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## KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

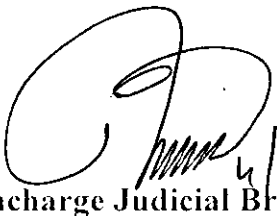
APPEAL NO	INSTITUTION	ORIGINAL INSTITUTION	DECISION	PAGES
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Muharir/Compilation 30/5/24

  
Incharge Judicial Branch 4/4/24

10. That the applicant has filed the present application just to pressurize the respondents.
11. **That the August Supreme Court of Pakistan suspended the impugned judgment on 18-12-2019 regarding the Advance Increments on account of higher qualification in CP No. 397-P/2017, 409-P/2017, 420-P/2017, 72-P/2019 & 733-P/2019.**
12. That the applicant has not come to this Honorable Tribunal with clean hands.
13. That the applicant is estopped to sue due to his own conduct.
14. That the instant application is not maintainable due to non-joinder and mis-joinder of necessary parties.
15. That the instant application is against the rules and policy of the Government.

**On Facts:-**

1. That para-1 pertains to the service record.
2. That analyzing pay rules (National pay scales) introduced w.e.f. 01-03-1972 for civil employees, while for the teaching staff separate national pay scales (NPS) introduced w.e.f. 01-07-1973, it is evident that there are separate advance increment schemes on acquiring higher qualification for teaching and non-teaching staff.
3. On the introduction of basic pay scales (BPS) in 1983, 1987 & 1991, advance increment schemes on acquiring higher qualification was separate and different for teaching and non-teaching staff as well.
4. Basic pay scale rules of 1983 Notification No. FD(SR-i)1-67/82 dated 24-08-1983, for teaching staff, the advance increments scheme on acquiring higher qualification was separately introduced which continued with some amendments till 30-11-2001 and was discontinued w.e.f. 01-12-2001. "Vide Govt. of NWFP Finance Department (Regulation Wing) letter No. FD(PRC)1-1/2001, dated 27-10-2001 as per para-09: advance increments to school teachers on attaining/ acquiring higher qualification vide No. FD(SR-II)67/83, Govt. of NWFP Finance Department Peshawar, the 24<sup>th</sup> August 1983".
5. That vide letter No. FD(PRC)1-1/89 dated Peshawar the 7<sup>th</sup> August 1991, the advance increments sanctioned by FD vide para-09, of its letter No. FD(SR-i)1-67/82 dated 24-08-1983 will not be admissible on acquiring/ possessing qualifications for which higher pay scales are being sanctioned through this notification which was amended vide FD letter No. FD (SR-V)2-123/98 dated 22-03-1999 and FD letter No. SO(R-V)2-123/91 dated 25-09-1995, re-continuing the advance increments only on acquiring higher qualification on which higher scales was not granted earlier.
6. That Finance Department Govt. of Khyber Pakhtunkhwa vide its letter No. FD(SR-II)2-123/83 dated 31-01-1998, further clarified in the light of para-6(a) that "**it is clarified the order is not applicable to the teachers**". Then, vide Notification No FD(PRC) 1-1/89, dated 11-08-1991 as per para-5, grant of advance increments to officials for possessing/attaining higher education qualification:
  - i. From 1-6-1991 onwards advance increments shall be allowed without the condition of 2<sup>nd</sup> division to the officials in BPS 1-15 for possessing or acquiring higher educational qualification over and above prescribed qualification in the relevant recruitment rules to the extent given below:

①  
**KHYBER PAKHTUNKHWA**

**SERVICE TRIBUNAL, PESHAWAR**

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281  
Fax:- 091-9213262

No. 1021 /ST Dated 2/5 /2024

To

The Director General,  
Law and Parliamentary Affairs & Human Right Department,  
Civil Secretariat Peshawar.

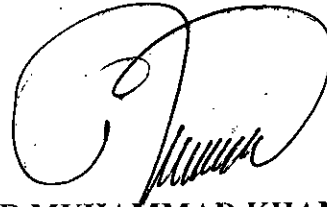
Subject

**JUDGMENT IN SERVICE APPEAL NO. 648/2022, 650-53/22  
TITLED MUHAMMAD ISHFAQ AND OTHERS -VERSUS- THE  
GOVERNMENT OF KHYBER PAKHTUNKHWA THROUGH  
CHIEF SECRETARY, CIVIL SECRETARIAT, KHYBER  
PAKHTUNKHWA, PESHAWAR AND OTHERS**

Dear Sir,

I am directed to forward herewith a certified copy of judgment dated 01.04.2024, passed by this Tribunal in the above mentioned service appeals for compliance.

*Encl. As above.*



(PIR MUHAMMAD KHAN AFRIDI)  
ACTING REGISTRAR  
KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL,  
PESHAWAR.

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

**Service Appeal No. 648/2022**

BEFORE: MR. KALIM ARSHAD KHAN .... CHAIRMAN  
MRS. RASHIDA BANO ... MEMBER (J)

Mr. Muhammad Ishfaq, Assistant (BPS-16), Office of the District Attorney  
at Service Tribunal, Peshawar.

... (Appellant)

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary  
Civil Secretariat, Peshawar.
2. The Secretary Establishment Department, Civil Secretariat, Peshawar.
3. The Secretary Law, Parliamentary Affairs & Human Rights  
Department, Civil Secretariat, Peshawar.
4. The Director General of Law and Parliamentary Affairs & Human  
Rights Department, Civil Secretariat, Peshawar.

... (Respondents)

Mr. Noor Muhammad Khattak  
Advocate

... For appellant

Mr. Asif Masood Ali Shah  
Deputy District Attorney

... For respondents

Date of Institution.....28.04.2022  
 Date of Hearing.....01.04.2024  
 Date of Decision.....01.04.2024

**JUDGEMENT**

**RASHIDA BANO, MEMBER (J):** The service appeal in hand has been  
instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act,  
1974 with the following prayer:

“That on acceptance of this appeal, the impugned order  
dated 10.12.2020 may very kindly be modified/rectified to  
the extent that appellant may very kindly be promoted to  
the post Assistant BPS-16 w.e.f the date when the post of

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PESHAWAR



**Assistant BPS-16 was sanctioned/created i.e w.e.f 30.01.2013 with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant."**

2. Through this single judgment, we intend to dispose of the instant service appeal as well as connected service appeals which are mentioned below as in all these appeals common question of law and facts are involved:

- 1. Service Appeal No.649/2022
- 2. Service Appeal No.650/2022
- 3. Service Appeal No.651/2022
- 4. Service Appeal No.652/2022
- 5. Service Appeal No.653/2022

3. Brief facts of the case are that appellants were serving in the Law & Parliamentary Affairs Department. That on promotion of 19 Office Assistants to the post of Superintendent, those 19 posts were lying vacant for promotion. That promotion quota, 75% was reserved for seniority-cum-fitness amongst Senior Clerks while 25% quota was reserved for initial recruitments. The respondent department advertised 08 posts of Assistants for initial recruitment against 75% quota. Feeling aggrieved, the appellant filed Writ Petition before the Peshawar High Court which was decided in their favor and the appellants were given promotion to the post of Assistant (BPS-16) vide order dated 10.12.2020 but with immediate effect and not from the date of their eligibility i.e. 30.01.2013. Feeling aggrieved, they filed departmental appeal, which was not responded, hence, the instant service appeal.

4. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for

the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

5. Learned counsel for the appellants argued that the impugned order was against law, facts and norms of natural justice; that the appellant had not been treated in accordance with law and rules; that the respondents had acted arbitrarily and malafidely; that the appellants were eligible from the date of sanction of posts, however the said right was not given to them; that the appellants had been discriminated and the respondents had violated the principle of natural justice. Lastly, he submitted that under Section-9 of the Civil Servants Act, 1973 read with Rule-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 the appellants were fully eligible to be promoted from the date of creation of posts i.e. 2013. Therefore, he requested for acceptance of the instant service appeal.

