

BEFORE THE SERVICE TE KPK PESHAWAR

Service Appeal No: 694/2024

Hazrat Bilal (Applicant)

VS

Director of E&SE KPK & Others (Respondents)

APPEAL

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Dated: 23/8/2024

Appellant
Hazrat Bilal

Hazrat Bilal

Yaquub
Yaquub Khan Advocate
District Courts Mardan

Yaquub Khan
Advocate,
District Courts Mardan

BEFORE THE SERVICE TE KPK PESHAWAR

Member Pakhtukhwa
Service Tribunal

Diary No. 15187

Dated 26/8/24

Service Appeal No: 694/2024

Hazrat Bilal

VS

Director of E&SE KPK & etc.

SERVICE APPEAL

APPLICATION FOR PLACING ON FILE UNDERSMENTIONED DOCUMENTS AS
ADDITIONAL DOCUMENT BEING NECESSARY DOCUMENTS FOR INSTANT CASE.

Respected sheweth,

1. That above captioned case is fixed for preliminary hearing on 10-09-2024 before this honourable Tribunal.
2. That following documents are necessary documents for instant case, hence appellatant is requesting for placing on filing of at instant case as additional documents:
 - a. Copy of letter of E&SE deptt: No: SO(P-M) E&SE/4-7/seniority of PSTs dated 26-06-2024.
 - b. Copy of Law deptt: KPK No: 7405-7408 dated 20-05-2024.
 - c. Copy of notification of directorate E & SE dated 23-02-2024,
 - d. Copy of directorate notification No. 4230-3/AD (Lit II) dated 13-08-2024.
3. That above mentioned documents may please be placed on file as additional documents being necessary documents for instant case.

It is therefore, humbly requested that above mentioned documents may please be placed on file as additional documents for instant case.

Appellant

Hazrat Bilal

Hazrat Bilal

Through Counsel

Yaqub Khan Advocate

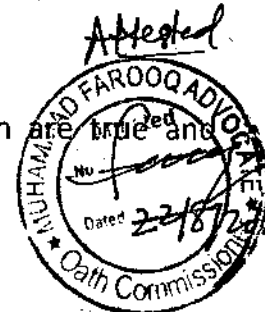
District Courts Mardan

AFFIDAVIT

I undersigned declare on oath that the contents of application are correct.

Hazrat Bilal

Deponent
Hazrat Bilal





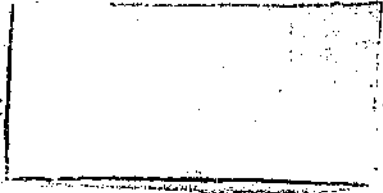
GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY AND SECONDARY EDUCATION DEPARTMENT
CIVIL SECRETARIAT PESHAWAR
 (Phone No.091-9223587)

Handwritten marks and a circled number '2'

No. SO(Primary-M)E&SED/4-7/Seniority of PSTs under Act, 2017/Court Case/2024
 Peshawar Dated 26th June, 2024

To,

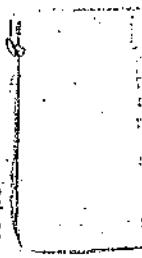
The Director
 Elementary & Secondary Education Department
 Khyber Pakhtunkhwa, Peshawar



Subject: GUIDANCE REGARDING EXTENTION OF BENEFITS (SENIORTY ON AGE-WISE) TO ALL SIMILARLY PLACED PSTs (BPS-12) THROUGHOUT KHYBER PAKHTUNKHWA ON THE ANALOGY OF JUDGEMENT DATED 31-05-2023 OF THE HONORABLE SERVICE TRIBUNAL, PESHAWAR IN SERVICE APPEALS NO. 2069/2019 TO 2079/2019.

I am directed to refer to your letter No. 3656(AD Lit-II) dated 09-01-2024 on the subject noted above and to enclose herewith a copy of letter No. ALO(OP)/LD/15-2/2023/KC/7405-7408 dated 20-05-2024 received from Law Department Khyber Pakhtunkhwa which is self-explanatory for further necessary action, please.

