


Form- A

FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 343/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.05.2024	<p>The implementation petition of Mr. Rafiq Ahmad submitted today by Mr. Ali Gohar Durrani Advocate. It is fixed for implementation report before Single Bench at Peshawar on _____ .Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the Petitioner.</p> <p>By the order of Chairman  REGISTRAR</p>

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

In Re:
Execution Petition No. 343 /2024

In Service Appeal No. 600/2023

Decided on: 15.03.2024


Mr. Rafique Ahmad **Versus** The Government of Khyber
Pakhtunkhwa and others

I N D E X

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Petitioner

Through


(ALI GOHAR DURRANI)
Advocate Supreme Court
0332-9297427

①

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12585

Dated 07-05-2024

In Re:

Execution Petition No. 343 /2024

In Service Appeal No. 600/2023

Decided on: 15.03. 2024

Mr. Rafique Ahmad Law Drafter (BPS-16), Khyber Pakhtunkhwa
Service Tribunal Peshawar.

(PETITIONER)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Government of KP through Secretary Tourism, Sports, Culture, Museum & Youth Affairs, Civil Secretariat, Peshawar.
3. The Government of KP through Secretary Finance, Finance Department at Civil Secretariat Peshawar.
4. The Government of KP through Secretary Establishment, Civil Secretariat Peshawar.
5. The Government of KP through Secretary Administration, Administration Department, Civil Secretariat Peshawar.
6. Directorate of Tourist Services, through Director General Tourist Services, Peshawar.

(Respondents)

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**EXECUTION PETITION TO GIVE EFFECT & IMPLEMENT
THE JUDGMENT OF THIS HONOURABLE TRIBUNAL
DATED 15-03-2024, UPON THE EXECUTION PETITIONER.**

Respectfully Sheweth.

That the petitioner earnestly craves the permission of the Honorable Service Tribunal to submit as under:

1. THAT the petitioner is a Law Drafter (BPS-16) at Khyber Pakhtunkhwa service Tribunak, Peshawar and entered into the Government service on 03-01-2022.

Copy of appointment order is Annexure-A.

2. That an appeal was filed for directions to the Respondents that the petitioners be granted promotion and the decision taken in the minutes of meeting of the DPC dated 07-11-2022 be set-aside, before the Honourable Service Tribunal and the same was heard on 15-03-2024. The said appeal was accepted, and subsequently, Respondents were directed to promote the appellants from the date when the meeting of DPC was held i.e. 07.11.2022.

Copy of the Service Appeal No. 600/2023 is Annex-B

3. That the Honourable Tribunal rendered its judgment dated 15-03-2024, but the respondent did not implement the judgment dated 15-03-2024 of this Honourable Tribunal.

Copy of the judgment dated 15-03-2024 has been Annex-C

4. That the judgment dated 15-03-2024 rendered by the Honourable Service Tribunal, Reference can be given to the relevant portion of judgment, produced herein below:

"In view of the above discussion, one can safely say that the appellants qualified the conditions laid down in the service rules in the light of which working papers for their promotions were prepared and presented before the DPC. The DPC, however, failed to take into consideration the service rules presented before them and raised objections which were groundless. All the appeals presented before us are, therefore, allowed as prayed for. Respondents are directed to promote the appellants from the date when the

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meeting of DPC was held i.e. 07.11.2022 Cost shall follow the event
Consign."

5. That the petitioner also moved an application to the Respondents for the implementation of the judgment dated 15-03-2024 of this Hon'ble Tribunal but no action was taken on the said application and the judgment dated 15-03-2024 rendered by this Hon'ble tribunal is still not implemented by the Respondents.

Copy of Application is Attached as Annex-D

6. That due to the inaction of the respondents to comply with the directions of the Honourable Service Tribunal, the execution petitioner now approaches this Honorable Tribunal for directions to implement the judgment dated 15.03.2024 in the larger interest of justice and fair play.

Prayer:

It is therefore most humbly prayed that on the acceptance of this petition, may it please this honorable tribunal to so kindly direct the implementation of judgment dated 15.03.2024 in Service Appeal No. 600/2023, any other relief that this Honorable Tribunal may deem appropriate in the circumstances of the case may also be given.


