

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service No. 1376/2020

With Previous Service Appeal on the same stance already decided.

Service Appeal No.232/2017

Khalid Muhammad AT, GMS Anbar, Swabi.....Appellant

VERSUS

1. Secretary E&SE Khyber Pakhtunkhwa Peshawar
2. Director E&SE Khyber Pakhtunkhwa, Peshawar
3. District Education (E&SE) Male Swabi
4. Secretary Finance Department Khyber Pakhtunkhwa Peshawar

.....Respondents

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**DISTRICT EDUCATION OFFICER
(MALE) SWABI**

Dist: Education Officer
(Male) Swabi

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service No. 1376/2020

With previous Service Appeal which was filed on the same stance has already been decided.

Service Appeal No.232/2017

Khalid Muhammad AT, GMS Anbar, Swabi.....**Appellant**

VERSUS

- 1. Secretary E&SE Khyber Pakhtunkhwa Peshawar
- 2. Director E&SE Khyber Pakhtunkhwa, Peshawar
- 3. District Education (E&SE) Male Swabi
- 4. Secretary Finance Department Khyber Pakhtunkhwa Peshawar

.....**Respondents**

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 01 TO 04

Respectfully Sheweth,

As the present Service Appeal is the same, that has already been dismissed ^{as} with drawn on 14/12/2018. The main objection is that, this Service Appeal is hit by the principles of res-judicata and furthermore the appellant has already been retired form service on 04/02/2019 on superannuation. Therefore, the appeal is not maintainable and the comments submitted in the previous Service Appeal No. 232/2017 with signatures of all the four respondents is reproduced and annexed as “ C” for ready reference. Please peruse special note about the case at the end of the grounds of comments.

PRELIMINARY OBJECTIONS.

- 1. That the appellant Khalid Muhammad does not exist at work against AT post at GMS Anbar (Swabi). There is GHS Anbar, the appellant does not exist there also. This named teacher is SST and working at GHS Gar Munara (Swabi). The appellant concealed the material facts from the Honourable Tribunal and is not maintainable.
- 2. That no departmental appeal dated 20.11.2016 has been filed before the appellate authority. Departmental appeal dated 02.07.2013(Annexure-A) has been manipulated in dates by appellant, hence he has not come this Honourable Tribunal with clean hands.
- 3. That the instant Appeal is badly time barred and not maintainable.
- 4. That the departmental appeal is not presented to the proper appellate authority, hence not maintainable.
- 5. That the Appellant has no locus standi or cause of action to file the instant appeal
- 6. That the Appellant has not come to the Tribunal with clean hands.
- 7. That the Appellant has filed the instant Appeal just to pressurize the respondents.
- 8. That the Appellant is estopped by his own conduct to file the instant appeal.
- 9. That, the Appeal is not maintainable in the present form and also in the present circumstances of the issue.
- 10. That the instant Appeal is against the prevailing laws and rules.

Facts.

1. That, the para relates to the appointment of the appellant. He was appointed on temporary and Adhoc basis at Rs.620/- PM fixed in BPS No.9 subject to the important note, section B, they will be placed in regular scale of Arabic Teacher BPS No.9 as when method of recruitment, qualification and age etc; are prescribed for the post by the Provincial Government. Later on method of recruitment, qualification and age was prescribed for the post of AT by the Provincial Government, which is stated as under.

AT:- I. Sanad in Darsi Nizami
 II. Honour in Arabic
 OR
 Shahadat-ul-Alamia
 OR

Equivalent qualification from a recognized institution with age limit 18-33 years.

In the light of the above prescribed criteria/ qualification, the appellant does not hold the prescribed qualification for the post. This stance has already been accepted by the Honourable Service tribunal Khyber Pakhtunkhwa judgment announced on 13.03.2008 in S.A No.828/2007 of the appellant. (Judgment annexed as-B).

Furthermore he annexed manipulated in dates departmental appeal with the service appeal. The appellant on 20.11.2016 is not in GMS Anbar. He is working as SST at GHS Gar Munara. There is no GMS Anbar exist in District Swabi.

