANO --- MEMBER (J)
MUHAMMAD AKBAR KHAN --- MEMBER (E)

Shaukat Ullah Khan, Ex-Director Soil Conservation (Head Quarters),
Agriculture, Live Stock and Co-Operative Department Government of
Khyber Pakhtunkhwa, Peshawar..... (*Appellant*)

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Agriculture,
Live Stock and Co-Operative Department, Civil Secretariat Peshawar.
2. Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat
Peshawar.
3. Director General, Soil Conservation, Government of Khyber
Pakhtunkhwa, Peshawar.
4. Secretary Establishment Department, Government of Khyber
Pakhtunkhwa, Civil Secretariat, Peshawar..... (*Respondents*)

Present:-

FAZAL SHAH MOHMAND,
Advocate --- For Appellant

ASIF MASOOD ALI SHAH,
Deputy District Attorney --- For respondents.

Date of Institution.....06.04.2018

Date of Hearing..... 06.02.2024

Date of Decision.....06.02.2024

JUDGMENT.

MUHAMMAD AKBAR KHAN, MEMBER(E):- The instant service
appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa
Service Tribunal, Act 1974 with the prayer copied as under;

*“On acceptance of this appeal the impugned letter/order
dated 16.01.2018 may kindly be set aside and the appellant*

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may kindly be ordered to be granted proforma promotion to (BPS-20), form the date as per rules/policy with all back benefits."

02. Brief facts of the case are that appellant was appointed as Soil Conservation Assistant (BPS-17) vide order dated 07.12.1982. He was promoted to (BPS-18) on 19.03.2009 and further promoted to (BPS-19) on 08.09.2021. The appellant was at the top of Seniority list of BPS-19 officers of 15.01.2018; that vide circular letter dated 11.03.2016 all kinds of exemptions from mandatory training was withdrawn however exception extended already to professional and technical cadres was to continue and vide Notification dated 05.12.2017, the Senior Management Course was made mandatory for promotion against technical post in (BPS-20). The appellant filed departmental appeal on 12.12.2017 for exemption from Senior Management Course for promotion to (BPS-20) which was regretted vide letter dated 16.01.2018. He was retired from service on the age of superannuation on 14.02.2018. The appellant filed Writ Petition No. 1064-P/2018 before the Hon'ble Peshawar High Court, Peshawar which was withdrawn with the permission to approach proper forum vide order dated 21.03.2018. Thereafter he filed the instant service appeal on 06.04.2018.

03. Notices were issued to the respondents, who submit their comments, wherein they refuted the assertions raised by the appellant in his appeal. We have heard arguments of learned counsel for the appellant and learned

Deputy District Attorney and have gone through the record with their valuable assistance.

04. Learned counsel for the appellant contended that the impugned order is illegal and void abinitio; that mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated in accordance with law and rules; that appellant had never been selected for the Senior Management Course by the high-ups and it was not his fault; that the Notification dated 05.12.2017 was not applicable with retrospective effect, therefore, appellant was entitled for promotion; that the respondents had promoted Zulfiqar Ahmad to BPS-20 who was of the same department and had not undergone the SMC; that the appellant was entitled for pro-forma promotion as other employees of the same batch had been given promotions by the Peshawar High Court. Lastly, he submitted that the fundamental rights of the appellant had been violated by the respondents, therefore, he requested for acceptance of the instant service appeal.

05. On the other hand, learned Deputy District Attorney contended that the appellant had never submitted any promotion case for his promotion to the post of Director General (BPS-20) and was not promoted due to delay in framing of Service Rules for the said post. He submitted that Senior Management Course was mandatory at that time for promotion to BPS-20; that his case for promotion was not materialized due to non-framing of Service Rules for the post of Director General Soil Conservation (BPS-20).

Lastly, he submitted that appellant had rightly been treated and his case be dismissed.


06. Scrutiny of record available on file reveal that the appellant while serving in Soil Conservation wing of Agriculture & Live Stock Department was promoted to the post of Director BS-19 on 08.09.2011. A post of Director General Soil Conservation (BS-20) in the said department was created in the year 2013. The appellant was assigned additional charge of the new post of Director General. The post of Director General remained un-filled because of not framing service rules for the same. Nothing is available on record that speak about the efforts of the appellant for initiation of case for framing of service rules for the post of Director General Soil Conservation being holder of the said post. He held additional charge of the post of Director General till 01.03.2017 when he himself expressed his inability to hold additional charge of the post of Director General citing health reasons. Record further reveals that the appellant submitted application for exemption from Senior Management Course for his promotion to the post of Director General, Soil Conservation Agriculture Department dated 12.12.2007 requesting therein that he may be exempted from the said course as he was retiring on 15.02.2018. The application of the appellant was processed and taken up with the Establishment Department for advising in the matter. Establishment department in their response referred to the amendment in the promotion policy of 2009 made vide Notification dated 05.12.2017 which clearly states that promotion against technical post in BS-20 which required managerial and administrative skill, the Senior Management Course shall

be mandatory. The said provision of the promotion policy of the Provincial Government was conveyed accordingly to the appellant vide letter dated 16.01.2018. We observe that for promotion of any post service rules prescribing criteria for filling the post is required. Since at the relevant point in time no service rules for promotion to the post of Director General Soil Conservation were in the field nor the appellant was eligible for promotion to the post of Director General (BS-20) because of deficiency of Senior Management Course. The respondents in their reply and during the course of arguments as well repeatedly pointed out that for initiation of case for framing of service rules for the post of Director General (BS-20) Soil Conservation was responsibility of the appellant being holder of the post of Director General on additional charge basis but he remained unable to do so.

07. In view of the above discussion the appeal in hand is dismissed being devoid of merit. Costs shall follow the event. Consign.

08. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 06th day of February, 2024.*


(Rashida Bano)
Member (J)


(Muhammad Akbar Khan)
Member (E)

Kamranullah

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ORDER

06.02.2024 1. Learned counsel for the appellant present. Mr. Asif

Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

2. Vide our detailed judgment of today separately placed on file, the appeal in hand is dismissed being devoid of merit.

Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 06th day of February, 2024.*



(Rashida Bano)
Member (J)



(Muhammad Akbar Khan)
Member (E)

Kamramillah

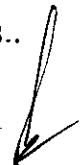
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09.01.2024 1. Clerk of counsel for the appellant present.

2. Lawyers are on general strike, therefore, case is adjourned.

To come up for arguments on 06.02.2024 before D.B. P.P given to the parties..

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(Muhammad Akbar Khan)
Member (E)


(Rashida Bano)
Member (J)


23.11.2023


Junior of learned counsel for the appellant present. Mr. Khalid Gohar, Deputy Director (IT) and Mr. alongwith Mr. Muhammad Jan, District Attorney for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in Peshawar High Court, Peshawar.

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Adjourned. To come up for arguments on 06.12.2023 before the D.B. Parcha Peshi given to the parties.


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

Naeem Amin

6th Dec, 2023

1. Junior to counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Khalid Gohar, Deputy Director (IT) for the respondents present.

2. Junior to counsel for the appellant seeks adjournment on the ground that learned senior counsel is not available today.

Adjourned. To come up for arguments on 09.01.2024 before D.B. P.P given to the parties.

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(Salah Ud Din)
Member(J)


(Kalim Arshad Khan)
Chairman

*Adnan Shah *

S.A #.492/2018

4th July, 2023

1. Junior to counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Khalid Gohar, Deputy Director for the respondents present.
2. Lawyers are on strike. Therefore, case is adjourned. To come up for arguments on 02.08.2023 before the D.B. P.P given to the parties.

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(Rashida Bano)
Member (J)



(Kalim Arshad Khan)
Chairman

Mutazem Shah

2nd August, 2023 1. Junior to counsel for the appellant present. Mr. Fazal Shah, Deputy District Attorney alongwith alongwith Khalid Gohar, Deputy Director for respondents present.

2. Junior to counsel for the appellant requested for adjournment on the ground learned counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 23.11.2023 before the D.B. PP given to the parties.

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(Fareeha Paul)
Member (E)



(Rashida Bano)
Member (J)


*Kaleemullah


08.05.2023

Mr. Baseer Ahmad Shah, Advocate for the appellant present and submitted fresh Wakalatnama, which is placed on file. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Khalid Gohar, Deputy Director for the respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has been newly engaged in the instant appeal and has not gone through the brief. Adjourned. To come up for arguments on 30.05.2023 before the D.B. Parcha Peshi is given to the parties.

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(Muhammad Akbar Khan)
Member (E)


(Salah-ud-Din)
Member (J)


Naeem Amin


30.05.2023

Learned counsel for the appellant present. Dr. Khalid Gohar Khan, Deputy Director alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Learned counsel for the appellant seeks time for preparation of arguments. Adjourned. To come up for arguments on 04.07.2023 before the D.B. Parcha Peshi given to the parties.

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Peshawar


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)


Naeem Amin


09th Dec. 2022

Counsel for the appellant present. Mr. Muhammad Riaz Khan Pindakhel, Assistant Advocate General alongwith Ali Gohar, Deputy Director for the respondents present.

Learned counsel for the appellant states that due to rush of work he could not prepare the brief and seeks adjournment of the matter to 02.02.2023. On the request of learned counsel for the appellant, the matter is adjourned to his desired 02.02.2023 for arguments before the D.B as last chance, failing which the matter will be decided on the basis of available record without the arguments.

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(Fareeha Paul)
Member (E)



(Kalim Arshad Khan)
Chairman


2nd Feb, 2023

Clerk of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Lawyers are on strike, therefore, the case is adjourned. Office is directed to notify the next date on the notice board as well as on the website of the Tribunal. To come up for arguments on 08.05.2023 before D.B.

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(Muhammad Akbar Khan)
Member (E)


(Kalim Arshad Khan)
Chairman

31.08.2022

Clerk of learned counsel for the appellant present.
Mr. Bilal Shah, Stenographer alongwith Mr. Kabirullah
Khattak, Additional Advocate General for the
respondents present.

Learned Member (Judicial) Ms. Rozina Rehman is
on leave, therefore, arguments could not be heard.
Adjourned. To come up for arguments on 10.11.2022
before the D.B.



(Salah-ud-Din)
Member (Judicial)

10.11.2022

Junior to counsel for the appellant present.

Naseer Ud Din Shah learned Assistant Advocate General
for the respondents for respondents present.

Former requested for adjournment on the ground that his
senior counsel is busy before Hon'ble Peshawar High Court
Peshawar. Adjourned. To come up for arguments on 09.12.2022
before D.B.

SCANNED
KPST
Peshawar



(Fareeha Paul)
Member (E)




(Rozina Rehman)
Member (J)

13.01.2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG alongwith Syed Bilawal Shah, Steno for respondents present.

Learned counsel for the appellant seeks adjournment in order to further prepare the brief. Request is accorded. To come up for arguments before the D.B on 29.04.2022.

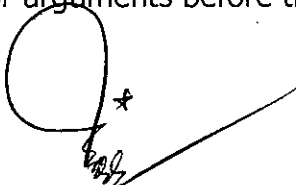

(Atiq-ur-Rehman Wazir)
Member(E)

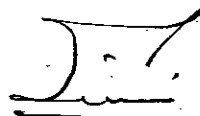

Chairman

29.04.2022

Counsel for the appellant present. Syed Naseer Ud Din Shah, Assistant Advocate General alongwith Syed Bilawal Shah, Steno for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that he has not met preparation for arguments. Adjourned. To come up for arguments before the D.B on 20.06.2022.



(Mian Muhammad)
Member(E)



(Salah Ud Din)
Member(J)

20th June, 2022

Counsel for the appellant present. Mr. Muhammad Riaz Khan Painsdakhel, Asstt. AG for the respondents present.

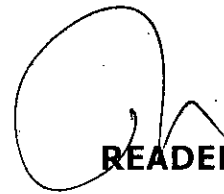
Learned counsel for the appellant seeks adjournment to further prepare the brief. Last chance is given, failing which the case will be decided on the basis of available record without the arguments. To come up for arguments on 31.08.2022 before the D.B.


(Fareeha Paul)
Member(E)


(Kalim Arshad Khan)
Chairman

04.03.2021

Due to COVID-19, the case is adjourned for the same on 10.06.2021 before D.B



READER

10.06.2021

Counsel for appellant present.

Muhammad Rasheed learned Deputy District Attorney for respondents present.

Former made a request for adjournment. Adjourned. To come up for arguments on 03.09.2021 before D.B.



(Rozina Rehman)
Member (J)



Chairman

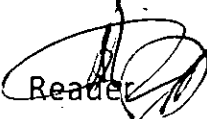
03.09.2021

Due to summer vacations, the case is adjourned to 13.01.2022 for the same as before.



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_____ .2020 Due to COVID19, the case is adjourned to
12/8/2020 for the same as before.



Reader

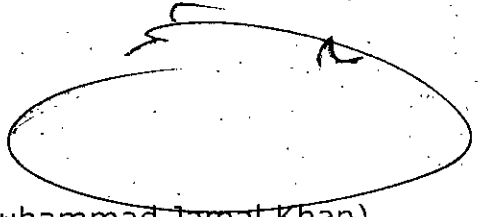
12.08.2020 Due to summer vacations case to come up for the same on
15.10.2020 before D.B.