6. Conversely, learned Deputy District Attorney argued that promotion was always with immediate effect under the promotion policy of the Provincial Government. He submitted that no discrimination had been done against the appellants nor any provision of the constitution had been violated. Further, submitted that the appellants had no solid ground and proof in support of their claim. Therefore, he requested for dismissal of the instant service appeal.

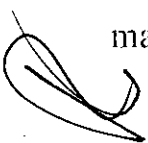
7. Perusal of record reveals that appellants are serving in respondent department. That earlier on strengthening of Law, Parliamentary Affairs & Human Rights Department and its lower



formations, 28 posts of Office Assistants were sanctioned/created by the Finance Department in the Office of Government Pleader (renamed/redesigned as District Attorneys) in various department of the Khyber Pakhtunkhwa. Nineteen (19) posts of Office Assistants BPS-16 fell vacant due to promotion of 19 Office Assistants to the post of Superintendents in various offices of District Attorneys in Khyber Pakhtunkhwa. It is pertinent to mention here that the Senior Clerks including the appellants who were entitled for promotion on these vacant posts of Office Assistants were not considered rather 19 out of 28 posts of Office Assistants were abolished and only 09 posts were left behind.

8. Perusal of rules/notification notified on 26.04.2017 reveals that 75% posts of Assistants will have to be filled by promotion on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five year of experience as Junior Clerk and Senior Clerk and 25% will have to be filled by initial recruitment, but respondents are intending to infringe upon 75% quota reserved for promotion, because instead of filling vacant posts of Office Assistants by promotion they abolished 19 posts out of total 28 posts while remaining 9 posts were advertised for fresh recruitments.

When it is clearly mentioned in the rules that share of promotion quota is 75% then respondent, are not competent to alter the statutory rules by means of any administrative instruction, 75% quota of promotion will have to be filled first and therefore, direct recruitment shall be made to extent of 25% quota reserved for the same.



9. It is the respondent department who willfully delayed process of promotion of the appellants despite availability of posts, service rules and more importantly eligibility of the appellants in which there was no fault of the appellant. Therefore, in these circumstance, it will be in fitness of the things that let the due right be given to its real claimants/officials. Hence appellants are entitled to be considered for promotion from date of filling of vacancy, i.e. 29.01.2013, when Office Assistants were promoted to the posts of Superintendents vide notification order dated 29.01.2013 and not from immediate effect as is done by the respondent which is evident from promotion order of the appellant dated 10.12.2020.

10. For what has been discussed above, we are unison to accept instant appeal in hand as well as connected service appeals as prayed for. Costs shall follow the event. Consign.

11. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1<sup>th</sup> day of April, 2024.*



(KALIM ARSHAD KHAN)  
Chairman



(RASHIDA BANO)  
Member (J)

\*M.Khan

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Peshawar



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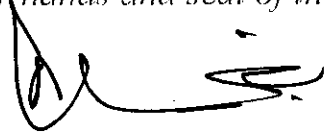
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**ORDER**  
01.04.2024

1. Learned counsel for the appellant present. Mr. Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

2. Vide our detailed judgment of today placed on file, we are unison to accept instant appeal in hand as well as connected service appeals as prayed for. Costs shall follow the event. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 1<sup>st</sup> day of April, 2024.*



**(KALIM ARSHAD KHAN)**  
Chairman



**(RASHIDA BANO)**  
Member (J)


\*M.Khan


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13.11.2023 1. Learned counsel for the appellant present. Mr. Asad Ali Khan learned Assistant Advocate General for the respondents present.

2. Learned counsel for the appellant requested for adjournment on the ground that he has not prepare the brief. Adjourned. To come up for arguments on 24.01.2024 before D.B. P.P given to the parties.

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(Muhammad Akbar Khan)  
Member (E)


  
(Rashida Bano)  
Member (J)


\*KaleemUllah\*

24.01.2024 Clerk of learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Clerk 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. Adjourned. To come up for arguments on 01.04.2024 before the D.B. Parcha Peshi given to the parties.

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(Fareeha Paul)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

\*Naeem Amin\*

19<sup>th</sup> July, 2023

1. Junior to counsel for the appellant present. Mr. Fazal Shah Mohmand, learned Assistant Advocate General for the respondents present.

2. Junior to counsel for the appellant requested for adjournment on the ground that senior counsel for the appellant is busy Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 22.09.2023 before D.B. P.P given to the parties.

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(Fareeha Paul)  
Member (E)

(Rashida Bano)  
Member (J)

\*KaleemUllah

22<sup>nd</sup> Sept. 2023

1. Learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney alongwith Mr. Jamshaid Khan, Superintendent for the respondents present.

2. Being not prepared, learned counsel for the appellant requested for adjournment in order to prepare the brief. Adjourned. To come up for arguments on 13.11/2023 before D.B. P.P given to the parties.

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Peshawar

(Muhammad Akbar Khan)  
Member (E)

(Kalim Arshad Khan)  
Chairman

\*Mutazem Shah\*

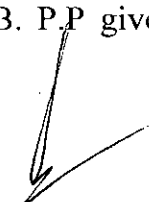
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07.03.2023

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Muhammad Ismail, Superintendent for the respondents present.

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Peshawar

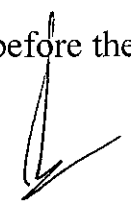
Reply/comments on behalf of respondents as well as cost of Rs. 1000/- paid by the respondents which is received by Registrar of the Tribunal and receipt of which is placed on file. To come up for rejoinder, if any, and arguments on 08.05.2023 before D.B. P.P given to the parties.

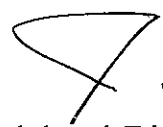
  
(Muhammad Akbar Khan)  
Member (E)

08.05.2023

Appellant alongwith his counsel present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Muhammad Ismail, Superintendent for the respondents present.

Learned counsel for the appellant seeks adjournment for preparation of arguments. Adjourned. To come up for arguments on 19.07.2023 before the D.B. Parcha Peshi is given to the parties.

  
(Muhammad Akbar Khan)  
Member (E)

  
(Salah-ud-Din)  
Member (J)

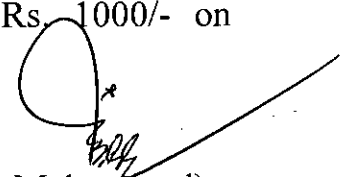
\*Naecm Amin\*

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Peshawar

23.01.2023

Appellant alongwith his counsel present. Mr. Muhammad Ismail, Superintendent alongwith Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Vide previous order sheet dated 22.12.2022, respondents were given last opportunity for submission of reply/comments with further direction that in case the last opportunity as given is not availed, the next adjournment shall be subject to prior payment of cost of Rs. 3000/-. Today representative of the respondents again sought further time for submission of reply/comments, therefore, last opportunity is further extended subject to payment of cost of Rs. 1000/-, failing which their right for submission of reply/comments shall be deemed as struck of. Appellant stated at the bar that cost of Rs. 3000/- has been paid to him and in this respect he produced receipt, which is placed on file. Adjourned. To come up for submission of reply/comments as well as cost of Rs. 1000/- on 07.03.2023 before the S.B.

  
(Mian Muhammad)  
Member (E)

22<sup>nd</sup> Dec, 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl:AG for respondents present.

Written reply on behalf of the respondents not submitted. Last opportunity given. In case the last chance as given is not availed, the next adjournment shall be subject to prior payment of cost of Rs. 3000/-. Adjourned. To come up for submission of reply/comments on 23.01.2023 before S.B.

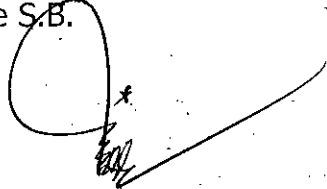
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(Kalim Arshad Khan)  
Chairman

29.09.2022

Junior counsel for the appellant present. Mr. Naseer-ud-Din Shah, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents not submitted. Learned Assistant Advocate General seeks time to contact the respondents for submission of reply/comments. Adjourned. To come up reply/comments on 23.11.2022 before S.B.




(Mian Muhammad)  
Member (E)

23.11.2022

Appellant present in person. Naseer Ud Din Shah learned Assistant Advocate General for respondents present.