2. That, the para relates to the qualification of the appellant.
3. That, the notification of Govt of KPK dated 07.08.1991 in award of BPS-14 to AT is very clear that: " All the present and future Arabic Teacher who possess the qualification of Trained Fazil with BA/BSc (2nd Division) and five year teaching experience or MA Arabic or equivalent qualification, shall be placed in BPS-14 with 1/3rd in selection grade BPS-15. However the higher scales/grade allowed to those teacher will be personal to them and the inter-se-seniority will remain intact" As discussed in para-1 of the para-wise comments above, the appellant is not a trained Fazil. He is not entitled for award of BPS-14 as per notification of Government Khyber Pakhtunkhwa dated 07.08.1991.
4. Incorrect, the appellant was not trained Fazil, hence not entitled for award of BPS-14. Furthermore he did not raise the issue in the previous appeal No.828/2007, which decided on 13.03.2008. The Departmental appeal, he attached with the service appeal as annexure-E is not in its original shape and manipulated. Hence this departmental appeal is badly time barred and not maintainable. There does not exist GMS Anbar on 20.11.2016, this school is GHS Anbar. Muhammad Khalid is not AT teacher at GMS Anbar on 20.11.2016. Muhammad Khalid named teacher is working against SST post at GHS Gar Munara. Hence he has concealed the facts. The appeal is not maintainable in the present form and also in the present circumstances of the issue. He has no cause of action to file the instant appeal and the appeal in hand is liable to be dismissed with the following grounds inter alia.

Grounds

- A. Incorrect, the appellant is not eligible for grant of BPS-14 due to lack of professional qualification as per notification dated 07.08.1991. His Departmental appeal is manipulated in dates and not submitted to the appellate authority. Hence the appeal is not maintainable in present form and also in present circumstances of the issue.
- B. Incorrect, hence denied, the appellant is not entitled to BPS-14 as per notification dated 07.09.1991. His pay is fixed in the light of judgment passed by this Honourable Tribunal in S.A No.828/2007 dated 13.03.2008. His annexed departmental appeal is manipulated in dates and not sent to the appellate authority.
- C. Incorrect, hence denied, the respondents followed the notification in letter and spirit for all including the appellant for fixation of pay. The appellant is not entitled for award of BPS-14. The action of the respondents is according to law, rule and policy.
- D. Incorrect, hence denied, the appellant is not entitled for award of BPS-14. The respondents can not violate the notification. The action of the respondents is as per law, rule, policy and norm of natural justice.
- E. Incorrect, hence strongly denied, the appellant has been treated in accordance with the notification dated 07.08.1991. He was not entitled for award of BPS-14 due to lack of professional qualification. Hence he was treated as per law, rule, policy and norm of natural justice.
- F. That the respondents seek permission to raise other points/grounds/facts at the time of hearing in view of the above facts.

Special Note:-

That the appellant, Mr.Khalid Muhammad AT, GMS Anbar (Swabi), was promoted to SST BPS-16 and adjusted at GHS Kunda (Swabi) vide DEO(M) Swabi Endst:No.6160-6282/ dated Swabi the 30/10/2014. The GMS Anbar (Swabi) has already been upgraded to GHS Anbar on 01/12/2015. He was transferred and adjusted against SST post at GHS Gar Munara vide order Endst:No.3581-84/ dated 18/04/2016, from there, he was retired form Government Service on 04/02/2019 on attaining the age of superannuation. Retirement order annexed as "A".


That the appellant filed the same appeal with the same prayer, facts and grounds, under Service Appeal No.232/2017, which was dismissed as withdrawn vide this Honourable Service Tribunal order dated 14/12/2018. Thus the instant Service Appeal before Service Tribunal is barred by the principles of res judicata and is liable to be dismissed. Dismissed withdrawn annexed as "B".


That a retired person is not a Civil Servant, same is reported in 1998 SCMR 569. That Promotion from back date to the retired Civil Servants can not be granted, same is reported in PLD 2003 SC 110.