Reader

15.10.2020 Miss. Rabia Muzaffar, Advocate for appellant is present. Mr.
Muhammad Jan, Deputy District Attorney alongwith representative of
the department Syed Bilawal Shah, Junior Scale Stenographer, are
also present.

Learned counsel submitted that her senior is busy before the
Hon'ble Peshawar High Court, Peshawar and requested for
adjournment. Adjourned to 11.12.2020 on which to come up for
arguments before D.B.


(Atiq-ur-Rehman Wazir)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

11.12.2020 Counsel for appellant is present. Mr. Kabirullah Khattak,
Additional Advocate General and Syed Bilawal Shah, Junior Scale
Stenographer, for the respondents are also present.

Due to COVID-19, the case is adjourned to 05.03.2021
before D.B.


READER

13.12.2019


Appellant in person present. Addl: AG alongwith Naveed Hashim, Conservation Officer for respondents present. Appellant seeks adjournment due to general strike of the bar. Adjourned. Case to come up for arguments on 12.02.2020 before D.B.


Member


Member

12.02.2020

Junior to counsel for the appellant present. Mr. Usman Ghani learned District Attorney alongwith Mr. Naveed Hasham Conservation Officer for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not available today. Adjourned. To come up for arguments on 20.03.2020 before D.B.

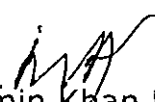

(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member

20.03.2020

Due to general strike of Khyber Pakhtunkhwa Bar Council, learned counsel for the appellant is not available today. Mr. Kabirullah Khattak, Additional AG alongwith Mr. Khalid Gohar, D.D for the respondents present. Adjourned to 20.05.2020 for arguments before D.B.


(Mian Muhammad)
Member


(M. Amin Khan Kundi)
Member

09.08.2019

Junior to counsel for the appellant and Mr. Zia Ullah learned Deputy District Attorney present. Junior to counsel for the appellant seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come for arguments on 07.10.2019 before D.B.


Member


Member

01.10.2019

Junior counsel for the appellant and Mr. Riaz Ahmad Paindakheil, Assistant AG alongwith Mr. Naveed Hashim, Conservation Officer for the respondents present. Junior counsel for the appellant submitted rejoinder and requested for adjournment for arguments. Adjourned to 05.11.2019 for arguments before D.B.


(AHMAD HASSAN)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

05.11.2019

Miss. Rabia Muzafar, Advocate present on behalf of learned counsel for the appellant present and seeks adjournment. Mr. Ziaullah, DDA alongwith Mr. Naveed Hashim, Conservation Officer for respondents present. Learned DDA stated that similar nature of appeal has already been rejected by this Tribunal. Adjourn. To come up for arguments on 13.12.2019 before D.B. Appellant be put on notice for appearance for the date fixed.


Member


Member

492/18

12.04.2019

Appellant in person and Addl. AG alongwith Naveed Hashim Soil Conservation Officer for the respondents present.

Representative of respondents states that the requisite reply/comments have been prepared but are yet to be vetted. He, therefore, requests for adjournment.


Adjourned to 25.04.2019 before S.B.



Chairman

25.04.2019

Counsel for the appellant present. Addl: ^{AG} for respondents present. Written reply not submitted. Requested for adjournment. Adjourned but as a last chance. Case to come up for written reply/comments on 19.06.2019 before S.B.



(Ahmad Hassan)
Member

19.06.2019


Counsel for the appellant and Mr. Kabirullah Khattak, Additional AG alongwith Mr. Naveed Hashim, Soil Conservation Officer for the respondents present. Representative of the department submitted joint written reply on behalf of respondents No. 1 to 4. Case to come up for rejoinder and arguments on 09.08.2019 before D.B.



(Muhammad Amin Khan Kundi)
Member

02.10.2018

Counsel for the appellant present. Security and process fee not deposited. Appellant is directed to deposit the security and process fee within three days, thereafter, notice be issued to the respondents for written reply/comments for 16.11.2018 before S.B.


(Muhammad Amin Khan Kundi)
Member

16.11.2018

The learned Chairman has not yet assumed the charge. Therefore, the case is adjourned. To come up on 04.01.2019. Written reply not received.


READER


04.01.2019

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Neither written reply on behalf of respondents submitted nor representative of the department is present therefore, notice be issued to the respondents with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. To come up for written reply/comments on 19.03.2019 before S.B.


(Muhammad Amin Khan Kundi)
Member

19.03.2019

Counsel for the appellant and Mr. Kabirullah Khattak learned Addl; AG alongwith Mr. Naveed Hashim Soil Conservative officer for the respondents present. Written reply not submitted. Representative of the respondents department seeks time to file written reply/comments. Granted. To come up for written reply/comments on 12.04.2019 before S.B.


Member

8/8/2018

Counsel for the appellant Shaukatullah present. Preliminary arguments heard. It was contended that appellant was serving in Agriculture Department as Director, Soil Conservation BPS-19. It was further contended that as per notification dated 4/11/2011, the civil servants who has crossed age of 58 years, were exempted from NIPA training/course. It was further contended that one Zulfiqar Ahmad of the same department has been promoted from BPS-19 to BPS-20 as per tentative seniority list dated 16/5/2017. It was further contended that the said Zulfiqar Ahmad is junior from the appellant and promoted to BPS-20, but the appellant was ignored. Against which he filed departmental appeal, which was rejected. Hence the present appeal. It was further contended that the appellant has been retired from service, therefore, entitled for proforma promotion.

Points urged at bar need consideration. The appeal is admitted. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for written reply/comments on 2/10/2018 before SB.

Appellant Deposited
Security & Process Fee


(Muhammad Amin Khan Kundi)
MEMBER

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Peshawar

11.07.2018

Clerk of the counsel for appellant present. Preliminary arguments could not be heard due to killing of a lawyer Barrister Haroon Bilour in a suicide attack during the election campaign. To come up for preliminary hearing on 12.07.2018 before S.B.


Chairman

13.07.2018





Neither petitioner nor his counsel present. To come up for arguments on restoration application/ further proceedings on 08.08.2018 before S.B.


Chairman

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 492/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	06/04/2018	<p>The appeal of Mr. Shaukat Ullah Khan presented today by Mr. Fazal Shah Mohmand 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 <u>6/4/18</u></p>
2-	<u>09/04/18.</u>	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>23/04/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	23.04.2018	<p>Counsel for the appellant present and requested for adjournment. Granted. To come up for preliminary hearing on 11.05.2018 before the S.B.</p> <p style="text-align: right;"> Chairman</p>
	11.05.2018	<p>The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on <u>11.07.2018</u> before S.B.</p> <p style="text-align: right;"> Reader</p>

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. 492 /2018.

Shaukat Ullah Khan.....Appellant

**SCANNED
KPST
Peshawar**

V E R S U S

Govt. and Others.....Respondents

I N D E X

S.No	Description of Documents	Annexure	Pages
1.	Service appeal with affidavit <i>condonation Application</i>		1-5
2.	Copy of Seniority List	A	6
3.	Copy of letter dated 11-03-2016 & Notification dated 05-12-2017	B	7-9
4.	Copy of Appeal & letter dated 16-01-2018	C	10-11
5.	Copy of WP & Order dated 21-03-2018	D	12-21
6.	Copy of letter dated 04-11-2011	E	22-25
7.	Copy of Notification dated 19-12-2017 & Seniority List dated 16-05-2017	F & G	26-29
8.	Copy of Notification dated 08-01-2018	H	29/A-
9.	Copy of order and judgment	I	30-41
9.	Wakalat Nama		42

Dated:- 04-04-2018.

Through

Shaukat
Appellant

Fazal Shah
**Fazal Shah Mohmand
Advocate, Peshawar**

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301 8804841
Email:- fazalshahmohmand@gmail.com

1

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 492 /2018

Diary No. 514

Dated 06-4-2018

Shaukat Ullah Khan Ex Director, Soil Conservation (Head Quarters),
Agriculture, Livestock and Co-Operative Department, Govt. of KPK
Peshawar.Appellant

V E R S U S

1. Govt. of KPK through, Secretary Agriculture, Livestock and Co-Operative Department, Civil Secretariat Peshawar.
2. Chief Secretary, Govt. of KPK Civil Secretariat Peshawar.
3. Director General, Soil Conservation, Govt. of KPK Peshawar.
4. Secretary, Establishment Department, Govt. of KPK Civil Secretariat Peshawar.Respondents

**APPEAL U/S 4 OF THE KPK SERVICE TRIBUNAL ACT 1974
AGAINST THE LETTER/ORDER DATED 16-01-2018 WHERE
BY DEPARTMENTAL APPEAL OF THE APPELLANT FILED
FOR EXEMPTION FROM SENIOR MANAGEMENT COURSE
HAS BEEN REGRETTEED.**

PRAYER:-

On acceptance of this appeal the impugned letter/order dated
Filed to-day 16-01-2018 may kindly be set aside and the appellant may
Registrar kindly be ordered to be granted proforma promotion to (BPS-
20), from due date as per rules/policy with all back benefits.

Respectfully Submitted:-

1. That the appellant is highly qualified, has qualified his M.Sc. (Hons) in Soil Science Specialization in the year 1992, was appointed as Soil Conservation Assistant (BPS-17) on 07-12-1982, was promoted to (BPS-18) on 19-03-2009 and was promoted to (BPS-19) on 08-09-2011 and since then he performed his duties with honesty and full devotion and to the entire satisfaction of his superior officers.
2. That the appellant was at the top of Seniority List of BPS-19 officers of 15-01-2018. (**Copy of Seniority List is enclosed as Annexure A**).
3. That vide Circular/letter dated 11-03-2016 all kinds of exemptions from mandatory training was withdrawn with exception to extended to already to professional and technical

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cadres and vide Notification dated 05-12-2017, the Senior Management Course was made mandatory for promotion against technical posts in (BPS-20). **(Copy of letter dated 11-03-2016 & Notification dated 05-12-2107 is enclosed as Annexure B).**

4. That the appellant is perfectly fit and eligible and coming up to the criteria specified by law, rules and promotion policy for promotion to (BPS-20) but despite this he is not promoted to (BPS-20) in consequent to Notification dated 05-12-2017.
5. That the appellant vide appeal dated 12-12-2107 made request for exemption from Senior Management Course for promotion to (BPS-20), which was regretted vide letter dated 16-01-2018. That in the meanwhile the appellant on attaining the age of superannuation got retired from service on 14-02-2018 **(Copy of Appeal & letter dated 16-01-2018 is enclosed as Annexure C).**
6. That the appellant filed Writ petition No 1064-P/2018 before the Peshawar High Court which was withdrawn with permission to approach proper forum vide order dated 21-03-2018. **(Copy of Writ Petition & Order dated 21-03-2018 is enclosed as Annexure D).**
7. That the impugned letter/order dated 16-01-2018 is against the law, facts and principles of justice on grounds inter alia as follows:-

GROUND S:-

- A. That the impugned order is illegal and void abinitio.
- B. That mandatory provisions of law and rules have badly been violated by the respondents and the appellant has not been treated according to law and rules.
- C. That the appellant was never selected for the Senior Management Course for no fault on his part and as such he could not be punished for the fault of others, as the mentioned condition of Course was made mandatory in December 2017 and he got retired from service on 14-02-2018, i.e about two months before his retirement and during this period he was never selected for the same.
- D. That even the appellant having being more than 58 years of age is exempted from training/Course as per letter dated 04-11-2011. **(Copy of letter dated 04-11-2011 is enclosed as Annexure E).**

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- E. That even the mentioned Notification is not applicable with retrospective effect and thus not applicable in case of the appellant who had become entitled for promotion before the same.
- F. That even keeping in view the length of his service after the Notification it was not possible to undergo the said course.
- G. That even after 05-12-2018 the respondents vide Notification dated 19-12-2017 have promoted Zulfiqar Ahmad to BPS-20 of the same department and that too without undergoing the mentioned Course and the appellant as such could not be deprived of his due rights on the same ground. It is also important to mention here that the appellant was promoted to BPS-19 on 08-09-2011 while the said Zulfiqar Ahmad was prompted to BPS-19 on 27-02-2013. **(Copy of Notification dated 19-12-2017 & seniority list dated 16-05-2017 is enclosed as Annexure F & G).**
- H. That one Deputy Director/District Officer BPS-18 namely Zahoor Ahmad has been promoted to BPS-19 as Director on proposed Service Rules while the petitioner is discriminated and is kept deprived of the benefits of the same rules. **(Copy of Notification dated 08-01-2018 is enclosed as Annexure H).**
- I. That the appellant is having the requisite length of service, PERs, besides other threshold required for promotion to BPS-20.
- J. That those having less service of the same department have been promoted to BPS-20 while the appellant is treated with different yard stick in violation of the Constitution and law of the land.
- K. That as per the instructions and promotion policy of the Provincial Govt. and Fundamental Rules, the appellant is entitled to Proforma Promotion.
- L. That even the like employees have been granted promotion by the Hon'ble Peshawar High Court. **(Copy of order and judgment is enclosed as Annexure I).**
- M. That the fundamental rights of the appellant guaranteed in the Constitution are badly violated and he is not treated

4

as per law and rules governing the matter, thus would suffer irreparable loss.

- N. That the appellant has about 36 years of service with unblemished service record.
- O. That the appellant seeks the permission of this honorable tribunal for further/additional grounds at the time of arguments.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for in the heading of the appeal.

Any other relief not specifically asked for and deemed appropriate in the circumstances of the case may also be granted in favor of the appellant.