Written reply on behalf of respondent not submitted. Learned AAG sought further time for submission of written reply. To come up for written reply/comments on 22.12.2022 before S.B.



(Rozina Rehman)  
Member (J)

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Peshawar

# KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR CHECK LIST

CASE TITLE: *M. Ishaq V/S Govt of K.P Pkthwa*

S#	CONTENTS	YES	NO
1	This Appeal has been presented by:		
2	Whether Counsel/Appellant/Respondent/Deponents have signed the requisite documents?	✓	
3	Whether appeal is within time?	✓	
4	Whether the enactment under which the appeal is filed mentioned?	✓	
5	Whether the enactment under which the appeal is filed is correct?	✓	
6	Whether affidavit is appended?	✓	
7	Whether affidavit is duly attested by competent Oath Commissioner?	✓	
8	Whether appeal/annexures are properly paged?	✓	
9	Whether certificate regarding filing any earlier appeal on the subject, furnished?	x	✓
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether copies of annexures are readable/clear?	✓	
13	Whether copy of appeal is delivered to AG/DAG?	✓	
14	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15	Whether numbers of referred cases given are correct?	✓	
16	Whether appeal contains cutting/overwriting?	✓	
17	Whether list of books has been provided at the end of the appeal?	x	✓
18	Whether case relate to this court?	✓	
19	Whether requisite number of spare copies attached?	✓	
20	Whether complete spare copy is filed in separate file cover?	✓	
21	Whether addresses of parties given are complete?	✓	
22	Whether index filed?	✓	
23	Whether index is correct?	✓	
24	Whether Security and Process Fee deposited? On _____	✓	
25	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? On _____		
26	Whether copies of comments/reply/rejoinder submitted? On _____		
27	Whether copies of comments/reply/rejoinder provided to opposite party? On _____		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: *Noor Mohammad KTK*

Signature: 

Dated: \_\_\_\_\_



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

SERVICE APPEAL NO. 648 /2022

SCANNED  
KPST  
Peshawar

MUHAMMAD ISHFAQ

V/S

GOVT: OF K.P.&  
OTHERS

**I N D E X**

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Dated: /04./2022

**APPELLANT**

Through:

**NOOR MOHAMMAD KHATTAK  
ADVOCATE  
0345-9383141**

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

**APPEAL NO.** 648 / 2022

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 646

Mr. Muhammad Ishfaq, Assistant (BPS-16),  
Office of the District Attorney at Service Tribunal Peshawar

Dated 28/4/2022

..... **APPELLANT**

**VERSUS**

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
- 2- The Secretary Establishment Department, Civil Secretariat, Peshawar.
- 3- The Secretary Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.
- 4- The Director General of Law & Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.

..... **RESPONDENTS**

**APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10-12-2020 OF THE RESPONDENTS WHEREBY THE APPELLANT WAS PROMOTED TO THE POST OF ASSISTANT (BPS-16) ON REGULAR BASIS WITH IMMEDIATE EFFECT AND NOT W.E.F. 30-01-2013 I.E. WHEN THE POST OF ASSISTANT WAS SANCTIONED/CREATED AND ALSO AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS**

**PRAYER:**

That on acceptance of this appeal the impugned order dated 10-12-2020 may kindly be modified/rectified to the extent that the appellant may very kindly be promoted to the post of Assistant (BPS-16) with effect from the date when the post Assistant BPS-16 was sanctioned/created i.e. w.e.f. 30-01-2013 with all back benefits including seniority. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the appellant.

Filed to-day  
Registrar  
28/4/2022

**R/SHEWETH:**

**ON FACTS:**

**Brief facts giving rise on the present appeal are as under:**

1- ✓ That the appellant is the employee of the respondent Department and is serving the respondent Department quite efficiently and up to the entire satisfaction of his superiors.

✓ 2- That earlier on strengthening of Law, Parliamentary Affairs & Human Rights Department and its lower formations, 28 posts of office Assistant were sanctioned/ created by Finance Department in the office of Government Pleader (renamed/redesigned as District Attorneys) in various department of the Khyber Pakhtunkhwa.

**Copy of sanction order 04-09-2012 is attached as annexure..... A**

✓ 3- That on promotion of 19 office Assistants to the post of Superintendents in various offices of District Attorneys in Khyber Pakhtunkhwa, resultantly 19 posts of Assistants (BPS-16) fall vacant.

**Copy of promotion order dated 29-01-2013 is attached as annexure..... B**

✓ 4- That it is pertinent to mention here that the senior clerks including the appellant who were entitled for promotion on these vacant posts of office Assistant were not considered rather 19 out of 28 posts of office Assistants were abolished and only 09 posts were left behind.

**Copy of abolition order dated 18-05-2015 is attached as annexure..... C**

5- That as per Service Rules, 75% quota was fixed for promotion on the basis of seniority-cum-fitness amongst the Senior Clerks with at least five years' experience as Junior Clerk and 25 % quota for initial recruitment . However, this time the relevant rules were ignored and the Law department has ultimately advertised 08 posts of Assistant without observing 75% promotion quota .

**Copy of Service Rules dated 26-04-2017 is attached as annexure..... D**

6- That being aggrieved from the above action of the respondent department, the Senior Clerks filed a writ petition before the Honorable Peshawar High Court which yielded fruit. The august court while accepting the writ petition has issued directions to the respondents for action in accordance with law/rules on the subject, relevant portion of its verdict is reproduced below:

**"In the circumstances mentioned hereinabove, this writ petition is allowed in terms that the respondents shall strictly adhere to the rules and the quota reserved to be filled through promotion shall not be disturbed and the respondents shall consider the**

**petitioners for promotion strictly in accordance with law and rules on the subject".**

**Copy of judgment dated 19-11-2019 is attached as annexure.....**

- 7- That in light of the ibid judgment the respondents issued the impugned order dated 10.12.2020 whereby the appellant has been promoted to the post of Assistant (BPS-16) with immediate effect and not from the due date i.e. 30.1.2013. That as a matter of fact the posts of Assistant remained vacant for more than 07 years as such the appellant(s) was entitled to back benefits due from 30-01-2013, however, the same was not given to the appellant at the time of promotion and thus the appellant deprived of this established and un-alienated right. Copies of the promotion and posting orders are attached as annexure .....
- 8- That felling aggrieved appellant preferred departmental appeal before the respondent No.3 but no response has been given till the expiry of statutory period of ninety days. **Copy of the departmental appeal is attached as annexure .....**
- 9- That after being highly aggrieved from the act of the respondents and having no other remedy the appellant filed this appeal on the ground inter alia as under:-

**GROUND:**

- A- That the impugned order dated 10-12-2020 of the respondent department by promoting the appellant with immediate effect and by not promoting the appellant from the dates when the said posts were sanctioned/created is against law, facts, and norms of natural justice, hence not tenable and liable to be rectified/modified.
- B- That the appellant has not been treated in accordance with law and rules by the respondent Department on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the respondents acted in arbitrary and malafide manner by promoting the appellant with immediate effect and not promoting the appellant from the dates when the said posts were sanctioned/ created.
- D- That according to Article 38 (e) of the Constitution of Islamic Republic of Pakistan, 1973 the state is bound to reduce disparity in the income and earning of individuals including persons in the services of the federation, therefore in light of


*Section 9.  
read with  
rule-7.*

the said Article the appellant is fully entitle for promotion to the said post when it became sanctioned/created.

