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KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION NO _____

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Sajjad Ali vs *Labour Department*

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Muhammad
Muharrir Compilation 05/07/24

Muhammad
Incharge Judicial Branch

TO BE SUBSTITUTED BEARING SAME NUMBER & DATE.

DIRECTORATE OF ARCHIVES & LIBRARIES,
KHYBER PAKHTUNKHWA, PESHAWAR.


No. 1560/3/52/DA Dated 20th September, 2016.

ORDER.

In pursuance of the instructions contained in the Section Officer(C-IV), Higher Education, Archives & Libraries Department, Khyber Pakhtunkhwa letter No. SO(C-IV)/HE/19-1/2015/Ministerial Staff(RF-2)/740 dated 15-09-2016, the following Committee is hereby constituted to examine the objections raised by Mrs. Nasim Sikandar, Junior Clerk, Abbottabad Public Library, Abbottabad over the seniority list of Junior Clerks of Directorate of Archives & Libraries, Khyber Pakhtunkhwa as it stood on 21-01-2016.

- i)- Mr. Aziz Muhammad, Section Officer(B&A), Higher Education, Archives and Libraries Department, Khyber Pakhtunkhwa.
- ii)- Mr. Muhammad Ashfaq Ahmad, Librarian, Directorate of Archives & Libraries, Peshawar.
- iii)- Mr. Waheed Murad, ARO, Directorate of Archives & Libraries, Peshawar.

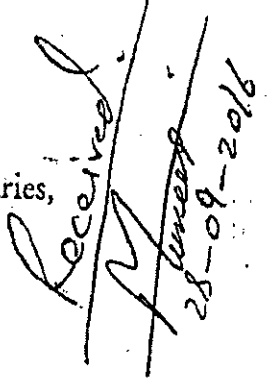
02- The committee is directed to submit its report within fifteen days of the issuance of this order.


 (Zahir Ullah Khan)
 Director of Archives & Libraries,
 Khyber Pakhtunkhwa, Peshawar.

Endst: No. & Date Even.

Copy forwarded to :-

- (i)- PS to Secretary, Higher Education, Archives & Libraries Department, Khyber Pakhtunkhwa.
- (ii)- All members of the Committee.
- (iii)- The Section Officer(C-IV), Higher Education, Archives & Libraries Department, Khyber Pakhtunkhwa.
- (iv)- Mr. Muneer Alam, Research Officer, Directorate of Archives & Libraries, Peshawar.
- (v)- Office Orders File.


 Received
 Muneer Alam
 25-09-2016

Director of Archives & Libraries,
 Khyber Pakhtunkhwa, Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 2008/2022

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

Sajjad Ali, Former Assistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Resident of Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, Outside Lahori Gate, Peshawar.(Appellant)

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Labour Department, Peshawar.
2. Deputy Secretary, Labour Department, Peshawar.
3. The Departmental Promotion Committee through its Chairman, Labour Department, Peshawar.
4. Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor F.C Trust Building, Peshawar Cantt.
5. Amir Khaliq former Labour Officer, Labour Department, Peshawar.(Respondents)

Barrister Adnan Saboor Rohaila,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For respondents

Date of Institution..... 25.08.2023

Date of Hearing..... 03.05.2024

Date of Decision..... 03.05.2024

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 02.12.2022 whereby request of the appellant to grant promotion in BPS- 16 was denied/rejected. Prayer in the appeal is as follows:-



- "A. That the appellant has the right to be promoted as Labour Officer BPS- 16 from 26.02.2009 i.e the date of promotion of respondent No. 5/Amir Khaliq by issuing antedated promotion in BPS- 16 in accordance with the tentative seniority list of Assistant Labour Officers BPS- 11 circulated as stood on 22.11.2008 with all consequential, financial, entire privileges and other benefits attached with the post of Labour Inspector BPS 16 and back benefits of seniority and refusal of the respondent Labour Department is illegal, without lawful authority and liable to be quashed.
- B. That the order and refusal of the respondent contained in letter No. SOL/LD/1-49/2022/Sajjad Ali/6853 dated 2.12.2022 to promote the appellant is illegal, discriminative, against law, rules and dicta laid by the superior courts thus the appellant is entitled for proforma notional promotion from 26.02.2009, the date when respondent No. 5 being junior to the appellant was promoted.
- C. That the appellant's promotion has been suspended, prolonged and blocked due to malafide intention of the official respondents with no fault of the appellant whereas the stance of the appellant has been concurred by apex Supreme Court of Pakistan and this honourable Tribunal and expunged all the adverse remarks recorded in ACRs of the appellant vide order and judgments dated 04.01.2010 and 17.09.2020 respectively.
- D. Any other appropriate remedy not specifically mentioned may also be granted.
- E. Costs."

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant joined Labour Department on 01.08.1975 and had unblemished record at his credit. The appellant through letter dated 26.12.2008 was conveyed that two posts of Labour Officers (BPS- 16)



were vacant which were required to be filled in by promotion from amongst the Assistant Labour Officers, in accordance with the Departmental Service Rules, 2005. The letter further stipulated for willingness for acceptance of promotion as Labour Officer in BPS- 16 anywhere in Khyber Pakhtunkhwa where the posts of Labour Officer were lying vacant. The appellant accepted the proposal and extended his willingness through written letter dated 02.01.2013. Respondents, earlier through letter dated 01.12.2008, also enquired and asked for option to be promoted and posted on one vacant post of Labour Officer BPS- 16 at D.I.Khan and the appellant immediately, through letter dated 04.12.2008, conveyed his consent. Tentative seniority list of Assistant Labour Officer (BPS- 11) was circulated on 22.11.2008 whereby the appellant was ranked at serial No. 1 and Mr. Amir Khaliq, respondent No. 5, was ranked junior to the appellant which was not challenged and attained finality. Through letter dated 18.02.2009, the appellant was conveyed adverse remarks recorded in his ACRs for the year 2004 to 2008. He approached the Service Tribunal through appeal No. 1018 of 2009 which was partially accepted and the adverse remarks recorded in his ACRs for the years 2004 to 2007 were expunged. Since no findings relating to ACR for 2008 were made therefore, the appellant preferred Civil Appeal No. 320-P/2010 in the august Supreme Court of Pakistan which was accepted on 17.09.2020 and adverse remarks recorded for 01.01.2008 to 31.12.2008 were expunged. Respondent department did not promote the appellant and his junior Amir Khaliq (respondent No. 5) was promoted as Labour Officer BPS- 16 on 26.02.2009. The appellant and respondent No. 5 retired from service after



attaining the age of superannuation. The appellant soon after the judgment of august Supreme Court of Pakistan, approached the Director Labour through representation dated 17.09.2020 with the request that since entire adverse remarks recorded against the appellant were expunged, therefore, he had the right to be promoted to the post of Labour Officer from the date when his junior (respondent No. 5) was promoted as Labour Officer (BPS-16). No response was communicated to the appellant, therefore, a reminder dated 06.05.2021 was also addressed to Director Labour but with no reply. The appellant filed Writ Petition No. 504-P/2022 in the Honourable Peshawar High Court. The respondents were issued notices and they filed parawise comments. The writ petition finally came up for hearing on 30.08.2022 and following order was passed:

"Keeping in view the peculiar facts and circumstances of the case, this petition is converted into representation and sent to Secretary Labour Department "respondent No. 01" with direction to decide it in accordance with law within shortest possible time after providing the petitioner an opportunity of due hearing. The petition is disposed of accordingly. Office shall retain copies of the petition for the purpose of record."

The appellant, through letter dated 06.09.2022, provided the copies of the Writ petition and judgment dated 30.08.2022 of the honourable Peshawar High Court to respondent No. 1 for the needful and compliance. Subsequently, the appellant through letter dated 19.09.2022 was called for personal hearing on 21.09.2022 where he explained the entire factual and legal aspect of the case with the request that he might be notionally promoted as Labour Inspector



from 26.02.2009, the date on which respondent No. 5 was promoted. After personal hearing, no response was conveyed therefore, COC No. 417-P/2022 was filed in the Peshawar High Court on 08.10.2022 which came up for hearing on 06.12.2022. During the hearing it was disclosed that the representation of the appellant was decided on 02.12.2022. In the circumstances, the COC was decided. The appellant through letter dated 02.12.2022 was conveyed, "the Labour Department through Departmental Promotion Committee considered your representation. Since no provision was available for promotion with retrospective effect, as per promotion policy in vogue, hence this department is unable to accept your representation"; hence the instant service appeal.

3. Respondents were put on notice who submitted their joint parawise comments on the appeal. We heard the learned counsel for the appellant as well as learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that refusal of the respondent through letter dated 02.12.2022 to promote the appellant as Labour Officer was illegal and without lawful authority. The appellant's promotion was blocked due to malafide intention with no fault on his behalf. Stance of the appellant was concurred by the Apex Court and the Service Tribunal and all the adverse remarks recorded in his ACR had been expunged. He further argued that the stance of the respondents that since appellant had already retired, therefore, he could not be promoted retrospectively was uncalled for. According to him, there were plethora of



instances and rulings of superior courts that promotion could be made from the date when a person was illegally deprived of his lawful promotion. He referred to the seniority list circulated on 22.11.2008, vide which the appellant was ranked at serial no. 1 while respondent No. 5 was ranked junior to him and such seniority list was not challenged and thus it attained finality. He requested that the appeal might be accepted as prayed for.

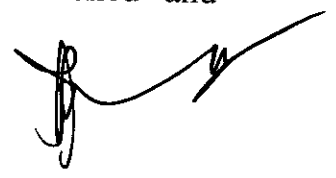
5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that according to the tentative seniority list attached as annexure-B with the appeal, Mr. Khawaja Muhammad was at serial no. 1, the appellant was at serial no. 2 and respondent No. 5 was at serial no. 3. Case of the employees of the Directorate of Labour was sent to the Departmental Promotion Committee for consideration. The committee promoted respondent No. 5 and superseded the appellant and Khawaja Muhammad due to adverse remarks and poor performance indicated in their ACRs. He argued that although the adverse remarks were communicated to him in the year 2009 formally, the appellant was well aware about his conduct and competence which was evident from his letter of acceptance/willingness. He further argued that on receipt of application from the appellant, in compliance of the order dated 17.09.2020 of the august Supreme Court of Pakistan, adverse remarks from ACRs of the appellant were expunged and communicated to him vide letter dated 03.02.2022. So far as his claim regarding promotion since 2009 was concerned, the same was sent for opinion to the Law Department and Establishment Department. Opinion from both the forums was received and it was clarified that the Hon'ble Court had not issued



any direction regarding promotion of the appellant from the back date. In compliance of the Hon'ble Peshawar High Court's order dated 30.08.2022 the appellant was provided with the opportunity to explain his position and after due deliberation, his case was declined. He requested that the appeal might be dismissed.

6. An order dated 02.12.2022 has been impugned before us vide which the respondent department has conveyed to the appellant that in the light of judgment dated 30.08.2022 of the Honourable Peshawar Court, his representation was referred to the Departmental Promotion Committee but as there was no provision for promotion with retrospective effect, as per promotion policy in vogue, hence his representation could not be accepted. Arguments and record presented before us show that the appellant, who was Assistant Labour Officer (BPS- 11), was at serial no. 2 of the seniority list as on 31.12.2007. At that time, one vacant post of Labour Officer (BS- 16) was available to be filled by promotion, on which an official, junior to the appellant was promoted in 2009 and he was ignored on the ground that he had adverse remarks in his ACRs. The appellant had earned adverse remarks in ACRs for the years 2004 to 2007 and 2008, which were expunged by this Tribunal vide its judgment daed 04.1.2010 and the honourable Supreme Court of Pakistan vide its judgment dated 17.09.2020 respectively.