Execution Petitioner

Through



(ALI GOHAR DURRANI)

Advocate Supreme Court

0332-9297427

khaneliegohar@yahoo.com

SHAH | DURRANI | KHATTAK

(4)

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

In Re:

Execution Petition No. _____/2024

In Service Appeal No. 600/2023

Decided on: 15.03.2024

Mr. Rafique Ahmad Law Drafter (BPS-16), Khyber Pakhtunkhwa
Service Tribunal Peshawar.

(PETITIONER)

Versus

The Government of Khyber Pakhtunkhwa and others

(Respondents)

AFFIDAVIT Of,

I, Mr. Rafique Ahmad Law Drafter (BPS-16), Khyber
Pakhtunkhwa Service Tribunal Peshawar. do hereby solemnly
declare and affirm on oath:-

I am personally conversant with the facts and circumstances of the case
as contained therein and the facts and circumstances mentioned in the
enclosed writ petition are true and correct to the best of my knowledge
and belief.

Deponent

CNIC#

15401-7254778-9.

Identified by:

ALI GOHAR DURRANI
Advocate Supreme Court



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BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL

In Re:

Execution Petition No. _____/2024

In Service Appeal No. 600/2023

Decided on: 15.03. 2024

MEMO OF ADRESS

Mr. Rafique Ahmad Law Drafter (BPS-16), Khyber Pakhtunkhwa
Service Tribunal Peshawar.
(PETITIONER)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.
2. The Government of KP through Secretary Tourism, Sports, Culture, Museum & Youth Affairs, Civil Secretariat, Peshawar.
3. The Government of KP through Secretary Finance, Finance Department at Civil Secretariat Peshawar.
4. The Government of KP through Secretary Establishment, Civil Secretariat Peshawar.
5. The Government of KP through Secretary Administration, Administration Department, Civil Secretariat Peshawar.

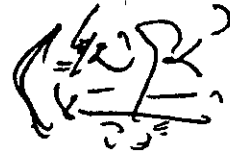
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6. Directorate of Tourist Services, through Director General
Tourist Services, Peshawar

(Respondents)

Petitioner

Through



(ALI GOHAR DURRANI)

Advocate Supreme Court

0332-9297427

khaneliegohar@yahoo.com

SHAH | DURRANI | KHATTAK



No.TSW-PR-1(148)/19-A&E
Government of Khyber Pakhtunkhwa
Directorate of Tourist Services

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Regd
25
Amir (A)

4th Floor, FC Plaza, Sunehri Masjid Road,
Peshawar, the 23rd January, 2019

Subject: RECRUITMENT TO THE POST OF ASSISTANT (BPS-16)

On the recommendation of KPKPSC is offered on appointment of Assistant (BPS-16) in the Directorate of Tourist Services. Terms and conditions of the appointment will be as under:-

- He will get pay at the minimum of BPS-16 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
- He will have no claim to seniority and confirmation from the date earlier to his date of appointment and in preference to persons already serving in the Department of Tourist Services.
- He shall be governed by the Civil Servant Act, 1973 and all the laws applicable to the Civil Servants and Rules, made there.
- He will be on probation for a period of one year in the first instance extendable by an order before or after its completion for further period of one year. During probation his services are liable for termination at any time without assigning any reason.
- His appointment will be provisional subject to verification of his character and antecedents and medical fitness (for fresh appointees only)
- He will report for joining at Directorate of Tourist Services, 4th Floor FC Plaza Peshawar Saddar, and letter on will be posted any where in Khyber Pakhtunkhwa.
- He will be required to report for duty in the office at Para-f, within 15 days.
- He shall produce a medical certificate of fitness from Medical Superintendent, Services Hospital, Peshawar, before joining duties in the Civil Secretariat, as required under the rules.
- For all other terms not covered above, he will be governed by the government servant's temporary employment rules.
- He has to join duties at his own expenses. In case he wishes to resign at any time 14 days notice will be necessary or in lieu thereof 14 days pay will be forfeited.
- He would bring with him the following documents
- His original domicile certificate, educational certificate (Matriculation etc.) and two attested copies thereof from the concerned board / University.
- Two character Certificate signed by two different class 1 Gazette Officer (Band copies are enclosed)
 - He should immediately but not later than 06.02.2019 inform this office whether or not the offer of appointment is acceptable to him.
 - If the offer is acceptable to him, he should immediately contact the office as indicated at Para-f) above to ascertain the date on which he is required to report for medical examination/duty. The offer of appointment is liable to be canceled if he fails to report for duty within the above prescribed period.
 - No TA/DA will be paid for joining the duty his Department.

