

BEFORE THE
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 1869/2022.

Mazhar Hussain s/o Imdad Hussain, Junior Clerk/Muharrar, District
Judiciary, Charsadda Appellant

VERSUS

The Registrar, Peshawar High Court, Peshawar and others.

..... Respondents

SERVICE APPEAL UNDER SECTION 4 OF THE SERVICE
TRIBUNAL ACT, 1974

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Deponent
Im

27-05-24
S.B.

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

Mazhar Hussain S/o Imdad Hussain
R/o Drashkhan Colony, Peshawar
Junior Clerk/Moharrir, District Judiciary, Charsadda

..... *Appellant*

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12987

Hon'ble Peshawar High Court through Registrar
And 11 others

Dated 27-08-24

..... *Respondents*

SERVICE APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974

Respectfully Sheweth,

*Reply / Para-wise Comments on behalf of Respondents No.1 and 2 are submitted
as under:*

Preliminary objection:

1. That the appellant has got no cause of action to file instant appeal.
2. That the appellant has not come to this Hon'ble Tribunal with clean hands.
3. That the appellant is estopped by his own conduct.
4. The promotion of the appellant to the post of Senior Clerk has been deferred due to adverse remarks of the reporting officer i.e. Civil judge-II, Shabqadar (District Charsadda) recorded in the Annual Confidential Report for the year 2020.

On Facts:

1. Correct. Presently the appellant is posted at the Headquarter, District Judiciary, Charsadda.
2. Correct to the extent that the appellant was appointed as Junior Clerk in District Judiciary, Charsadda in the year 2003 nonetheless his devotion to duties is evident from the documents annexed with the present reply.
3. It is wrong to the extent of stance of appellant with regard to his unblemished service record as several complaints from Judicial Officers against the appellant's late coming and lethargic attitude are available on record. Copies of

M. (P)
DSJ chd.
13/5/24

the same are appended as **Annexure "A"**.

4. Need no comments as related to the record. However, the appellant filed two separate appeals before the respondent No.1; one against the adverse remarks in the ACR, 2020 whilst the other against the promotion order dated 10.02.2022 which is also impugned herein before the Tribunal.
5. Meeting of Departmental Promotion Committee for promotion to the post of Senior Clerk was held on 10.02.2022 and on the basis of Seniority cum fitness, senior most officials i.e. Junior Clerks were considered for promotion to the post of Senior Clerks by the Committee. Since the appellant was already directed vide order dated 19.06.2021 passed by respondent No.2/the then District & Sessions Judge, Charsadda **to earn good ACRs for the following three years**; therefore, due to the said reason as well as due to pendency of appeal before the Hon'ble Peshawar High Court, Peshawar against the order dated 19.06.2021; the Committee deferred the case of the appellant till decision of the appeal and this fact is duly mentioned in the minutes of Departmental Promotion Committee Meeting held on 10.02.2022. Copy of the minutes is attached as **Annexure "B"**.
6. Incorrect. As highlighted above, promotion of the appellant was deferred due to the above referred reasons.
7. Incorrect. No such application whatsoever is available on the record which would depict that in fact the appellant has solicited copy of any document.
8. Incorrect. Even otherwise, the Working Paper as prerequisite for the meeting of Departmental Promotion Committee, being confidential document, cannot be provided to a third party.
9. Incorrect. In fact the Appellant's name was admittedly enlisted in the relevant list which was to be considered by the Departmental Promotion Committee, both in December 2021 (which was postponed) as well as in February 2022, however he was deferred for the reasons highlighted above in Para No.5.
10. The appellant has not been deprived of his legal right rather he was considered but found not eligible for promotion due to the ibid reasons. Besides, no doubt meeting of the DPC was held during pendency of appeal No.18/2021 before the

DSJ chd.
13/5/24

august Peshawar High Court, nevertheless the appellant has not obtained and even not applied for suspension of DPC proceeding before the appellate forum.

11. The stance of the appellant is totally incorrect. His position in the seniority list was never disturbed rather he remained on his actual position in the list. Moreover, seniority list of the of the officials is prepared in accordance with Seniority Rules of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and transfer) Rules, 1989.