7. It has been noted here that the adverse remarks in his ACRs were conveyed to the appellant vide a letter dated 18.02.2009 and the meeting of DPC was held on 26.02.2009. This means that the appellant had no time to challenge the adverse remarks before the meeting of DPC was convened and




private respondent no. 5, who was junior to him, was promoted. If he had not been given those adverse remarks, he was eligible for promotion at that time when his junior colleagues was promoted.

8. In view of the above discussion, there is no second opinion that the appellant was eligible for promotion in 2009 but was superseded because of adverse remarks in his ACRs, which were latter on expunged. This shows that he was deprived of promotion because of some fault of others and hence he should not be punished for it. The service appeal is, therefore, allowed and the respondent department is directed to promote the appellant to the post of Labour Officer (BS- 16) from the date when his junior colleague, i.e respondent No. 5, was promoted, with all back and consequential benefits. Cost shall follow the event. Consign.

9. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 03rd day of May, 2024.*


(FARISHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)

FazleSubhan P.S

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SA 2008/2022

03rd May, 2024 01. Barrister Adnan Saboor Rohaila, 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 08 pages, there is no second opinion that the appellant was eligible for promotion in 2009 but was superseded because of adverse remarks in his ACRs, which were later on expunged. This shows that he was deprived of promotion because of some fault of others and hence he should not be punished for it. The service appeal is, therefore, allowed and the respondent department is directed to promote the appellant to the post of Labour Officer (BS- 16) from the date when his junior colleague, i.e respondent No. 5, was promoted, with all back and consequential benefits. Cost shall follow the event.

SCANNED
KPST
Peshawar

Consign.
03. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 03rd day of May, 2024.*


(FAREEHA PAUL)
Member (E)


(RASHIDA BANO)
Member(J)


(W)


26.03.2024 1. Appellant alongwith his counsel present. Mr. Muhammad Jan learned District Attorney alongwith Muhammad Ibrar, Inspector for the respondents present.

2. Representative of respondent is directed to produce minutes of DPC meeting of Labour Officer of BPS-16 on the next date.

Adjourned. To come up for record and arguments on 03.05.2024 before D.B. P.P given to parties.

SCANNED
K. S. S. T.
Iqbalhawan


(Fareeha Paul)
Member (E)


(Rashida Bano)
Member (J)

11


15.08.2023

1. Learned counsel for the appellant present. Mr. Fazal Shah Mohmand learned Additional Advocate General alongwith Muhammad Ibrar, Inspector (Weights & Measures) for the respondents present.

2. Due to summer vacations D.B is not available, therefore, case is adjourned. To come up for arguments on 07.12.2023 before D.B. P.P given to parties.

SCANNED
KPST
Peshawar

Kaleem Ullah


(Rashida Bano)
Member (J)

7th Dec, 2023


1. Appellant in person present. Mr. Asad Ali Khan, Assistant Advocate General alongwith Mr. Jamil Ahmad Quraishi, Assistant Director (Litigation) for the respondents present.

2. Appellant had filed application for withdrawal of the instant appeal, which application now he wants to be withdrawn. Application is thus withdrawn on the oral request of the appellant. To come up for arguments on 26.03.2024 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

Adnan Shah


(Salah Ud Din)
Member(J)


(Kalim Arshad Khan)
Chairman

15.05.2023

Appellant in person present. Muhammad Ibrar, Inspector (Weight and Measures) alongwith Mr. Asad Ali Khan, Assistant Advocate General for the respondents present and seeks further time for submission of reply/comments. Last opportunity granted. To come up for submission of reply/comments on 27.06.2023 before the S.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar

Naeem Amin

(Salah-ud-Din)
Member (J)

27.06.2023

1. Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Muhammad Ibrar, Inspector (Weights & Measures) for the respondents present.

2. Written reply on behalf of official respondents 1 to 4 submitted which is placed on file. Copy of the same is handed over to the appellant. Appellant stated at the bar that private respondent No. 5 has been retired from service, therefore, time may granted to him to furnish correct address of respondent No.5. Appellant is directed to do the needful within 10 days. Adjourned. To up for written reply 15.08.2023 before D.B. P.P given to the parties.

SCANNED
KPST
Peshawar

Kaleemullah

(Rashida Bano)
Member (J)

13

07th Feb. 2023

Appellant present in person and submitted fresh Wakalatnama of Miss Naila Jan, Advocate/learned counsel, which is placed on file. Preliminary arguments heard and record perused.

Rs-100/-
Amount Deposited
Security & Process Fee
A. J. J. J.
8/2/23

SCANNED
KPST
Peshawar

Points raised need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to respondents for submission of written reply/comments. To come up for written reply/comments on 28.03.2023 before S.B.


(Fareeha Paul)
Member(E)

28th March, 2023

Appellant present in person. Mr. Fazal Shah Mohmand, Addl. A.G alongwith Khalid, Junior Clerk for the respondents present.

SCANNED
KPST
Peshawar

Reply/comments on behalf of respondents not submitted. Learned AAG requested for further time to submit reply/comments. Granted. To come up for written reply/comments on 15.05.2023 before the S.B. Parcha Peshi given to the parties.


(Fareeha Paul)
Member(E)

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FORM OF ORDER SHEET

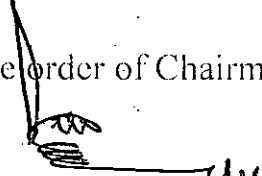
Court of _____

Case No.- _____ 2008/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/12/2022	<p>The appeal of Mr. Sajjad Ali resubmitted today by Mr. Abdul Rauf Rohaila Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on <u>4-1-23</u> Notices be issued to appellant and his counsel for the date fixed.</p>
	4 th Jan, 2023	<p>Learned counsel for the appellant present. Learned counsel for the appellant seeks adjournment on the ground that he has not prepared the case. Adjourned. To come up for preliminary hearing on 07.02.2023 before S.B.</p>
		<p>(Kalim Arshad Khan) Chairman</p>

SCANNED
KPST
Peshawar

By the order of Chairman


REGISTRAR

SCANNED
KPST
Peshawar


15

The appeal of Mr. Sajjad Ali Former Assistant Labour Officer received today i.e. on 26.12.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- ✓1- The law under which appeal is filed is not mentioned.
- 2- Copy of promotion order of respondent no.5 mentioned in the memo of appeal is not attached with the appeal.
- 3- Page no.8, 12, 13, 14, 28 & 29 are illegible which may be replaced by legible/better one.

No. 3701 /S.T,

Dt. 27-12-2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Abdul Rauf Rohaila Adv.Pesh.

28-12-2022 Resubmitted after removal of deficiencies. The promotion order of Amir Khaliq is available at page 28 and 29 of the paper book. May be placed before the Tribunal.


Abdul Rauf Rohaila

16

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECKLIST

Case Title: SAJJAD ALI vs Govt. of KPK Secretary Labour Deptt.

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

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

Name: SAJJAD ALI

Signature: [Handwritten Signature]

Dated: 23-12-2022

17

-1-

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2008/2022

SCANNED
KEPT
Peshawar

Sajjad Ali, Former

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Labour Department etc

I N D E X

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14.	Wakalatnama			

Appellant,
through
Abdul Rauf Rohaila,
Senior Advocate Supreme Court,
Barrister Adnan Saboor Rohaila,



Sammad Hasnain,
Rohaila, Christina & Keyani,
Advocates, Consultants & Legal Advisors,
Sikander Pura, G.T. Road, Peshawar.
e-mail:- raufrohaila@gmail.com
Cell # 0321-9290960

Service Appeal No. 2008 / 2022

Sajjad Ali, Former ssistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Resident of Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, Outside Lahori Gate Peshawar.

-----Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Labour Department, Peshawar.
2. Deputy Secretary, Labour Department, Peshawar.
3. The Departmental promotion Committee through its Chairman, Labour Department, Peshawar.
4. Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor, F.C Trust Building, Peshawar Cantt
5. Amir Khaliq former Labour Officer, Labour Department, Peshawar.

----- Respondents

APPEAL UNDER SECTION 4 OF KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED 2-12-2022 WHEREBY REQUEST OF THE APPELLANT TO GRANT PROMOTION IN BPS-16 HAS BEEN DENIED/REJECTED

/ /

Respectfully Sheweth,

The appellant humbly submits as under:

1. That the appellant joined Labour Department on 1-8-1975, has unblemished record at his credit. The appellant through letter No. DL/Admn:/11/59/5127-29 dated 26-12-2008 was conveyed that two posts of Labour Officers (BPS-16) have been vacant which are required to be filled in by promotion from amongst Assistant labour Officers, in accordance with Departmental Service Rules 2005. The letter further stipulates that willingness for acceptance of promotion as Labour Officer in BPS-16 anywhere in Khyber Pakhtunkhwa where the posts of Labour Officer are lying vacant. The appellant accepted the proposal and extended his willingness through written letter dated 2-1-2013. It is matter of record that respondents earlier through letter No. DL/Admn:/11/59/Vol III 3962-64 dated 1-12-2008 also enquired and ask the option to be promoted and posted on one vacant Post of Labour Officer PBS-16 at D. I. Khan the appellant immediately through letter dated 4-12-2008 conveyed his consent.

(Copies of the referred documents are annexure "A")

Service Appeal No. 2008/2022

Sajjad Ali, Former asistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Resident of Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, Outside Lahori Gate Peshawar.

-----Appellant

VERSUS

Khyber Pakhtunkhwa
Service Tribunal

Case No. 2480

Dated 26/12/2022

1. Government of Khyber Pakhtunkhwa through Secretary Labour Department, Peshawar.
2. Deputy Secretary, Labour Department, Peshawar.
3. The Departmental promotion Committee through its Chairman, Secretary to Govt of Labour Department, Peshawar
4. Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor, F.C Trust Building, Peshawar Cantt
5. Amir Khaliq former Labour Officer, Labour Department, Peshawar.

----- Respondents

APPEAL AGAINST THE ORDER DATED 2-12-2022
WHEREBY REQUEST OF THE APPELLANT TO GRANT
PROMOTION IN BPS-16 HAS BEEN DENIED/REJECTED

26/12/22
Registrar

Submitted to
and filed.

28/12/22
Registrar

Respectfully Sheweth,

The appellant humbly submits as under:

1. That the appellant joined Labour Department on 1-8-1975, has unblemished record at his credit. The appellant through letter No. DL/Admn:/11/59/5127-29 dated 26-12-2008 was conveyed that two posts of Labour Officers (BPS-16) have been vacant which are required to be filled in by promotion from amongst Assistant labour Officers, in accordance with Departmental Service Rules 2005. The letter further stipulates that willingness for acceptance of promotion as Labour Officer in BPS-16 anywhere in Khyber Pakhtunkhwa where the posts of Labour Officer are lying vacant. The appellant accepted the proposal and extended his willingness through written letter dated 2-1-2013. It is matter of record that respondents earlier through letter No. DL/Admn:/11/59/Vol III 3962-64 dated 1-12-2008 also enquired and ask the option to be promoted and posted on one vacant Post of Labour Officer PBS-16 at D. I. Khan the appellant immediately through letter dated 4-12-2008 conveyed his consent.

(Copies of the referred documents are annexure "A")

That according to the departmental modalities, tentative seniority list of Assistant Labour Officer (BPS-11) was circulated on 22-11-2008 whereby the appellant has been ranked at serial No. 1 and Mr. Amir Khaliq, respondent No. 5 has been ranked junior to the appellant. Such seniority list has not been challenged and attained finality.

(Copy of the seniority list is annexure "B")

3. That it is irony that all of a sudden due to malafide intention of the respondents and to deprive the appellant from his due promotion, he through letter No. DL/Admn/1/271/718 dated 18-2-2009 was conveyed the adverse remarks recorded in his ACRs for the year 2004 to 2008. The appellant was forced to approach this honourable Tribunal through Appeal No. 1018 of 2009. After hearing the parties, this honourable Tribunal through order dated 4-1-2010 partially accepted the appeal and the adverse remarks recorded in ACRs for the year 2004 to 2007 have been expunged.