- E- That the appellant has been discriminated on the subject noted above and as such the respondents violated the principle of natural justice.
- F- That the relevant service rules on the subject have not been adopted and thus the respondents have contravened the norms of justice and fair play.
- G- That as per Section-9 of the Civil Servant Act, 1973 read with rule 7 of the APT rules, 1989 the appellant is fully entitled to be promoted from the date when the posts of Assistant were created i.e. w.e.f. 2013.
- H- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

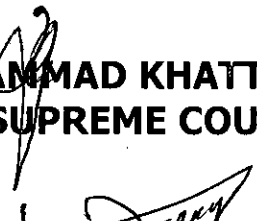

It is therefore most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 18-04-2022

**APPELLANT**  


**MUHAMMAD ISHFAQ**

**THROUGH:**  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE SUPREME COURT**

  
**UMAR FAROOQ MORMAND**  
**&**  
**KHANZAD GUL**  
**ADVOCATES**  


(2)

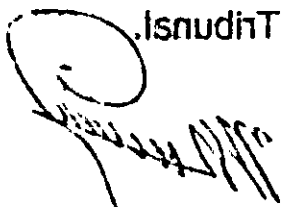
**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR**

SERVICE APPEAL NO. \_\_\_\_\_ / 2023

MUHAMMAD ISHAQ V/S GOVT. OF K.P. DEPTT:

**AFFIDAVIT**

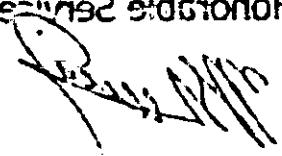
Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



**DEPONENT**

**CERTIFICATE:**

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.



**CERTIFICATION**



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

APPEAL NO. \_\_\_\_\_ /2022

**MUHAMMAD ISHFAQ**

**VS**

**GOVT: OF K.P & OTHERS**

**APPLICATION FOR CONDONATION OF  
DELAY IN FILING THE ABOVE NOTED  
APPEAL**

**R.SHEWETH:**

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so for.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

**GROUND OF APPLICATION:**

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

Dated: \_\_\_\_ .04.2022

**APPELLANT**  
  
**MUHAMMAD ISHFAQ**

**THROUGH:**  
  
**NOOR MOHAMMAD KHATTAK  
ADVOCATE**



9739  
6/9/12

GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT

No. BO.II/FD/3-2/LD/SNE/2012-13  
Dated Peshawar the 04.09.2012

To

The Secretary to Govt: of Khyber Pakhtunkhwa,  
Law Department.

SUBJECT: STRENGTHENING OF LAW, PARLIAMENTARY AFFAIRS & HUMAN RIGHTS  
DEPARTMENT AND ITS ATTACHED OFFICES.

Dear Sir,

I am directed to refer to your letters No.SO(G)(LD)(19-2)/2012 dated 13.08.2012 & No. SO(G)(LD)(19-2)/2012/14335-37 dated 31.08.2012 on the subject noted above and to say that in pursuance of the approval of the competent authority (Chief Minister), Finance Department agrees to the creation of 152 posts of various categories, with immediate effect, as per following breakup:-

Law Department:

S.No.	Name of posts.	BPS	No. of post
1.	Naib Qasid.	01	12
TOTAL:			12

Advocate General's office.

S.No.	Name of posts.	BPS	No. of post
1.	Senior Clerk.	09	03
2.	Junior Clerk.	07	03
3.	Driver.	04	01
4.	Naib Qasid.	01	04
TOTAL:			11

Directorate of Human Rights.

S.No.	Name of posts.	BPS	No. of post
1.	Administrative Officer.	17	01
2.	Junior Clerk.	07	04
3.	Naib Qasid.	01	05
4.	Chowkidar.	01	02
TOTAL:			12

Government Pleaders offices.

S.No.	Name of posts.	BPS	No. of post
1.	Office Superintendent.	16	20
2.	Assistant.	14	03
3.	Senior Clerk.	09	20
4.	Junior Clerk.	07	20
5.	Naib Qasid.	01	30
6.	Chowkidar.	01	24
TOTAL:			117
G:TOTAL:			152

2. The Administrative Department may prepare audit copy(s) alongwith breakup in respect of Govt: Pleaders offices under the relevant DDO code and submit the same to this department for authentication.

Yours faithfully,

*(Signature)*  
(SYED NOOR AHMAD SHAH)  
BUDGET OFFICER-II

ASCG  
please send  
audit copies

*(Signature)*  
06/9/12

*(Signature)*  
05/9/12  
PTO  
06/9/12  
please send  
audit copies.  
so (4)  
06/9/12

ATTACHED





**NOTIFICATION**

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS  
& HUMAN RIGHTS DEPARTMENT**

ANNEX B

23  
8

Dated the Pesh: 29/01/2013

**No. E&A/LD/2-77/2012:-**

On the recommendations of the Departmental Promotion Committee, the competent authority is pleased to promote the following Assistants (BPS-14) of the Government Pleader Offices in Khyber Pakhtunkhwa to the post of Superintendent (BPS-16) on regular basis with immediate effect:

S.NO	NAME OF THE OFFICIAL / OFFICER
1.	Mr. Akbar Ali
2.	Mr. Muhammad Bilal
3.	Mr. Afzal Haider Zahid
4.	Mr. Rizwan Ullah
5.	Mr. Saleh Shah
6.	Mr. Muhammad Arif
7.	Mr. Mushtaq Ahmad
8.	Mr. Akhtar Zaman
9.	Mr. Jehanzeb
10.	Mr. Asif Khan
11.	Mr. Khalid Mehmood
12.	Mr. Syed Mateen Abid Gillani
13.	Mr. Muhammad Qaiser
14.	Mr. Shuja-ud-Din
15.	Mr. Muhammad Imran
16.	Mr. Misal Shah
17.	Mr. Meshkat Ullah
18.	Mr. Jan Ali
19.	Mr. Asad Ullah Khan

- The above officers on their promotion will remain on probation for an initial period of one year in term of Rules 15 of Civil Servant (Appointment, Promotion & Transfer) Rules, 1989, automatically extendable to another year, if not terminated through a specific order.
- Consequent upon their promotion as Superintendent (BPS-16) on regular basis, the following Postings / Transfers are hereby order in the public interest with immediate effect.

S.No	Name	From	To
1.	Mr. Akbar Ali	Office of the Government Pleader Bunner	Office of the Government Pleader Khyber Pakhtunkhwa, Service Tribunal Peshawar
2.	Mr. Muhammad Bilal	Office of the Director Human Rights Peshawar	Office of the Government Pleader Haripur
3.	Mr. Afzal Haider Zahid	Office of the Government Pleader Peshawar	Office of the Government Pleader Labour Court Peshawar
4.	Mr. Rizwan Ullah	Office of the Government Pleader Karak	Office of the Government Pleader Karak
5.	Mr. Saleh Shah	Office of the Government Pleader Nowshera	Office of the Government Pleader Nowshera

Contd: page-2

6.	Mr. Muhammad Arif	Office of the Government Pleader D.I.Khan	Office of the Government Pleader Mansehra
7.	Mr. Mushtaq Ahmed	Office of the Government Pleader Chitral	Office of the Government Pleader D.I.Khan
8.	Mr. Akhter Zaman	Office of the Government Pleader Tank	Office of the Government Pleader Tank
9.	Mr. Jehanzeb	Office of the Government Pleader Bannu	Office of the Government Pleader Bannu
10.	Mr. Asif Khan	Office of the Government Pleader (Lower) Dir	Office of the Government Pleader Batkhela
11.	Mr. Khalid Mehmood	Office of the Government Pleader Lakki Marwat	Office of the Government Pleader Lakki Marwat
12.	Mr. Syed Mateen Abid Gillani	Office of the Government Pleader Labour Court Peshawar	Office of the Government Pleader Abbotabad
13.	Mr. Muhammad Qaiser	Office of the Government Pleader Peshawar	Office of the Government Pleader Peshawar
14.	Mr. Shuja-ud-Din	Office of the Government Pleader Peshawar	Office of the Government Pleader Kohat
15.	Mr. Muhammad Imran	Office of the Government Pleader Mardan	Office of the Government Pleader Mardan
16.	Mr. Misal Shah	Office of the Government Pleader Sawabi	Office of the Government Pleader Sawabi
17.	Mr. Mishkat Ullah	Office of the Government Pleader Kohat	Office of the Government Pleader Hangu
18.	Mr. Jan Ali	Office of the Government Pleader Charsadda	Office of the Government Pleader Charsadda
19.	Mr. Asad Ullah Khan	Office of the Government Pleader Khyber Pakhtunkhwa Service Tribunal Peshawar	Office of the Government Pleader Swat



(Muhammad Arifeen)

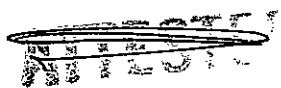

Secretary to Government of Khyber Pakhtunkhwa  
Law, Parliamentary, Affairs & Human Rights  
Department.