Dated:- 04-04-2018.

Through

[Signature]
Appellant

[Signature]
**Fazal Shah Mohmand
Advocate, Peshawar**

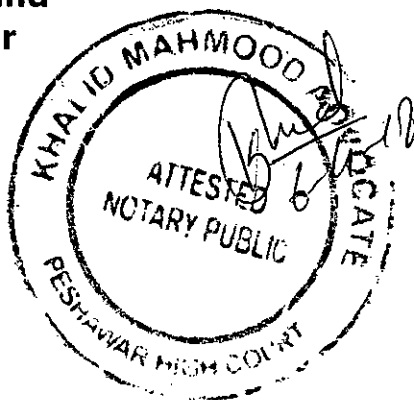
AFFIDAVIT

I, Shaukat Ullah Khan Ex Director, Soil Conservation (Head Quarters), Agriculture, Livestock and Co-Operative Department, Govt. of KPK Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

[Signature]
**Fazal Shah Mohmand
Advocate Peshawar**

[Signature]
DEPONENT



5

BEFORE THE SERVICE TRIBUNAL KPK PESHAWAR

Service Appeal No. _____/2018

Shaukat Ullah Khan.....Appellant

V E R S U S

Govt. and Others.....Respondents
Application for the condonation of delay if any.

Respectfully submitted:-

1. That the accompanying appeal is being filed today in which no date of hearing has been fixed so far.
2. That the grounds of appeal may be considered as integral part of this application.
3. That the applicant approached honorable High Court who allowed the applicant to approach proper forum and the appeal is as such within time.
4. That the law as well as the dictums of the superior Courts also favors decisions of cases on merit.

It is therefore prayed that on acceptance of this application, the delay if any in filing of appeal may kindly be condoned.

Shaukat
Appellant

Dated:- 04-04-2018.

Through

Fazal
Fazal Shah Mohmand
Advocate, Peshawar

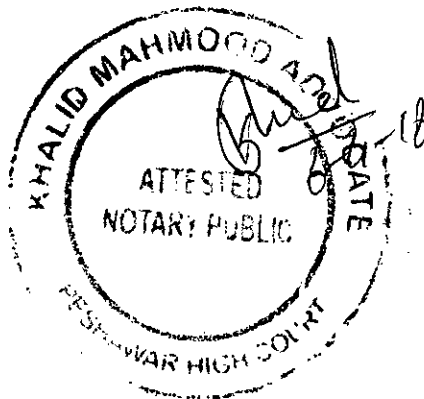
A F F I D A V I T

I, Shaukat Ullah Khan Ex Director, Soil Conservation (Head Quarters), Agriculture, Livestock and Co-Operative Department, Govt. of KPK Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by

Fazal
Fazal Shah Mohmand
Advocate Peshawar

Shaukat
DEPONENT



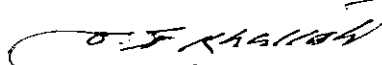
(6)

A

**DRAFT SENIORITY LIST OF BPS-19 OFFICERS OF SOIL CONSERVATION
OF AGRICULTURE DEPARTMENT AS IT STOOD ON 15/01/2018.**

Sr. No.	Name of Officer with academic Qualifications.	Date of Birth and Domicile	Date of 1 st Entry into Govt; Service			Regular appointment / Promotion to the Present post.			Present Appointment	Remarks.
			Date	BPS	Method of recruitment	Date	BPS	Method of recruitment		
1	2	3	4	5	6	7	8	9	10	11
1.	Mr. Shaukat-Ullah Khan, M.Sc, (Hons) Agri.	15-02-1958 L/Marwat	07-12-1982	17	Direct	08-09-2011	19	By Promotion	Peshawar	
2.	Mr. Zahoor Ahmad Khattak M.Sc, (Hons) Agri.	01-04-1959 Nowshera	09-12-1982	17	Direct	08-01-2018	19	By Promotion	Peshawar	

Certified that the seniority list are final, circulated and un-disputed


 Director General
 Soil Conservation
 Khyber Pakhtunkhwa
 Peshawar.

Attested




GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No. SOR-VI/E&AD/1-16/2016
Dated Peshawar, the March 11, 2016

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To

1. The Additional Chief Secretary, Planning & Development Department.
2. The Additional Chief Secretary (FATA), FATA Secretariat.
3. The Senior Member Board of Revenue.
4. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
5. All Divisional Commissioners in Khyber Pakhtunkhwa.
6. The Accountant General, Khyber Pakhtunkhwa.
7. All Heads of the Attached Departments in Khyber Pakhtunkhwa.
8. All Political Agents in FATA.
9. All Deputy Commissioners in Khyber Pakhtunkhwa.

Subject: PROMOTION POLICY - REVISION OF EXEMPTION POLICY FROM MANDATORY TRAINING

Dear Sir,

I am directed to refer to the subject noted above and to convey that the ~~competent authority has been pleased to withdraw all kinds of exemptions from mandatory~~ training on the basis of age w.e.f. 31.07.2016 viz (a) Mid Career Management Course (MCMC), (b) Senior Management Course (SMC), (c) National Management Course (NMC) and (d) National Defence Course (NDC) to ensure merit based promotion in the best public interest. However, the exemptions extended already to professional and technical cadres will continue as the Professionals / Technocrats undertake their specialized trainings separately.

2. The policy instructions regarding grant of exemption / waiver from mandatory training course as contained in this department's circulars No.SOR-VI/E&AD/1-16/2008/ Vol.VI dated 07.05.2009 and 30.06.2010 may be considered as withdrawn.

3. This may be brought into the notice of all concerned for information and compliance.

Yours faithfully,

DEPUTY SECRETARY (POLICIES)

S.O (E)
Diary No. 655
Date 7/3/2016
Agriculture Deptt.

Secretary Agriculture
Diary No. 2507
Dated 16/3/16

D/S (E)

P.T.O

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aly

ENDST. NO. & DATE EVEN

Copy forwarded to:

1. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. All heads of Authorities / Autonomous / Semi-Autonomous bodies in Khyber Pakhtunkhwa.
4. All Special Secretaries / Additional Secretaries / Deputy Secretaries/DD(I) / Section Officers in Establishment & Administration Department.
5. The Secretary, Khyber Pakhtunkhwa Public Service Commission.
6. The Deputy Secretary (CP-IV), Establishment Division, Cabinet Secretariat, Govt of Pakistan, Islamabad w/r to his Office Memorandum No.F10/1/2012-CP-II dated 30.12.2015.
7. PS to Chief Secretary Khyber Pakhtunkhwa.
8. PS to Secretary Establishment.

(SAIFU ^{SA} KHAN)
SECTION OFFICER (REG-VI)

11/3/16



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(REGULATION WING)

No. SOR-III (E&AD) 1-14/2014(B)
Dated Peshawar the December 12, 2017

(Handwritten marks and number 8)

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Agriculture Livestock & Cooperative Department

Subject: - MINUTES OF THE SSRC MEETING HELD ON 02-11-2017 UNDER THE CHAIRMANSHIP OF SECRETARY AGRICULTURE

Dear Sir,

I am directed to refer to your letter No.SOE(AD)II(2)429/2017 dated November 13, 2017 on the subject noted above and to say that Para 3 (b) of the Notification dated 05-12-2017 issued by the Establishment Department is quite clear to be followed while considering cases for promotion to BS-20 accordingly (copy enclosed).

Yours faithfully

Encl: As above

(Shafi-Ul-Ahmad)
SECTION OFFICER (R-III)
Phone No.9211793

Handwritten notes: doc SSA 12 page up, 13/12, 2/12/17

Diary No. 534
Date 13-12-17

Secretary Agriculture
Diary No. 15876
Dated 12-12-17

Attestal
Handwritten signature



GOVERNMENT OF THE KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT.
REGULATION WING

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247
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Dated: 05.12.2017

NOTIFICATION

No.SO(Policy)/E&AD/I-16/2017. The Competent Authority is pleased to direct that in the "Khyber Pakhtunkhwa Promotion Policy, 2009" circulated vide this department letter No.SOE-III(E&AD)I-3/2008 dated 28.1.2009, the following amendments shall be made, namely:-

AMENDMENTS

1. The following words (in italic form) shall be added after the word and dot "PER." appearing in the 3rd line of sub-para (a) of para IV:

"The requirement of earning one calendar year report will start from the date the officer joins back and the training period will also be included for completion of the requirement of such PER."

2. After sub-para (h) of para IV the following sub-para (i) shall be inserted:

~~"the mere fact that the seniority is sub-judiced will not debar the competent forum to make recommendation. However, in such cases following shall be applicable:~~

- (i) All promotion based on ~~sub-judice seniority will be conditional~~ i.e. subject to final outcome of Court cases.
- (ii) An officer who gets his seniority restored and becomes senior to already promoted officers in the cadre will be considered for promotion by the relevant board ~~from the date when his junior got promoted.~~
- (iii) In case, the ~~officer expires or retires~~ from service and subsequently, his seniority is restored his case will be considered for ~~proforma~~ promotion alongwith all financial benefits.
- (iv) Juniors promoted on sub-judice seniority list will be assigned seniority as per final Court Orders and will be reverted in case there is no vacancy".

3. Para II (b) shall be substituted as follow:

~~"(b) This condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts for promotion within their own line of specialization as envisaged in the existing promotion policy. However, for promotion against technical posts in BS-20, which require managerial and administrative skills, the SMC shall be mandatory."~~

Attended
RGP

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L. E. & A. D.
of sub-para (a) of para V shall be deleted and the next below clause (ii) and (iii) shall be re-numbered as (i) and (ii). In sub-para (b) of Para V the word three shall be substituted with the word "two".

Sd/-

Secretary to Government of Khyber Pakhtunkhwa
Establishment Department

ENDST: NO & EVEN DATE

Copy is forwarded to:-

1. Additional Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
2. Additional Chief Secretary (FATA), FATA Secretariat Peshawar.
3. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
5. The Principal Secretary to Governor, Khyber Pakhtunkhwa.
6. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
10. All Deputy Commissioners in Khyber Pakhtunkhwa and Political Agents in FATA.
11. The Registrar Peshawar High Court, Peshawar.
12. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
13. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
14. All Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & Administration Department.

05/12/17

(BEENISH IQBAL)
SECTION OFFICER (POLICY)

To,

The Secretary
Government of Khyber Pakhtunkhwa
Agriculture, Livestock and Cooperative Department
Peshawar.

10

HP

THROUGH PROPER CHANNEL

Subject: EXEMPTION FROM SENIOR MANAGEMENT COURSE.

Sir,

Kindly refer to the subject captioned above, it is submitted for you kind information in sympathetic consideration that I am retiring from Government service on 15-02-2018. My promotion is due to BS-20 but the Government of Khyber Pakhtunkhwa has made it mandatory that promotion to BS-20 must have a Senior Management Course.


As it is evident from the above facts that my age and remaining length of service do not permit to conduct the Senior Management Course at this stage.

It is very kindly requested that I may please be exempted from Senior Management Course at this stage.

Thanks.

Dated: - 12-12-2017.

Yours Obediently,


Shaukatullah Khan
Director Soil Conservation
Khyber Pakhtunkhwa
Peshawar.

- Copy in advance is forwarded to Honorable Secretary Agriculture, Livestock and Cooperative Department Khyber Pakhtunkhwa Peshawar, for favor of kind information and early necessary action, please.

AACTA
el
G



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

NO.SOE(AD)22-13/80
Dated Peshawar, the January 16, 2018

11

11

To

Mr. Shaukat Ullah,
Director, Soil Conservation,
Directorate General, Soil Conservation,
Khyber Pakhtunkhwa, Peshawar

SUBJECT:- EXEMPTION FROM SENIOR MANAGEMENT COURSE

Reference to your application dated 12.12.2017 on the subject and to inform state that your appeal was considered and regretted by the competent authority, as the post of Director General, Soil Conservation (BS-20) is managerial and administrative in nature. Under the Promotion Policy amended on 05.12.2017, for promotion against technical posts in BS-20, which require managerial and administrative skills, the SMC shall be mandatory.

SECTION OFFICER-ESTT.