Directorate Of Tourist Services F.C Plaza
4th Floor Peshawar Cantt

23 JAN 2019

6473 to 6477
ISSUE/IDARY No

Prasad
(Director)

Mr. Rafiq Ahmad
S/o Zarif Khan
R/o Village & P/O Meherdi
Tehsil Dargal District Malakand,

Copy is forwarded for information to:

- Accountant General, Khyber Pakhtunkhwa, Peshawar
- The Director, Directorate of Tourist Services, Govt. of Khyber Pakhtunkhwa.
- PS to Secretary, Sport & Tourism Department, Govt. of Khyber Pakhtunkhwa
- The Section Officer Tourism,
- Personal File

Attested to be True
Copy

Prasad

(3) (B) Annex

**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.**



APPEAL No. 600 /2023

Mr. Rafiq Ahmad Assistant (BPS-17) Directorate of Tourist Services Peshawar,
Khyber Pakhtunkhwa .

..... Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. The Sports, Culture, Tourism, Museum and Youth Affairs Department,
Through Secretary Tourism to the Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
3. The Finance Department,
Through Secretary Finance to the Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar.
4. The Establishment Department,
Through Secretary Establishment to the Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar
5. The Administration Department,
Through Secretary Administration to the Government of Khyber Pakhtunkhwa,
Civil Secretariat, Peshawar
6. Directorate of Tourist Services,
Through DG Tourist Services.

..... Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 FOR PROMOTION.**

RESPECTFULLY SUBMITTED:

The appellant most humbly beg to submit as under:

1. That the Appellant is a law-abiding citizen of Pakistan and also hails from a respectable family who holds a Master Degree in English. He is serving as Assistant (BPS-16) in Directorate of Tourist Services Peshawar Khyber Pakhtunkhwa who entered in a Government services on 01-02-2019 vide notification dated 23-01-2019. Copy of the notification is Annex-A.
2. That the Appellant was appointed by initial appointment to the post of Assistant (BPS-16) through KPPSC. Copy of the notification dated 03-01-2022 is Annex-B.
3. That the Government of Khyber Pakhtunkhwa Directorate of Tourist Services Peshawar issued a joint seniority list of Inspectors and Associate of Directorate of Tourist Services vide Notification dated 03-01-2022.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Assistant
7/1/2023

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Copy of the Final Seniority Lists Annex-C.

4. That a working paper was issued by Department of Sports and Tourism, Directorate of Tourist Services, Khyber Pakhtunkhwa Peshawar for Promotion/Appointment to the post of Assistant Controller/Assistant Director/ Assistant Director-Cum-Assistant Controller on Regular/ Charge Basis and the appellant was considered eligible for appointment to the post of Assistant Controller/ Assistant Director-cum-Assistant Controller on ~~acting~~ ^{Regular} charge basis

Copy of the working paper is Annex-D.

5. That on 31-10-2017 a notification was issued by the Government of Khyber Pakhtunkhwa, Sports, Tourism, Culture, Archaeology, Youth Affairs and Museums Department in pursuance of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 which lays down the method of Recruitment, Qualification and other Conditions.

Copy of the notification dated 31-10-2017 is Annex-E.

6. That subsequently certain amendments were made in the above mentioned Service Rules vide notification dated 25-04-2022 by the Government of Khyber Pakhtunkhwa, Sports, Tourism, Culture, Archaeology, Youth Affairs and Museums Department.

Copy of the notification dated 25-04-2022 is Annex-F.

7. That a meeting of the Departmental Promotion Committee of the Directorate of Tourist Services Khyber Pakhtunkhwa, Peshawar was held on 07-11-2022 under the chairmanship of the Secretary Sports, Tourism, Archaeology, Museum and Youth Affairs Department.