Endst: No. E&amp;A/LD/2-77/2012/1480-58

Dated: 29-01-2013

Copy is forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Ps to Secretary, Law, Parliamentary, Affairs & Human Rights Department.
3. All Government Pleaders in Khyber Pakhtunkhwa.
4. All Districts Accounts Officers in Khyber Pakhtunkhwa.
5. The Officers Concerned.
6. Personal file of the Officers Concerned.

(Sajjad-Ur-Rehman)  
Section Officer (General)



GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE - DEPARTMENT

No. BO-III/FD/3-2/SNE/LD/14-15  
Date Peshawar the 18.05.2015

To

The Secretary to Govt: of Khyber Pakhtunkhwa  
Law Department

SUBJECT: ABOLITION OF POSTS IN SR. GOVERNMENT PLEAERS OFFICES AT VARIOUS DISTRICTS OF LAW, PARLIAMENTARY AFFAIRS AND HUMAN RIGHTS DEPARTMENT DUE TO ECONOMY MEASURES.

Dear Sir,

I am directed to your letter No. SO(G)(LD)/15-40/2014-15/13269-70 dated 08.05.2015 on the subject noted above and to convey Finance Department's concurrence to the abolition of the following posts in the offices of the Law Department indicated below with immediate effect:-

S#	Name of Govt: pleader office	Addl: Govt: pleader (BPS-17)	Superintendent (BPS-17)	(Assistant) (BPS-16)	Total
1.	PR4006-Govt Peshawar Pleader			01	01
2.	PR4008-Lab: Court, Peshawar			01	01
3.	CA4226-Govt: Charsadda pleader			01	01
4.	NR4222-Nowshera			01	01
5.	SU4207-Swabi			01	01
6.	BD4148-Bunner	01	01	01	03
7.	MD4004-Malakand			01	01
8.	DA4236-Dir. (Lower)			01	01
9.	DP4154-Dir. (Upper)		01	01	02
10.	CL4161-Chitral		01	01	02
11.	SH4001-Shangla		01	01	02
12.	KD4078-Kohistan		01	01	02
13.	BM4125-Battagram	01	01	01	03
14.	MA4001-Mansehra	01			01
15.	TG4004-Tor Ghar	01		01	02
16.	HR4046-Haripur		01	01	02
17.	HG4126-Hangu			01	01
18.	KK4207-Karak			01	01
19.	LK4160-Lakki Marwat	01		01	02
20.	TK4012-Tank			01	01
	Total	05	07	19	31

Yours faithfully,

(SYED NOOR AHMAD SHAH)  
BUDGET OFFICER-II

Copy forwarded to the:-

- 1) Accountant General, Khyber Pakhtunkhwa
- 2) Director FMIU, Finance Department
- 3) Master File.

BUDGET OFFICER II



26  
ANNEX D 11

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS &  
HUMAN RIGHTS DEPARTMENT**

Dated Peshawar the 26-04-2017

**NOTIFICATION:**

**No. SO(G)/LD/15-18/2014** / 13414-64. In continuation of this deptt's Notification No. SO(G)/LD/15-18/2014/2768-2837 dated 12-01-2016 and 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 rules made in this behalf the Law, Parliamentary Affairs and Human Rights Department, in consultation with the Establishment and Finance Departments, hereby lays down the method of recruitment, qualification and other condition of service specified in columns 3 to 5 in following table which shall be applicable to posts in the offices of the Senior Govt. Pleaders as specified in column 2 of the table given below:-

Sr. #	Nomenclature of Post	Qualification	Age Limit	Method of Recruitment
1	District Attorney (B-19)			By promotion on the basis of seniority-cum-fitness from amongst the Deputy District Attorney having twelve years service in BS-17 and above with at least three years service in BS-18.  Provided that the length of service for promotion of persons appointed in BS-18 by initial recruitment shall be seven years as such.
2	Deputy District Attorney (B-18)	a) Practicing Lawyer with 2 <sup>nd</sup> Class LLM degree from a recognized University with five years standing at the Bar experience; preferably on civil side; OR  b) Practicing Lawyer with 2 <sup>nd</sup> Class LLB degree from a recognized University with total eight years standing at the Bar experience including three years High Court level practice, preferably on civil side.	25-40 years	i) 70% by promotion, on the basis of seniority-cum-fitness, from amongst Assistant District Attorneys with five years service as such;  ii) 30% by initial recruitment.
3	Assistant District Attorney (B-17)	Practicing Lawyer with 2 <sup>nd</sup> Class LLB degree or equivalent qualification from a recognized	25-35 years	By initial recruitment.

**ATTESTED**

		University with three years standing at the Bar experience.		
4	Superintendent			By promotion, on the basis of seniority-cum-fitness from amongst holders of the post of Assistant with at least five years services as such.
5	Assistant	Second Class Bachelor Degree or equivalent qualification from a recognized University.	20-32 years	i) 75% by promotion, on the basis of seniority-cum-fitness, from amongst Senior Clerks with at least five years service as Junior Clerk and Senior Clerk; and ii) 25% by initial recruitment.
6	Computer Operator	i) 2 <sup>nd</sup> Class Bachelor Degree in Computer Science/Information Technology (BCS/BIT four years) from a recognized university; OR ii) 2 <sup>nd</sup> Class Bachelor Degree from a recognized university with one year Diploma in Information Technology from a recognized Board of Technical Education.	20-32 years	By initial recruitment.
7	Senior Clerk			By promotion on the basis of seniority-cum-fitness from amongst Junior Clerks with at least two years service as such.
8	Junior Clerk	i) Matriculation with second division or equivalent qualification from a recognized Board; and ii) A speed of 30 words per minute in typing.	18-30 years	i) 33% by promotion, on the basis of seniority-cum-fitness, from amongst Naib Qasids and Chowkidars with two years service as such who have passed S.S.C. examination; and ii) 67% by initial recruitment. <u>Note:</u> For the purpose of promotion, there shall be maintained a joint seniority list with reference to the dates of acquiring the Secondary School Certificate.  Provided that: i) If two or more officials have acquired the S.S.C. in the same session, the inter-se seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post; ii) Where a senior official does not possess the requisite qualification at the time of filling up a vacancy, the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official or officials.

15/P

4/1

	Naib Qasid	Preferably literate	18-40 years	By initial recruitment.
10	Chowkidar	Preferably literate	18-40 years	By initial recruitment
11	Sweeper	Preferably literate	18-40 years	By initial recruitment

(Muhammad Arifeen)

Secretary to Govt. of Khyber Pakhtunkhwa  
Law, Parliamentary Affairs & Human Rights Department

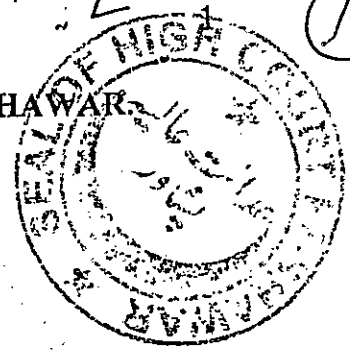
Endst: No. & Date Even.

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. All the Administrative Secretaries to Government of Khyber Pakhtunkhwa.
3. The Advocate General, Khyber Pakhtunkhwa, Peshawar.
4. The Registrar, Peshawar High Court, Peshawar.
5. All the Senior Govt. Pleaders in Khyber Pakhtunkhwa.
6. The Secretary, Khyber Pakhtunkhwa Public Service Commission.
7. The Manager, Government Printing Press, Khyber Pakhtunkhwa for publication in Government Gazette. He is requested to send ten (10) copies of the same to this Department.
8. The Director of Archives and Libraries, Khyber Pakhtunkhwa, Peshawar.
9. The Section Officer (R-IV), Establishment Department.
10. The Librarian, Establishment/Administration Department, Khyber Pakhtunkhwa.
11. The PS to Secretary Law Department, Khyber Pakhtunkhwa.