(Copies of the referred documents are annexure "C")

4. That since no findings relating to ACR for 2008 were made therefore, the appellant preferred Civil Appeal No. 320-P/2010 in the Supreme Court of Pakistan which came up for hearing on 17-9-2020, the appeal has been accepted and adverse remarks recorded for 1-1-2008 to 31-12-2008 have also been expunged.

(Copy of the order of the order is annexure "D")

5. That the respondent Labour Department illegally and unlawfully, blocked the due promotion of the appellant and his junior Amir Khaliq /respondent No. 5 was promoted as Labour Officer-BPS-16 on 26-2-2009 and the Appellant has been denied his due right. However, the appellant and respondent No. 5 have since been retired after attaining the age of superannuation.

6. That the appellant soon after the judgment of apex Supreme Court of Pakistan, approached the Director Labour through representation dated 17-9-2020 with the request that since entire adverse remarks recorded against the appellant have been expunged, therefore he has the right to be promoted to the post of Labour Officer from the date when his junior Ameer Khaliq/respondent No. 5 was promoted as Labour Officer (PBS-16). No response was communicated to the appellant, therefore, a reminder dated 6-5-2021 was also addressed to Director Labour but with no reply.

(Copies of the letters are annexure "E")

7. That due to the negative attitude and posture of official respondents, the appellant was constrained to file Writ Petition No. 504-P/2022 in the honourable Peshawar High Court. The respondents in the writ petition were issued notices and they filed parawise comments. The writ petition finally came up for hearing on 30-8-2022 and division bench of the honourable Peshawar High Court passed following orders:-

" Abdul Shakoor, J. Keeping in view the peculiar facts and circumstances of the case, this petition is converted into representation and sent to Secretary Labour Department "respondent No. 01" with direction to decide it in accordance with law within shortest possible time after providing the petitioner an opportunity of due hearing. The petition is disposed of accordingly. Office shall retain copies of the petition for the purpose of record."

(Copies of the referred documents are annexure "F")

8. That the appellant through letter dated 6-9-2022 provided the copies of the writ petition and judgment dated 30-8-2022 of the learned Peshawar High Court to respondent No. 1 for the needful and compliance. Subsequently, the appellant through letter No. SO(Lit)/LD/1-49/2022 dated 19-9-2022 was called for personal hearing on 21-9-2022. The appellant during the hearing explained entire factual and legal aspects of the case with the request that he may be notionally promoted as Labour Inspector from the 26-2-2009 on which respondent No. 5 was promoted.
9. That after personal hearing, no response was conveyed, therefore COC No. 417-P/2022 was filed in the Peshawar High Court on 8-10-2022 which came up for hearing on 6-12-2022. During the hearing it was disclosed that the representation of the appellant has been decided on 2-12-2022. In the circumstances, the COC was decided.
10. That appellant through letter No. SOL/LD/1-49/2022/Sajjad Ali/6853 dated 2-12-2022 was conveyed that "The Labour Department through Departmental Promotion Committee considered your representation. Since there no provision was available for promotion with retrospective effect, as per promotion policy in vogue, hence, this department is unable to accept your representation"

(Copies of the referred documents are annexure "G")

11. That the appellant is seriously aggrieved of the order dated 2-12-2022, hence the preset appeal inter-alia on the following grounds:-

- i) Firstly, the order and refusal of the respondent through letter No. SOL/LD/1-49/2022/Sajjad Ali/6853 dated 2-12-2022 to promote the appellant as Labour Officer is illegal, without lawful authority and void ab-initio.
- ii) Secondly, the appellant promotion has been blocked due to malafide intention of the official respondents with no default of the appellant. The stance of the appellant has been concurred by apex Supreme Court of Pakistan and this honourable Tribunal and expunged all the adverse remarks recorded in ACRs of the Appellant vide their Judgments dated 4-1-2010 and 17-9-2020.
- iii) Thirdly, the appellant has been deprived of his due promotion from 26-2-2009 of promotion of his junior colleague Amir Khaliq/respondent No. 5 had been promoted as Labour Officer in BPS-16. The stance of the respondents that since appellant has already retired, therefore, he cannot be promoted retrospectively is uncalled for. There are plethora of instances and ruling that promotion can be made from the date when a person has illegally been deprived of his lawful promotion.
- iv) Fourthly, the refusal contain in letter No. SOL/LD/1-49/2022/Sajjad Ali/6853 dated 2-12-2022 is uncalled for inasmuch as according to the seniority list circulated on 22-11-2008 whereby the appellant has been ranked at serial No. 1 and Mr. Amir Khaliq, respondent No. 5 has been ranked junior to him whereas Such seniority list has not been challenged thus attained finality.
- v) Fifthly, the appellant has deliberately been denied his due right due to the negative attitude and behavior of the official respondent which is apparent from the fact that he was twice offered to be promoted as Labour Officer BPS 16 and get the consent of the appellant. However, the respondents in order to deprive the appellant from his due promotion simultaneously conveyed four years adverse remarks which have already been quashed and expunged by the Apex Supreme Court of Pakistan and this honourable Tribunal.
- vi) Sixthly, the refusal of the respondents, the attitude, behavior and conduct towards the appellant is biased, discriminatory, against law and ethics. The respondent department in order to promote a junior person and to deprive the senior person illegally recorded adverse remarks in the ACRs of the appellant. By such modus operandi the promotion of the Appellant was blocked illegally and unlawfully.



- vii) Seventhly, by unlawful tactics used by the respondent department, the appellant has been deprived of his due right with monetary and job/post rights. Huge amount has been incurred by the appellant for the litigation and precious service career has also been ruined by the respondents to tease and debar him illegally and in excess of jurisdiction.
- viii) Eighthly, the appellant had to knock the doors of the Service Tribunal, Supreme Court of Pakistan which through elaborate judgment have graciously expunged all the adverse remarks recorded in the ACRs. Nevertheless, after expunction of adverse remarks, the respondents failed to process the promotion case of the appellant. His applications were sent to the cold storage knowingly and willfully using delaying tactics, rough methods, biased attitude and overall mal-administration on the part of respondents who are bent upon to deny promotion to the appellant.
- ix) Ninthly, the objective of the respondents No. 1 to 4 communicating adverse remarks to the Appellant after five years are the worst example of biased attitude, discrimination and bad administration on their part who have illegally promoted junior and denied the right to the senior/appellant. The tentative seniority list of Assistant Labour Officers- BPS-11 as stood on 22-11-2008 confirms the fact that appellant is senior to Amir Khaliq/ respondent No. 5.
- x) Tenthly, this honorable Service Tribunal and August Supreme Court of Pakistan had declared the adverse remarks given by the reporting officer and countersigning officer as nullity in law. In the light of such judgments, the performance and innocence of the appellant has been commended and proved that he was annealed on anvil of suppression so that he could not avail his right.
- xi) Eleventhly, the appellant has been treated maliciously whereas the respondents can create a supernumerary post to grant promotion to the appellant from the date when his junior colleague Amir Khaliq had been promoted and the appellant was left high, dry due to malicious attitude and maladministration of the respondents who are/were not ready to grant promotion to a deserving person. The appellant is entitled to avail his right in the light of the judgments of the Service Tribunal and the August Apex Court.
- xii) Twelfthly, the appellant is entitled for the notional promotion from the date of promotion of respondent No. 5 who is/was admittedly junior to the appellant. All financial benefits which the respondent department has paid and granted to respondent No. 5 may be paid and granted to him with back benefits and seniority. There is no stigma on the performance of the appellant till his superannuation.

It is, therefore, humbly prayed that on acceptance of this appeal, this honourable tribunal may hold declare and order:-

- A. That the appellant has the right to be promoted as Labour Officer BPS 16 from 26-2-2009 i.e. the date of promotion of respondent No. 5/Amir Khaliq by issuing antedated promotion in BPS 16 in accordance with the tentative seniority list of Assistant Labour Officers- BPS-11 circulated as stood on 22-11-2008 with all consequential, financial, entire privileges and other benefits attached with the post of Labour Inspector BPS 16 and back benefits of seniority and refusal of the respondent Labour Department is illegal, without lawful authority and liable to be quashed.
- B. That the order and refusal of the respondent contain in letter No. SOL/LD/1-49/2022/Sajjad Ali/6853 dated 2-12-2022 to promote the appellant is illegal, discriminative, against law, rules and dicta laid by the superior courts thus the appellant is entitled for proforma notional promotion from 26-2-2009, the date when respondent No. 5 being junior to the appellant was promoted.
- C. That the appellant's promotion has been suspended, prolonged and blocked due to malafide intention of the official respondents with no fault of the appellant whereas the stance of the appellant has been concurred by apex Supreme Court of Pakistan and this honourable Tribunal and expunged all the adverse remarks recorded in ACRs of the Appellant vide order and judgments dated 4-1-2010 and 17-9-2020 respectively.
- D. Any other appropriate remedy not specifically mentioned may also be granted.
- E. Costs

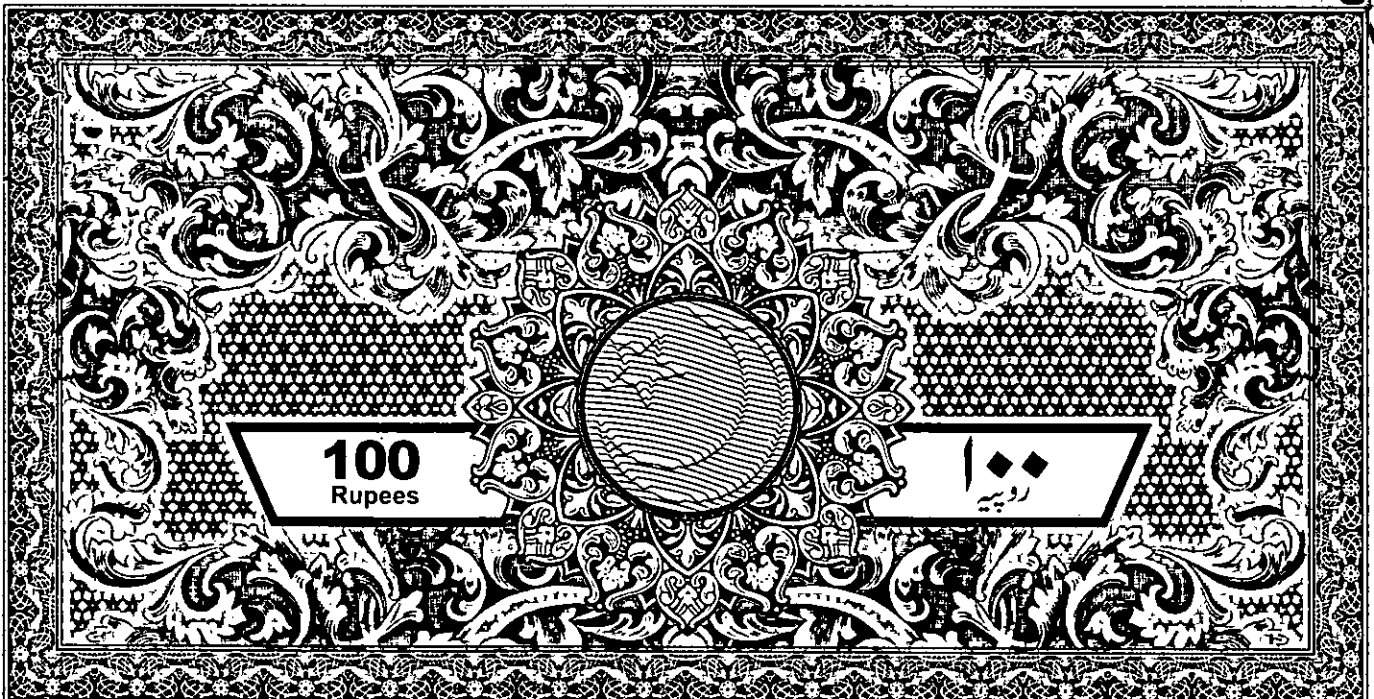
Appellant,
through
Abdul Rauf Rohaila,
Senior Advocate Supreme Court,
Barrister Adnan Saboor Rohaila,

Sammad Hasnain,
Rohaila, Christina & Keyani,
Advocates, Consultants & Legal Advisors,
Sikander Pura, G.T. Road, Peshawar.
e-mail:- raufrohaila@gmail.com
Cell # 0321-92909690

Certificate

Certified no appeal, petition has been filed against the letter impugned letter dated 2-12-2022.