Copy of the Minutes of the meeting is Annex-G.

8. That being aggrieved of the minutes of the meeting held on 07-11-2022 the Appellant filed an Appeal/representation to the worthy Chief Secretary that the decision of the Departmental Promotion Committee be declared null and void and fresh directions may be issued for Fresh Departmental Promotion Committee and the appellant be recommended for promotion as per Rules/ entitlement.

Copy of the Appeal dated 02-12-2022 is Annex-H.

9. That it requires mention that under the purview of Section 8 of the Tourism Act 2019, the services of appellant were to be placed in surplus pool. To be stopped from processing the case of the appellant for placement in surplus pool, the appellant approached the honorable Peshawar high Court in writ jurisdiction for the seeking of directions of holding of DPC meeting. During the pendency of the writ petition the DPC meeting dated 07-11-2022 took place. And the writ petition was dismissed.

10. That being denied to promotion as per Rules/entitlement to the appellant having no alternate remedy but to approach this Honorable Tribunal amongst others on the following grounds:

Grounds:

- a. Because the Appellant has been treated illegally, unlawfully and against the spirit of the law.

ATTESTED
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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- b. Because the Rights of the Petitioner are secured under Article 8, and the entirety of Part II of the Constitution of the Islamic Republic of Pakistan, and its redress falls solely within the ambit of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973, and lie with this honorable tribunal.
- c. Because when the law requires a thing to be done in a particular manner, it has to be done in that manner alone. Reliance is placed on 2020 CLC 1453 Pesh, 2022 PLC (CS) 478 Pesh, 2017 SCMR 1427, 2008 SCMR 1148.
- d. Because the right to due process as per Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973 is being made redundant in the instant case against the Appellant. The right is absolute and cannot be done away with and it needs to be taken as liberally as possible as per the dictum laid by the Honorable Supreme Court in PLD 2022 SC 497.

"Incorporation of the right to a fair trial and due process by Article 10-A in the Constitution as an independent fundamental right underscores the constitutional significance of fair trial and due process and like other fundamental rights, it is to receive a liberal and progressive interpretation and enforcement."

- e. Because the Honorable Supreme Court of Pakistan in the recent judgment in Justice Qazi Faez Isa case has held in unequivocal terms that even the highest of offices are not to be denied the fundamental rights so guaranteed by the Constitution. The judgment is reported as PLD 2022 SC 119 and lay as under:

"Right to be dealt with in accordance with law. No one, including a Judge of the highest court in the land, is above the law, At the same time, no one, including a Judge of the highest court in the land, can be denied his right to be dealt with in accordance with law; it matters little if the citizen happens to hold a high public office, he is equally subject to and entitled to the protection of law."

The judgment referred to above further lay clear that the principles of natural justice are to be met in every circumstances in the following terms:

"After recognition of the right to fair trial and due process as a fundamental right by insertion of Art. 10A in the Constitution, violation of the principles of natural justice, which are the necessary components of the right to fair trial and due process, is now to be taken as a violation of the said fundamental right as well."

These principles are time and again reiterated by the Honorable Supreme Court and have been recently held of immense value in PLD 2021 SC 600 in the following words:

"Constitutional guarantee of the right to be dealt with in accordance with law, under Art. 4 of the Constitution, is available not only to every citizen of the country but also to every other person for the time being within Pakistan, Said constitutional guarantee cannot be curtailed or limited in the case or matter of any person whosoever he may be and whatever the allegations against him may be."

- f. Because even otherwise promotion after retirement is permissible under the law, if otherwise employees fulfil the conditions of eligibility, suitability and fitness.
- g. Because it is well settled preposition of law laid down by the superior courts that when employee has wrongly been prevented from promotion to the higher post without his fault despite of availability of vacancy against the promotion quota, the employee is entitled to notional/anti-dated promotion. Reliance is placed on promotion on 2010 SCMR1466, 2011 SCMR389, 1998 SCMR2544, 2012 PLC (CS)566 and 2011-SCMR788.