12. The Departmental Selection Committee might have assessed only the adverse remarks in ACR but would have also deferred his case due to pendency of appeal before the Hon'ble High Court.

13. Correct to the extent that the Departmental Promotion Committee consider different aspect including seniority cum fitness as well as ability and capability of an official at the time of his promotion to a higher position.

14. The Departmental Promotion Committee, as per rules, comprised of the District & Sessions Judge, Charsadda, Nominee of the august Peshawar High Court, Peshawar and Nominee of the District & Sessions Judge, Charsadda. The Committee might have definitely considered all these aspects including seniority, fitness, past service record, general behavior and devotion to duties of the officials as well as the appellant.

Moreover, promotion Criteria for the post of Senior Clerk is Seniority-cum-fitness as per Rules. Guidance in this regard is also taken from the Judgement of the Hon'ble Peshawar High Court, Peshawar D.I. Khan Bench in W.P No. 1127-D/2017 and W.P No. 702- D/2017.

Copies of the concerned Rules as well as above judgments are appended as Annexure "C".

GROUND:

Reply to the grounds so taken is as under:

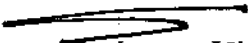
- A. Incorrect, the impugned order and all the proceedings were carried out in accordance with law and relevant rules.

17. (B) ✓
DJS cad.
13/5/24

- B. Totally incorrect. Besides, the appellant has recently been promoted to the post of Senior Clerk.
- C. Incorrect. No such discrimination was made. Everyone is treated equally. The Committee was consisted upon such members who are presumed to be the guardian of constitution.
- D. Incorrect. No fundamental right of the appellant has been infringed. Rather he was treated in view of his service record.
- E. Incorrect. Available record does not reflect that any favoritism was made. Rather the proceeding was carried out in accordance with law and rules.
- F. Incorrect. The impugned order speaks to have been passed in accordance with law and no violation of law has been made.


In view of the above it solicited that appeal of the appellant being devoid of merits, may kindly be dismissed with cost.

Respondent No. 1.


Registrar, Peshawar High Court,
Peshawar.

Atkhar Khan Khan

Respondent No.2


District & Sessions Judge,
Charsadda

M. Asif Khan

BEFORE THE

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

SERVICE APPEAL NO. 1869/2022.

Mazhar Hussain son of Imdad Hussain, Junior Clerk/Moharrir.

.....Appellant

VERSUS

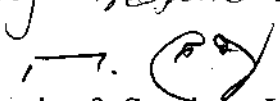
The Registrar, Peshawar High Court, Peshawar and others.

.....Respondents


SERVICE APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNAL ACT, 1974.

AFFIDAVIT

I, the undersigned do hereby solemnly affirm and declare that the contents of the reply of appeal are true and correct to the best of our knowledge and this office record. *it further stated on oath that in this appeal the assuring responded through neither place ex-parte nor their defense struck off cost.*


 District & Sessions Judge,
 Charsadda.

Certified that the above was verified on solemnly affirmation before me in the city of his 13 day of 05 2024 by District & Sessions Judge to Charsadda by _____ who is permanent known to me.


 DISTRICT COMMISSIONER
 PESHAWAR HIGH COURT PESHAWAR
 SUB-REGISTRY, CHARSADDA

(6)

Annexure "A"

No. 72 /AD&SJ, Chd at Tangi

Dated: 09/03/2018

To

Mr. Mazhar Hussain
Moharrir/Junior Clerk.

Subject: EXPLANATION.

It has been noticed by the undersigned that you reached to the court at 10:30 hours. Your, this attitude shows negligence towards duty on your part.

You also failed to file replies to the earlier explanations with reference to your absence from duty and late coming.

You are, therefore, required to explain as to why disciplinary action should not be initiated against you. Your reply must reach the undersigned within 03 days positively, failing which it would be considered that you have no reply to offer.

Allestal
Jm
AJMAL KHAN WAZIR,
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

Copy forwarded to:

✓ The learned District & Sessions Judge, Charsadda for information, please.

Jm
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

Jm

(7)

No. 59 /AD&SJ, Chd at Tangi

Dated: 16/03/2018

To

Mr. Mazhar Hussain
Moharrir/Junior Clerk.