Appellant



100
Rupees

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روپے

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. _____ / 2022

Sajjad Ali, Former

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Labour Department etc

Affidavit

I, Sajjad Ali son of Khanimullah, resident of Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, Outside Lahori Gate Peshawar do hereby solemnly affirm that the contents of the accompanied appeal are true and correct to the best of my knowledge and belief and nothing has been concealed from the notice of the Honourable Tribunal.

Deponent

Sajjad Ali

Sajjad Ali



21-12-2022 سجاد علی ولد خورشید اللہ سرگودھا ضلع

District Comptroller of Accounts
14 DEC 2022
(Treasury Wing) Peshawar.

SAJID ULLAH S/O LIAQAT ALI
STAMP VENDOR
Lic. No. 100/191/HC
Issue Date: 14/12/2022
District Khyber Pakhtunkhwa Peshawar
Peshawar Treasury Peshawar

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DIRECTORATE OF
INDUSTRIES, COMMERCE AND LABOUR
NWFP, PESHAWAR

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No. DL/Admn: 11/59/Vol-III/ 3962-64

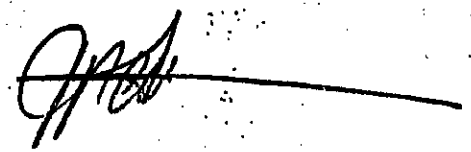
Dated: 01/12/2008.

1. Mr. Khawja Muhammad
Asstt: Labour Officer, Mansehra.
2. Mr. Sajjad Ali
Asstt: Labour Officer, Charsadda
3. Mr. Amir Khaliq
Asstt: Labour Officer, Swabi.

Subject: OPTION FOR PROMOTION TO THE POST OF LABOUR OFFICER
(BPS-16) AT D.I.KHAN.

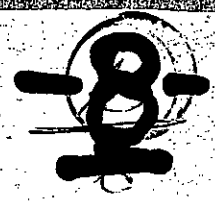
I am directed to refer to the subject cited above and to say that one post of Labour officer (BPS-16) is lying vacant in this Directorate at D.I.Khan falling to the share of promotion quota.

You are therefore requested to convey your willingness / unwillingness for promotion to the post of Labour Officer (BPS-16) D.I.Khan within 06-days. In case no reply is received within the stipulated period of time it will be presumed that you are not willing for promotion.



(Abdul Rauf Jan)
Assistant Director (Admn)
Hqtrs Office, Peshawar

ATTESTED



Registered

DIRECTORATE OF
INDUSTRIES, COMMERCE AND LABOUR
NWFP, PESHAWAR.

No. DI Admn: II 59/Vol-III/ **3962-64**

Dated: **01/12** /2008.

- 1. Mr. Khawja Muhammad
Asstt: Labour Officer, Marischna
- ✓ 2. Mr. Sajjad Ali
Asstt: Labour Officer, Charwadda.
- 3. Mr. Amir Khaliq
Asstt: Labour Officer, Swabi

Subject:

OPTION FOR PROMOTION TO THE POST OF LABOUR OFFICER
(BPS-16) AT D.I.KHAN.

I am directed to refer to the subject cited above and to say that one post of Labour Officer (BPS-16) is lying vacant in this Directorate at D.I.Khan falling to the share of promotion quota.

You are therefore requested to convey your willingness / unwillingness for promotion to the post of Labour Officer (BPS-16) D.I.Khan within **06** days. In case no reply is received within the stipulated period of time it will be presumed that you are not willing for promotion.

(Abdul Rauf Jan)
Assistant Director (Admn)
Hqtrs Office, Peshawar

ATTESTED
[Signature]



To

The Assistant Director (Admn)
H. Quarter office, Peshawar

Subject:- OPTION FOR PROMOTION TO THE POST OF LABOUR OFFICER (BPS-16)

Sir

Kindly refer to your letter No. 3962-64 dated 01 December, 2008 on the subject noted above and to submit if promoted to the post of Labour Officer (BPS-16), I shall be willing to perform my duties at Labour Office D.I.Khan.

Thanks

Yours Obediently,

Sajjad Ali
(Sajjad Ali)

Assistant Labour Officer,
Charsadda

Received on 04/12/08

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ATTESTED
ADVOCATE

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Notification

Tentative seniority list of Assistant Sabout
as stood on 31.12.2007

Sanction post of

S.No.	Name of official with qualification	Date of birth with domicile	Remarks
-------	-------------------------------------	-----------------------------	---------

01	02	03	09
----	----	----	----

01.	Mr. Khawja Muhammad FA	27.9.1950 Peshawar.	-
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02.	Mr. Sajjad Ali B.A.	10.5.1955 Peshawar.	Mr.
-----	------------------------	------------------------	-----

03.	Mr. Amir Khaliq B.A.	04.9.1958 (Tribal area)	Mr.
-----	-------------------------	----------------------------	-----

04.	Mr. Shujani Mulk M.A.	01.4.1956 Mingora	Mr.
-----	--------------------------	----------------------	-----

Enclt. No. DL/Admn/11/2/3802-05

Copy of the above is forwarded to confirm their placement in the list and receipt of this communication, otherwise fully notified

ATTESTED
ASSOCIATE

Directorate of
Industries, Commerce and Labour
NWFP Peshawar.

REGISTERED

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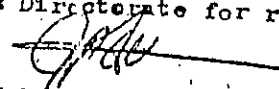
No. DL/Admn/1/271/7/8

Dated. 18/2/09

The Labour Officer,
Acting Assistant Director Labour,
Charsadda.

Sub; - Communication of adverse remarks.

I Am directed to forward herewith two letters (in duplicate each) on the subject in respect of Mr. Sajjad Ali, Assistant Labour Officer Charsadda with the request to deliver the said letters to him after getting signature on the duplicate copy of each letter in token of having received the original and return the same to this Directorate for record.


(Abdul Rauf Jan)
Assistant Director (Admn) Peshawar.

ATTESTED
ADVOCATE

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BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1018 of 2009

Date of institution - 20.06.2009

Date of decision - 04.01.2010

Sajjad Ali Assistant Labour Officer, Charsadda, Officer of Assistant Director,
Industries, Commerce & Labour, Charsadda.....(Appellant)

VERSUS

1. Mufti Nasser Iqbal, Labour Officer, acting Assistant Director, Industries
Commerce & Labour, Charsadda.
2. Khalid Jan Durrani, Director of Industries, Commerce & Labour NWFP, FC,
Trust Building Peshawar.
3. Secretary to Government of NWFP, Industries Commerce, Mineral
Development, NWFP, Labour & Transport Department
Peshawar.....(Respondents)

Appeal under Section 4 of NWFP Service Tribunals Act, 1974, against letters
No. DI/ADMN/1/271/718 & 719 dated 18.2.2009 of Respondent No.2 whereby
adverse entries/remarks recorded in ACRs of appellant for the period of five
years from 1.1.2004 to 31.12.2008 were communicated & letter No. SO-1 (IND)
9-1/80 Vol: VII/1274 dated 13.6.2009 of Respondent No.3 whereby the
representation of appellant for expunction of adverse remarks/entries for the said
period of ACRs was rejected.

Mr. Abdul Hameed, Advocate..... For appellant.
Mr. Jamil Abdul Nasir A.G.P..... For Respondents.

MR. ABDUL JALIL..... MEMBER
SYED MANZOOR ALI SHAH..... MEMBER

JUDGMENT

ABDUL JALIL MEMBER:- This appeal has been filed by the appellant against
letter dated 18.2.2009 of Respondent No.2 whereby adverse entries/remarks recorded in
his ACRs for the period from 1.1.2004 to 31.12.2008 were communicated & letter dated
13.6.2009 of Respondent No.3 whereby his representation for expunction of adverse
remarks/entries was rejected. He has prayed that the adverse remarks in the ACRs of
appellant may be expunged.

ATTESTED

NWFP Service Tribunal
Peshawar
EXAMINER

ATTESTED

2. Short facts giving rise to the present appeal are that the appellant was appointed as Labour Inspector in BPS-9 and later on promoted to the post of Assistant Labour Officer (BPS-11) on regular basis w.e.f 10.1.2004. During the period from 1.1.2004 to 31.12.2008 the appellant remained posted under the administrative control of Respondents No.1 and 2 and performed his duties honestly and diligently. During that period no explanation or any written warning issued to the appellant. On 1.12.2008, option was sought from appellant for posting against the available vacant post of Labour Officer at D.I Khan to which he agreed, instead of his posting the appellant was communicated adverse reports on 18.2.2009 for 5 years period from the year 2004-2008, meaning thereby that his case for the post of Labour Officer and his posting order to D.I.Khan was dropped because of this reports. He has prayed in his appeal that the reports for years 2004, 2005, 2006, 2007 were written on one day i.e 12.11.2008 by Respondents No.1 and 2 while report for the year 2008 was written on 15.1.2009 which indicates the malafide intention of Respondents No.1 and 2, and also violation settled instructions regarding PERs issued by Establishment Department. The appellant preferred a departmental representation on 4.3.2009 before for expunction of adverse entries/ remarks has been rejected on 13.6.2009. Hence, this appeal.

3. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the adverse remarks recorded in the ACRs for the years from 2004-2008 are unfounded and merely based on personal dislike of Respondent No.1 and 2. The appellant had earlier earned good ACRs because of which he was promoted to higher post. The remarks below average indicate the personal grudge of Respondent No. 2 as the same Respondents No. 1 and on other occasions had appreciated the works of the appellant. He referred to the judgments of Hon'ble Supreme Court of Pakistan wherein below average has been "disproved". The Countersigning Officer (Respondent No. 2 has not applied his independent mind to prove the adverse remarks. The entire adverse remarks are unjustified, un-called for and prejudiced mind of Respondents No. 1 and 2. He referred to 1999-SCMR-1587, the adverse remarks recorded in the ACR were communicated after lapse of more than 4 months and the authority failed to explain every day delay. The Hon'ble Supreme Court

ATTESTED

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of Pakistan has held that the adverse remarks should be communicated to civil servant within a reasonable period. He referred to another authority 1992-SCMR-1427 which says that adverse remarks should be communicated in time.


5. The A.G.P argued that the adverse remarks recorded were based on the performance of the appellant and therefore, carry weight for ensuring discipline and smooth functioning of the Government Institutions. He was found delinquent giving poor performance in field duty, therefore, warning/explanation notice has been served on 12.1.1999, 25.1.1999, 5.11.2001, 21.11.2001 and 18.4.2002. Proper counselling was held but he failed to improve his performance. Respondents No. 1 and 2 have no personal grudge against the appellant. He also referred to SCMR-2001-1707 and SCMR-1999-2117 in which it has been held that counselling/warning is not mandatory.

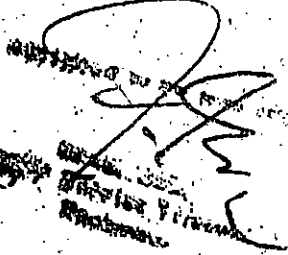
6. In view of the above, the Tribunal holds that ACR instructions were not considered while communicating the adverse remarks. As per instruction No. 9 while writing PER utmost care should be taken to ensure that "personal adverse remarks are avoided". While the Countersigning Officer has recorded the word "useless official", again has repeated the word useless which amount to personal remarks, therefore, the adverse remarks for the years 2004 to 2007 are expunged. As per instructions on PER 13.6: proper counselling/warning has not been given to the appellant. The same should be expunged as the same were sent to the appellant at a belated stage. The parties are however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.
4.1.2010.