ATTESTED

[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Serv. Commission
 Peshawar

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- h. Because it has been held by the superior court time in again, that remedy would always be available to the employee, where any executive authority entrusted with responsibility for taking certain action in accordance with the law, and had not been done so. Reliance is placed on 2007 PLC 366.
- i. Because the mechanism provided under Article 212 is attracted for the reason of the order being coram non iudice and illegal for the entrenched malice on part of the Respondents in the case.
- j. Because the actions on part of the respondents seriously are in the negation of the Constitution of the Islamic Republic of Pakistan, 1973 and the Civil Servants Act.
- k. Because the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The said rights flow out of the Constitution the terms and conditions of service of the Appellant and this Honorable Court being the custodian of the Fundamental Rights of citizens of Pakistan, as well as the protection afforded by the Constitution of Islamic Republic of Pakistan 1973, is why the Appellant seeks the redress of their grievances and to end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of the Respondents.
- l. Because the Appellant has got the fundamental right of being treated in accordance with law but the treatment meted out to the Appellant is on consideration other than legal and he has been deprived of his rights duly guaranteed to him by the constitution of Pakistan.
- m. Because the appellant has not been treated in accordance with law, hence his rights secured and guaranteed under the Law are badly violated.
- n. Because the Appellant crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Tribunal highlighting further contraventions of the provisions of the Constitution & Laws which adversely affected the Appellant.

PRAYER:

In view of the above, it is humbly prayed that this Honorable Tribunal may graciously be pleased to direct that the Appellant be granted promotion and the decision taken in the minutes of meeting of the DPC dated 07-11-2022 be set aside. Any other relief deemed appropriate in the circumstance of the case may also be granted.

Interim Relief:

That pending disposal of the instant appeal, may it please this honorable tribunal to restrain the respondents from placement of the services of the appellant in surplus pool.

ATTESTED

[Signature]

Kh. ...
Sec. ...

Through

[Signature]
Appellant

ALI GOHAR DURRANI
Advocate High Court(s)
0332-9297427
khaneliegohar@yahoo.com
SHAH | DURRANI | KHATTAK
(A REGISTERED LAW FIRM)
HOUSE NO. 231-A, STREET
NO.13, NEW SHAMI ROAD,
PESHAWAR.

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BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Appeal No. _____/2023

Mr. Rafiq Ahmad

Versus

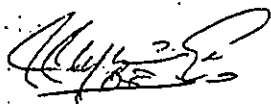
Government of Khyber Pakhtunkhwa through Chief Secretary and others

AFFIDAVIT

I, Rafiq Ahmad Assistant (BPS-17) Directorate of Tourist Services Peshawar, Khyber Pakhtunkhwa, do hereby solemnly affirm and declare on oath that the contents of accompanied writ petition are true and correct to the best of my knowledge and belief and nothing has been intentionally concealed from this Honorable Court.

Rafiq Ahmad
15401-7254778-9
Deponent
CNIC No. 0315-4331871

Identified By:


Ali Gohar Durrani
Advocate High Court(s)

(13) Amjad (D)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR**



Service Appeal No. 597/2023

BEFORE: MRS. RASHIDA BANO ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)

Mr. Raza Khan Superintendent (BPS- 17) Directorate of Tourist Services Peshawar Khyber Pakhtunkhwa.
..... (Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa through Chief Secretary Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Sports, Culture, Tourism, Museum and Youth Affairs Department through Secretary Tourism to the Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
3. The Finance Department, through Secretary Finance to the Government of Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
4. The Establishment Department through Secretary Establishment to the Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. The Administration Department, through Secretary Administration to the Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
6. Directorate of Tourist Services, through Director General Tourist Services, Peshawar.....(Respondents)

Mr. Ali Gohar Durrani, Advocate ... For appellant

Mr. Asif Masood Ali Shah, Deputy District Attorney ... For respondents

Date of Institution..... 20.3.2023
Date of Hearing..... 15.03.2024
Date of Decision..... 15.03.2024

**CANNED
KPST
Peshawar**

CONSOLIDATED JUDGEMENT

FAREEHA PAUL, MEMBER (E): Through this single judgment, we intend to dispose of instant service appeal as well as connected service appeal No. 598/2023, titled "Muhammad Amjad Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil

ATTESTED

EX-MEMBER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

07/15/24

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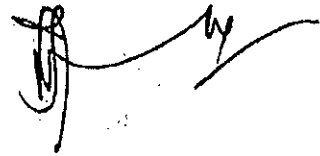
Secretariat, Peshawar and others”, service appeal No. 599/2023, titled “Shaher Yar Khan Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others”, and service appeal No. 600/2023 titled “Rafiq Ahmad Versus the Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar and others”, as in all the appeals, common questions of law and facts are involved.