Subject: EXPLANATION.

It has been noticed by the undersigned that you reached to the court at 09:30 hours. Your, this attitude shows negligence towards duty on your part.

You also failed to file reply to the earlier explanations with reference to your absence from duty.

You are, therefore, required to explain as to why disciplinary action should not be initiated against you. Your reply must reach the undersigned within 03 days positively, failing which it would be considered that you have no reply to offer.

attested

dm

AJMAL KHAN WAZIR,
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

Copy forwarded to:

✓ The learned District & Sessions Judge, Charsadda for information, please.

Additional Distt; & Sessions Judge,
Chasadda at Tangi.

No. 62 /AD&SJ, Chd at Tangi

Dated: 17/03/2018

To

Mr. Mazhar Hussain
Moharrir/Junior Clerk.

Subject: EXPLANATION.

It has been noticed by the undersigned that you reached to the court at 09:28 hours. Your, this attitude shows negligence towards duty on your part.

You also failed to file reply to the earlier explanations with reference to your absence from duty.

You are, therefore, required to explain as to why disciplinary action should not be initiated against you. Your reply must reach the undersigned within 03 days positively, failing which it would be considered that you have no reply to offer.

Attestal

AJMAL KHAN WAZIR,
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

Copy forwarded to:

✓ The learned District & Sessions Judge, Charsadda for information, please.

Additional Distt; & Sessions Judge,
Chasadda at Tangi.

(9)

No. 77 /AD&SJ, Chd at Tangi

Dated: 28/03/2018

To

Mr. Mazhar Hussain
Moharrir/Junior Clerk.

Subject: EXPLANATION.

It has been noticed by the undersigned that you reached to the court at 09:30 hours. Your, this attitude shows negligence towards duty on your part.

You also failed to file reply to the earlier explanations with reference to your absence from duty.

You are, therefore, required to explain as to why disciplinary action should not be initiated against you. Your reply must reach the undersigned within 03 days positively, failing which it would be considered that you have no reply to offer.

Attested

[Signature]

[Signature]
AJMAL KHAN WAZIR,
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

Copy forwarded to:

✓ The learned District & Sessions Judge, Charsadda for information, please.

[Signature]
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

No. 152 /AD&SJ, Chd at Tangi

Dated: 30/04/2018

To

The Learned District & Sessions Judge,
Charsadda.

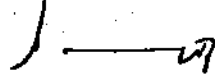
Subject: ABSENCE OF FAROOQ AHMAD STENOGRAPHER AND
MAZHAR HUSSAIN MOHARRIR FROM DUTY.

Respected Sir,

It is to bring in your kind notice that the officials named above are absent from duty without any intimation/prior permission.

Moreover, Mazhar Hussain Moharrir earlier remained absent time and again without prior permission and he is also habitual late comer and despite repeated show cause, he failed to file reply to the show cause notices with reference to his absence and late coming dated 19.10.2017, 19.12.2017, 08.01.2018 18.10.2017, 18.12.2017, 08.01.2018 & 28.03.2018 .

Report is submitted for your kind information and for necessary action,
please.


AJMAL KHAN WAZIR,
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

Attested
Seek explanation from the official / 01/5
Supdt

(11)

District & Sessions Judge,
Charsadda.

Phone: 091-9220444
Fax: 091-9220438



Ref: No. 741 /DJ-6

Dated 3/5/18

Mr. Farooq Ahmad,
Stenographer
✓ Mr. Mazhar Husain,
Junior Clerk/Muharrir.

Subject: EXPLANATION.

I am directed with reference to report submitted by the Additional District & Sessions Judge, Tangi, vide No. 152 dated 30.04.2018 that you are absent from your duty without any intimation.

You are, therefore, asked to explain your position that why you remained absent from duty without intimation to your presiding officer within two days.


Superintendent,
Sessions Court, Charsadda.

Attestd

Lo

12

8 12

No. 30 /AD&SJ, Chd at Tangi

Dated: 17/02/2018

To

Mr. Mazhar Hussain
Moharrir/Junior Clerk.

Subject: EXPLANATION.

It has been noticed by the undersigned that you reached to the court at 09:25 AM. Your, this attitude shows negligence towards duty on your part.