ATTESTED


(SYED MANZOOR ALI SHAH)
MEMBER.


(ABDUL JALIL)
MEMBER.


12004-1-2010
8-00
8-00
04/2/2010
04/2/2010

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BEFORE THE NWFP, SERVICE TRIBUNAL PESHAWAR.

Appeal No. 1018 of 2009

Date of institution - 20.06.2009

Date of decision - 04.01.2010

Sajjad Ali Assistant Labour Officer, Charsadda, Officer of Assistant Director, Industries, Commerce & Labour, Charsadda.....(Appellant)

VERSUS

1. Multi Nasser Iqbal, Labour Officer, acting Assistant Director, Industries, Commerce & Labour, Charsadda.
2. Khalid Jan Durrani, Director of Industries, Commerce & Labour NWFP, FC, Trust Building Peshawar.
3. Secretary to Government of NWFP, Industries Commerce, Mineral Development, NWFP, Labour & Transport Department Peshawar.....(Respondents)

Appeal under Section-4 of NWFP Service Tribunals Act, 1974, against letters No. DI/ADMN/1/271/718 & 719 dated 18.2.2009 of Respondent No.2 whereby adverse entries/remarks recorded in ACRs of appellant for the period of five years from 1.1.2004 to 31.12.2008 were communicated & letter No. SO-1 (IND) 9430 Vol: VII/1274 dated 13.6.2009 of Respondent No.3 whereby the representation of appellant for expunction of adverse remarks/entries for the said period of ACRs was rejected.

Mr. Shah Hameed, Advocate..... For appellant.
Mr. Jamil Abdul Nasir A.G.P For Respondents.

MIR. ABDUL JALIL..... MEMBER
SYED HANZOOR ALI SHAH MEMBER

OPINION

MR. ABDUL JALIL, MEMBER:- This appeal has been filed by the appellant against letter dated 18.2.2009 of Respondent No.2 whereby adverse entries/remarks recorded in his ACRs for the period from 1.1.2004 to 31.12.2008 were communicated & letter dated 13.6.2009 of Respondent No.3 whereby his representation for expunction of adverse remarks/entries was rejected. He has prayed that the adverse remarks in the ACRs of appellant may be expunged.

EXAMINER
NWFP Service Tribunal
Peshawar

ATTESTED
ADVOCATE



2. Short facts giving rise to the present appeal are that the appellant was appointed as Labour Inspector in BPS-9 and later on promoted to the post of Assistant Labour Officer (BPS-11) on regular basis w.e.f 10.1.2004. During the period from 1.1.2004 to 31.12.2008 the appellant remained posted under the administrative control of Respondents No.1 and 2 and performed his duties honestly and diligently. During that period no explanation or any written warning issued to the appellant. On 1.12.2008, option was sought from appellant for posting against the available vacant post of Labour Officer at D.I Khan to which he agreed. Instead of his posting the appellant was communicated adverse reports on 18.2.2009 for 5 years period from the year 2004-2008, meaning thereby that his case for the post of Labour Officer and his posting order to D.I.Khan was dropped because of this reports. He has prayed in his appeal that the reports for years 2004, 2005, 2006, 2007 were written on one day i.e 12.11.2008 by Respondents No.1 and 2 while report for the year 2008 was written on 15.1.2009 which indicates the mala fide intention of Respondents No.1 and 2 and also violation settled instructions regarding PERs issued by Establishment Department. The appellant preferred a departmental representation on 4.3.2009 before for expunction of adverse entries/ remarks has been rejected on 13.6.2009. Hence, this appeal.

ATTESTED

ADVOCATE

3. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the adverse remarks recorded in the ACR for the years from 2004-2008 are unfounded and merely based on personal dislike of Respondent No.1 and 2. The appellant had earlier earned good ACRs because of which he was promoted to higher post. The remarks below average indicate the personal grudge of Respondent No. 2 as the same Respondents No. 1 and 2 on other occasions had appreciated the works of the appellant. He referred to the judgments of Hon'ble Supreme Court of Pakistan wherein below average has been "disproved". The Countersigning Officer (Respondent No. 2 has not applied his independent mind to prove the adverse remarks. The entire adverse remarks are unjustified, un-called for and prejudicial mind of Respondent No. 1 and 2. He referred to 1999-SCMR 1887, the adverse remarks recorded in the ACR were communicated after lapse of more than 4 months and the authority failed to explain every day delay. The Hon'ble Supreme Court


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of Pakistan has held that the adverse remarks should be communicated to civil servant within a reasonable period. He referred to another authority 1992-SCMR-1427 which says that adverse remarks should be communicated in time.

5. The A.G.P argued that the adverse remarks recorded were based on the performance of the appellant and therefore, carry weight for ensuring discipline and smooth functioning of the Government Institutions. He was found delinquent giving poor performance in field duty, therefore, warning/explanation notice has been served on 12.1.1999, 25.1.1999, 5.11.2001, 21.11.2001 and 18.4.2002. Proper counselling was held but he failed to improve his performance. Respondents No. 1 and 2 have no personal grudge against the appellant. He also referred to SCMR-2001-1707 and SCMR-1999-2117 in which it has been held that counselling/warning is not mandatory.

6. In view of the above, the Tribunal holds that ACR instructions were not considered while communicating the adverse remarks. As per instruction No. 9 while writing PER utmost care should be taken to ensure that "personal adverse remarks are avoided". While the Countersigning Officer has recorded the word "useless official", again has repeated the word useless which amount to personal remarks, therefore, the adverse remarks for the years 2004 to 2007 are expunged. As per instructions on PER 13.6, proper counselling/warning has not been given to the appellant. The same should be expunged as the same were sent to the appellant at a belated stage. The parties are, however, left to bear their own costs. File be consigned to the record.

ANNOUNCED.
4.1.2010.


(SYED MANZOOR ALI SHAH)
MEMBER.


(ABDUL JALIL)
MEMBER.

TESTED

ADVOCATE

12004-1-2010
5-00
5-00
04/2/2010
04/2/10

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE GULZAR AHMED, HCJ
MR. JUSTICE IJAZ UL AHSAN

CIVIL APPEAL NO.320-P OF 2010
(Against the judgment dated 04.01.2010 passed by
the NWFP, Service Tribunal, Peshawar in Appeal
No.1018 of 2009).

Sajjad Ali.

...Appellant(s)

Versus

Labour Officer, Acting Assistant Director Industries
Commerce and Labour and others.

...Respondent(s)

For the Appellant(s): Sajjad Ali, In person.
(via video-link from Peshawar)

For the Respondent(s): Mr. Atif Ali Khan, Addl. A. G. KP.
(via video-link from Peshawar)

Date of Hearing: 17.09.2020.

ATTESTED
ADVOCATE

ORDER

GULZAR AHMED, CJ.- The Appellant was communicated adverse remarks recorded in his ACRs for the period from 01.01.2004 to 31.12.2007 vide letter dated 18.02.2009 and by a separate letter of the same date for the period from 01.01.2008 to 31.12.2008. The Appellant filed a Service Appeal before the NWFP Service Tribunal, Peshawar ("the Tribunal") challenging such adverse remarks. The Tribunal after hearing the parties vide impugned judgment dated 04.01.2010 expunged the adverse remarks recorded against the Appellant in his ACRs for the period from 01.01.2004 to 31.12.2007. However, it omitted to expunge such remarks for the period from 01.01.2008 to 31.12.2008.

adverse remarks for the last mentioned period were not expunged. We note that the Tribunal in its impugned judgment has observed that the Assessing Officers were required to write down the ACRs of the Appellant on objective basis and not on personal basis. However, adverse remarks have been recorded against the Appellant in his ACRs on personal basis by using the words, "useless fellow". Using of such words in the ACRs of the Appellant were found by the Tribunal to be that of a personal assessment, which was not permissible in law. We note that the words, "useless fellow" also find mentioned in the ACR of the Appellant for the period from 01.01.2008 to 31.12.2008 and the same being similar to the one mentioned in his ACRs for the period from 01.01.2004 to 31.12.2007 that were expunged by the Tribunal through the impugned judgment, in our view, the same principle will also apply to the ACR for the period from 01.01.2008 to 31.12.2008. As such, benefit of expungment of adverse remarks by the Tribunal is extended to ACR of the Appellant for the period from 01.01.2008 to 31.12.2008 also. Consequently, the impugned judgment of the Tribunal dated 04.01.2010 is modified and the adverse remarks in the ACR of the Appellant for the period from 01.01.2008 to 31.12.2008 are expunged. The appeal in such terms is allowed.

ATTESTED
 ADVOCATE

Sd/-
Sd/-
 Certified to be True Copy

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DIRECTORATE OF LABOUR
KHYBER PAKHTUNKHWA
PESHAWAR

3rd floor F.C Trust Building Peshawar Cantt.

ORDER

On attaining the age of superannuation i.e. 60 years Mr. Sajjad Ali Assistant Labour Officer (BPS-11) Office of the Deputy Director Labour District Peshawar shall stand retired from service with effect from 14.05.2015. (Afternoon). His date of birth is 15.05.1955.

In terms of Rules 20(1) of the Khyber Pakhtunkhwa Civil Servant Revised Leave Rules, 1981 sanctioned is hereby accorded to the lump sum payment equal to full pay of 365 days as encashment of leave, in pursuance of Government of Khyber Pakhtunkhwa Finance Department Notification No.SO (FR) FD-5-92/2005/Vol-v dated: 13.12.2012.

"Certified that the Official has more than 365-days balance of leave at his credit"

Sd/-
Director Labour
Khyber Pakhtunkhwa
Peshawar

dated. 26/02/2015.

Indst.No.DI/Admn/1/271/ 688-93

Copy forwarded to:-

1. The Accountant General Khyber Pakhtunkhwa Peshawar.
2. The Chief Inspector of Factories Hqtr Office Peshawar.
3. The Deputy Director Labour District Peshawar
4. The Accounts Officer, Hqtr Office Peshawar.
5. Mr. Sajjad Ali Assistant Labour Officer (BPS-11) Office of the Deputy Director Labour District Peshawar.
6. Personal File of the Officer Concerned.

(Hidayat Ullah Khan)
Deputy Director Labour (Admn).
Hqtrs Office, Peshawar.

ATTESTED
ADVOCATE

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-18-

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To,

The Worthy Director of Labour,
KPK, Peshawar.

Subject: Expunction of adverse remarks in ACR of Sajjad Ali, Assistant Labour Officer vide Judgment and Order dated 17.09.2020 passed by August Supreme Court of Pakistan-Promotion as Labour Officer and Assistant Director.

Respected Sir,

Most respectfully I beg to invite your kind and sympathetic attention to judgement and order dated 17.09.2020 passed by the August Supreme court of Pakistan in Civil Appeal No.320-P of 2010 (Copy enclosed for your honour's kind perusal) wherein adverse remarks in my ACR for the year-2008 have been expunged.

2. Because of adverse remarks as submitted above, I was not granted promotion to higher posts and Mr. Ameer Khaliq who was junior to me, was promoted to the posts of Labour Officer and thereafter Assistant Director under your kind control.

3. As entire adverse remarks in my ACRs have been expunged, it is humbly requested that I may kindly be granted promotion to the posts of Labour Officer and Assistant Director from the dates from which Mr. Ameer Khaliq who was junior to me was promoted in the interest of Justice.

Thanks,

Yours Obediently,

Sajjad Ali

Assistant Labour Officer
House no 31, Street No. 1,
Sultanabad, Sneikhabad Road,
Outside Lahori Gate,
Peshawar City

TESTED
ADVOCATE

Dated 17.9.2020

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To, The Director Labour,
Khyber Pakhtunkhwa,

Subject: Expunction of adverse remarks of ACR of Sajjad Ali,
Assistant Labour Officer in pursuance of order dated
17.09.2020 passed by Honourable Supreme Court of
Pakistan-Promotion as Labour Officer.