(Rizwan Ullah Khan)  
Section Officer (General)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR



Writ Petition No. 2430 /2017

1. Mr. Ali Haider, Senior Clerk, Office of Senior Government Pleader (District Attorney) Swabi.
2. Mr. Faheez Zaman, Senior Clerk, Office of Senior Government Pleader (District Attorney) Hangu.
3. Mr. Nisar Ahmad, Senior Clerk, Office of Senior Government Pleader (District Attorney) Abbottabad.
4. Mr. Shahid Ali, Senior Clerk, Office of Senior Government Pleader (District Attorney) Malakand.
5. Mr. Muhammad Ismail Khan, Senior Clerk, Office of Senior Government Pleader (District Attorney) Karak.
6. Mr. Muhammad Ilyas, Senior Clerk, Office of Senior Government Pleader (District Attorney) Swat.
7. Mr. Muhammad Ishfaq, Senior Clerk, Office of Senior Government Pleader (District Attorney) Charsadda.
8. Mr. Raza Khan, Senior Clerk, Office of Senior Government Pleader (District Attorney) Peshawar.
9. Mr. Zafar Ali, Senior Clerk, Office of Senior Government Pleader (District Attorney) Nowshera.

VERSUS PETITIONER

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary Establishment Department, Civil Secretariat, Peshawar.
3. The Secretary Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.
4. The Secretary Khyber Pakhtunkhwa Public Service Commission, 2<sup>nd</sup> Fort Road, Peshawar Cantt.

RESPONDENTS

ATTESTED  
EXAMINER  
Peshawar High Court

~~ATTESTED~~

15

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISMLAIC REPUBLIC OF THE PAKISTAN, 1973 FOR ISSUING APPROPRIATE WRITS TO THE RESPONDENTS TO OBSERVE THE RECRUITMENT RULES DATED 26-04-2017 IN THE LETTER AND SPIRIT AND TO DECLARE THE ADVERTISEMENT DATED 10.05.2017 TO THE EXTENT OF S.NO. 27 OF THE ADVERTISEMENT, WHEREIN THE SHARE OF PROMOTION QUOTA HAS ALSO BEEN INCLUDED FOR THE INITIAL RECRUITMENT, AS ILLEGAL, UNLAWFUL, UNCONSTITUTIONAL VIOLATION OF RULES AND NORMS OF JUSTICE, THEREFORE, INEFFECTIVE UPON THE RIGHTS OF THE PETITIONERS. THE RESPONDENTS MAY FRUTHER PLEASE BE DIRECTED TO FILL THE PROMOTION QUOTA BY PROMOTING THE PETITIONERS AND NOT BY INITIAL RECRUITMENT. ANY OTHER REMEDY WHICH THIS AUGUST COURT DEEMS APPROPRIATE MAY ALSO BE AWARDED IN FAVOUR OF PETITIONERS.

RESPECTFULLY SHEWETH:

Brief facts giving rise to present petition are as under:-

1. That the petitioner are the law abiding citizens of Pakistan and are working as Senior Clerk in the offices of Senior Government Pleaders (District Attorney) mentioned in the heading of writ petition.
2. That since from the date of separation of the prosecution wing from the Law Department till notification of new Rules (26.4.2017), all promotion of ministerial staff of Government Pleader Offices were made on the basis of the Rules of the Establishment Department of the year 1982 and 2012. However, Rules for the Government Pleader Offices (now District Attorney) are notified on 26.04.2017. Copies of Rules of 1982, 2012 and 2017 are attached as Annexure-A, B, & C. respectively.
3. That it is worth to mention here that in all the above mentioned Rules of 1982, 2012 and 2017, the post of Assistant is to be filled in as:-
 

75% *By promotion on the basis of seniority cum fitness from amongst Senior Clerks with five years service as Junior Clerk and Senior Clerk.*

**ATTESTED**  
  
**EXAMINER**  
 Peshawar High Court

~~RECORDED~~  
~~INDEXED~~



&amp;

25% By initial recruitment.

(16)

Thus as per Recruitment Rules, the petitioners have 75% promotion quota in the posts of Office Assistants.

4. That vide Finance Department memo dated 06.07.2010 total 24 posts of Office Assistant BPS-14 were created in the offices of Government Pleaders at various station, and total 19 persons were working as Office Assistants against those posts as evident from the seniority list dated 24.07.2012. All the 19 Office Assistants were promoted as Superintendent (BPS-16) vide Notification dated 19.01.2013 on the basis of Rules of 2012 (Annexure-B). Copies of posts creation, seniority list and promotion order are attached as Annexure-D, E, & F respectively.
5. That the respondents, instead of giving promotion to the petitioners against those 19 posts vacated by Office Assistants on their promotion, kept the issue pending and finally abolished 15 posts of Office Assistant and as such now only 9 posts of Office Assistants available as shown in details of strength of Government Pleaders Offices stood on 20.05.2016. This also shows the malice of the respondents by giving promotions to 19 persons, whereas denying promotion against those 19 posts to low cadre officials. Copy of list of strength is attached as Annexure-G.
6. That the more injustice caused to the petitioners when all the remaining posts of Office Assistant were advertised for initial recruitment vide publication dated. 10.05.2017. (at. Sr. No. 27) without observing 75% and 25% quota. It is also to be noted that previously all Office Assistants were directly recruited and no promotion quota for the Senior Clerks was observed for the office of Government Pleaders (now District Attorneys). Copy of the Advertisement is attached as Annexure-H.
7. That despite being senior most, eligible and waiting for promotion since long, the petitioners are deprived illegally from the promotion due to illegal and unlawful advertisement dated 10.05.2017, therefore, the petitioners are constrained to file the instant writ petition on the following grounds amongst the other inter alia. Copy of Strength List is attached as Annexure-I.

**ATTESTED**

**EXAMINER**  
Peshawar High Court

**GROUND:**

(17)

- A. That that impugned advertisement to the extent of Sr. No. 27 whereby posts of Office Assistant meant for promotion are given to initial recruitment as well as all actions/omissions of the respondents in this regard are illegal, unlawful, unconstitutional, violation of 75% : 25% quota, therefore, the same is not tenable and liable to be set aside.
- B. That the career of the petitioners has been damaged twice 1<sup>st</sup> by abolishing 15 posts of Office Assistants vacated due to promotion on 29.05.2013 (Annexure-F), and 2<sup>nd</sup> when all the remaining posts are advertised for initial recruitment. Thus the petitioners have been deprived from their legal right of promotion in an arbitrary manner.
- C. That as per quota 75% : 25% (07) posts of Office Assistants come in share of petitioners for promotion, whereas (02) posts of Office Assistants come in share of initial recruitment, but the respondents have advertised all the posts which is a clear violation of Rules notified on 26.04.2017. (Annexure-C) therefore, the advertisement dated 10.05.2017 to the extent of Sr. No. 27 is violation of Rules (Annexure-C).
- D. That the fundamental rights of petitioners protected under Article-9, 25 and 38 are violated by the respondent by advertising their promotion quota posts for initial recruitment.
- E. That to have legitimate expectancy and prospects of equal promotion cannot be denied to the petitioners under the garb of executive domain by advertising promotion quota posts for initial recruitment. Therefore the whole action of the respondents is unlawful, without lawful authority and amount to colorful exercise of powers in an illegal manner.
- F. That 75% quota of the posts of Office Assistant has been given and granted vide Rules dated 26.04.2017(Annexure-C) and being the Statutory Rules, the respondents are legally bound to observe the same without any exercise of illegal discretion, and similarly, the petitioners are also entitled to be treated as such under the law as per Rules (Annexure-C)
- G. That the acts/omission of respondents and advertisement dated 10.05.2017(Annexure-H) is against the spirit of Article-2A, 3, 4, 9, 25 & 38 of the Constitution.
- H. That the petitioners seek permission to advance other grounds and proofs at the time of hearing.