You also failed to file reply to the earlier explanations dated 19.10.2017, 19.12.2017 and 08.01.2018 with reference to your absence from duty on 18.10.2017, 18.12.2017 & 08.01.2018.

You are, therefore, required to explain as to why disciplinary action should not be initiated against you. Your reply must reach the undersigned within 03 days positively, failing which it would be considered that you have no reply to offer.

Attested

[Signature]

AJMAL KHAN WAZIR,
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

Copy forwarded to:

✓ The learned District & Sessions Judge, Charsadda for information, please.

[Signature]

Additional Distt; & Sessions Judge,
Chasadda at Tangi.

(13)

No. 58 /AD&SJ, Chd at Tangi

Dated: 1/11/3/2018

To

Mr. Mazhar Hussain
Moharrir/Junior Clerk.

sent

Subject: EXPLANATION.

It has been noticed by the undersigned that you reached to the court at 09:55 hours. Your, this attitude shows negligence towards duty on your part.

You also failed to file reply to the earlier explanations with reference to your absence from duty.

You are, therefore, required to explain as to why disciplinary action should not be initiated against you. Your reply must reach the undersigned within 03 days positively, failing which it would be considered that you have no reply to offer.

Attested
[Signature]

[Signature]
AJMAL KHAN WAZIR,
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

Copy forwarded to:

✓ The learned District & Sessions Judge, Charsadda for information, please.

[Signature]
Additional Distt; & Sessions Judge,
Chasadda at Tangi.

District & Sessions Judge,
Charsadda.
Email: dsicharsadda@yahoo.com
Web: DistrictJudiciarycharsadda.gov.pk



Ph:

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Annexure "B"

MINUTES OF DEPARTMENTAL PROMOTION COMMITTEE MEETING.

The meeting of the subject committee was held on 10.02.2022. In order to conduct the promotion for the posts of Senior Clerk/Reader BPS-14 and Junior Clerk /Muharrir BPS-11, composition of the committee is as under;

1. Ms. Sofia Waqar Khattak, District Sessions Judge/Chairman Departmental Promotion Committee, Charsadda.
2. Ms. Hina Khan Additional Sessions Judge, Nowshera/Nominee of the Peshawar High Court, Peshawar.
3. Mr. Muhammad Irfan, Senior Civil Judge (A) Charsadda/Nominee of District & Session Judge, Charsadda.

Against eleven vacant seats of Senior Clerk/Reader BPS-14, the ACRs of fifteen (Junior Clerks BPS-14) were thoroughly discussed so as to promote the best suitable candidates on the basis of seniority cum fitness. For this purpose fifteen senior most officials were considered. Their ACRs for the last three years were evaluated.

Though Mr. Jehangir Shah who is placed at S.No. 1 of the Seniority list his ACR for three months of the year 2019 (Jan-March-2019) contained adverse remarks, but he has earned very good ACR for the year 2021 and good ACR for the year 2020. Moreover, the ACR for major part of the year 2019 was also found good, therefore, the committee unanimously agreed to consider him fit for promotion.

There is adverse remarks contained in ACR of the official at S.No 03 Mr. Mazhar Husain for the year 2020, though he has obtained very good ACR in the 2019 as well as in the year 2021 but since he has challenged his adverse entries in ACR before the Hon'ble Peshawar High Court, Peshawar which is still pending, therefore, the committee unanimously held to defer his case for the time being till decision of his case.

Though there is adverse remarks contained in ACR at S.No 09 of Mr. Jafar Shah for the year 2020. His case was discussed in detail, the entry in ACR 2020 was considered as adverse remarks and he was supposed to earn good ACR for the following year i.e. 2021. The official has earned very good ACR for the year 2021 and found fit for promotion. Therefore, the committee unanimously agreed to consider him fit for promotion. The cases of other

officials mentioned at S.No 02, 04,05,06,07,08,10,11,12 of the working paper for promotion were discussed, as they have earned good/very good ACRs for the year 2019 to 2021, therefore, they were found fit for promotion. The following eleven senior most officials, (Junior Clerks/Muharrir BPS-11) were found fit for promotion to the post of Senior Clerk/Reader BPS-14. The committee unanimously recommended them for promotion to the post of Senior Clerk/Reader (BPS-14) with immediate effect.