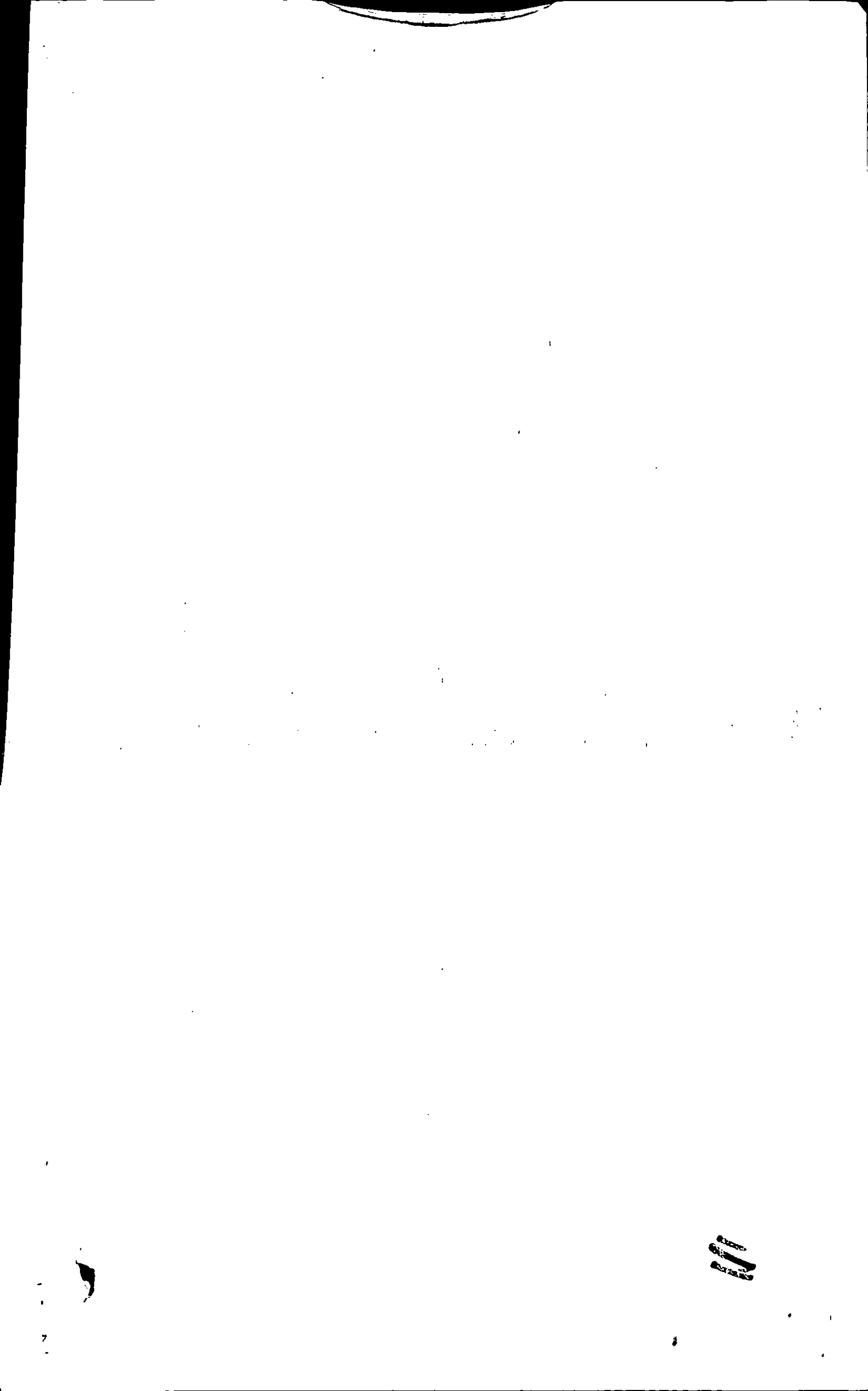
Endst. of even No. & Date.

Copy to:

1. P.S to Secretary Agriculture department.
2. PA to DS (Admn), Agriculture Department.

SECTION OFFICER-ESTT.

Attested
[Signature]



12

B



IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No 10647/2018

Shaukat Ullah Khan Ex Director Soil Conservation (Head Quarter),
Agriculture, Livestock & Cooperative Department, Govt. of KPK
Peshawar.

.....Petitioner

VERSUS

1. Govt. of KPK through Secretary, Agriculture, Livestock & Cooperative Department, Civil Secretariat Peshawar.
2. Chief Secretary, Govt. of KPK Civil Secretariat Peshawar.
3. Director General, Soil Conservation, Khyber Pakhtunkhwa Peshawar.
4. Secretary, Establishment Department, Govt. of KPK Civil Secretariat Peshawar.....Respondents

**WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF THE ISLAMIC REPUBLIC OF
PAKISTAN 1973.**

Prayer In Writ Petition:-

On acceptance of this writ petition, an appropriate writ may please be issued declaring that the petitioner is perfectly fit and eligible and coming up to the criteria specified in law and rules for promotion to BPS-20 declaring letter dated 16-01-2018 as illegal unlawful and without lawful authority, with direction to the respondents to grant proforma promotion to the petitioner to BPS-20, with all back benefits.

FILED TODAY
Deputy Registrar

22 FEB 2018

ATTESTED
EXAMINER
Peshawar High Court

27 MAR 2018

(2) (13)

Respectfully Submitted:-

1. That the petitioner is highly qualified has qualified his M.Sc. (Honors) in Soil Science Specialization in the year 1982, and was appointed as Soil Conservation Assistant (BPS-17) on 07-12-1982, was promoted to BPS-18 on 19-03-2009 and was promoted to BPS-19 on 08-09-2011.
2. That since appointment, the petitioner performed his duties with honesty and full devotion and to the entire satisfaction of his superior officers with no complaint during his entire service career of 36 years.
3. That the petitioner is at the top of the Seniority of BPS-19 officers of 15-01-2018 **(Copy of Seniority List is enclosed as Annexure A).**
4. That vide circular/letter dated 11-03-2016 all kinds of exemptions from mandatory training was withdrawn with exception to extended to already to professional and technical cadres and vide Notification dated 05-12-2017 the Senior Management Course was made mandatory for promotion against Technical posts in BPS-20. **(Copy of letter dated 11-03-2016 & Notification dated 05-12-2017 is enclosed as Annexure B).**

FILED TODAY
Deputy Registrar
22 FEB 2018

ATTESTED
EXAMINER
Peshawar High Court
27 MAR 2018

wp2459-2017-M-Alam-vs-BISEP-full

3

14

5. That the petitioner is perfectly and eligible for promotion to BPS-20 as per Section 9 of the Civil Servant Act 1973 besides promotion policy 2009 and coming up to the criteria specified in law and rules but despite this he is not promoted to BPS-20 in consequent to the mentioned Notification dated 05-12-2017 wherein Senior Management Course has been made mandatory for promotion against Technical posts in BPS-20.

6. That petitioner vide application dated 12-12-2017 requested respondents for exemption from Senior Management Course for promotion to BPS-20 which was regretted vide letter dated 16-01-2018. **(Copy of application dated 12-12-2017 & letter dated 16-01-2018 is enclosed as Annexure C).**

7. That thereafter the petitioner submitted appeal for processing his case for promotion from BPS-19 to BPS-20 on 01-02-2018 which is still pending, case of the petitioner is not processed for promotion to BS-20 and he got retired from service after attaining the age of superannuation on 14-02-2018. **(Copy of appeal dated 01-02-2018 is enclosed as Annexure D).**

8. That this action of the respondents of not promoting the petitioner as Director General (BPS-20), is against the

FILED TODAY
Deputy Registrar

22 FEB 2018

ATTES/ED
EXAMINER
Peshawa Court

27 MAR 2018

(4) (15)

law, facts and principles of justice on grounds inter alia
as follows:

GROUND:

- A.** That the omissions and commissions of the respondents are illegal, unconstitutional, and unlawful, without lawful authority and of no legal effect, therefore need the interference of this honorable Court.
- B.** That the petitioner has served for about 36 years with spotless service career, is most senior, besides having excellent ACRs during this period and as such is perfectly fit and eligible to be promoted to BPS-20.
- C.** That the petitioner could not be punished for the fault of others, as the condition of mentioned course was made mandatory in December 2017 and he got retired from service on 14-02-2018, i.e about two months before his retirement and during the same period he was never selected for the same.
- D.** That even keeping in view the remaining length of service and age of the petitioner, it is not possible to undergo the said course being at the verge of retirement besides short span of remaining service.

FILED TODAY
Deputy Registrar
22 FEB 2018

ATTESTED
EXAMINER
Peshawar District Court
27 MAR 2018

wp2459-2017-M-Alam-vs-BISEP-full

(16)

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E. That even otherwise the condition of Senior Management Course is not applicable in case of the petitioner as he became entitled to promotion before 05-12-2017 and as such he could not be deprived from promotion on the basis of mentioned course.

F. That even after 05-12-2017 the respondents vide Notification dated 19-12-2017 have promoted Zulfiqar Ahmad to BPS-20 of the same department and that too without undergoing the mentioned course and the petitioner too as such could not be deprived of his due rights on the same ground. **It is also important to mention here that the petitioner was promoted to BPS-19 on 08-09-2011 while the said Zulfiqar Ahmad was promoted to BPS-19 on 27-02-2013. (Copy of Notification dated 19-12-2017 and Seniority list dated 16-05-2017 is enclosed as Annexure E & F).**

G. That one Deputy Director/District Officer (BPS-18) namely Zahoor Ahmad has been promoted to BPS-19 as Director on proposed service rules while the petitioner is discriminated and is kept deprived of the benefits of the same rules. **(Copy of Notification dated 08-01-2018 is enclosed as Annexure G).**

H. That those having less service of the same department have been promoted to BPS-20 while the petitioner is treated differently in violation of the constitution and law of the land.

FILED TODAY
Deputy Registrar
22 FEB 2018

ATTES
EXAMINER
Peshawar
27 MAR 2018

(8) (17)

I. That even as per the instructions and promotion policy of the provincial Govt. and Fundamental Rules, the petitioner is entitled to proforma promotion.

J. That the fundamental rights of the petitioner guaranteed in the Constitution are badly violated and he is not treated as per law and rules governing the matter, thus would suffer irreparable loss.

K. That the petitioner seeks the permission of this honorable Court for further/additional grounds at the time of arguments.

It is therefore prayed that Writ petition, of the petitioner may kindly be accepted, as prayed for.

Any other relief not specifically asked for and deemed appropriate in the circumstances of the case, may also be granted in favor of the petitioner.

INTERIM RELIEF

By way of interim relief respondents may kindly be directed to promote the petitioner to BPS-20, till the final disposal of the instant Writ Petition.

Petitioner

Dated:-16-02-2018

Through

Fazal Shah Mohmand

Advocate Peshawar

CERTIFIED TO BE TRUE COPY

Exempted from
Peshawar High Court, Peshawar
Authorised under Article 175 of
The Constitution of Pakistan 1973

27 MAR 2018

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LIST OF BOOKS

1. Constitution 1973.
2. Other books as per need

Certificate

Certified that as per instructions of my clients, no Writ petition on the same subject and between the same parties has been filed previously or concurrently before this honorable Court.


ADVOCATE


CERTIFIED TO BE TRUE COPY

Exempted from the provisions of the
Peshawar High Court, Peshawar
Authorised Under Article 87 of
The Qanun-e-Shahadat Order 1984

27 MAR 2018

FILED TODAY
Deputy Registrar

22 FEB 2018

8 19

IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No 10647/2018

Shaukat Ullah Khan.....Petitioner

V E R S U S

Govt. of KPK and Others.....Respondents

A F F I D A V I T

I, Shaukat Ullah Khan Ex Director Soil Conservation (Head Quarter), Agriculture, Livestock & Cooperative Department, Govt. of KPK Peshawar, do hereby solemnly affirm and declare on oath that the contents of this Writ Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable court.

Identified by

Fazal Shah Mohmand
Fazal Shah Mohmand
Advocate Peshawar

Shaukat Ullah Khan
DEPONENT
NIC: 11201-0344345-3

No:.....	16284.....
Certified that the above was verified on solemnly affirmation before me, in office, this.....	
day of.....	Feb..... 18.....
at.....	Dist. Dir. Peshawar.....
who was identified by.....	<i>Fazal Shah Mohmand</i>
Who is personally known to me:	
<i>Shaukat Ullah Khan</i> 17/02/2018	

22 FEB 2018
Deputy Registrar

CERTIFIED TO BE TRUE COPY
Peshawar High Court, Peshawar
Authorized Under Article 87 of
The Constitution Order 1984
27 MAR 2018

IN THE PESHAWAR HIGH COURT PESHAWAR

~~20~~ 20

Writ Petition No 10647 /2018

Shaukat Ullah Khan.....**Petitioner**

V E R S U S

Govt. of KPK and Others.....**Respondents**

ADDRESSES OF THE PARTIES

PETITIONER:-

Shaukat Ullah Khan Ex Director Soil Conservation (Head Quarter),
Agriculture, Livestock & Cooperative Department, Govt. of KPK
Peshawar

RESPONDENTS:-

1. Govt. of KPK through Secretary, Agriculture, Livestock & Cooperative Department, Civil Secretariat Peshawar.
2. Chief Secretary, Govt. of KPK Civil Secretariat Peshawar.
3. Director General, Soil Conservation, Khyber Pakhtunkhwa Peshawar.
4. Secretary, Establishment Department, Govt. of KPK Civil Secretariat Peshawar

Petitioner

Dated:-16-02-2018

Through

Fazal Shah Mohmand

Advocate Peshawar

FILED TODAY
Deputy Registrar

22 FEB 2018

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court Peshawar
Authorised by Section 67 of
The Courts Act, 1984

27 MAR 2018

21

PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET



Date of Order or Proceedings	3
1	2
21.03.2018	<p><u>W.P No.1064-P-2018 with I.R.</u></p> <p>Present: <i>Mr. Fazal Shah Mohmand, Advocate for petitioner.</i></p> <p>****</p> <p>ROOH-UL-AMIN KHAN, J:- Requests for withdrawal of instant petition with permission to approach proper forum. Request is acceded to. The instant writ petition is dismissed as withdrawn, however, petitioner is at liberty to avail the proper remedy before the appropriate forum.</p> <p><u>Announced.</u> 21.03.2018.</p>

Handwritten notes on the left side of the page:

Rooh-ul-Amin Khan J

Muhammad Ibrahim Khan J

Handwritten signatures and titles on the right side of the page:

[Signature]
JUDGE

[Signature]
JUDGE

CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Under Article 2.7 of
The Qanun-e-Shahadat Order 1984

27 MAR 2018

NO. 15584

Date of Presentation of Application 24/3/18

No of Pages 09-P

(DB) Hon'ble Mr. Justice Rooh-ul-Amin Khan & Hon'ble Mr. Justice Muhammad Ibrahim Khan

Urgent Fee

Total Rs. 36/-

Date of Preparation of Copy 27/3/18

Date of Delivery of Copy 27/3/18

Received By Adalat

Ijaz

Promotion

58 year aged employees exempted from **E**
from training / Course.