Encl: AA



Handwritten signature and date: 26/06/24
 (REHMAN GUL)
 SECTION OFFICER (PRIMARY MALE)

Endst: of even No. & Date:

Copy forwarded to the:

1. Assistant Law Officer (Opinion) Law Department Khyber Pakhtunkhwa w/r to his letter cited above.
2. PS to Secretary, E&SE Department Khyber Pakhtunkhwa.

Handwritten signature and date: 26/06/24
 SECTION OFFICER (PRIMARY MALE)

Handwritten notes: "Accepted" and "Yousaf" with a signature

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Handwritten notes: "Accepted" and "Yousaf" with a signature and "Advocate" text



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

3

NO. ALO(OP)/LD/15-2/2023/KC 7405-7408
DATED: PESH: THE 20TH MAY, 2024

To
The Secretary,
Government of Khyber Pakhtunkhwa,
Elementary & Secondary Education Department.

Attention: Section Officer (Primary Male)

Subject: - **GUIDANCE REGARDING EXTENTION OF BENEFITS (SENIORITY ON AGE-WISE) TO ALL SIMILARLY PLACED PSTs (BPS-12) THROUGHOUT KHYBER PAKHTUNKHWA ON THE ANALOGY OF JUDGMENT DATED 31-05-2023 OF THE HONORABLE SERVICE TRIBUNAL PESHAWAR IN SERVICE APPEAL NO. 2069/2019 TO 2079/2019.**

Dear Sir,

I am directed to refer your Department's letter No. SO(Primary Male)-E&SED/4-7/Seniority of PSTs Under Act, 2017/Court Case/2024, dated, 17.04.2024 on the subject noted above and to state that the Scrutiny Committee of Law Department opined in its meeting held on 06-09-2023 that in terms of section 4(2) of Khyber Pakhtunkhwa Employees of Elementary & Secondary Education Department (Appointment, Regularization) Act, 2017, which stipulate, determination of seniority on the basis of age. The Scrutiny Committee further held that the said section of law outlines the method for determining seniority of the employees, whose services were regularized within a specific cadre under the Act ibid. Moreover, seniority is determined based on their continuous service within the cadre and if two or more employees have the same date of continuous service the employee older in age is to be considered senior to the younger one. Furthermore, the Act ibid has overriding effect on Rule 17 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 which is not attracted to the seniority inter se of the employees, regularized under the Act ibid.

2. Hence, keeping in view the above, Law Department further holds that leaving aside the judgment of Service Tribunal dated 31-05-2023 in Service Appeal No. 2069/2019 to 2079/2019, benefit of section 4(2) of the Act ibid may be extended to all the employees regularized under the said Act after advice of the Scrutiny Committee dated 06-09-2023 ibid, please.

OFFICE OF THE SECRETARY, L.A. DEPT.
PESHAWAR
Date: 21/5/2024

Yours Faithfully,

SAYED SAQLAIN HAIDER
Assistant Law Officer (Opinion)

Encl: of even No. & date.

- Copy is forwarded for information to the:-
1. PS to Minister for Law Department.
 2. PS to Secretary, Law Department.
 2. Master File.

SAYED SAQLAIN HAIDER
Assistant Law Officer (Opinion)

Attested
Yusuf Khan
21/5/2024

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Attested
Yusuf Khan
21/5/2024



Directorate of Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar

NOTIFICATION

1. Whereas, the appellant Mr. Jan Baz Khan was appointed as Arabic Teacher (BPS-15) in District Bannu on adhoc/contract basis through NTS on 22-05-2014 and regularized vide Notification dated 21-03-2018. Thereafter, the DEO (M) Bannu notified seniority (merit-wise) of AT cadre on 15-10-2019 in terms of Section-8 of Civil Servant Act, 1973 read with Rules-17 of (Appointment, Promotion & Transfer) Rules 1989, wherein, the name of the appellant was shown at S.No. 84 among his other colleagues.
2. And whereas, aggrieved of the seniority ibid, the appellant invoked the constitutional jurisdiction under Article-212 of the Islamic Republic of Pakistan, 1973 through filing Service Appeal No. 887/2020 before the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar, whereby the appellant impugned the seniority list stood on 26-10-2019 of ATs (BPS-15) in District Bannu with the prayer, that the same may be prepared age-wise in accordance with the Sub-Section-2 of Section-4 (Appointment & Regularization of Services) Act of 2017.