2. The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of the appeal, the respondents might be directed to grant promotion to the appellant and the decision taken in the minutes of meeting of the DPC dated 07.11.2022 be set aside, alongwith any other remedy which the Tribunal deemed appropriate.

3. Brief facts of the case, as given in the memorandum of appeal, are that the appellant entered in the government service on 16.11.1989 and was serving as Superintendent (BPS- 17) in the Directorate of Tourist Services Khyber Pakhtunkhwa, Peshawar. Vide notification dated 27.12.2017, he was promoted from the post of Senior Clerk (BPS- 14) to Assistant (BPS- 16). He was then promoted to the post of Superintendent BPS- 17 on acting charge basis vide notification dated 26.11.2020. Directorate of Tourist Services Peshawar issued a joint seniority list of Inspectors and Assistants of Directorate of Tourist Services vide notification dated 03.01.2022. On 31.10.2017, a notification was issued by the Government of Khyber Pakhtunkhwa,

ATTESTED

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Khyber Pakhtunkhwa
Service Tribunal
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Sports, Tourism, Department in pursuance of Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 which laid down the method of recruitment, qualification and other conditions. Subsequently certain amendments were made in the service rules vide notification dated 25.04.2022. A working paper was prepared by the Directorate of Tourist Services for promotion/appointment to the post of Assistant Controller/Assistant Director/Assistant Director-Cum-Assistant Controller on regular/acting charge basis. Meeting of the Departmental Promotion Committee of the Directorate of Tourist Services Khyber Pakhtunkhwa, Peshawar was held on 07.11.2022 under the Chairmanship of the Secretary Sports and Tourism Department. Being aggrieved of the minutes of the meeting, the appellant filed an appeal/representation to the Chief Secretary to declare the decision of the DPC null & void and to issue directions for fresh DPC and recommend the appellant for promotion as per rules/entitlement. Under the purview of Section 8 of the Khyber Pakhtunkhwa Tourism Act 2019, the services of appellant were to be placed in surplus pool. To stop from processing the case of the appellant for placement in surplus pool, he approached the Honourable Peshawar High Court in writ jurisdiction for seeking directions of holding of DPC meeting. It was during the pendency of writ petition that the meeting of DPC was held on 07.11.2022. Subsequently the writ petition was also dismissed; hence the instant service appeal.

4. Respondents were put on notice who submitted their joint written

reply/comments on the appeal. We heard the learned counsel for the

ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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

5. Arguments and record presented before us transpire that the appellants were serving in the Directorate of Tourist Services of the province. Appellants in service appeal No. 597/2023 (Mr. Raza Khan) and 600/2023 (Mr. Rafiq Ahmad) were Assistants whereas the ones in service appeal No. 598/2023 (Muhammad Amjad) and 599/2023 (Shaheryar Khan) were Computer Operators. Working paper was prepared for meeting of Departmental Promotion Committee in which the names of the appellants in service appeal No. 597/2023 and 600/2023 were mentioned as eligible for promotion to the post of Assistant Controller/Assistant Director-cum-Assistant Controller on regular basis. As far as the appellants in service appeals No. 598/2023 and 599/2023 are concerned, they were shown as eligible for promotion to the post of Assistant Director (IT/Planning) on regular basis. The meeting of DPC was held on 07.11.2022 and while considering the working paper, in case of appellants Mr. Raza Khan and Mr. Rafiq Ahmad, following recommendation was made:-

"Raza Khan Superintendent (ACB) (BS- 17)

The said official has already been promoted to the post of Superintendent (BS- 17) on ACB in light of Service Rules of DTS duly notified on 31.10.2017 and there is no provision for promotion of said official to the post of Assistant Director/Assistant Controller/Assistant Director-cum-Assistant Controller in the Amended Service Rules of DTS notified on

ATTESTED

**EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar**

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25.04.2022. Hence the Committee deferred the promotion of said incumbent.