(22)

The Secretary to Government of Khyber Pakhtunkhwa,
Establishment Department.

Subject:- EXEMPTION FROM NIPA TRAINING.

Dear Sir,

Your attention is invited to the Letter No. SOE-III/(E&AD)3-8/2011/SIMC dated 04-11-2011, (Copy attached) for needy reference, in which policy on vogue for exemption from mandatory training is explained.

2. In para (2) of the attached letter it has been given that mandatory period of serving in a training institution was valid upto 27-12-2005, where as in para (3) of the attached letter, it has been mentioned that Mr. Bashah Gul Wazir served in Provincial Service Academy before 27-12-2005 and therefore, was exempted for attending mandatory training course.

3. In this connection it is submitted that I served in Academy before 27-12-2005. My service tenure in Provincial Services Academy is from 03-03-2000 to 16-09-2002. In my opinion the criteria given in the attached letter for exemption from mandatory training do fit in my case also.

4. It is therefore once again requested to look in my case with legal eyes and order my exemption from the mandatory training of NIPA.

Yours faithfully,

(MUSA WAZIR)
ADDITIONAL SECRETARY
SPORTS, TOURISM, ARCHAEOLOGY,
MUSEUMS & YOUTH AFFAIRS
DEPARTMENT.

CR
e/s

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
No. SOE-III (E&AD) 3-8 (B)/2011/S/MC
Dated Peshawar the 04th November, 2011

The Additional Secretary,
Sports, Tourism, Archaeology, Museums &
Youth Affairs Department,
Government of Khyber Pakhtunkhwa.

SUBJECT: EXEMPTION FROM NIPA TRAINING.

Dear Sir,
I am directed to refer to your application dated 10-10-2011 and this

Department's letter No. SOE-III(E&AD)3-8(B)/2010/S/MC, dated 02nd November, 2010 (copy enclosed) on the above cited subject and to state that the policy in-vogue of exemption from under going mandatory training course is reproduced as under:-

The officers who have been granted exemption from mandatory training having attained the age of 56 years (now 58 years) or completed mandatory period of serving in a Training Institution upto 27-12-2005, may be awarded marks on notional basis for the training factor (for which he/she was exempted) in proportion to the marks obtained by them in the PEAs.

The above policy indicates that exemption from mandatory training after completing mandatory period of serving in a Training Institution was valid upto 27-12-2005. However, exemption from mandatory training is presently allowed on a having the age of 58 years. As far as the case of Mr. Badshah Gul Wazir is concerned, he served in Provincial Services Academy before 27-12-2005 and therefore, was exempted for attending mandatory training course.

In view of the above, your request for exemption from Senior Management Course is regretted, being not covered under the policy. Further, you are requested to complete PEAs for the last six years at the earliest.

Yours faithfully,

(Signature)

Section Officer (E-III)

22
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operative
8.03.09

(Signature)

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Additional Secretary,
Sports, Tourism, Archaeology, Museum
Youth Affairs Department.

(Musa Wazir)

Your faithfully,

Thanks,

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12/1/10

Handwritten notes and signatures

In view of the foregoing circumstances, it is once again requested that I may very kindly be exempted from the NIPA course in connection with my promotion from BPS-19 to BPS-20 on the analogy as that of Mr. Badshah Gul Wazir.

The undersigned has applied for exemption from attendance of that Mr. Badshah Gul Wazir who had been posted as Deputy Director, PSA, while he was in BPS-18. It is worth to mention that he was promoted from BPS-16 to BPS-19 and afterwards to BPS-20 in the year 2005. Since, I have also served as Assistant Director in PSA for three years, therefore, I also request to be declared as exempted from the required training, which is prerequisite for my promotion from BPS-19 to BPS-20.

Senior Management/National Management Training Course on

Kindly refer to your Department letter No. SOE-III(ESAD) 63/2010/SMC dated 2-11-2010 on the subject noted above and state that I had more than twelve years of service when I went on deputation at PSA. The promotion to BPS-18 usually needed round about 30 years of service before 2005 in provincial service (EB). However, according to Establishment and Administration Department letter/notification No. SOR.VI(ESAD)1-16/2004, dated 18.4.2005 all the officers who had attained the age of fifty six (now fifty eight) years at all those who had completed the mandatory period for serving in training institution before 4th January 2005 shall remain exempted. It is submitted that I have applied for exemption on the plea that my service on deputation at training institute is in the period before the 4th January 2005.

Dear Sir,

EXEMPTION FROM NIPA TRAINING

Handwritten number 24 in a circle

Handwritten numbers 7776 and 3

The Secretary to Govt. of Khyber Pakhtunkhwa,
Establishment & Administration Department,
(Establishment Wing), Civil Secretariat,
Peshawar.

Handwritten date 11/1/10

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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(ESTABLISHMENT WING)

No. SOE-III (E&AD) 3-8 (S)/2010/SMC
Dated Peshawar the 02nd November, 2010

The Additional Commissioner,
Kohat Division, Kohat.

SUBJECT:- EXEMPTION FROM NIPA TRAINING.

Dear Sir,

I am directed to refer to your letter No. 458-59/AC/KI, dated 11-08-2010 on the above cited subject and to state that 2 years service in BS-19 in NIPA, Staff College, NDC, Civil Service Academy is required for exemption from mandatory trainings for promotion to BS-20. The Service in BS-17 as Assistant Director in PSA, therefore, does not entitled you for exemption from the mandatory training course.

Yours faithfully,

(Irum Naz)
o/c (Irum Naz)
Section Officer (II-III)
22-11-10

CR
EYD

(Signature)



**GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT**

E

Dated Peshawar, the December 19, 2017

26

NOTIFICATION

No.SO(E-I)E&AD/9-118/2017 The competent authority on the recommendations of the Provincial Selection Board is pleased to promote Mr. Zulfiqar Ahmad, District Director, Agriculture (BS-19), Abbottabad to (BS-20) on regular basis, with immediate effect.

2. The officer on promotion shall remain on probation for a period of one year or till his retirement, whichever is earlier, in terms of Section 6(2) of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule-15(1) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

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

S.#	NAME OF OFFICERS	FROM	TO
1.	Mr. Zulfiqar Ahmad (BS-20)	District Director, Agriculture, Abbottabad.	Principal, Agriculture Training Institute, Peshawar, vice Sr. No. 2.
2.	Mr. Muhammaad Naseem (BS-20)	Principal, Agriculture Training Institute, Peshawar.	Director General, Agriculture Extension, Khyber Pakhtunkhwa, Peshawar, against the vacant post.

**CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA**

Endst. No. and date even

Copy forwarded to the:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Secretary Government of Khyber Pakhtunkhwa, Agriculture, Livestock & Cooperative Department.
4. Commissioners, Peshawar & Hazara Divisions.
5. Accountant General, Khyber Pakhtunkhwa/DAO, Abbottabad.
6. Deputy Commissioner, Peshawar & Abbottabad.
7. Director General, Agriculture Extension, Khyber Pakhtunkhwa.
8. Director, Information, Khyber Pakhtunkhwa.
9. PS to Chief Secretary, Khyber Pakhtunkhwa.
10. PS to Secretary Establishment E&AD.
11. Officers concerned.
12. Manager, Govt. Printing Press Peshawar.

**(ISHTIAQ AHMAD)
SECTION OFFICER (ESTT. I)**

Handwritten signatures and notes: 16221, 26-12-17, 27/12, Affected, etc.



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the May 16, 2017

NOTIFICATION

NO. SOE(AD)III(2)391/2017.

In pursuance of Section-8 (1) of Khyber Pakhtunkhwa Civil Servant Act, 1973 read with Rule-17 of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, final seniority list of officers in BPS-19 of Agriculture Department (Extension Wing) Khyber Pakhtunkhwa, as stood on 01.04.2017, is notified/circulated:-

S. No.	Name of officer with academic qualifications	Date of Birth and domicile	Date of 1st entry in to Govt. service	Regular appointment/ promotion to present post.			Present appointment	Remarks
				Date	BS	Method of Recruitment		
1	Zulfiqar Ahmad M.Sc. Hons, Agri:	5.5.1958 Mansehra	23.8.1983	27.2.2013	19	By Promotion	District Director Agriculture (DDA), Abbottabad	
2	Faseehur Rehman, M.Sc. Hons: Agri:	2.5.1958 Peshawar	23.8.1983	27.2.2013	19	By Promotion	DDA, Buner	
3	Fazli Mabood, M.Sc. Hons: Agri:	25.4.1960 Nowshera	23.8.1983	24.6.2013	19	By Promotion	Director Field Operaton HQ	
4	Hassan Taj, M.Sc. (Hons) Agri:	1.4.1961 Swabi	23.8.1983	24.6.2013	19	By Promotion	DDA, Chitral	
5	Muzaffar Khan, M.S (Agriculture).	14.7.1959 Nowshera	23.8.1983	24.6.2013	19	By Promotion	DDA, Peshawar	
6	Sadique Muhammad, M.Sc (Hons) Agri.	14.5.1957 Karak	23.8.1983	24.6.2013	19	By Promotion	DDA Karak	
7	Fazli Khuda, M.Sc (Hons) Agri.	8.4.1958 Nowshera	23.8.1983	24.6.2013	19	By Promotion	Director Marketing, HQ	
8.	Muhammad Israr, M.Sc (Hons) Agri.	6.2.1960 Nowshera	23.8.1983	24.6.2013	19	By Promotion	DDA, Swabi	
9	Liaqat Ali, M.Sc (Hons) Agri.	8.8.1958 Peshawar	23.8.1983	24.6.2013	19	By Promotion	DDA, Charsadda	
10	Antiaz Ahmad, M.Sc (Hons) Agri.	1.3.1958 Charsadda.	23.08.1983	24.5.2016	19	By Promotion	Director Agriculture (FATA) Peshawar	

Attested
[Signature]



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11	Fazli Maula, M.Sc (Hons) Agri.	1.6.1958 Swat	06.01.1985	24.5.2016	19	By promotion	DDA, Swat
12	Obaidullah, M.Sc (Hons) Agri.	20.4.1961 Swat	26.12.1984	24.5.2016	19	By promotion	DDA, Malakand
13	Kamal Din, M.Sc (Hons) Agri.	14.5.1961 Mardan	26.12.1984	24.5.2016	19	By Promotion	Vice Principal ATI, Peshawar
14	Haq Nawaz M.Sc (Hons) Agri.	4.4.1962 Mansehra	26.12.1984	24.5.2016	19	By Promotion	On LPR vide Notificaiton NO.SOE(AD)21- 217/85/EW dated 7.9.2016
15	Muhammad Khan, M.Sc (Hons) Agri.	16.4.1963 Mardan	26.12.1984	24.5.2016	19	By promotion	Director Horticulture HQ
16	REhmat-ud-Din, M.Sc (Hons) Agri.	10.11.1959 Bajour Agency	26.12.1984	24.5.2016	19	By Promotion	DDA, Dir Upper
17	Sultan Hussain Shah M.Sc(Hons) Agri	3.11.1957 Nowshera	20.9.1984	24.5.2016	19	By Promotion	DDA, Nowshera
18	Nisar Ahmad B.Sc(Hons)Agriculture	01.04.1961 Haripur	27.9.1984	24.5.2016	19	By Promotion	DDA, Mansehra
19	Javed Maqbool Butt B.Sc(Hons) Agri	4.1.1962 Peshawar	22.01.1986	24.5.2016	19	By Promotion	DDA, Mardan
20	S.Ghulam Murtaza Shah M.Sc (Hons) Agri.	9.3.1961 Abbottabad	25.01.1986	24.5.2016	19	By Promotion	CPO, Civil Sectt: Peshawar
21	Wazir Ahmad, M.Sc (Hons) Agri.	2.2.1961 Mansehra	01.02.1986	11.07.2016	19	By Promotion	DDA, Torghar
22	Dr. Fayaz-ud-Din, Ph. D.	8.4.1960 Charsadda	05.02.1986	24.5.2016	19	By Promotion	Director, MFSC HQ
23	Ahmad Khan, M.Sc (Hons) Agri.	15.6.1960 Peshawar	06.02.1986	24.5.2016	19	By Promotion	Director Seed HQ Office
24	Naveed Iqbal, M.Sc (Hons) Agri.	24.3.1961 Mansehra	06.02.1986	24.5.2016	19	By Promotion	DDA, Haripur
25	Zia Mohiyud Din, M.Sc (Hons) Agri.	15.11.1962 Peshawar	19.10.1986	24.5.2016	19	By Promotion	Director Plant Protion HQ
26	Fazli Rehman, M.Sc (Hons) Agri.	10.2.1962 Mardan	20.10.1986	24.5.2016	19	By Promotion	Director Training ATI, Peshawar
27	Zahirullah Khan, M.Sc (Hons) Agri.	1.4.1962 Karak	20.10.1986	24.5.2016	19	By Promotion	DDA, Kohat.
28	Hizbullah, M.Sc (Hons) Agri.	1.10.62 DIKhan	22.10.86	11.7.2016	19	By Promotion	DDA, Lakki Marwat
29	Muhammad Tahir, M.Sc (Hons) Agri.	15.5.1964 Abbottabad	14.5.87	11.7.2016	19	By promotion	DDA, Kohistan

It is certified that the above list is final and undisputed.