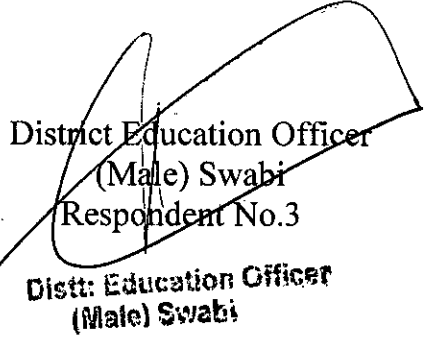
That the departmental appeal dated 02/07/2013 or 20/11/2016 has been manipulated in dates by appellant, hence he has committed serious breach of discipline, forgery, professional dishonesty and misconduct.

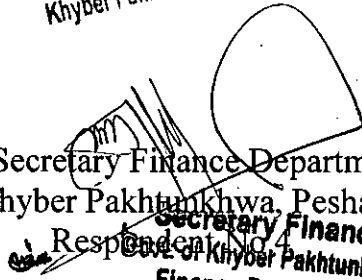
That repetitive frivolous and fraudulent litigation after final adjudication of matter has no legal back up, same is reported in 2011 SCMR 27. The signatures of other respondents are present in the para-wise comments, already submitted in the same grounds Service Appeal No. 232/2017, which is annexed as "C" for ready reference.

In wake of the above submissions, it is requested that this Honourable Service Tribunal may very graciously be pleased to dismiss the instant appeal with special compensatory cost in favour of the respondent department.


Secretary E&SED
Khyber Pakhtunkhwa, Peshawar
Respondent No.1
SECRETARY
& Secondary Edu. Deptt:
Govt. of Khyber Pakhtunkhwa

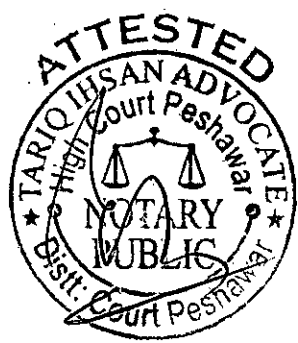

Director E&SE
Khyber Pakhtunkhwa, Peshawar
Respondent No.2
Director
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar.

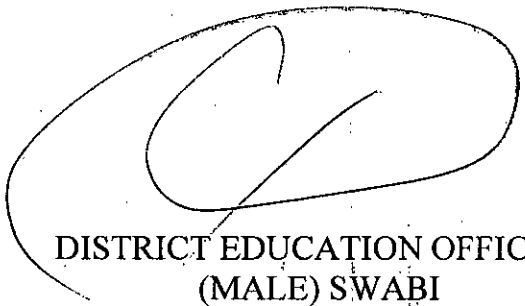

District Education Officer
(Male) Swabi
Respondent No.3
Distt: Education Officer
(Male) Swabi


Secretary Finance Department
Khyber Pakhtunkhwa, Peshawar
Respondent No.4
SECRETARY Finance
Govt. of Khyber Pakhtunkhwa
Finance Department

AFFIDAVIT

I Irfan Ali, DEO (M) Swabi do hereby solemnly affirm and declare on oath that the contents of the comments are true and correct to the best of my knowledge and belief, nothing has been concealed from this Honourable Tribunal.




DISTRICT EDUCATION OFFICER
(MALE) SWABI
Distt: Education Officer
(Male) Swabi



Annexure - A

OS

DISTRICT EDUCATION OFFICE (MALE) SWABI

Office phone & Fax No 0938280239, emis_swabi@yahoo.com

OFFICE ORDER.

The competent authority is pleased to accord sanction to the grant of encashment of leave in lieu of LPR wef: 01-05-2018 to 04-02-2019 (280 days) on full pay in respect of Mr. Khalid Muhammad SST (Swabi) as due and admissible to him under the revised leave Rules 1981.

The District Accounts Officer Swabi has certified that the Leave encashment for 280 days is admissible to the SST concerned under the rules.

He shall stand to be retired from Govt. service on 04-02-2019 (AN) on attaining the age of superannuation.

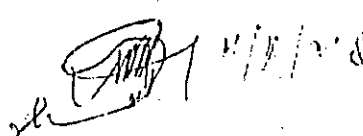
These orders are final and shall not be revoked at any stage.