S.No	Name of Official	S.No	Name of Official
1	Jehangir Shah	2	Karim Jan
3	Nasurl Haq	4	Muhammad Ijaz
5	Sartaj Muhammad	6	Fazle Elahi
7	Abid Ali	8	Jafar Shah
9	Muhammad Muhsin	10	Naveed Khan
11	Fawad Ur Rahman		

Against one vacant seat of Junior Clerk/Muharrir BPS-11, the ACRs of five officials (class-IV) from common seniority list were thoroughly discussed so as to promote the best suitable candidate on the basis of seniority cum fitness. For this purpose last three years ACRs of five senior most officials were evaluated. Though Mr. Hasweed Jan is placed at S.No.01 of the common seniority list but his date of joining service is 21.08.2017 and has not completed five years service, which is the mandatory requirement for promotion, therefore, the second most senior official namely Shabbir Ahmad Chowkidar BPS-03 was found fit for promotion to the post of Junior Clerk/Muharrir BPS-11. The committee unanimously recommended him for promotion to the post of Junior Clerk/Muharrir (BPS-11) with immediate effect.

Hina Khan
Hina Khan
AD&SJ/Nominee of
Peshawar High Court, Peshawar

Muhammad Irfan
Muhammad Irfan,
Nominee of the District & Sessions Judge
Charsadda.

[Signature]
District & Sessions Judge/Chairman,
DPC, Charsadda.

OFFICE OF THE DISTRICT & SESSIONS JUDGE, CHARSADDA.

No. 124 - 255J.8 Dated Charsadda, 10-02-2022

Copy forwarded for information to:

1. The Worthy Registrar, Peshawar High Court Peshawar.
2. The Senior Civil Judge, (A) Charsadda.
3. The District Accounts Officer, Charsadda.
4. The B&A Assistant Sessions Court, Charsadda.
5. The COC of SCJ (A) Charsdda.
6. All the Members.

[Signature]
District & Sessions Judge/Chairman,
DPC, Charsadda.

Attested
[Signature]

(16)

Annexure 4 C 11

III-Human Resources I-Ministerial Establishment of District Courts

C.No. 3(3-1)

**THE [KHYBER PAKHTUNKHWA]¹ CIVIL SERVANTS
(APPOINTMENT, PROMOTION & TRANSFER) RULES, 1989.**

**PART-I
GENERAL**

1. **Short title and commencement:** - (1) These rules may be called the [Khyber Pakhtunkhwa]² Civil Servants (Appointment, Promotion and Transfer) Rules, 1989.

(2) They shall come into force at once.

2. **Definitions:** - (1) In these rules, unless the context otherwise requires: -

(a) **"Appointing Authority"** in relation to a post, means the person authorized under rule 4 to make appointment to that post;

(b) **"Basic Pay Scale"** means the Basic Pay Scale for the time being sanctioned by Government, in which a post or a group of posts is placed:

(c) **"Commission"** means the [Khyber Pakhtunkhwa]³ Public Service Commission.

⁴ [(d) **Departmental Promotion Committee:** means a committee constituted for making selection for promotion or transfer to such posts under a Department, or offices of Government which do not fall within the purview of the Provincial Selection Board].

⁵ [(dd) **"Departmental Selection Board"** means a Board constituted for the purpose of making selection for initial recruitment / appointment to posts under a Department or office of Government in Basic Pay Scale 17 not falling within the purview of the Commission].

Provided that more than one such committee may be constituted for civil servants holding different scales of pay".