3. And whereas, the case of the appellant was decided vide judgment dated 31-05-2023 by the Honorable Tribunal in favor of the appellant with the direction to the Department, reproduced in verbatim as under:-

"Inter-so-seniority of the appellant shall be determined age-wise on the basis of Notification dated 21-03-2018 as well as Sub-Section-2 of Section-4 of KP E&SE Department (Appointment & Regularization of Services) Act, 2017 by placing the name of the appellant at correct position in the seniority list of the concerned Arabic Teacher with all consequential benefits".

4. And whereas, the case was declared as UNFIT for filing CPLA before the apex Court by the law Department, whereafter, the DEO (M) Bannu implemented the Judgment ibid to the extent of seniority (age-wise) and submitted working papers to this Directorate for promotion of the appellant to the post of SST(BPS-16) in compliance of the judgment supra, whereafter, the case was referred to the meeting of Departmental promotion committee held on 13-12-2023 and the committee has recommended that, the promotion Notification No. 8565-70 dated 07-02-2020 be withdrawn to the extent of Mr. Safdar All Shah SST (B/C) (BPS-16) only and Mr. Janbaz Khan - AT (BPS-15) be promoted to the post of SST (BPS-16) with immediate effect.

Now therefore, in compliance of the Judgment dated 31-05-2023 of the Honourable Khyber Pakhtunkhwa Service Tribunal, Peshawar & recommendations of Departmental Promotion Committee, the competent authority (Director E&SE Khyber Pakhtunkhwa) is pleased to withdraw the promotion Notification No. 8565-70 dated 07-02-2020 to the extent of Mr. Safdar All Shah SST (B/C) (BPS-16) and the appellant Mr. Jan Baz Khan AT (BPS-15) is hereby promoted to the post of SST (BPS-16) in terms of Rule-7 of the (Appointment, Promotion & Transfer) Rules, 1989 with immediate effect in the interest of public service. Moreover, their services are placed at the disposal of DEO (M) Bannu for further adjustment.

Terms and Conditions:-

1. He shall be on probation for a period as specified in Rules (15) substituted vide No.SO(Policies)/E&AD/1-3/2017 Dated, 07-12-2017 in Appointment, Promotion and Transfer Rules, 1989.
2. He will be governed by such rules and regulations as may be issued from time to time by the government.
3. His services can be terminated at any time, in case his performance is found unsatisfactory during probationary period. In case of misconduct, he shall be proceeded under the rules framed from time to time.
4. Charge report should be submitted to all concerned.

Attested
Janbaz Khan
Advocate,
Bannu District

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- 5 His Inter-Se- seniority on lower post will remain intact as per Rules (17)(4) of Appointment, Promotion and Transfer Rules, 1989.
- 6 No TADA is allowed for joining the duty.
- 7 He will give an undertaking to be recorded in his service book to the effect that if any over payment is made to them in light this order, will be recovered and if he is wrongly promoted, he will be reversed.
- 8 Before handing over charge, his documents may be checked. If he does not possess the required relevant qualification as per rules, he may not be handed over the charge of the post.

(Samina Altaf)
 Director
 Elementary & Secondary Education
 Khyber Pakhtunkhwa Peshawar

No: 4172-76 /F.No. (AD/II-II)/SA No. 887/2020/Jon Baz/2023. Dated Peshawar the: 23/2/2024

Copy forwarded for information & action to the:-

- 1 Learned Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 2 Learned AAG Khyber Pakhtunkhwa Service Tribunal, Peshawar.
- 3 District Education Officer (Male) Bannu.
- 4 District Accounts Officer District Bannu.
- 5 Deputy Director (Legal) E&SE Khyber Pakhtunkhwa
- 6 Section Officer (Lit-II) E&SE Department Khyber Pakhtunkhwa.
- 7 PA to Additional Secretary (General) E&SE Department Khyber Pakhtunkhwa.
- 8 PA to Director E&SE Khyber Pakhtunkhwa.
- 9 Official concerned
- 10 Master File.