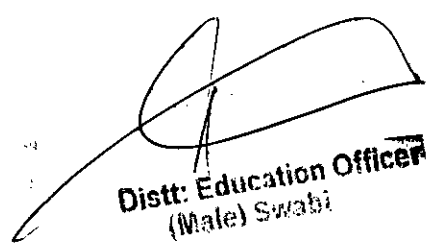
(JEHANGIR KHAN)
DISTRICT EDUCATION OFFICER
(M) SWABI

Endst No 8964-68 /Ret: L-Encash: SST/ Vol: 16/Dated Swabi the 15/10 /2018

Copy of the above is forwarded to the:-

1. Director E & S5 Khyber Pakhtunkhwa Peshawar.
2. District Accounts Officer Swabi.
3. Principal GHS Gar Munara .
4. ADEO Estab: Local Office.
5. Officer/Official Concerned.


DY DISTRICT EDUCATION OFFICER
(M) SWABI

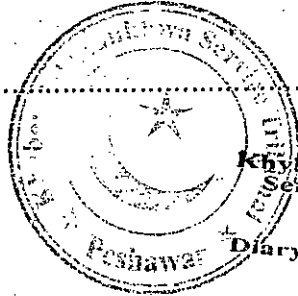

Distt: Education Officer
(Male) Swabi

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.

APPEAL NO. 232 /2017.

Khalid Muhammad, AT,
GMS Anbar, Swabi.....

Appellant.



Khyber Pakhtunkhwa
Service Tribunal

Diary No. 185

Dated 20-02-2017

VERSUS

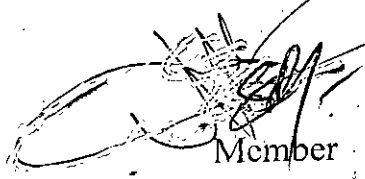
- 1- The Secretary Education (E&SE) Peshawar.
- 2- The Director Education (E&SE), Peshawar.
- 3- The Distt: Education Officer , malè (E&SE) Swabi.
- 4- The Secretary Finance Deptt: KPK Peshawar.

.....Respondents.

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT 1974 FOR DIRECTING THE RESPONDENTS TO FIX THE PAY OF APPELLANT IN BPS-14 AT THE RELEVANT TIME AS PER NOTIFICATION DATED. 07.08.1991 AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN STATUTORY PERIOD.

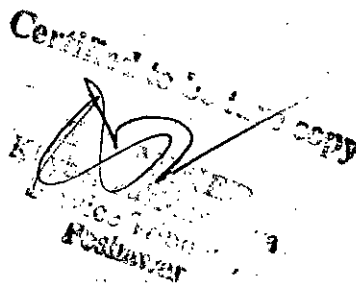
14/12.2018

Learned counsel for the appellant and Mr. Muhammad Jan learned Deputy District Attorney alongwith Shahi Mulk Deputy D.O present. Learned counsel for the appellant seeks withdrawal of the present service appeal. Consequently the present service appeal is hereby dismissed as withdrawn. No order as to costs. File be consigned to the record room.


Member


Member

ANNOUNCED.
14.12.2018


Certified to be a true copy
Khyber Pakhtunkhwa Service Tribunal
Peshawar

Annexure - C / HAD

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

20/11/17
07

Service Appeal No.232/2017

Khalid Muhammad AT, GMS Anbar, Swabi.....Appellant

VERSUS

1. Secretary E&SE Khyber Pakhtunkhwa Peshawar
2. Director E&SE Khyber Pakhtunkhwa, Peshawar
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.....Respondents

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S#	Description of Documents	Annexure	Page
1	Para Wise Comments with affidavit	-	01 to 03
2	Departmental Appeal and its Manipulation in dates	"A"	04-06
3	Judgments in Service Appeal No.828/2007	"B"	07-09

~~_____~~
DISTRICT EDUCATION OFFICER
(MALE) SWABI

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

Service Appeal No.232/2017

Khalid Muhammad AT, GMS Anbar, Swabi.....Appellant

VERSUS

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2. Director E&SE Khyber Pakhtunkhwa, Peshawar
3. District Education (E&SE) Male Swabi
4. Secretary Finance Department Khyber Pakhtunkhwa Peshawar