Respected Sir,

Most respectfully I beg to invite your kind and sympathetic attention to letter No. SOG/LD/3-6/DL/2021 Dated 22.04.2021 from the Section Officer (General), Government of Khyber Pakhtunkhwa, Labour Department address to Secretary Law Department and to submit that the only question in my case is "whether a government servant can be granted promotion after retirement". In this connection your Honour's kind and sympathetic attention is invited to judgment and order titled "Secretary Establishment Islamabad vs. Tahawwar Ahmad" of August Supreme Court of Pakistan reported on pages 46-56 of SCMR January, 2021 which shows that Mr. Tahawwar Ahmad, Joint Secretary of the Federal Government has been granted promotion to BPS-22 after retirement. Similarly, the Honourable Peshawar High Court Peshawar, remanded the case of Engr. Gulzar Muhammad to the Local Council Board for promotion after retirement as per Daily News (DAWN) Peshawar dated 15 April 2021. Copies of Judgment and order titled "Secretary Establishment Islamabad vs. Tahawwar Ahmad" of August Supreme Court of Pakistan and extract of Daily News (DAWN) Peshawar dated 15.04.2021 are Annexed for your kind and sympathetic consideration.

2. It is requested that my case may kindly be considered in the light of these judgment and orders of August Supreme Court of Pakistan and of Honourable Peshawar High Court, Peshawar and granted promotion to BPS-16 from the date from which I am entitled in Interest of Justice.

Thanking you

Your Most Obedient Servant,

Sajjad Ali

Sajjad Ali
Ex-Assistant Labour Officer (Retired)

Dated: 6.5.2021

Received
Abdul Jaleel
06/5/2021

ATTESTED
ADVOCATE

42



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BEFORE THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 5047 / 2022

Sajjad Ali, Ex Assistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Peshawar

Present:- Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, near Safi Hotel, outside Lahori Gate Peshawar.

----- Petitioner

VERSUS

1. Secretary to the Government of Khyber Pakhtunkhwa, Labour Department, Civil Secretariat, Peshawar.
2. Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor, F.C Trust Building, Peshawar Cantt: Peshawar.
3. Administrative Officer, Labour Department, 3rd Floor, F.C Trust Building, Peshawar Cantt: Peshawar.

----- Respondents

Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan 1973, as amended till date, against the refusal of the Respondents to grant promotion to the Petitioner in BPS-16, although the Honourable Khyber Pakhtunkhwa Service Tribunal Peshawar and the August Supreme Court of Pakistan had expunged the adverse remarks from the ACRs of the Petitioner vide their Judgments dated 04/01/2010 and 17/09/2020, while the Petitioner submitted representations to the Respondents for the grant of promotion to him in BPS-16, from time to time but to no result.

Prayer in Writ Petition:- Declaring the Refusal of the Respondents as unlawful, illegal, arbitrary, void, malafide and as such without lawful authority, the Respondents may kindly be ordered to process the promotion case of the Petitioner in (BPS-16) and place the same before the Departmental Promotion Committee (DPC) so that the problem of the petitioner could be solved and he could get his right from the date when his junior colleague Amir Khaliq was promoted as Labour Officer in (BPS-16).

Sheweth,

The Petitioner respectfully submits as under:

1. That the petitioner joined the Labour Department on 01/08/1975 and retired from the service on 14/05/2015 on attaining the age of superannuation vide order of the Respondent No. 2 dated 26/02/2015 (Copy of the retirement order annexed as A). Thus the petitioner had served the labour department for about 40 years.
2. That during the service, the Petitioner was asked to show his willingness/unwillingness for acceptance of promotion as Labour Officer in BPS-16 at D.I Khan, vide letter of the Respondent No. 2 dated 01/12/2008 (copy of the order annexed as B). The Petitioner in response to the above said letter expressed his willingness to accept promotion in BPS-16 at D.I Khan (copy of the Petitioners willingness is annexed as C).

ATTESTED
LAUNDRY

FILED TODAY
Deputy Registrar
02 FEB 2022

ATTESTED
EXAMINER
Peshawar High Court

3. That all of a sudden the Petitioner was communicated adverse remarks in his ACRs for the period from 2004 to 2008 in his ACRs vide letter of the Respondent No. 2 dated 18/02/2009 (copy of the order annexed as D). It means the adverse remarks were communicated to the Petitioner after lapse of five years. It clearly represents that the Respondents had blocked the path of promotion to the Petitioner. The junior colleague of the Petitioner namely Amir Khaliq was promoted in BPS-16 and the Petitioner was deprived of his right through clever trick.
4. As the adverse remarks had blocked the path of promotion of the Petitioner, therefore, he had to invoked the jurisdiction of the Service Tribunal and the Supreme Court of Pakistan. Both the Honourable legal forums expunged all the adverse remarks from the ACRs of the Petitioner vide their Judgments dated 04/01/2010 and 17/09/2020 (copies of the judgments are annexed as E & F).
5. That after the judgments of the Honourable legal forums given in favour of the Petitioner, he submitted an application to the Respondent No.2 (Director Labour), for the grant of promotion to him from the day when his junior colleague Amir Khaliq had been promoted as Labour Officer in (BPS-16) (Copy of the application dated 17/09/2020 is annexed as G). But sorry to say that the Petitioner was given no response.
6. That once again the Petitioner submitted another application on 06/05/2021 to the Respondents for the redress of his grievance (copy of the application dated 06/05/2021 is annexed as H). But the Respondents turned deaf ear to the cry of the Petitioner. He has not received any reply from the Respondents till date.
7. As the Respondents are not ready to redress the grievance of the Petitioner, therefore, the Petitioner has no other option open to him but to knock at the door of this Honourable Court through this Writ Petition for the redressal of his grievance on the following amongst the other grounds.

GROUND

- A. That the attitude and behavior of the Respondents towards the Petitioner is biased, discriminatory and against all the laws and ethics.
- B. That the Respondent Department in order to promote a junior person and to deprive the senior person, brought adverse remarks in the ACRs of the Petitioner. Thus the path of promotion to the Petitioner was blocked. Therefore, the Petitioner had to knocked at the doors of the Service Tribunal and Supreme Court of Pakistan who very kindly expunged all the adverse remarks from the ACRs of the Petitioner. But even after expungement of adverse remarks by the Honourable legal forums from the ACRs of the Petitioner, the Respondents badly failed to process the promotion case of the Petitioner. His applications were sent to the cold storage. Whenever the Petitioner approached the offices of the Respondents, he was dodged. It represents delaying tactics, rough methods, biased attitude and overall mal-administration on the part of Respondents who are reluctant to grant promotion to the Petitioner.
- C. That the aim of communicating adverse remarks after five years to the Petitioner is the worst example of biased attitude and discrimination on the part of Respondents who had already made up their mind to award the junior and to discard the senior. The tentative seniority list of Assistant Labour Officers (BPS-11) as stood on 22/11/2003 confirms this fact that the Petitioner (at Serial No.2 is senior to Amir Khaliq at Serial No.3).

ATTESTED
EXAMINER
Peshawar High Court

FILED TODAY
Deputy Registrar
02 FEB 2022

ATTESTED
ADVOCATE

(Copy of the seniority list is annex as I). Thus the Respondents followed their discretion and kicked back the senior and uplifted the joiner.

- D. That the Petitioner had to expand a huge amount on litigation while the Respondents used public money to fulfil their ulterior motives.
- E. That the Honorable Service Tribunal and the August Supreme Court of Pakistan had declared the adverse remarks given by the reporting officer and countersigning officer as biased. In the light of this observation of the legal forums the innocence of the Petitioner is proved that he was annealed on the anvil of suppression so that he could not avail his promotion.
- F. That from the very beginning the Respondents gave the petitioner a treatment of a step mother. The problem of the petitioner could easily be solved by creating a supernumerary post to grant promotion to the petitioner from the date when his junior colleague Amir Khaliq had been promoted and the petitioner was left high and dry but malicious attitude and maladministration of the Respondents were not ready to grant promotion to a deserving person. Therefore, the petitioner has no hope of goodness from the Respondents. The petitioner is entitled to avail his right in the light of the judgments of the Service Tribunal and the August Apex Court.
- G. That the petitioner shall also rely on the additional grounds after filing the written statement by the Respondents.
- H. That under the circumstances as mentioned above the Refusal of the Respondents is liable to be declared null and void.

It is humbly prayed that accepting this Writ Petition in favour of the Petitioner and against the Respondents with cost, the Respondents may kindly be ordered to prepare the case of Petitioner's promotion as Labour Officer in BPS-16 and place the same before the Departmental Promotion Committee so that the Petitioner could get his due right from the day i.e 21/03/2009 when his joiner colleague namely Amir Khaliq had been promoted in BPS-16.

It is further prayed that the drastic action may also be taken against the Respondents who have unlawfully been depriving the Petitioner of his right since long.

ATTESTED
ADVOCATE

Sajjad Ali
Sajjad Ali

Dated: ___/02/2022

(Petitioner in person)

Affidavit

ATTESTED
EXAMINER
Peshawar High Court

I, Sajjad Ali, Ex Assistant Labour Officer of the Labour Department Khyber Pakhtunkhwa, (Petitioner) do hereby solemnly affirm that the contents of the accompanied Writ Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from the notice of the Honourable Court.

Dated: ___02/2022

FILED TODAY
Deputy Registrar

Sajjad Ali
Deponent

02 FEB 2022

BEFORE THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 504 P / 2022

ADDRESSES OF THE PARTIES:

Sajjad Ali, Ex Assistant Labour Officer Labour Department, Khyber Pakhtunkhwa, Peshawar

Present:- Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, near Safi Hotel, outside Lahori Gate Peshawar.

----- Petitioner

VERSUS

- 1. Secretary to the Government of Khyber Pakhtunkhwa, Labour Department, Civil Secretariat, Peshawar.
- 2. Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor, F.C Trust Building, Peshawar Cantt: Peshawar.
- 3. Administrative Officer, Labour Department, 3rd Floor, F.C Trust Building, Peshawar Cantt: Peshawar.

----- Respondents
ATTESTED
ADVOCATE

[Signature]
PETITIONER

ATTESTED
EXAMINER
Peshawar High Court

Dated: 02/2022

FILED TODAY
Deputy Registrar
02 FEB 2022

IN THE PESHAWAR HIGH COURT, PESHAWAR

W.P No. 504 P / 2022

Sajjad Ali.....Petitioner

VERSUS

Government of KPK and others.....Respondents

AFFIDAVIT

I, Sajjad Ali, Ex-Assistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Peshawar R/o Sheik Abad, Gulbahar Road, Mohallah Sultan Abad, Near Safi Hotel, Outside Lahori Gate, Peshawar, do hereby solemnly affirm and declare on oath that the contents of accompanying Writ Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.



Sajjad Ali

DEPONENT-IN-PERSON

CNIC#17301-7125460-5 ✓

Cell# 0345-9124020

Sajjad Ali
AFFIRMED TO BE TRUE COM

2022

Certified that the above was verified on solemnly affirmation before me in office, this 02 day of Feb 2022 by Sajjad Ali s/o Khaniullah residing at Peshawar who was identified by self

Who is personally known to me: Self

[Signature]
Judge
Peshawar

verified 02/02/2022

FILED TODAY
Deputy Registrar
02 FEB 2022

PESHAWAR HIGH COURT PESHAWAR

Form "A"

Order Sheet



Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
2	

30.8.2022

W.P 504-P/2022 with IR

Present:

Mr. Sajjad Ali, petitioner in person.

Syed Qaisar Ali Shah, AAG, alongwith Mr. Jamil Ahmad Qureshi, Assistant Director Labour (Litigation), on behalf of Directorate of Labour.