Rafiq Ahmad Assistant (BS-16)

The DPC deferred the promotion of said official due to objections raised on the Service Rules of DTS by Representative of Establishment & Finance Department and DG DTS was directed to rectify the Service Rules of DTS."

6. If we look at the service rules of the department notified on 31.10.2017, read with the amendments notified on 25.04.2022, we fail to understand why the appellant, Mr. Raza Khan, was given the acting charge of the post of Superintendent? A simple perusal of the Service Rules shows that the post of Superintendent is to be filled by promotion, on the basis of seniority-cum-fitness, from amongst the Stenographers with at least five years service as such, whereas the appellant, Mr. Raza Khan, was an Assistant, who, according to the rules, was to be promoted to the post of Assistant Controller/Assistant Director/Assistant Director-cum-Assistant Controller (BS- 17). In case of Mr. Rafiq Ahmad (Assistant), the representatives of Establishment and Finance raised objection on the service rules. The departmental representative present before us was asked to clarify the points raised in the meeting of DPC based on which promotion of both the officials was deferred. He replied that other than the rules notified on 31.10.2017 and 25.04.2022, there was no other set of rules and that the working paper was prepared in the light of those rules. When asked that the rules were extremely clear and that both the officials qualified for promotion based on those rules, than why the DPC raised those absurd objections, the departmental

ATTES

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

representative as well as the learned Deputy District Attorney could not respond.

7. In case of Muhammad Amjad and Mr. Shaheryar, Computer Operators, BS- 16, the DPC deferred their promotion due to objections raised on the service rules by the representative of Finance Department.

Recommendations are reproduced as follows:-

"The DPC deferred the promotion of said officials due to objections raised on the Service Rules of DTS by Representative of Finance Department and DG DTS was directed to rectify the Service Rules of DTS."

Here, one fails to understand that when the service rules were approved by the provincial government and notified in the official gazette, then why some individual from Finance Department raised observation with the direction to rectify the service rules? The minutes are silent on the nature of observation and the required rectification.

8. There is no second opinion that the working papers were prepared in the light of existing service rules which were approved by the provincial government and duly notified. If any amendment or rectification was required, it was to be done in some future time and had to be made effective after following the due procedure. The cases of promotion which were ripe for consideration of DPC could not be deferred for the sake of any new rules on the directions of representative of Finance Department, who was simply a Deputy Secretary in the department. He had no authority to direct the DG DTS to rectify the

ATTESTED
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar

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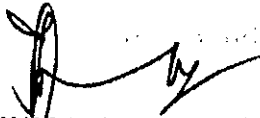
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service rules that had already been approved by the provincial government.

9. In view of the above discussion, one can safely say that the appellants qualified the conditions laid down in the service rules in the light of which working papers for their promotions were prepared and presented before the DPC. The DPC, however, failed to take into consideration the service rules presented before them and raised objections which were groundless. All the appeals presented before us are, therefore, allowed as prayed for. Respondents are directed to promote the appellants from the date when the meeting of DPC was held i.e 07.11.2022. Cost shall follow the event. Consign.

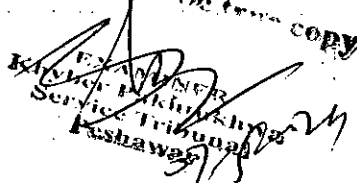
10. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 15th day of March, 2024.

SCANNED
KPST
Peshawar


(FAREEHA PAUL)
Member (I)


(RASHIDA BANO)
Member (J)

Fazle Subhan, P.S

Certified to be true copy

Fazle Subhan
Secretary
Service Tribunal
Peshawar

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SA 597/2023

15th Mar. 2024 01. Mr. Ali Gohar Durrani, Advocate for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, one can safely say that the appellant qualified the conditions laid

15th Mar. 2024

down in the service rules in the light of which working paper for his promotion was prepared and presented before the DPC.