.....Respondents

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS 01 TO 04

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. That the appellant Khalid Muhammad does not exist at work against AT post at GMS Anbar (Swabi). There is GHS Anbar, the appellant does not exist there also. This named teacher is SST and working at GHS Gar Munara (Swabi). The appellant concealed the material facts from the Honourable Tribunal and is not maintainable.
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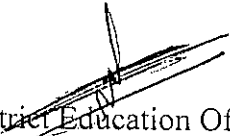
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Grounds

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- B. Incorrect, hence denied, the appellant is not entitled to BPS-14 as per notification dated 07.08.1991. His pay is fixed in the light of judgment passed by this Honourable Tribunal in S.A No.828/2007 dated 13.03.2008. His annexed departmental appeal is manipulated in dates and not sent to the appellate authority.
- C. Incorrect, hence denied, the respondents followed the notification in letter and spirit for all including the appellant for fixation of pay. The appellant is not entitled for award of BPS-14. The action of the respondents is according to law, rule and policy.
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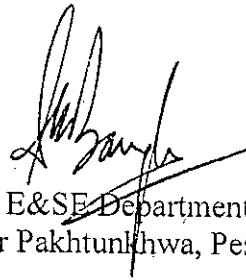
- E. Incorrect, hence strongly denied, the appellant has been treated in accordance with the notification dated 07.08.1991. He was not entitled for award of BPS-14 due to lack of professional qualification. Hence he was treated as per law, rule, policy and norm of natural justice.
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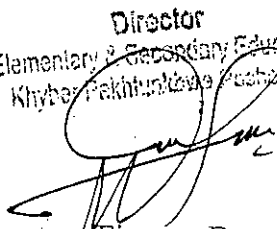
In wake of the above submission, it is requested that this Honourable Service Tribunal may very graciously be pleased to dismiss the instant appeal in favour of the respondent department.


 District Education Officer
 (Male) Swabi


 Director Elementary & Secondary Education
 Khyber Pakhtunkhwa, Peshawar

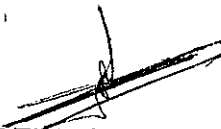
31/5/2017


 Secretary E&SE Department
 Govt:of Khyber Pakhtunkhwa, Peshawar


 Director
 Elementary & Secondary Education
 Khyber Pakhtunkhwa, Peshawar
 Secretary Finance Department
 Govt:of Khyber Pakhtunkhwa, Peshawar

AFFIDAVIT

We do hereby solemnly affirm and declare on oath that the contents of the comments are true and correct to the best of our knowledge and belief, nothing has been concealed from this Honourable Tribunal.


 DISTRICT EDUCATION OFFICER
 (MALE) SWABI

(12) 3/16 (17) 2/9/13

DIRECTORATE OF ELEMENTARY AND SECONDARY EDUCATION
KHYBER PAKHTUNKHWA.

No. 3160 /F.No. 285/Vol:III/TT/AT/Qari(M)

Dated Peshawar the 22/8/2013.

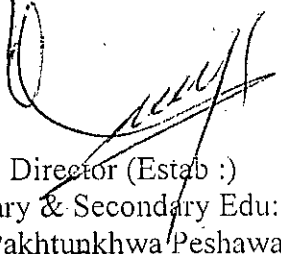
To,

The District Education Officer (M)
Swabi.

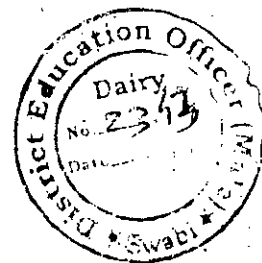
Subject: - APPEAL..

Memo:

I am directed to enclose herewith a copy appeal alongwith its enclosure in respect of Mr. Khalid Muhammad S/O Mr. Gul Dad R/o District Swabi on the subject noted above noted above and to ask you to submit comments/factual position as desired.