**ATTESTED****EXAMINER**  
Peshawar High Court

18

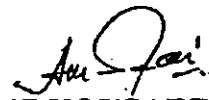
It is, therefore, most humbly prayed that on acceptance of this writ petition the august may be pleased to declare the advertisement dated 10.05.2017 (Annexure-H) to the extent of Sr. No. 27 as illegal, unlawful, without lawful authority, violation of Rules dated 26.04.2017 (Annexure-C) and ineffective upon the rights of petitioners and liable to be set aside. The respondents may also be directed to abide by Rules and to grant promotion to the petitioners against 75% quota fixed in Rules against the posts of Office Assistant, instead of filling through initial recruitment. Any other remedy which this august Court deems fit that may also be awarded in favor of petitioner.

**INTERIM RELIEF.**

The respondents may be restrained from making appointment against the posts of Office Asstt: advertised on 10.05.2017 at S.No. 27 OR not to finalize the appointments till the disposal of main writ petition to avoid legal complication.

  
PETITIONER  
Ali Haider etc.

THROUGH:

  
(M. ASIF YOUSAFZAI)  
ADVOCATE SUPREME COURT,  
PESHAWAR.

**VERIFICATION:**

It is verified that no other Writ Petition earlier has been filed between the present parties, except the present one.

DEPONENT

**LIT OF BOOKS:**

1. Constitution of the Islamic Republic of Pakistan, 1973.
2. Any other case law as per need.

  
**ATTESTED**

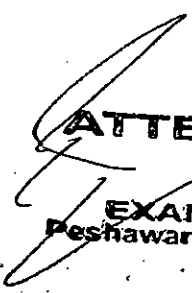
EXAMINER  
Peshawar High Court

**NOTE:** Prior Notice along with the copies of the Writ Petition has already been given to the respondents as per amended High Court's Rules dated. 23.02.2016

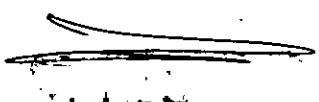
19



(M. ASIF YOUSAFZAI)  
ADVOCATE SUPREME COURT,  
PESHAWAR.



ATTESTED  
EXAMINER  
Peshawar High Court



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7

**BEFORE THE PESHAWAR HIGH COURT, PESHAWAR.**

(20)

Writ Petition No. \_\_\_\_\_ /2017

Ali Haider

V/S

Government of KPK.

**ADDRESSES OF PARTIES**

**PETITIONERS**

1. Mr. Ali Haider, Senior Clerk, Office of Senior Government Pleader (District Attorney) Swabi.
2. Mr. Feeheez Zaman, Senior Clerk, Office of Senior Government Pleader (District Attorney) Hangu.
3. Mr. Nisar Ahmad, Senior Clerk, Office of Senior Government Pleader (District Attorney) Abbottabad.
4. Mr. Shahid Ali, Senior Clerk, Office of Senior Government Pleader (District Attorney) Malakand.
5. Mr. Muhammad Ismail Khan, Senior Clerk, Office of Senior Government Pleader (District Attorney) Karak.
6. Mr. Muhammad Ilyas, Senior Clerk, Office of Senior Government Pleader (District Attorney) Swat.
7. Mr. Muhammad Ishfaq, Senior Clerk, Office of Senior Government Pleader (District Attorney) Charsadda.
8. Mr. Raza Khan, Senior Clerk, Office of Senior Government Pleader (District Attorney) Peshawar.
9. Mr. Zafar Ali, Senior Clerk, Office of Senior Government Pleader (District Attorney) Nowshera.

**RESPONDENTS**

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat, Peshawar.
2. The Secretary Establishment Department, Civil Secretariat, Peshawar.
3. The Secretary Law, Parliamentary Affairs & Human Rights Department, Civil Secretariat Peshawar.
4. The Secretary Khyber Pakhtunkhwa Public Service Commission, 2<sup>nd</sup> Fort Road, Peshawar Cantt

**PETITIONER**

Ali Haider etc

THROUGH:

*M. Asif Yousafzai*  
(M. ASIF YOUSAFZAI)

**ADVOCATE SUPREME COURT,  
PESHAWAR**

**ATTESTED**

**EXAMINER  
Peshawar High Court**

**JUDGMENT SHEET  
PESHAWAR HIGH COURT, PESHAWAR  
JUDICIAL DEPARTMENT**



Writ Petition No. 2430-P of 2017.

**Mr. Ali Haider etc  
Versus  
Government of Khyber Pakhtunkhwa and others.**

Date of hearing 19.11.2019

Petitioner (by) Muhammad Asif Ullah Yousafzai - Advocate

Respondent (by) Noor Muhammad Ullah Advocate

Muhammad Riaz Ullah Addl: D.S.

**JUDGMENT**

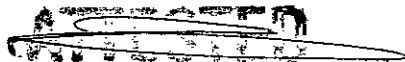
**MUSARRAT HILALI, J.**- Through the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners have sought the following relief:-

*"that acceptance of this writ petition the august Court may be please to declare the advertisement dated 10.5.2017 to the extent of Sr. No.27 as illegal, unlawful, without lawful authority, violation of Rules dated 26.4.2017 and ineffective upon the rights of petitioners and liable to be set aside. The*

*grain*

**ATTESTED**

**EXAMINER  
Peshawar High Court**



*respondents may also be directed to abide by Rules and to grant promotion to the petitioners against 75% quota fixed in Rules against the post of Office Assistant, instead of filling through initial recruitment. Any other remedy which this august Court deems fit that may also be awarded in favour of petitioner."*

2. In essence, petitioners are working as Senior Clerks in the offices of Senior Government Pleaders (District Attorney) fully mentioned in the heading of the instant writ petition; that 24 posts were created by respondents in the offices of Government Pleaders at various station while 19 persons were working as Office Assistant against those posts; that vide notification dated 19.1.2013, the above Office Assistants were promoted to the Post of Superintendent (BPS-16); that petitioners who were liable to be promoted on those vacant posts of Office Assistant under 75% quota fixed for promotion to the said post under the relevant rules were not considered for promotion rather 15 posts of Office Assistant out of

ATTESTED

EXAMINER  
Peshawar High Court



24 posts were abolished and only nine(09) posts were shown to be available; that the above posts were advertised by respondents vide publication dated 10.5.2017 without observing 75% and 25% quota, so aggrieved from the same, petitioners have approached this Court through filing the instant writ petition.

3. The respondents on Court order submitted their parawise comments to the writ petition.

4. Arguments heard and record annexed with the petition gone through.

5. According to the rules framed in the years 1982, 2012 and 2017, 75% of the post of "Assistant" are reserved to be filled by promotion on the basis of seniority-cum-fitness from amongst the Senior Clerks with at least five years experience as Junior Clerk and Senior Clerk and 25% is to be filled in by initial recruitment, however, in the instant case, it appears that respondents are intending to intrude upon 75% quota

ATTESTED

EXAMINER  
Peshawar High Court

ATTESTED



reserved for promotion as instead of filling the vacant posts of Office Assistant, by promotion, abolished 15 posts of 'Office Assistant' and the remaining posts were advertised to be filled through initial recruitment.

6. We are of the view that the grievance of the petitioners is justified in law as the respondents are not competent to alter the statutory rules by means of administrative instructions and where a cadre has a definite quota reserved for departmental promotion, it has to be filled first and thereafter direct recruitment shall be made. The respondents cannot abolish the quota reserved to be filled by promotion and destroy the chances of promotion to those who are already in service since years.

7. In the circumstances mentioned hereinabove, this writ petition is allowed in terms that the respondents shall strictly adhere to the rules and the quota reserved to be filled through promotion shall not be

ATTESTED

EXAMINER  
Peshawar High Court

disturbed and the respondents shall consider the  
petitioners for promotion strictly in accordance with law  
and rules on the subject.

**Announced**  
**19.11.2019**

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY

EXAMINER  
Peshawar High Court, Peshawar  
Authorised Under Article 177 of  
The Qanun-e-Shahadat Order, 1988

13 JAN 2020

No. 14944  
Date of Presentation of Application 20/11/19  
No of Pages 12  
Copying fee 400/-  
Total  
Date of Preparation of Copy 13/11/2012  
Date of Delivery of copy 13/11/2012  
Received By

(D.B)  
Hon'ble Justice Musarrat Hilali.  
Hon'ble Mr. Justice Ishtlaq Ibrahim.