Attested
e/c

Sd/-
Chief Secretary

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Endst.No. and Date even

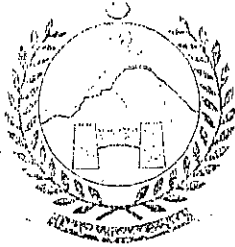
Copy forwarded to the:

1. DG, Agriculture Extension, Khyber Pakhtunkhwa Peshawar.
2. PS to Chief SEcrtry, Khyber Pakhtunkhwa, Peshawar.
3. PS to Secretary Establishment, Khyber Pakhtunkhwa.
4. PS to Secretary Agriculture Department.
5. Officers Concerned.
6. Manager, Government Printing Press, Peshawar.
7. Master file.

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SECTION OFFICER (ESTT)

Attested
[Handwritten initials]

18/1/17
PESHAWAR



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the January 8, 2018

29/A

NOTIFICATION

NO. SOE (AD) V-7/2017/SC.- Upon the recommendations of the Provincial Selection Board (PSB), the competent authority is pleased to promote Mr. Zahoor Ahmad, from Deputy Director/District Officer (BS-18) to the post of Director (BS-19) in the Soil Conservation Wing, Agriculture Department on regular basis with immediate effect.

2. He will be on probation for a period of one year in terms of Rule-15 of APT Rule, 1989. His posting order will follow subsequently.

SECRETARY TO
GOVT. OF KHYBER PAKHTUNKHWA
AGRICULTURE, L/STOCK AND COOP: DEPTT:

Indst. of even No. & Date.

- Copy forwarded for information and necessary action to the:-
1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
 2. DG. Soil Conservation, Khyber Pakhtunkhwa, Peshawar with request to furnish adjustment proposal in respect of the above named officer for approval.
 3. PSO to Chief Minister, Khyber Pakhtunkhwa.
 4. PSO to Chief Secretary, Khyber Pakhtunkhwa.
 5. Web Administrator, Agriculture Department with the request to upload the instant notification on the official website of the department.
 6. PS to Minister for Agriculture, Khyber Pakhtunkhwa.
 7. PS to Secretary Agriculture, Khyber Pakhtunkhwa.
 8. PA to DS (Admn), Agriculture Department.
 9. Officer concerned.
 10. Personal file.

(DR. MIR AHMAD KHAN)
SECTION OFFICER-ESTT:

Attested
eul

IN THE PESHAWAR HIGH COURT PESHAWAR



W.P No. 1819 /2017

Engr. Syed Muhammad Mujahid Saeed Chief Engineer North
(OPS) Irrigation Department Warsak Road Peshawar.

.....Petitioner

VERSUS

1. Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department, Peshawar.
3. The Secretary Government of Khyber Pakhtunkhwa, Law, Parliamentary Affair & Human Rights Department.
4. The Provincial Selection Board through its Chairman, The Chief Secretary Government of Khyber Pakhtunkhwa.
5. Secretary to Government of Khyber Pakhtunkhwa Irrigation Department, Peshawar.

.....Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN, 1973

Respectively Sheweth:

1. That the petitioner was initially appointed as an Assistant Engineer (BPS-17) in Irrigation Department on 04/11/1985 after qualifying the competitive examination conducted by Provincial Public Service Commission. After completing the qualifying service and other requirement's he was promoted to Executive Engineer (BPS-18) on 18/7/1994 and subsequently to Superintending Engineer (BPS-19) on 29/3/2008.

FILED TODAY
Deputy Registrar
22 APR 2017

WP1819-2017-Eng-S-Mujahid-VS-Govt-Full

ATTESTED
EXAMINED
Peshawar High Court
27 MAR 2018

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2. That two posts of Chief Engineers i.e. Chief Engineer South & Chief Engineer North became vacant on retirement of the two incumbents namely Engineer Kamal Jehangir Khan (BPS-20) and Engineer Riaz Ahmed Khan (BPS-20) respectively on 28.09.2015 and 12.11.2015. (Copies of the retirement Notifications are annexure "A" & "B" respectively).
3. That consequently the petitioner was appointed as Chief Engineer (North) Irrigation Department Peshawar in his Own Pay Scale on 20.04.2016 and is serving as such till date. (Copy of the Order dated 20.04.2016 is annexure "C").
4. That it is worth mentioning that the petitioner was posted as Director General Small Dams in his Own Pay & Scale on 05.08.2015 and served as such till his present posting. (Copy of the Notification dated 05.08.2015 is annexure "D").
5. That on 13.02.2015 the respondent No. 2 issued a notification wherein it was directed for making necessary amendments in the service rules by declaring Senior Management Course (SMC) mandatory for all those posts in BPS-20 which require managerial and administrative skills. (Copy of the Notification dated 13.02.2015 is annexure "E").
6. That his case for promotion from Superintending Engineer (BPS-19) to Chief Engineer (BPS-20) was presented before the Provincial Selection Board in its meeting held on January 30, 2017 but his promotion was not considered on the only ground that he has not qualified "Senior Management Course" (SMC). (Copies of the Working Papers & Minutes of the Meeting are annexure "F" & "G" respectively).
7. That it is worth mentioning that a note for respondent No. 7 was written by respondent No. 4, being the Administrative Head of the petitioner's department wherein in view of the Service Recruitment Rules of Irrigation Department the petitioner was

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Deputy Registrar

22 APR 2017

ATTESTED
EXAMINE
Peshawar

2018

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proposed to be exempted from (SMC). (Copy of the Note is annexure "H").

- 8. That consequently promotion against one vacant post of Chief Engineer (BPS-20) was notified in respect of Engineer Syed Zahid Abbas and the other post was left vacant. (Copy of the promotion Notification dated 27.03.2017 is annexure "I").
- 9. That the petitioner filed a representation to competent authority against the denial of promotion. (Copy of the same is annexure "J").
- 10. That feeling aggrieved the petitioner approaches this Honorable Court inter alia on the following grounds:

GROUND

A. That the decision of the Provincial Selection Board turning down the promotion case of the petitioner is against the law and the facts as well as the Promotion Policy of the Provincial Government. (Copy of the Promotion Policy as annexure "K").

B. That according to the Service Rules circulated vide Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Department Peshawar Notification No. SO (E)/Irr/23-5/73, dated 17-02-2011, promotion from Superintending Engineer (BPS-19) to Chief Engineer/Director General (BPS-20) is made **"by selection, on merit from amongst the Senior Superintending Engineers and Directors with at least seventeen years' service in BPS-17 and above, possessing Degree in B.E/B.Sc Engineering (Civil) from a recognized**

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22 APR 2017

ATTESTED

EXAMINER
Peshawar High Court

27 MAR 2018

University" wherein there is no requirement of qualifying SMC. It is worth mentioning that the qualifying service for promotion from Superintending Engineer (BPS-19) to Chief Engineer (BPS-20) is 17 years of continuous service whereas the petitioner has completed 32 years of continuous service which is twice the length of qualifying service. (Copy of the Service Rules of Irrigation Department is annexure "L").

(A)

(33)

C. That according to the Promotion Policy undertaking of Senior Management Course, is also not required for promotion to the position of Chief Engineer (BPS-20) being purely technical post which is dealt under the promotion policy narrating, **“this condition will not be applicable to civil servants in specialized cadres such as Doctors, Teachers, Professors, Research Scientists and incumbents of purely technical posts, for promotion within their own line of specialization as envisaged in the existing Promotion Policy”.**

D. That during the course of time, on the directions of Establishment department, a Note was moved to the Chief Secretary KP for approval requesting therein that condition of qualifying SMC for promotion to the post of Chief Engineer/ Director General may be exempted as it is not covered by the service rules mentioned above. An advice of the law department, on the matter, was thus asked for by the Chief Secretary KP. The Law Department as per Para 3 of letter No. SO(OP-I/LD/5-6/2012-VOL-III/3538-39 dated February 02, 2017 communicated to the Secretary Establishment department that **“The said Service Rules are framed under Rule-3(2) of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 which were framed under Section-26 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, whereas, Promotion Policy is instructions of Government, which cannot override the existing service Rules which is a valid piece of subordinate legislation having a perfect legal trail. Hence in nutshell, SMC training is not necessary for Engineering Cadre of Irrigation Department, as enshrined in the aforesaid policy of the government”.** (Copy of the advice of law department is annexure

LED TODAY
 Registrar
 22 APR 2017

ATTESTED
 EXAMINE
 High Court
 27 APR 2018
 “M”

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E. That even the competent authority on 07.03.2017 addressed the respondent No. 1 for withdrawal of the requirement of (SMC) for promotion of officers to BPS-20 but the same has yet to be acted upon. (Copy of the letter from Chief Minister Secretariat is annexure "N").

F. That in a similar case, the Service Rules of Public Health Engineering Department, qualifying SMC is not mandatory for promotion from the rank of Superintending Engineer to (BS-19) to Chief Engineer (BS-20) therefore, recently Superintending Engineer Mr. Bahramand Khan was promoted to the rank of Chief Engineer (BS-20) and notified vide letter No. SO (E-I) E&AD/9-363/2016 dated November 2, 2016 without undergoing Senior Management Coarse (SMC) as not required (Copy of the service rules of PHED & the promotion Order are annexure "O" & "P" respectively), hence the petitioner is being discriminated against.

G. That the petitioner even opted to avail an opportunity to undertake the Senior Management Course but has not been offered the same. (Copy of the request made through proper channel is annexure "Q").

H. That the requirement of undertaking the (SMC) is not applicable to the petitioner not only according to prevailing rules and policy but also in view of the judgments of August Supreme Court of Pakistan rendered in the cases reported as 2013 SCMR 1752 & 2015 SCMR 456 & recently in a Suo Moto case No. 16 of 2016 wherein it was held that the officials from cadre posts could not be appointed as Administrative Heads of the department, hence the decision of the PSB is liable to be set aside. (Copy of the Order dated 04.10.2014 is annexure "R").

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Deputy Registrar

22 APR 2017

ATTEST

Postmaster

27 APR 2017

That the petitioner has an unblemished service record of 32 long years and is legitimately expecting promotion to BPS-20.

J. That by denying the petitioner of his due right to be promoted, the authorities have put the petitioner and his family in mental torture

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and disgrace in the society due to his no fault, which is a source of humiliation and discouragement.

K. That the act of authorities involved is illegal, unjustified, prejudiced, biased, malafide, discriminatory, against fundamental human rights, unlawful, without lawful authority, tent amounting to deprivation of justice to a competent servant and violation of the basic principles of promotion.

L. That the petitioner seeks the permission of this Honorable Court to rely on additional grounds at the time of hearing of this petition.

It is therefore, humbly prayed that on acceptance of this writ petition an appropriate writ may please be issued directing Provincial Selection Board to consider promotion case of the petitioner w.e.f 23/03/2016 the day the post of Chief Engineer became vacant in light of the Service Rules of Irrigation Department and Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 wherein Senior Management Course training is not necessary for Promotion from Superintending Engineer (BS-19) to Chief Engineer (BS-20) Engineering Cadre of Irrigation Department.

Any other remedy deemed proper but not specifically prayed for in this writ petition, in the circumstances of the case may be allowed as well.

FILED TODAY

Deputy Registrar

22 APR 2017

Through

Petitioner

Naveed Akhtar

Naveed Akhtar

Advocate Supreme Court

Date: 20/4/2017

CERTIFIED TO BE TRUE COPY

Peshawar Bench, Peshawar
Authorized Under Article 8.7 of
The Qanun-e-Mahadal Order 1984

27 MAR 2018

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CERTIFICATE:

Certified on instructions of my client that petitioner has not previously moved this Honorable Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 regarding the instant matter.

M. A. Siddiqui
ADVOCATE

LIST OF BOOKS:

1. Constitution of Islamic Republic of Pakistan, 1973
2. Any other law books according to need.

M. A. Siddiqui
ADVOCATE

FILED TODAY
Deputy Registrar
22 APR 2017

CERTIFIED TO BE TRUE COPY
Ex. No. *[Signature]*
Peshawar High Court, Peshawar
Authorized under Article 87 of
The Governance of Punjab Order 1998
27 MAR 2018

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IN THE HON'BLE PESHAWAR HIGH COURT, PESHAWAR

W.P. No. 1819 /2017

Engineer Syed Muhammad Mujahid Saeed, Chief
Engineer (North) (OPS) Irrigation Department,
Peshawar.....**Petitioner**


VERSUS


Government of Khyber Pakhtukhwa through Chief
Secretary Civil Secretariat Peshawar and others
.....**Respondents**

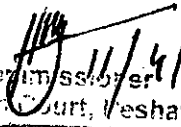
AFFIDAVIT

I, Engineer Syed Muhammad Mujahid Saeed S/o Syed
Wajid Hussain, Chief Engineer (North) (OPS) Irrigation
Department, Peshawar do hereby solemnly affirm and
declare on oath that the contents of the
accompanying **Writ petition** are true and correct to the
best of my knowledge and belief and nothing has been
concealed from this Hon'ble Court.