The DPC, however, failed to take into consideration the service rules presented before them and raised objections which were

groundless. The appeal presented before us is, therefore, allowed as prayed for. Respondents are directed to promote the

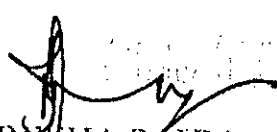
appellant from the date when the meeting of DPC was held i.e


07.11.2022. Cost shall follow the event. Consign.

03. Pronounced in open court in Peshawar and given under

our hands and seal of the Tribunal on this 15th day of March,

2024.


(FARIHA PAUL)
Member (E)


(RASHIDA BANO)
Member (J)

Fazal Subhan PS

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Amjad
①

SECRETARY
Culture, Tourism
Archeology & Museums Department
Khyber Pakhtunkhwa
Date: 04/04/24
629

To, The Secretary to Govt. of Khyber Pakhtunkhwa,
Culture, Tourism, Archeology and Museums.

Subject: IMPLEMENTATION OF JUDGEMENT DATED 15.03.2024 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL IN THE SERVICE APPEAL NO. 597/2023, 598/2023, 599/2023 AND 600/2023 TITLED RAZA KHAN, MUHAMMAD AMJAD, SHAHER YAR KHAN, RAFIQ AHMAD VS GOVT. OF KHYBER PAKHTUNKHWA THROUGH CHIEF SECRETARY & OTHERS.

Dear Sir,

In reference to the subject cite above it is to state that the undersigned were regular employees of the (defunct) Directorate of Tourist Services. The undersigned were eligible for promotion on regular basis as per the approved service rules. However, the Departmental Promotion Committee in its meeting held vide dated-07.11.2022 under the chairmanship of Additional Secretary Tourism Department deferred the promotions on the basis of objections raised on the gazette service rules.

Consequent upon which the undersigned submitted Departmental appeal vide dated 02.12.2022. Later after 30 days' time the undersigned submitted service appeal in the Service tribunal.

In the instant service appeal was accepted by the Service Tribunal Khyber Pakhtunkhwa and ordered in its judgement dated 15.03.2024 to promote the appellants from the date when meeting of the DPC was held. (Judgement attached herewith).

In view of the foregoing, it is therefore requested that the said judgement may please be implemented and the undersigned may be promoted accordingly.

Thank You

Raza Khan ———— *Raza Khan*

Rafiq Ahmad ———— *Rafiq Ahmad*

Muhammad Amjad ———— *Amjad*

Shaher Yar Khan ———— *Shaher Yar Khan*

Ph#03009599818

Attested to be True
Copy

POWER OF ATTORNEY

22

BEFORE THE

SERVICE TRIBUNAL

PESHAWAR No. _____ of 2024

Razique Ahmad

VERSUS

Govt of KP

I/we _____ do hereby appoint & constitute The Law Firm Of

SHAH | DURRANI | KHATTAK

(a registered law firm) as counsel in the above mentioned case, to do all or any of the following acts, deeds and things:-

1. To appear, act and plead for me/us in the above mentioned case in this Court/Tribunal or any other court/tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign, verify and file Complaint/Written Statement or withdraw all proceedings, petitions, suit appeals, revision, review, affidavits and applications for compromise or withdrawal, or for submission to arbitration of the said case, or any other document, as may be deemed necessary or advisable by him for proper conduct, prosecution or defence of the said case at any stage.
3. To do and perform all other acts which may be deemed necessary or advisable during the course of the proceedings.

AND HEREBY AGREE:-

- a) To ratify whatever the said Advocates may do in the proceedings in my interest, Not to hold the Advocates responsible if the said case be proceeded ex-parte or dismissed in default in consequence of their absence from the Court/Tribunal when it is called for hearing or is decided against me/us.
- b) That the Advocates shall be entitled to withdraw from the prosecution of the said case if the whole OR any part of the agreed fee remains unpaid.

In witness whereof I/We have signed this Power of Attorney/Wakalat Nama hereunder the contents of which have been read/explained to me/us and fully understood by me / us this _____ day of _____ at _____.

Signature of Executant(s)

Accepted subject to term regarding payment of fee for/on behalf of The Law Firm of Shah | Durrani | Khattak.

[Signature]

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ADV

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[Signature]
Waleed Nawaz
ADV