ABDUL SHAKOOR, J: - Keeping in view the peculiar facts & circumstances of the case, this petition is controverted into representation and sent to the Secretary Labour Department "respondent No.01" with direction to decide it in accordance with law within a shortest possible time after providing the petitioner an opportunity of due hearing. The petition is disposed of accordingly. Office shall retain copies of the petition for the purpose of record.

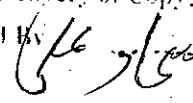
Announced:
30.8.2022


JUDGE

ATTESTE

ASSOCIATE


JUDGE

42455
Date of Presentation of Application: 30/8/2022
No of Pages: 6-9
Copying fee: 24/-
Total: 24/-
Date of Preparation of Copy: 05/9/2022
Date of Delivery of Copy: 05/9/2022
Witnessed by:  *Nazir* (D.B)

Hon'ble Mr. Justice Abdul Shakoor, J
Hon'ble Mr. Justice Fazal Subhan, J

05 SEP 2022

60

BEFORE PROVINCIAL SERVICE TRIBUNAL, PESHAWAR

Appeal No. _____/2022

Sajjad Ali

Versus

Director Labour Department and others

SECRET
KPST
Peshawar

On behalf of appellant

WAKALATNAMA/ POWER OF ATTORNEY

I, Sajjad Ali, appellant, do hereby appoint, constitute and authorize Abdul Rauf Rohaila Advocate Supreme Court, Sammad Hasnain, Arzoo-e-Sahar, Rozina Rehman Advocate High Court, in the above mentioned suit/ writ petition /suit/appeal/civil revision/ to do all or the following acts, deeds and things:-

1. To appear, act and plead for me in the above mentioned case in the Court /Tribunal in which the same may be tried or heard and any other proceedings arising out of or connected therewith.
2. To sign and verify and file or withdraw all proceeding, petitions, appeals, affidavits and applications for compromise or withdrawal or for submission to arbitration of the said case or any other documents as may be deemed necessary or advisable by them for the conduct, prosecution or defense of the said case at all its stages.
3. To receive payment of and issue receipts for all the moneys that may be or become due and payable to us during the course of the proceeding.

And hereby agree: -

- (a). That the advocates shall be entitled to withdraw from the prosecution of the said case if the whole or any part of the agreed fees remains unpaid provided entire/part fee paid shall not be refunded in any circumstances.
- (b). Not to hold Advocate(s) responsible if the said case be proceeded ex-parte or dismissed in default in consequence of his/their absence from the court when it is called for hearing.
- (c). That the advocate(s) shall be entitled to withdraw from the prosecution of the said case if the whole or any of the agreed fees remain unpaid.

In witness whereof I, have signed this Wakalatnama hereunder, the contents of which have been read/explained to me and fully understood by me/us on this 6th day of 13 December, 2022.


Accepted by

Abdul Rauf Rohaila,
Senior Advocate Supreme Court

Sammad Hasnain

Arzoo-e-Sahar

Rozina Rehman


Signature of Executants

48

DNO-1986-10
Refr. 06/09/2022

06/09/22 -26-
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The Secretary to the Govt of Khyber Pakhtunkhwa,
Labour Department, Civil Secretariat, Peshawar.

Subject:- ORDER OF THE HONOURABLE PESHAWAR HIGH COURT PESHAWAR DATED 30/08/2022 IN WRIT PETITION NO. 504-P/2022 OF THE APPLICANT, WHEREBY THE SAID WRIT PETITION HAS BEEN CONVERTED INTO REPRESENTATION AND SENT TO THE ADMINISTRATIVE DEPARTMENT FOR DECIDING THE SAME WITHIN THE SHORTEST TIME.

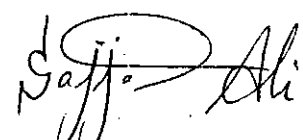
Sir,

The Applicant respectfully submits as under:

1. That the Honourable Peshawar High Court Peshawar has converted the Writ Petition of the Applicant into Representation vide their order dated 30/08/2022 and sent the said Representation to your office for decision within shortest possible time.
2. That the Applicant considers it essential to forward a copy of the orders dated 30/08/2022 alongwith the copy of the Writ Petition / Representation to your good self for information.

Please acknowledge receipt.

Yours obediently


Sajjad Ali

(Ex Assistant Labour Officer)
House # 264, Mohallah Sultan
Abad Out Side Lahori Gate Near
Ismail Safi Hotel Peshawar.
Cell # 0345-9124020

dated: 06/09/2022

ATTESTED
ADVOCATE



49

GOVERNMENT OF KHYBER PAKHTUNKHWA
LABOUR DEPARTMENT

27

IMMEDIATE / COURT MATTER

SO (Lit)/LD/1-49/2022
Dated Peshawar 19-09-2022

To

Mr. Sajjad Ali,
EX-Assistant Labour Officer,
House # 264, Mohallah Sultan Abad,
Outside Lahori Gate Near Ismail Safi Hotel Peshawar.
Cell # 0345-9124020.

Subject: - PERSONAL HEARING TO THE PETITIONER (MR. SAJJAD ALI, EX-ASSISTANT LABOUR OFFICER) IN WRIT PETITION 504/2022 IN COMPLIANCE OF HONORABLE PESHAWAR HIGH COURT, PESHAWAR ORDERS / DIRECTION DATED 30-08-2022

I am directed to refer to Honorable Peshawar High Court, Peshawar Order dated 30-08-2022 received from Deputy Registrar (J), Peshawar High Court, Peshawar vide their letter No. 57332 (1)/1643/2022/WP-MN dated 05th September, 2022 (Copy enclosed).

Therefore, the competent authority has been pleased to require you to attend the Office of Secretary Labour for personal hearing in the subject case on 21-09-2022 at 12:00 P.M, please.

Encl: As above: -


Section Officer (Litigation)

Copy forwarded to the:-

1. The Deputy Registrar (J), Peshawar High Court, Peshawar w/r to his letter number quoted above.
2. The Director Labour, Directorate of Labour, Khyber Pakhtunkhwa with the request to attend the Secretary Labour Office for attending the subject hearing on the date, time & venue mentioned above, please.
3. PS to Secretary Labour, Khyber Pakhtunkhwa
4. Master file.


Section Officer (Litigation)

ATTESTED
ADVOCATE

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-28-

**MINUTES OF THE MEETING OF DEPARTMENTAL
PROMOTION COMMITTEE**

A meeting of the Departmental Promotion Committee of Industries, Commerce, Labour, Mineral Development and Technical Education Department, NWFP, was held on 26/02/2009 at 1000 hours under the Chairmanship of Secretary to Government of NWFP, Industries Department in his office. The following attended the meeting:-

- | | | |
|----|--|-----------|
| 1) | Mr. Shah Wali Khan,
Secretary to Govt. of NWFP,
Industries Department. | Chairman |
| 2) | Mr. Robina Haider Bukhari,
Section Officer (Reg: II),
Establishment Department | Member |
| 3) | Mr. Sardar Ali,
Section Officer (SR-II),
Finance Department. | Member |
| 4) | Mr. Mumtaz Khan Khalil,
Director General, Mines & Minerals
NWFP. | Member |
| 5) | Mr. Khalid Jan Durrani,
Director, Industries, Commerce & Labour,
NWFP. | Member |
| 6) | Mr. Misal Khan,
Section Officer (Admn),
Industries Department. | Secretary |

Better Eligible Copy

The following decisions were taken in the meeting:-

Item No. 1

**PROMOTION TO THE POSTS OF LABOUR OFFICER BPS-16
IN THE DIRECTORATE OF INDUSTRIES, COMMERCE & LABOUR NWFP**

The case for promotion to the vacant post of Labour Officer BPS-16 in the Directorate of Industries, Commerce & Labour was examined by the Departmental Promotion Committee. The Committee recommended Mr. Amir Khaliq, Assistant Labour Officer BPS-11 for promotion to the post of Labour Officer (BPS-16) on regular basis with immediate effect. Mr. Khawaja Mohammad, Assistant Labour Officer and Mr. Sajjad Ali, Assistant Labour Officer at Sr. No. 1 & 2 of the seniority list were superseded due to adverse remarks and poor performance indicated in their ACRs.

Item No. 2

**PROMOTION TO THE POST OF MINERAL DEV: OFFICER (NON-TECHNICAL)
BPS-16 IN THE DIRECTORATE GENERAL, MINES & MINERALS NWFP**

The case for promotion to the vacant post of Mineral Dev: Officer (Non-Technical) BPS-16 in the Directorate General, Mines & Minerals, NWFP was examined by the Departmental Promotion Committee. The Committee recommended Mr. Noor-ul-Islam, Royalty Inspector (BPS-11) to the post of Mineral Dev: Officer (Non-Technical) BPS-16 on regular basis with immediate effect.

ATTESTED

51

- 1) Mr. Shah Wali Khan,
Secretary to Govt. of NWFP,
Industries Department.
- 2) Mr. Robina Haider Bukhari,
Section Officer (Reg: II),
Establishment Department
- 3) Mr. Sardar Ali,
Section Officer (SR-II),
Finance Department.
- 4) Mr. Mumtaz Khan Khalil,
Director General, Mines & Minerals
NWFP.
- 5) Mr. Khalid Jan Durrani,
Director, Industries, Commerce & Labour,
NWFP.
- 6) Mr. Misal Khan,
Section Officer (Admn),
Industries Department.

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ATTESTED

MINUTES OF THE MEETING OF DEPARTMENTAL PROMOTION COMMITTEE

A meeting of the Departmental Promotion Committee of Industries, Commerce, Labour, Mineral Development and Technical Education Department, NWFP, was held on 26-02-2009 at 1000 hours under the Chairmanship of Secretary to Government of NWFP, Industries Department in his office. The following attended the meeting:-

- 1) Mr. Shahr Wali Khan, Secretary to Govt. of NWFP, Industries Department. Chairman
- 2) Ms. Robina Haider Bukhari, Section Officer (Reg:II), Establishment Department. Member
- 3) Mr. Sardar Ali, Section Officer (SR-II) Finance Department. Member
- 4) Mr. Mumtaz Khan Khalil, Director General, Mines & Minerals NWFP. Member
- 5) Mr. Khalid Jan Durrani, Director, Industries, Commerce & Labour, NWFP. Member
- 6) Mr. Misal Khan, Section Officer (Admin) Industries Department. Secretary

26-2-2009

The following decisions were taken in the meeting:-

ATTESTED
ADVOCATE

Item No.1

PROMOTION TO THE POSTS OF LABOUR OFFICER BPS-16 IN THE DIRECTORATE OF INDUSTRIES, COMMERCE & LABOUR NWFP

The case for promotion to the vacant post of Labour Officer BPS-16 in the Directorate of Industries, Commerce & Labour was examined by the Departmental Promotion Committee. The Committee recommended Mr. Amir Khaliq, Assistant Labour Officer BPS-11 for promotion to the post of Labour Officer (BPS-16) on regular basis with immediate effect. Mr. Khawaja Mohammad, Assistant Labour Officer and Mr. Sajjad Ali, Assistant Labour Officer at Sr. No. 1 & 2 of the seniority list were superseded due to adverse remarks and poor performance indicated in their ACRs.

Item No.2

PROMOTION TO THE POST OF MINERAL DEV. OFFICER (NON-TECHNICAL) BPS-16 IN THE DIRECTORATE GENERAL, MINES & MINERALS NWFP

The case for promotion to the vacant post of Mineral Dev. Officer (Non-Technical) BPS-16 in the Directorate General, Mines & Minerals, NWFP was examined by the Departmental Promotion Committee. The Committee recommended Mr. Noor-ul-Islam, Royalty Inspector (BPS-11) to the post of Mineral Dev. Officer (Non-Technical) BPS-16 on regular basis with immediate effect.