Identified by:-


Naveed Akhtar
Advocate
Supreme Court of Pakistan


DEPONENT
CNIC No. **173011530861-7**

21721
Certified that the above was verified on solemnly
affirmation before me on this 11th
day of APR 17 Eng. Syed M. Mujahid
at Peshawar
who was identified by Naveed Akhtar
Who is personally known to me

Notary Public
Peshawar High Court, Peshawar

CERTIFIED TO BE TRUE COPY
Notary Public
Peshawar High Court, Peshawar
Authorized Under Article 8.7 of
The Qanun-e-Shahadat Order 1984
27 MAR 2018

FILED TODAY

Deputy Registrar
22 APR 2017

38



PESHAWAR HIGH COURT, PESHAWAR
FORM OF ORDER SHEET

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
1	2
19.12.2017	<p><u>WP No. 1819-P of 2017 with CM No. 2121 of 2017.</u></p> <p>Present: Mr. Naveed Akhtar, advocate, for the petitioner.</p> <p>Syed Sikandar Hayat Shah, AAG, for the respondents along with Mr. Taimoor Khattak, Deputy Secretary (Judicial) , Establishment Department, Government of KPK.</p> <p>*****</p> <p><u>QAISER RASHID KHAN, J:-</u> Through the petition in hand, the petitioner has prayed for as under;</p> <p><i>“It , therefore, humbly prayed that on acceptance of this writ petition an appropriate writ may please be issued directing the Provincial Selection Board to consider promotion case of the petitioner w.e.f 23/03/2016 the day the post of Chief Engineer became vacant in light of the Service Rules of Irrigation Department and Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules 1989 wherein Senior Management Course training is not necessary for Promotion from Superintending Engineer (BS-19) to Chief Engineer (BS-20) Engineering Cadre of Irrigation Department.”</i></p> <p>2. As per the brief facts gathered from the petition , the petitioner was initially appointed as an Assistant Engineer (BPS-17) on 04.11.1985 through the Provincial Public Service Commission and thereafter promoted as Executive Engineer (BPS-18) on 18.07.1994 followed by further promotion as Superintending Engineer (BPS-19) on 29.03.2008; that since two posts of Chief Engineers i.e. Chief Engineer North and Chief Engineer South in the Irrigation Department fell vacant on the</p>

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ATTESTED
EXAMINER
Peshawar High Court
27 MAR 2018

retirement of two incumbents, therefore, the petitioner was assigned the duty of Chief Engineer (North) Irrigation Department in his own pay scale on 20.04.2016 where he is serving till date. The petitioner has expressed his grievance against the notification dated 13.02.2015, issued by the respondent No.2 whereby it was directed for making necessary amendments in the service rules so as to make the Senior Management Course (SMC) mandatory for all the posts in BPS-20 for acquiring best administrative and managerial skills and when the case of the petitioner for promotion as Chief Engineer (BPS-20) was placed before the Provincial Selection Board in its meeting held on 30.1.2017, he was not considered only on the ground that the petitioner did not have the Senior Management Course to his credit though the Administrative Head of the petitioner's department has granted exemption from the said course and that is how he is before this court with the instant petition.

Comments sought from the respondents have accordingly been submitted.

3. Arguments heard and the available record perused.

4. All that the learned counsel for the petitioner vehemently argued is that the petitioner has been unnecessarily burdened with the condition of Senior Management Course though neither the Promotion Policy 2009 nor the Service Rules 2011 of the petitioner's

ATTESTED
EXAMINER
Peshawar High Court
27 MAR 2018

(46)

department provide for undergoing such course. He further contended that the rules have not been amended as yet but the respondents have made the SMC a precondition for the petitioner to be promoted to BPS-20. He also referred to the case of Syed Zahid Abbas, Superintending Engineer of the department of the petitioner who was granted exemption only on the ground that he being near to the age of superannuation and more so that one Mr. Bahramand Khan Superintending Engineer, Public Health Engineering Department was also promoted to the post of Chief Engineer (BS-20) without undergoing such course.

Contrarily, the learned AAG opposed the arguments of the learned counsel for the petitioner and contended that the Senior Management Course has been introduced with a view to give proper exposure to the incumbents of the post of Superintending Engineers as in the case of the petitioner so as to acquire better administrative and managerial skills and more so a draft notification in this respect has been approved but would be circulated after the approval by the competent authority.

5. The grievance of the petitioner is that he was not considered for promotion by the Provincial Selection Board despite the fact that the Senior Management Course (SMC) is not mandatory as per the Promotion Policy 2009 as well as the Service Rules of Irrigation Department. More so, as the available record shows that the draft rules have not been accorded approval by the law department

ATTESTED
 EXAMINER
 Peshawar High Court
 27 MAR 2018



DIRECTORATE GENERAL SOIL CONSERVATION KHYBER PAKHTUNKHWA

2437

Agriculture Training Institute Campus, opposite Islamia College, Jinnah Road Peshawar, Pakistan.
 Phone: (91) 9224331 Fax: (91) 3542912 <http://www.dgsc.kp.gov.pk> Email: director@dgsc.kp.gov.pk
 Conserving soil and water resources in Khyber Pakhtunkhwa.

No. 656 /DGSC/KP
 dated 21/03 /2017

To

The Secretary,
 Government of Khyber Pakhtunkhwa,
 Agriculture, Livestock and Cooperatives Department, Peshawar.

SUBJECT

RENOUNCEMENT FROM THE POST OF DIRECTOR GENERAL
 SOIL CONSERVATION KHYBER PAKHTUNKHWA.


Memo:

Reference is made to the subject cited above.

It is submitted that the undersigned holding the post of Director Soil Conservation Khyber Pakhtunkhwa since 27/01/2014, was entrusted with the look after charge of the post of Director General Soil Conservation Khyber Pakhtunkhwa on 27/05/2014 being the senior most officer of the department. Till date I have tried to perform my duties to the best of my abilities and with dedication and enthusiasm.

It is however, that recently, due to my health concern and high blood pressure issues, I cannot continue my duties as required for the said post of Director General. It is therefore humbly proposed that the responsibility may be entrusted onto a senior officer of the department, and allow the undersigned to work on the post of Director Soil Conservation please.

An early action is requested please.


 Director General
 Soil Conservation
 Khyber Pakhtunkhwa

Examine & put yr

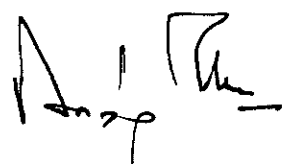
41

and where the instance of one Engineer Syed Zahid Abbas with his date of birth as 1959 is before us who has been granted exemption from the course and where another officer namely Mr. Bahramand Khan who too, has been promoted to BPS-20 by exempting him from such course, then we wonder as to why in the absence of any amendment in the Rules, the petitioner has not been considered for the post of BPS-20 and has thus been discriminated against.

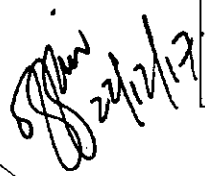
4. Accordingly, we dispose of this petition in terms of directing the respondents to place the case of the petitioner for his promotion to the post of BPS-20 in the upcoming meeting of the Provincial Selection Board, which, as per the learned counsel for the petitioner, is scheduled for 27.12.2017 and the PSB is in turn directed to consider the case of the petitioner on its own merits and seniority without considering the course of SMC as mandatory at the moment when the necessary amendments in the rules have not brought about.

sd/- Qaiser Rashid Khan J
 sd/- Mohammad Ayub Khan J


 JUDGE


 JUDGE

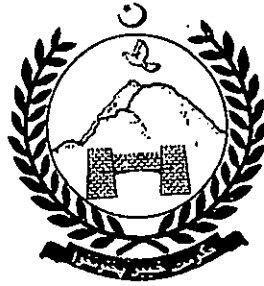
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 Examiner
 Peshawar High Court, Peshawar
 Authorised Under Article 8.7 of
 The Qanun-e-Shahadat Order 1984
 27 MAR 2018


 27/12/17

No. 15583
Date of Presentation of Application 24/3/18
No of Pages R-P
Copying Fee
Urgent Fee
Total / Rs 48/-
Date of Preparation of Copy 27/3/18
Date of Delivery of Copy 27/3/18
Received By Hidayat

I have received the copy of the application
of Hidayat

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. PIII

GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, FRIDAY, 19TH SEPTEMBER, 2019.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK AND COOPERATION DEPARTMENT.

NOTIFICATION

Peshawar, dated the 18/04/ 2018

No. SOE(AD)II(2)429/2015-16/SC: ... In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment Promotion and Transfer) Rules, 1989 and in supersession of all previous Notifications issued in this behalf, the Agriculture, Livestock and Cooperation Department in consultation with the Establishment Department and the Finance Department hereby lays down the method of recruitment qualification and other conditions specified in column No.3 to 5 of the Appendix appended to this Notification, which shall be applicable to the posts mentioned in column No.2 of the said Appendix in the Directorate of Soil Conservation.

APPENDIX PART-I PROFESSIONAL STAFF

S. No	Nomenclature of the post.	Minimum qualification for appointment by Initial recruitment.	Age Limit.	Method of Recruitment.
	2	3	4	5
1.	Director General.	--	--	By promotion, on the basis of seniority-cum-fitness, from amongst the Directors Soil Conservation and Directors Soil Survey with at least five years' service as such in BPS-19 or seventeen years' service in BPS-17 and above, having undergone Senior Management Course. Note: A joined seniority list of Director Soil Conservation and Director Soil Survey shall be maintained for the purpose of promotion.
2.	Director Soil Conservation/ Director Soil Survey.	--	--	By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy Directors Soil Conservation, Deputy Directors (Planning), Deputy Directors Soil Survey and District Officers Soil Conservation, having seven years' service in BPS-18 or twelve years' service in BPS-17 and above. Note: A joined seniority list of Deputy Directors Soil Conservation and Deputy Directors Soil Survey shall be maintained for the purpose of promotion.

سَوْتِ الدَّوْلَانِ ۱۳/۱۲

GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the August 29, 2017

NOTIFICATION

NO. SOE (AD)/22-13/82:-

In terms of Rule-20 of the Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981 as amended vide Government of Khyber Pakhtunkhwa Finance Department (Regulation Wing) Notification No. SO(FR)5-92/2005/Vol.V, dated 13-12-2012, sanction is hereby accorded to the encashment of leave equal to 365-days pay in lieu of Leave Preparatory to Retirement in favour of Mr. Shaukat Ullah Director (BS-19) Soil Conservation, Khyber Pakhtunkhwa Peshawar.

2. In terms of section-13 of the Khyber Pakhtunkhwa Civil Servants Act 1973, the officer stand retired from service with effect from 14.02.2018 (A.N) on attaining the age of superannuation.

Sd/-X

SECRETARY AGRICULTURE

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

- 1) The Accountant General, Khyber Pakhtunkhwa Peshawar.
- 2) DG, Soil Conservation, Khyber Pakhtunkhwa, Peshawar.
- 3) PS to Secretary Agriculture Department.
- 4) PA to DS (Admn:), Agriculture Department.
- 5) Officer concerned.
- 6) Master file.

SECTION OFFICER-ESTT:

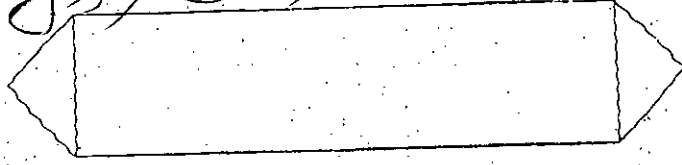
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30/8
30/17

Per
Per record

Signature

MAILED
11/08/17

بعدالت سردیس کے قبول کے



شہادت اللہ خان
2018ء پنجاب

شہادت اللہ خان بنام گورنمنٹ

SCANNED
KPST
Peshawar

دعویٰ

جرم

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ
آن مقام کے لئے **صہیل شاہ** **صہیل شاہ** کے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے و تقرر ثالث و فیصلہ پر جلف دینے 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 کی طرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ باختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخہ منظور و قبول ہوگا دوران مقدمہ میں جو فوجیہ ہر جائہ التوائے مقدمہ کے
سبب سے و ہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں
گے۔ کہ پیروی مذکور کریں۔ لہذا ذاکالت نامہ لکھد یا کہ سند ہے۔

صہیل شاہ

شہادت اللہ خان

Alfred
Alfred

2018ء

ماہ ۶

الرقوم

العہد گواہ العہد

کے لئے منظور ہے۔

شہادت

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 492/2018

Shaukat Ullah KhanAppellant

SCANNED
KPST
Peshawar

Versus

Government of Khyber Pakhtunkhwa through Secretary Agriculture and
OthersRespondents

INDEX

S.No	Description of documents	Annexure	Pages
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3.	Renouncement from the post of Director General	B	6-7
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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 492/2018

Shaukat Ullah KhanAppellant

VersusGovernment of Khyber Pakhtunkhwa through Secretary Agriculture and
OthersRespondents**WRITTEN REPLY ON BEHALF OF RESPONDENT NO.1, 2, 3 & 4.**

Respectfully Sheweth,

Respondent humbly submit as under:-

PRELIMINARY OBJECTIONS

1. That the appeal is badly time barred.
2. That the appeal is not maintainable and incompetent in its present form.
3. That the appellant is estopped due to his own conduct.
4. That the appellant has got no cause of action and locus standi.
5. That the appellant has not come to the Tribunal with clean hands.
6. That the appeal is bad for misjoinder/non-joinder of necessary parties.
7. That the appellant has concealed the material facts from Honorable Tribunal.
8. That the Honorable Service Tribunal has no jurisdiction to entertain the instant appeal.
9. That the appeal is hit by Rule 23 of Khyber Pakhtunkhwa Service Tribunal Rules.