(e) **"Departmental Selection Committee"** means a committee constituted for the purpose of making selection for initial appointment

Attested
Jh

¹ Substituted by The Khyber Pakhtunkhwa Laws (Amendment) Act, 2011

² Substituted by The Khyber Pakhtunkhwa Laws (Amendment) Act, 2011

³ Substituted by The Khyber Pakhtunkhwa Laws (Amendment) Act, 2011

⁴ Substituted by vide Notification No.SOR.I(S&GAD)4-1/80(Vol.II), dated 14.1.1992

⁵ Added and substituted by Notification No. SOR.III(S&GAD)2-7/86, dated 8.12.1994

III-Human Resources I-Ministerial Establishment of District Courts

(3) In case no specific order of extension of probation period under sub-rule (2), is issued on the expiry of one year within two months, the probation shall stand automatically terminates

(4) In case of extension of probation period, through specific order for another year, under sub-rule (2), the probation shall stand automatically terminated on the completion of extended period

16. Confirmation:- After satisfactory completion of the probationary period, a civil servant shall be confirmed; provided that he holds a substantive post, provided further that a civil servant shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course or has failed to complete successfully a training prescribed within the meaning of sub-section(3) of Section 6 of the ¹[Khyber Pakhtunkhwa] Civil Servants Act, 1973.

**PART-VI
SENIORITY**

17. Seniority: - (1) The seniority inter se of civil servants ²(appointed to a service, cadre or post) shall be determined:-

(a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission ³{or as the case may be, the Department Selection Committee;} provided that persons selected for appointment to a post in an earlier selection shall rank senior to the persons selected in a later selection; and

Attested
[Signature]

(b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Explanation-I: - If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely affect the interest of his seniors in fixation of his seniority in the higher post.

¹ Substituted by The Khyber Pakhtunkhwa Laws (Amendment) Act, 2011
² Substituted by Notification No.SOR-I(S&GAD) 4-1/80, dated 17.5.1989
³ Inserted by Notification No. SORI(S&GAD)4-1/80(V.II), dated 4.2.1996

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III-Human Resources

I-Ministerial Establishment of District Courts

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-a-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

¹[(3) In the event of merger / restructuring of the departments, attached departments or subordinate offices, the inter se seniority of Civil Servants affected by the merger / restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post]

²[(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the lower post is same, the civil servants older in age, shall be treated senior.]

Attested
So
18. General Rules: - In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

19. Repeal: - The ³[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

¹ Added by Notification No. SOR-1(E&AD)4-1/80(Vol-IV), Dated 28.05.2002.

² Added vide Notification No. SOR-VI(E&AD)1-3/2008, dated 19-11-2009

³ Substituted by The Khyber Pakhtunkhwa Laws (Amendment) Act, 2011

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III-Human Resources

I-Ministerial Establishment of District Courts

9	Computer Operator BPS-16 ¹	² [] M.Sc/BIT/BCS or equivalent from recognized university	18 – 30 years	By initial recruitment.
10	Senior Clerk/Reader BPS-14 ³			By promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Junior Clerk/Nazir, Junior Clerk/Copyist, Junior Clerk/Copy Clerk, Junior Clerk/Examiner, Junior Clerk/Muharrir and Junior Clerk/Typist at serial # 13 to 18 (all BPS-11) with at least three years' service as such: Provided that a common seniority list of the holders of the posts from serial # 13 to 18 below shall be maintained for the purpose of promotion to the post of Senior Clerk/Reader.
11	Senior Clerk/Record Keeper BPS-14 ⁴			By promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Junior Clerk/Nazir, Junior Clerk/Copyist, Junior Clerk/Copy Clerk, Junior Clerk/Examiner, Junior Clerk/Muharrir and Junior Clerk/Typist at serial # 13 to 18 (all BPS-11) with at least three years' service as such:

¹ Substituted vide Peshawar High Court Notification No.22993 Dated 26th November, 2019

² Words "First Class" stand omitted vide Corrigendum dated 28th January 2021

³ Basic pay scale upgraded vide Notification No. FD/SO(FR)10-22/2014 Dated 20th May, 2014

⁴ Basic pay scale upgraded vide Notification No. FD/SO(FR)10-22/2014 Dated 20th May, 2014

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

W.P No. 1127-D/2017

Farman Ullah
Vs
Government of Khyber Pakhtunkhwa through
Chief Secretary, Peshawar and 04 others

For petitioner Muhammad Sajid Awan, Advocate
For respondents Mr. Kamran Hayat Miankhel Addl.
 Advocate General
 Mr. Umar Farooq Bhattani, Advocate
Date of hearing **25.01.2021**

JUDGMENT

Sahibzada Asadullah, J.- Through this single judgment, we intend to decide the following cases, having identical facts and law points involved therein.