[Signature]
 Assistant Director (Estab-II-1)
 Elementary & Secondary Education
 Khyber Pakhtunkhwa Peshawar

Admitted
[Signature]
 Admitted
 Ch. No. 128

Admitted
[Signature]
 Admitted
 Ch. No. 128

Most Immediate
Court Matter :



**DIRECTORATE ELEMENTARY & SECONDARY EDUCATION
KHYBER PAKHTUNKHWA, PESHAWAR.**

No 4230-3/AD (Lit: II)

Dated Peshawar the 13/8/2024

(6)

To :

The District Education Officers,
(Male/Female) Khyber Pakhtunkhwa.

Subject: -

**DETERMINATION OF SENIORITY OF TEACHERS, REGULARIZED UNDER
THE KHYBER PAKHTUNKHWA E&SE DEPARTMENT (APPOINTMENT &
REGULARIZATION OF SERVICES) ACT, 2017.**

Memo:

I am directed to refer to the consolidated judgment dated 31-05-2023 of the Honorable Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeals No. 2069/2019 etc. under the titled: Abid Noor Vs Govt: of KP & subsequent guidance letter No. NO. ALO(OP)LD/15-2/2023/KC.7405-7408 dated 20-05-2024 of law Department conveyed to this Directorate vide letter No. SO (Primary-M) E&SED/4-7/seniORITY of PSTs under Act. 2017/court cases/2024 dated 26-06-2024 by the Admin Department, wherein, it has been held that:

"Leaving aside the judgment of the Honorable Service Tribunal dated 31-05-2023 in Service Appeals No. 2069 to 2079/2019, the benefits of Section-4 (2) of the (Appointment & Regularization of Services) Act, 2017 may be extended to all the employees, regularized under the said Act after advice of the scrutiny committee meeting held on dated 06-09-2023".

To elaborate further, Section-4(2) of the (Appointment & Regularization) Act, 2017. is hereby reproduced in verbatim for perusal:

*4. Determination of Seniority. (1),.....
(2). The seniority inter-se of those employees, whose services are regularized under this Act within the Cadre shall be determined on the basis of their continuous service in cadre.
// Provided that if the date of continuous service in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one. //*

As sequel to the fore-made discussion, citation of the relevant provision of law & Judgment dated 31-05-2023 of the learned Tribunal, it is hereby intimated that seniority of the teachers who have been regularized under the Act, 2017 be determined in light of the Section-4 (2) of the Act ibid in view of their continuous service in the cadre from the date of appointment and if continuous service of two or more teachers is the same, the employee older in age shall rank senior to the younger one please.

13.8.24
Assistant Director (Lit: II)
E&SE Khyber Pakhtunkhwa,
Peshawar.

Endst: No: _____ /F. No.AD (Lit-II)/Notification/2022-2023/Office Correspondence.

Dated Peshawar the ___/___/2024.

Copy forwarded for information to the:-

1. Learned Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar.
2. Learned Additional Advocate General Khyber Pakhtunkhwa Service Tribunal. Peshawar.
3. PS to Secretary E&SE Department Khyber Pakhtunkhwa, Peshawar.
4. Additional Director (Estab/M-I) Local Office with the request to make compliance please.
5. Deputy Director (Legal) E&SE Khyber Pakhtunkhwa.
6. SO Lit (I & II) E&SE Department Khyber Pakhtunkhwa.
7. PA to Director E&SE, Khyber Pakhtunkhwa.

Attested
Bagul Khan
Assistant Director
E&SE
Khyber Pakhtunkhwa
Peshawar

Assistant Director (Lit: II)
E&SE Khyber Pakhtunkhwa,
Peshawar.