BRIEF FACTS

1. Agreed.
2. Agreed.
3. Agreed.
 - a. Not Agreed. His case for promotion to BS-20 was not materialized due to non framing/ notifying of Service Rules for promotion to the post of Director General (BS-20) Soil and Water Conservation. Mr. Shaukat Ullah Khan (appellant) was enjoying the status of Director/ Director General Soil and Water Conservation (highest authority of the Soil and Water Conservation Wing) (Annex -A), But he was unable to pursue the case of framing of Service Rules due to his inefficiency; Furthermore, he has also given a written statement to the Administrative

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Department that he is unable to perform the duties of Director General (BS-20) Soil and Water Conservation on 01/ 03 /2017 (Annex-B).

4. The Senior Management Course (SMC) was mandatory at that time for promotion to the post of Director General (BS-20) Soil and Water Conservation that is why his appeal for condonation of Senior Management Course (SMC) was rejected by the Worthy Chief Secretary Government of Khyber Pakhtunkhwa (Annex-C). Once again it is stated that his promotion case to the post of Director General (BS-20) Soil Conservation was not materialized due to non framing of Service Rules for the same post.
5. Needs No Reply
6. The decision taken vide No. SOE (AD) 22-13/80, dated Peshawar, the January 16, 2018 is not against the law. Moreover, it is stated that the appellant has never submitted any promotion case for his promotion to the post of Director General (BS-20) due to non-framing of Service Rules for the said post. It is further informed that due to his lack of interest and intentional delay in framing of the Service Rules for Soil and Water Conservation Wing of Agriculture Department, many other officers/ officials also got suffered/ retired without enjoying their due right of promotion to the higher pay scales.
- 7.

GROUND:

- A. The decision taken vide No. SOE (AD) 22-13/80, dated Peshawar, the January 16, 2018 is not against the law. Moreover, it is stated that the appellant has never submitted any promotion case for his promotion to the post of Director General (BS-20) due to non-framing of Service Rules for the said post. It is further informed that due to his lack of interest and intentional delay in framing of the Service Rules for Soil and Water Conservation Wing of Agriculture Department, many other officers/ officials also got suffered/ retired without enjoying their due right of promotion to the higher pay scales.
- B. The appellant has been treated according to the prevailing law and rules .
- C. The Senior Management Course (SMC) was mandatory at that time for promotion to the post of Director General (BS-20) Soil and Water Conservation that is why his appeal for condonation of Senior Management Course (SMC) was rejected by the Worthy Chief Secretary Government of Khyber Pakhtunkhwa. Once again it is stated that his promotion case to the post of Director General (BS-20) Soil Conservation was not materialized due to non framing of Service Rules for the same post.
- D. Needs no reply.
- E. As replied in Para A.
- F. The department has performed as per rules.
- G. Not agreed the appellant has been treated according to the law.
- H. Not agreed. His case for promotion to BS-20 was not materialized due to non framing/ notifying of Service Rules for promotion to the post of Director General (BS-20) Soil and Water Conservation.



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1

GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the May 23, 2014

NOTIFICATION

NO. SOE (AD)20-184/94:- Consequent upon the creation of the post of Director General (BS-20), Soil Conservation, Khyber Pakhtunkhwa, Peshawar, Mr. Shaukat Ullah Director (BS-19), Soil Conservation, Khyber Pakhtunkhwa being the senior most officer is hereby authorized to look after the charge of post of Director General (BS-20), Soil Conservation, Khyber Pakhtunkhwa (in his own pay and scale) with immediate effect in the interest of public service, till further orders.

Sd/-XXX
SECRETARY AGRICULTURE

Endst. of even No. & Date.

Copy forwarded for information and necessary action to:-

1. All HAD's of Agriculture Department.
2. The Director General, Soil Conservation, Khyber Pakhtunkhwa.
3. The Accountant General, Khyber Pakhtunkhwa.
4. P.S to Minister for Agriculture, Khyber Pakhtunkhwa.
5. PS to Secretary Agriculture Department
6. PA to Deputy Secretary (Admn) Agriculture.


(DAULAT KHAN)
SECTION OFFICER-ESTT:



5

GOVERNMENT OF
KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK & COOPERATIVE
DEPARTMENT

Dated Peshawar, the May 24, 2013

NOTIFICATION

NO. SOE(AD)/3(3)1/2013/SC:-

The competent authority is pleased to order the posting/transfer of the following officers of Soil Conservation Wing, Agriculture Department in the interest of public service with immediate effect:-

S.No	Name of Officer	From	To
1.	Mr. Jehanzeb Khan (BS-19)	Director Soil Conservation, Khyber Pakhtunkhwa.	Additional Director Soil Conservation, Khyber Pakhtunkhwa.
2.	Mr. Shaukat Ullah (BS-19)	Additional Director Soil Conservation, Khyber Pakhtunkhwa	Director Soil Conservation, Khyber Pakhtunkhwa vice No.1

Sd/-XX
SECRETARY AGRICULTURE

Endst. of even No. & Date.

Copy forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. PS to Chief Secretary, Khyber Pakhtunkhwa.
4. Officers concerned.
5. PS to Minister for Agriculture, Khyber Pakhtunkhwa.
6. PS to Secretary Agriculture, Livestock and Cooperative Department, Khyber Pakhtunkhwa, Peshawar.
7. Master file.

(MUHAMMAD HERAZ)
SECTION OFFICER-ESTT:



GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

NO.SOE(AD)22-13/80
Dated Peshawar, the May 5, 2017

To

The Director General,
Soil Conservation,
Khyber Pakhtunkhwa, Peshawar

SUBJECT:- RENOUNCEMENT FROM THE POST OF DIRECTOR GENERAL, SOIL
CONSERVATION, KHYBER PAKHTUNKHWA PESHAWAR

I am directed to refer to your letter No.656 dated 01/03/2017 on the subject noted above and to state to please provide justification/proofs that you have real health problem and is not willing to shoulder the existing responsibility.

AMITAR ALI SHAH
SECTION OFFICER-ESTT.

Endst. of even No. & Date.

Copy to:

1. P.S. to Secretary Agriculture department.
2. PA to DS (Admn), Agriculture Department.

SECTION OFFICER-ESTT.

DIRECTORATE GENERAL SOIL CONSERVATION KHYBER PAKHTUNKHWA

Agriculture Training Institute Campus, opposite Islamia College, Janjira Road Peshawar, Pakistan.
 Phone: 091-9224331 Fax: 091-3842412 <http://soilconservation.kp.gov.pk> Email: directorsoilconservation@soilconservation.kp.gov.pk

Conserving soil and water resources in Khyber Pakhtunkhwa.



293

No. 656 /DGSC/KP
 dated 21/03 /2017

To

The Secretary,
 Government of Khyber Pakhtunkhwa,
 Agriculture, Livestock and Cooperatives Department, Peshawar.

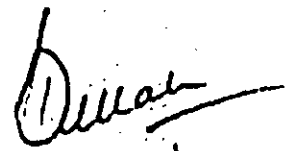
SUBJECT: RENOUNCEMENT FROM THE POST OF DIRECTOR GENERAL SOIL CONSERVATION KHYBER PAKHTUNKHWA.

Memo: Reference is made to the subject cited above.

It is submitted that the undersigned holding the post of Director Soil Conservation Khyber Pakhtunkhwa since 27/01/2014, was entrusted with the look after charge of the post of Director General Soil Conservation Khyber Pakhtunkhwa on 27/05/2014 being the senior most officer of the department. Till date I have tried to perform my duties to the best of my abilities and with dedication and enthusiasm.

It is however, that recently, due to my health concern and high blood pressure issues, I cannot continue my duties as required for the said post of Director General. It is therefore humbly proposed that the responsibility may be entrusted onto a senior officer of the department, and allow the undersigned to work on the post of Director Soil Conservation, please.

An early action is requested please.


 Director General
 Soil Conservation
 Khyber Pakhtunkhwa

Examine & put yr

8

GOVERNMENT OF KHYBER PAKHTUNKHWA
AGRICULTURE LIVESTOCK & COOPERATIVE
DEPARTMENT

NO.SOE(AD)22-13/80
Dated Peshawar, the January 16, 2018

To

Mr. Shaukat Ullah,
Director, Soil Conservation,
Directorate General, Soil Conservation,
Khyber Pakhtunkhwa, Peshawar

SUBJECT:- EXEMPTION FROM SENIOR MANAGEMENT COURSE

Reference to your application dated 12.12.2017 on the subject and to inform state that your appeal was considered and regretted by the competent authority as the post of Director General, Soil Conservation (BS-20) is managerial and administrative in nature. Under the Promotion Policy amended on 05.12.2017, for promotion against technical posts in BS-20, which require managerial and administrative skills, the SMC shall be mandatory.

SECTION OFFICER-ESTT:

Encls. of even No. & Date.

Copy to:

1. P.S to Secretary Agriculture department.
2. PA to DS (Admn). Agriculture Department.

SECTION OFFICER-ESTT:

Attested
e/td

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

SCANNED
KPT
Peshawar

Service Appeal No 492/2018

Shaukat Ullah KhanAppellant.

V E R S U S

Govt. & Others.....Respondents

REPLICATION ON BEHALF OF THE APPELLANT.

REPLY TO PRELIMINARY OBJECTIONS.

All the objections raised by the respondents are incorrect and as such denied. The appellant has got a valid cause of action and locus standi to bring the present appeal, which is well within time and in instant appeal all necessary parties have been impleaded. The appellant has come to this honorable tribunal with clean hands and the appellant is not estopped by his conduct to file instant appeal which appeal is maintainable and liable to be accepted.

REPLY TO FACTS/GROUNDS:

Comments of the respondents are full of contradictions, rather amounts to admissions and are based on malafide. Respondents have failed to show that the version of the appellant is incorrect. Even respondents have failed to show and substantiate their version referring to any law and rules. In the circumstances the appellant has been deprived of her rights without any omission or commission on his part and he has been deprived of his rights guaranteed by the Constitution and law of the land. The appellant has been denied promotion for no legal reason. The appellant could not be made to suffer due for a decision/law when the appellant was already eligible and entitled for promotion. Even the appellant was entitled for exemption from mandatory training.

The appellant was never selected for the said training nor the appellant ever refused in this regard. The said course/training was made mandatory just few months before his retirement and that too with

prospective effect when rights had already accrued to appellant. the appellant is having the requisite length of service with adverse entries during his entire service career. The appellant has been discriminated as in the same department juniors to him have been promoted denying such right to the appellant.

In the circumstances the appellant has not been treated according to law and rules being his fundamental right. The impugned order is in total disregard of the law and rules and as such alien to law which cannot be maintained, the appellant as such entitled to be granted proforma promotion to (BPS-20) from due date.

It is therefore prayed that appeal of the appellant may kindly be accepted as prayed for.

Dated:-01-10-2019.


Appellant

Through


Fazal Shah Mohmand

Advocate Peshawar

AFFIDAVIT

I, Shaukat Ullah Khan Ex Director Soil Conservation (Head Quarters) Agriculture, Livestock and Co-Operative Department Govt. of Khyber Pakhtunkhwa Peshawar, (the appellant); do hereby solemnly affirm and declare on oath that the contents of this **Replication** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Identified by


Fazal Shah Mohmand

Advocate Peshawar.




DEPONENT



DIRECTORATE GENERAL SOIL CONSERVATION KHYBER PAKHTUNKHWA



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Agriculture Training Institute Campus, Opposite Istaitia College, Jinnah Road, Peshawar, Pakistan.
Phone: 091-9224331 Fax: 091-3342912 <http://soilconservation.kp.gov.pk> Email: directorsoilconservation@soilconservation.kp.gov.pk
Conserving soil and water resources in Khyber Pakhtunkhwa.

No. 656 /DGSC/KP
dated 21/03 /2017

To

The Secretary,
Government of Khyber Pakhtunkhwa,
Agriculture, Livestock and Cooperatives Department, Peshawar.


SUBJECT RENOUNCEMENT FROM THE POST OF DIRECTOR GENERAL SOIL CONSERVATION KHYBER PAKHTUNKHWA.

Memo: Reference is made to the subject cited above.

It is submitted that the undersigned holding the post of Director Soil Conservation Khyber Pakhtunkhwa since 27/01/2014, was entrusted with the look after charge of the post of Director General Soil Conservation Khyber Pakhtunkhwa on 27/05/2014 being the senior most officer of the department. Till date I have tried to perform my duties to the best of my abilities and with dedication and enthusiasm.

It is however, that recently, due to my health concern and high blood pressure issues, I cannot continue my duties as required for the said post of Director General. It is therefore humbly proposed that the responsibility may be entrusted onto a senior officer of the department, and allow the undersigned to work on the post of Director Soil Conservation, please.

An early action is requested please.


Director General
Soil Conservation
Khyber Pakhtunkhwa

Enclosure of part of