1. W.P No. 1127-D/2017
[Farmanullah
Vs
Govt. of Khyber Pakhtunkhwa and others]
2. W.P No. 702-D/2017
[Sharifullah
Vs
Govt. of Khyber Pakhtunkhwa and others]

2. By virtue of these petitions filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, it is averred that the petitioners seek the directions to award promotion to the petitioners on the post of Junior Clerk in preference to Mr. Amir

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Muhammad son of Yar Muhammad/respondent No. 5 and thereby by restoring the seniority of the petitioners, the promotion of respondent No. 5 may be recalled. They have further prayed that the petitioners have been deprived of promotion on the basis of fitness, therefore, the fitness criteria, as determined by official respondents is highly unjust, illegal and the policy in vogue of the Provincial Government, hence, this constitutional petition.

3. On direction of Court order, the comments were called from the respondents, which were submitted accordingly, wherein they submitted that the competent authority/Department had fulfilled all the codal formalities according to Rules and policy in vogue in the process of promotion for the post of Junior Clerk.

4. Heard. Record perused.

5. In this case facts admitted on the record reveal that there are 33% share of class-IV employees for the purpose of promotion to the post of Junior Clerk as per the recruitment policy of the provincial government. In every provincial department, the posts of Junior clerk are to be filled through 67% direct recruitment on the basis of open merits, whereas 33% posts are to be filled by way of promotion from amongst the holders of the posts of Naib Qasid, Chowkidar, etc on the basis of Seniority-cum-fitness. For the purpose of such promotion to the post of Junior Clerk, the Naib Qasid, Chowkidar etc must possess Matric Qualifications. Record further suggestive that total number of four posts of Junior Clerk were laying vacant in the office of District Education Officer

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(Female), Education Department, Tank and out of said posts 33% quota was reserved for the class-IV who possess minimum matric qualification. To this effect, the respondent No.4 issued an advertisement wherein applications have been invited from the class-IV for promotion against 33% quota to the post of Junior Clerk. The petitioners having higher education as well as seniority applied for the post of Junior Clerk on the basis of 33% share of Class-IV, ultimately, the petitioners were dropped from promotion to the post of Junior Clerk and respondent No. 5 was promoted on the basis of fitness.

6. The moot issue which requires consideration and determination before this Court is that whether the fitness criteria, as determined by the official respondents with regard to promotion for the post of Junior Clerk is highly unjust and against the policy in vogue of the Provincial Government?. Before answering to this question, it will be essential to highlight that '*Eligibility for promotion*' and '*determination of fitness*' are two different criteria. Eligibility primarily relates to the terms and conditions of service and their applicability to the civil servants whereas question of fitness is a subjective evaluation on the basis of objective criteria. Section 9(1) of the Civil Servants Act 1973 provides that civil servant has a right to be considered for promotion if eligible on account of possessing the prescribed minimum qualification etc. A civil servant however has no vested right to be promoted. Section 4 of the Service Tribunals Act 1973 contemplates that any civil servant who is aggrieved with respect to the terms and

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condition of the service has right to file appeal before appropriate tribunal established for such purposes within prescribed period. On the other hand in the matters relating to determination of fitness of a civil servant to be promoted to a higher post, the law does not provide any remedy of appeal or representation in view of section 22 of the Act of 1973. Petitioners in this case therefore have no right to appeal or representation against the impugned recommendations of Department/respondents for promotion of the post of Junior Clerk. In view of the specific bar contained in clause (b) of proviso to section 4(1) of Service Tribunals Act 1973 the petitioners lacking adequate efficacious remedy therefore has a right to seek the constitutional remedy. This petition therefore is not violative to the mandate of Article 199 and 212 of the Constitution of Islamic Republic of Pakistan 1973. Reliance be made upon *Miss Zubaida Khatoon Vs. Mrs. Tehmina Sajid Sheikh and others (2011 PLC (C.S.) 596) (Supreme Court of Pakistan)*.