Deputy Director (Estab :)
Elementary & Secondary Edu:
Khyber Pakhtunkhwa Peshawar:

27/8/13

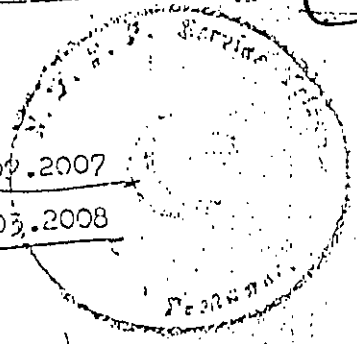


BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR.

APPEAL NO. 828/2007

Date of institution ... 27.09.2007

Date of decision ... 13.03.2008



Khalid Mohammad, A.T,
R/O Shah Mansoor, Swabi.

.. (Appellant)

VERSUS

- 1. The D.C.O, Swabi.
- 2. The E.D.O (S&L), Swabi.
- 3. The Secretary Finance, NWFP,
Peshawar.

.. (Respondents)

*See 1/2/1
discuss
need for
legal opinion*

APPEAL U/S 4 OF THE NWFP SERVICE TRIBUNALS ACT, 1974
FOR GRANT OF GRADED PAY AND OTHER ATTACHED BENEFITS
OF A.T. POST FROM THE DATE OF APPOINTMENT.

Mr. Muhammad Asif Yousafzai,
Advocate.

.. For appellant

Mr. Tahir Iqbal,
Addl: Govt. Pleader.

For respondents

Mr. Justice (R) Salim Khan,
Mr. Sultan Mehmood Khattak.

Chairman
Member

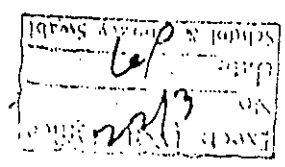
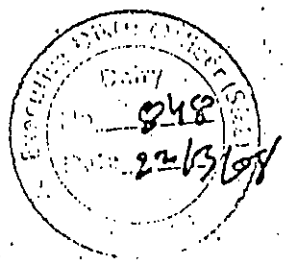
JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN: Through the

present appeal, the appellant contended that he was
appointed as A.T on 24.9.1985 in BPS-9, but in fixed
scale, that the appellant passed SSC, F.A, B.A, M.A &

13/3/08

ATTESTED
[Signature]
N.W.F.P. Service Tribunal
Peshawar



Sanad-ul-Faragh and he also worked for more than (30) years.

The appellant submitted that graded pay and other attached benefits of the post of A.T since his appointment were not given to him, that the appellant submitted departmental appeal, but with no reply. Hence the present appeal.

2. The respondents contested the appeal on various legal and factual grounds, including the ground that, though the appellant had passed M.A Islamiyat and Sanad-ul-Faragh, but he was not qualified for the post according to rules prescribed for the same. We heard the arguments and perused the record.

3. The learned counsel for the appellant produced the copy of Detailed Marks Certificate for B.A in the name of Khalid Mohammad, but neither signature appears on the same properly nor it is attested. The learned counsel, however, referred to the relevant rules for the post mentioned in letter No. 5882-5959 dated 26.01.88 of the Deputy Director(Schools) for D.E(S)N/FP, Peshawar.

The learned counsel for the appellant straight away accepted that the appellant had not acquired the required qualification for the post, though he has been working against the said post practically for more than (30) years. He referred to the judgment of the August Supreme Court of Pakistan in C.Fs No. 204 and 205 of 1991 as well as the judgment in C.P No.28S-P of 1993, and contended that

ATTACHED
M.B.U.

the incumbent of a post was always entitled to the salary, allowances and other benefits of the post which he was holding.

4. The AGP contended that the appellant has no relevant qualification and he is not entitled to the graded pay of the post.

5. As already mentioned, it is an admitted fact that the appellant does not hold the prescribed qualification for the post. But, in the light of the above judgments and the principle of law enunciated by the said judgments, the appellant is entitled to the pay, allowances and other benefits of the post against which he has been working as A.T. and is still working as such. In the light of the above, we accept the present appeal, and direct the respondents to allow the graded pay, allowances and other benefits of the post of A.T to the appellant from the date the rules mentioned above were prescribed. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED
13.03.2008

(JUSTICE (R) SALIM KHAN)
CHAIRMAN

CHIEF JUSTICE (R) (CHIEF JUSTICE)
PUNJAB

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