"A.Qayum PA"

~~ATTACHED~~  
ATTACHED

have



ANNEX F 91

**DIRECTORATE GENERAL OF LAW & HUMAN RIGHTS  
KHYBER PAKHTUNKHWA, PESHAWAR**

Phone: 091-9217204

Email: [dir.kpk@gmail.com](mailto:dir.kpk@gmail.com)

Website: [www.humanrights.kp.gov.pk](http://www.humanrights.kp.gov.pk)

Plot No. 21, Sector B-2, Phase-V, Hayatabad, Peshawar.

(26)

Dated Peshawar, the 10/12/2020 / 10 26-56

**ORDER:-**

**No. DG/SLT/AD/Promotion/2-16/2019:-** On the recommendation of the Departmental Promotion Committee the competent authority is pleased to promote the following Senior Clerk (BPS-14) of the Offices of District Attorneys in Khyber Pakhtunkhwa to the post of Assistant (BPS-16) on regular basis with immediate effect.

S. No.	Name of the Official
1.	Mr. Ali Haider
2.	Mr. Faheez Zaman
3.	Mr. Nisar Ahmad
4.	Mr. Shahab Ali
5.	Muhammad Ismail
6.	Muhammad Ilyas
7.	Muhammad Ishfaq

1. The Officials on promotion will remain on Probation in term of Section 6(2) of the Khyber Pakhtunkhwa Civil Servant, 1973 read with the amendment Rule 15(1&4) of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules, 1989, for one year, if not extended for another year.

-SD-

**DIRECTOR GENERAL**

Law and Human Rights Khyber  
Pakhtunkhwa

**No. DG/SLT/AD/Promotion/2-16/2019:-**

Dated Peshawar, the 10/12/2020

Copy Forwarded for Information to:

1. Accountant General, Khyber Pakhtunkhwa.
2. PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
3. PA to director General, Law and Human Rights.
4. All District Attorneys Offices in Khyber Pakhtunkhwa.
5. All District Accounts Offices concerned.
6. Official Concerned for Compliance.
7. Master File for Record.

**ASSISTANT SOLICITOR  
(M&E)**



42 ANNEX - G

**DIRECTORATE GENERAL OF LAW & HUMAN RIGHTS**  
**KHYBER PAKHTUNKHWA, PESHAWAR**

Phone: 091-9217204  
Email: [dir.kpk@gmail.com](mailto:dir.kpk@gmail.com)  
Website: [www.humanrights.kp.gov.pk](http://www.humanrights.kp.gov.pk)  
Plot No. 21, Sector B-2, Phase-V, Hayatabad, Peshawar

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Dated: 17/02/2021

**ORDER:**

**No. DG/SLT/AD/Posting/Transfer/2-2/2019-11026-56-B.** The Competent Authority is pleased to order the posting/transfer of the following Assistant (BPS-16) of District Attorney Offices Khyber Pakhtunkhwa in the best public interest with immediate effect:-

S#	Name of Official	From	To
1.	Mr. Ali Haider	Directorate General of Law and Human Rights.	District Attorney Office Peshawar. (Against the vacant post).
2.	Mr. Faheez Zaman	District Attorney Office Hangu.	District Attorney Office Kohat (Against the vacant post)
3.	Mr. Nisar Ahmad	District Attorney Office Abbottabad.	District Attorney Office Abbottabad (Against the vacant post)
4.	Mr. Shahab Ali	District Attorney Office Malakand at Batkhela.	District Attorney Office Swat (Against the vacant Post).
5.	Muhammad Ismail	District Attorney Office Lakki Marwat.	District Attorney Office Bannu (Against the vacant post)
6.	Muhammad Ilyas	District Attorney Office Lower Dir.	District Attorney Office Mardan (Against the vacant post).
7.	Muhammad Ishfaq	District Attorney Office Mardan.	District Attorney Office Service Tribunal Peshawar (Against the vacant post).

-SD-

**DIRECTOR GENERAL**  
Law and Human Rights Khyber  
Pakhtunkhwa

**No. DG/SLT/AD/Posting/Transfer/2-2/2019:-** Dated Peshawar, the 17/02/2021

Copy Forwarded for Information to:

1. Accountant General, Khyber Pakhtunkhwa.
2. PS to Secretary Law, Parliamentary Affairs and Human Rights Department.
3. PA to director General, Law and Human Rights.
4. All District Attorneys Offices concerned in Khyber Pakhtunkhwa.
5. All District Accounts Offices concerned.
6. Master File for Record.

**ASSISTANT SOLICITOR**  
(M&E)

To,

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ANNEX H

(28)

The Worthy Secretary,  
Govt: of Khyber Pakhtunkhwa  
Law, Parliamentary Affairs and Human Rights Department

Through **DIRECTOR GENERAL OF LAW AND HUMAN RIGHTS  
KHYBER PAKHTUNKHWA.**

Subject: **DEPARTMENTAL APPEAL FOR THE GRANT OF BACK  
BENEFITS ON PROMOTION FROM THE POST OF SENIOR  
CLERK (PBS-14) TO THE POST OF ASSISTANT (BPS-16) VIDE  
ORDER DATED 10.12.2020**

R/Sir,

The appellant humbly and respectfully submits as under:-

1. That 28 posts of Office Assistants were sanctioned/created by the Finance Department in the office of Government Pleader now District Attorney at various Districts as per (Flag-A).
2. That 19 Office Assistants were promoted to the post of Superintendent (BPS-16) in various offices of District Attorney Khyber Pakhtunkhwa vide order No. E&A/LD/2-77/2012/1480-1558, dated 29.01.2013 as per (Flag-B). Resultantly on their promotion to the post of superintendent 19 post of Assistant (BPS-16) fell vacant.
3. That the Senior Clerks who were entitled to be promoted on those vacant posts of Office Assistant were not considered for promotion rather 19 out of 28 posts of office Assistant were abolished as per (Flag-C) and only 9 posts of office Assistant were left behind.
4. That as per relevant Service Rules 75% quota was fixed for promotion on the basis of seniority-Cum Fitness amongst the Senior Clerk with at least five years' experience as Junior Clerk and Senior Clerk and 25% quota for initial recruitment. But ignoring the relevant Rules Law Department advertised 8 posts of Assistant without observing 75% promotion quota (Flag-D)
5. That the aggrieved Senior Clerk filed a Writ Petition before the Peshawar High Court Peshawar. The said writ petition was allowed by the Hon'ble Peshawar High court Peshawar and directions were issued that the respondents shall strictly adhere to the Rules and the quota

**ATTACHED**

reserved to be filled through promotion shall not be disturbed and the respondents shall consider the petitioners for Promotion strictly in accordance with Law and Rules on the subject as per Judgment (Flag-E) (duly highlighted).

- 6. That the posts of Assistant remained vacant for more than 7 years, due to which the applicant was entitled to back benefits w.e.from 30.01.2013, but the same were not extended/given to the appellant at the time of promotion. Which made the appellant compel to submit this appeal.
- 7. That the directions of Hon'ble Peshawar High court Peshawar, Directorate General Law & Human Rights promoted 7 Senior Clerk to the post of Assistant (BPS-16) vide order No.DG/SLT/AD/Promotion/2-16/2019/1026-56, dated 10.12.2020 (Flag-F) who were entitled to be promoted w.e.f. 30.01.2013.

Keeping in view the above mentioned facts, it is, therefore, requested that this appeal may please be allowed and back benefits may graciously be granted to the appellant w.e.f. 30.01.2013.

(MUHAMMAD ISHFAQ)  
Assistant  
Directorate General of Law & Human  
o/c Rights

Copy (in advance) forwarded to the Worthy Secretary Law, Parliamentary Affairs and Human Rights Department for information and necessary action please.

(MUHAMMAD ISHFAQ)  
Assistant  
Directorate General of Law & Human  
o/c Rights

By No. 198  
13-01-2022