7. In legal sphere, seniority-cum-fitness means that *due and equal regard should be paid both to seniority and to fitness, and, since fitness is a matter of degree, it would appear that a senior person can be overlooked in favour of a junior who is demonstrably more fit for the appointment that he is*. Thus, the provision for promotion on the basis of seniority-cum-fitness permits the respondents/Department to select a junior, who is demonstrably more fit than the senior. In other words, the rule of comparative assessment was applied. The principle of seniority-cum-merit or seniority-cum-fitness visualises

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only rejection of the unfit. There is certainly difference where the promotion is based on the pure seniority and promotion based on seniority-cum-fitness. Likewise, in cases of promotion based on seniority cum-fitness apart from pure seniority, the person's fitness, to hold the post to which he may be promoted, his physical fitness, *his acquirement of qualifications prescribed for the promoted post* or such other positive factors from which it would be obvious that he is unfit for promotion would have to be taken into account.

8. Shorn-of unnecessary detailed to the merits of the case, it is beneficial to refer the method of recruitment, qualifications and other conditions specified in column 3 to 5 which shall be applicable to pots of Junior Clerk in the Khyber Pakhtunkhwa Civil Secretariat as infra:

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 to 30 years	a) Thirty-three percent by promotion on the basis of seniority-cum-fitness, from amongst Daftaris, Gestetner Operators, Qasids and Naib Qasids including holders of other equivalent posts in the Secretariat with two years' service as such, who have passed SSC examination; and b) Sixty-seven percent by initial requirement.
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From the bird's eye view of above tabulated criteria for the post of Junior Clerk, it is visible that minimum qualification for appointment or promotion to the post of Junior Clerk, a speed of 30 words per minute in typing is essential and sine qua non. Admittedly the petitioners have desperately failed in the typing test which is necessary requirement for promotion as Junior Clerk, therefore, the petitioners are not eligible according to the Rules and policy as they have failed in typing test.

9. Plea of malice or discrimination raised by the petitioners qua their deferment is not substantiated through any speck of material. We do not find any jurisdictional error, legal infirmity or material irregularity in the impugned recommendations made by the Departmental Promotion Committee, therefore, the same do not call for any interference by this Court in exercise of constitutional jurisdiction.

10. Adherence to the statutory rules and procedures for selection of public jobs is the only surest method to objectively select the best out of the best from a competing lot; it is rooted into the fundamentals of equal opportunity, equal treatment and equal protections; any deviation therefrom would rock the bottom of the Republic, resting upon equiponderance. State authority in every sphere of life is a sacred trust to be exercised fairly and justly by the functionaries to accomplish the purposes assigned to them by law; it is their bounden duty to do right to the all manner of people, without any distinction. On the basis of said analogy, the respondents/Department have rightly denied the petitioners from

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the promotion being failed candidates in typing test which is sine qua non for the post of Junior Clerk.

11. Even otherwise, there is no vested right accrued to the petitioners in case of promotion. Promotion against the non-selection post shall be made on the basis of seniority-cum-fitness and a civil servant cannot claim or ask for a promotion as a matter of right, as it is within the exclusive domain of the competent authority or departmental selection committee. Neither the promotion can take place automatically, nor the seniority alone is the deciding factor, as number of factors constitute fitness for promotion. Thus, the fitness criteria, as determined by the respondents/Department is just and in accordance with Policy in vogue by the provincial government and depriving the petitioners from award of promotion to the post of Junior Clerk on the basis of fitness is on compact ground, needs no interference to invoke the constitutional jurisdiction of this Court.

12. For the reasons *supra*, the instant writ petition as well as connected W.P No. 702-D/2017 are dismissed accordingly.

Asst. Secy
2021

Announced
January 25, 2021
Hasnain

[Signature]
JUDGE
[Signature]
JUDGE

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District & Sessions Judge,
Charsadda.
Email: dsjcharsadda@yahoo.com



Ph: 091-9220444
www.districtjudiciarychar
sadda.gov.pk

AUTHORITY LETTER

Mr. Mujahid Jan, Junior Clerk is hereby authorized to appear on behalf of the undersigned before the august Khyber Pakhtunkhwa Service Tribunal, Peshawar in Service Appeal No. 1869 of 2022 titled "Mazhar Hussain VS District & Sessions Judge, Charadda etc."


District & Sessions Judge,
Charsadda.

District & Session Judge
Charsadda