- 1) Mr. Shah Wali Khan,
Secretary to Govt. of NWFP,
Industries Department.
- 2) Mr. Robina Haider Bukhari,
Section Officer (Reg:II),
Establishment Department
- 3) Mr. Sardar Ali,
Section Officer (SR-II)
Finance Department.
- 4) Mr. Mumtaz Khan Khalil
Director General, Mines & Minerals
NWFP.
- 5) Mr. Khalid Jan Durrani,
Director, Industries, Commerce & Labour,
NWFP.
- 6) Mr. Misal Khan,
Section Officer (Admn:)
Industries Department

16/3/89
Ranvir
21/3/89

Shah
13/3

Muhammad
13/3

Ranvir Durrani

Misal Khan

ATTESTED
ADVOCATE

BEFORE THE AUGUST PESHAWAR HIGH COURT, PESHAWAR.

COC No. 417/2022 IN WRIT PETITION No. 504/2022.

Sajjad Ali, Ex Assistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Peshawar.

Present:- Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, near Safi Hotel, outside Lahori Gate Peshawar.

----- Petitioner

VERSUS

- 1. Rooh Ullah, Secretary to the Government of Khyber Pakhtunkhwa, Labour Department, Civil Secretariat, Peshawar.
- 2. Irfan Ullah, Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor, F.C Trust Building, Peshawar Cantt: Peshawar.
- 3. Sher Afzal, Administrative Officer, Labour Department, 3rd Floor, F.C Trust Building, Peshawar Cantt: Peshawar.

----- Respondents

APPLICATION OF CONTEMPT OF COURT UNDER ARTICLE 204 OF THE CONSTITUTION OF THE ISLAMIC REPUBLIC OF PAKISTAN 1973 AS AMENDED TILL DATE AGAINST THE RESPONDENTS, ESPECIALLY RESPONDENT No.1, WHO ARE RELUCTANT TO OBEY THE OREDERS OF HONOURABLE HIGH COURT DATED 30/08/2022, GIVEN IN THE WRIT PETITION OF THE APPLICANT.

Sheweth,

ATTESTED

The Applicant / Petitioner respectfully submits as under:

ADVOCATE

- 1. That the Applicant / Petitioner had filed a Writ Petition (No. 504-P/2022) before this Honourable Court for the grant of promotion as Labour Officer in BPS-16 (copy of the Writ Petition is annexed as A).
- 2. That the Writ Petition of the Applicant / Petitioner was decided by the Honourable Court on 30/08/2022, whereby the Writ Petition was converted into representation and sent to the Secretary Labour Department "Respondent No.1" with the direction to decide it in accordance with law within a shortest possible time after providing the Petitioner an opportunity of due hearing (copy of the order of the Honourable Court dated 30/08/2022 annexed as B).
- 3. That the Applicant / Petitioner also provided a copy of the order of the Honourable Court to the Secretary to the Government of Khyber Pakhtunkhwa, Labour Department through an application dated 06/09/2022 (copy annexed as C).
- 4. That the Applicant / Petitioner was directed by the office of the Respondent No.1 to appear for personal hearing on 21/09/2022 (copy of the letter dated 19/09/2022 annexed as D).

ATTESTED
[Signature]
Peshawar High Court

LE-FILE
Deputy Registrar
08 OCT 2022

5. That the Applicant / Petitioner attended the office of the Respondent No.1 on the due date i.e. 21/09/2022 for personal hearing. Sorry to say that neither the Applicant / Petitioner was properly heard nor his written statement was taken. The hearing was not more than a joke.

6. That the Respondents are not ready to grant the Applicant / Petitioner his due right. The Applicant / Petitioner had given sufficient detail in his Writ Petition (504/2022) regarding biased attitude of the Respondents who were not ready to grant promotion to the Applicant / Petitioner even after the judgments of the Service Tribunal and the Supreme Court of Pakistan who had expunged adverse remarks from the ACRs of the Petitioner and as such the Applicant / Petitioner had become eligible for promotion in BPS-16 but the ill-will and malafide intentions on the part of the Respondents once again came across in the path of Petitioner's promotion and as such the Petitioner was kept deprived of his due right. The Respondents want to keep the Petitioner / Applicant locked in litigation for ever so that he could not get his due right.

7. That the Honourable Court disposed of the Writ Petition of the Petitioner on 30/08/2022 and converted the Writ Petition into representation and sent the same to the Respondent No.1 for deciding the same within shortest possible time. But the Respondents have once again started delaying tactics and rough methods to keep the Applicant / Petitioner deprived of his promotion. As such they have not implemented the orders of the Honourable Court dated 30/08/2022 till date.

8. That inaction and delaying tactics on the part of the Respondents, especially the Respondent No.1 are clearly evident that they are not ready to obey the orders of the court. The Respondents have no regard to the orders of the Honourable Court. They have badly violated the orders of the August Court. Their refusal to implement the orders of the Service Tribunal, Supreme Court and now the High Court represents contempt of court on their part.

9. That the Applicant / Petitioner is entitled to be promoted as Labour Officer in (BPS-16) from the date when his junior colleague had been promoted in (BPS-16).

It is humbly prayed that the proceedings of contempt of court may kindly be initiated against the Respondents who have not implemented the orders of the Honourable Court till date.

N.B. The addresses of the parties given in the heading of this application are correct and sufficient for service.

RE-FILED TODAY
Deputy Registrar
08 OCT 2022

Dated: 4/10/2022

FILED TODAY
Deputy Registrar
04 OCT 2022

Sajjad Ali
Applicant / Petitioner
(In person)

ATTESTED

ATTESTED
EXAMINER
[Signature]

IN THE PESHAWAR HIGH COURT, PESHAWAR

COC No. 417-P/2022
IN
W.P No. 504/2022

Sajjad Ali **Petitioner**

VERSUS

Govt. of KPK and others..... **Respondents**

AFFIDAVIT

I, **Sajjad Ali, Ex Assistant Labour Officer, Labour Department Khyber Pakhtunkhwa, Peshawar**, do hereby solemnly affirm and declare on oath that the contents of accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable court.

Sajjad Ali

DEPONENT-IN-PERSON
CNIC#17301-7125460-5 ✓
Cell# 0345-9124020

ATTESTED
ADVOCATE

FILED TODAY
[Signature]
Deputy Registrar
04 OCT 2022

19846
I, _____
Certified that the above was verified on solemn affirmation before me in office, this _____ day of Oct _____ 2022 by Sajjad Ali solhanimullah who was identified by Self who is personally known to me.
[Signature]
Deputy Registrar
Peshawar High Court Peshawar
04/10/2022

ATTESTED
EXAMINER
Peshawar High Court

PESHAWAR HIGH COURT, PESHAWAR

ORDER SHEET



Date of order or proceedings	Order or other proceedings with signature of Judge or Magistrate and that of parties or counsel where necessary.
1.	2.
06.12.2022	<p><u>Cr. Misc. (COC) No.417-P/2022 in WP No.504P/2022.</u></p> <p><u>Present:</u> Petitioner in person.</p> <p>Syed Qaiser Ali Shah, AAG for the respondents along with Mr. Jamil Ahmad Qureshi, Assistant Director Labour (Litigation), Directorate of Labour, KPK.</p> <p>*****</p> <p><u>QAISER RASHID KHAN, CJ.-</u> While through the present COC, the petitioner seeks the implementation of the judgment of this court dated 30.08.2022 in WP No.504-P/2022, the learned AAG states that pursuant to the directions of this court, the representation of the petitioner has been decided and in this respect, he has produced a copy of letter dated 2.12.2022, whereby, the request of the petitioner for notional promotion has been regretted.</p> <p>3. Such being the position, this petition cannot proceed and stands disposed of accordingly.</p>

Ataf Hussain, CS



(dR) Chief Justice Qaiser Rashid Khan
Justice Abdul Shakoor

ATTESTED
ADVOCATE

ATTESTED
EXAMINER
 PESHAWAR HIGH COURT

The petitioner is, however, at the liberty to seek his legal remedy before the proper forum, if so advised.

Announced.
Dated: 06.12.2022.


CHIEF JUSTICE

JUDGE

~~RECEIVED~~
~~12-06-2022~~

62555

20-12-22

5/

20

18-12-22

10-12-22

Handwritten notes in Urdu script

ATTESTED

ADVOCATE



59
GOVERNMENT OF KHYBER PAKHTUNKHWA
LABOUR DEPARTMENT

-35-

Registered Post

No.SOL/LD/1-49/2022/Sajjad Ali
Dated: 02 / 12 / 2022

6853

To

Mr. Sajjad Ali,
Ex-Assistant Labour Officer, Directorate of Labour,
Present: Sheikh Abad, Gulbahar, Mohallah Sultan Abad, Near
Safi Hotel, Outside Lahori Gate, Peshawar.

SUBJECT: **MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE IN
LIGHT OF ORDER DATED 30-08-2022 OF HONORABLE PESHAWAR
HIGH COURT PESHAWAR IN WP NO.504-P/2022.**

I am directed to refer to the subject noted above and to inform that the Labour Department through the Departmental Promotion Committee considered your representation. Since there no provision was available for promotion with retrospective effect, as per promotion policy in vogue, hence, this department is unable to accept your representation.

Section Officer (General)




Endst: No. & date even

Copy forwarded to the:-

1. Director Labour, Directorate of Labour, Khyber Pakhtunkhwa.
2. PS to Secretary, Labour Deptt. Khyber Pakhtunkhwa.
3. PA to the Deputy Secretary, Labour Department.

Section Officer (General)

**ATTESTED
ADVOCATE**

قیمت 50 روپے	60495			
ایڈویکیٹ: <i>Harika Jam</i>		پشاور بار ایسوسی ایشن، خیبر پختونخواہ		
بار کونسل/ ایسوسی ایشن نمبر: <i>Bc-13-4172</i>				
رابطہ نمبر: <i>0312925471</i>				

بعدالت جناب: *KP* سر سے لے کر *مختار* صاحب

مخاطب: ایڈووکیٹ	دعویٰ: <i>سر سے لے کر</i>
سجاد علی بنام	علت نمبر:
	مورثہ:
	جرم:
	تھانہ:

باعث تحریر آتکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ
آن مقام *نشانہ کیلئے* *ناگال* کو وکیل مقرر
کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو
راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق
زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز
دائرہ کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی
کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب
مقرر شدہ کو وہی جملہ مذکورہ اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا
دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے
باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے

المقوم: *27/07/2022*
27/07/2022
PESHAWAR BAR ASSOCIATION
KHYBER PAKHTUNKHWA
پشاور

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

Accepted

Accepted

Nant...

67

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 2008/2022

SCANNED
KPST
Peshawar
27/6/23

Sajjad Ali, former Assistant Labour Officer Directorate of Labour, Khyber Pakhtunkhwa, District Peshawar..... Appellant.

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Labour Department Peshawar.
2. Deputy Secretary Labour Department Peshawar.
3. The Departmental Promotion Committee through its Chairman, Labour Department Peshawar.
4. The Director Labour Khyber Pakhtunkhwa, 3rd floor FC Trust Building Peshawar.
5. Amir Khaliq former Labour Officer, Labour Department Peshawar..... Respondents.

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04	Copy of tentative Seniority List	Annexure-A	07
05	Copy of Minutes of the meeting of Departmental Promotion Committee	Annexure-B	08-09
06	Copy of the acceptance Letter	Annexure-C	10
07	Copy of the Letter of communication about the expunging the adverse remarks from ACRs	Annexure-D	11
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09	Copy of the Letter from Establishment Department	Annexure-F	13
10	Copy of the letter date 02-12-2022	Annexure-G	14



 DEPARTMENT

CNIC No: 17301-1392156-3

Contact Number: 0343-7779998

 Assistant Director Labour
 (Litigation)
 Directorate of Labour KP

68

ANNED
KPST
Peshawar
27/6/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 2008/2022

Khyber Pakhtukhwa
Service Tribunal

Diary No. 6207

Dated 27/6/2023

Sajjad Ali, former Assistant Labour Officer Directorate of Labour, Khyber
Pakhtunkhwa, District Peshawar..... Appellant.

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Labour Department Peshawar.
2. Deputy Secretary Labour Department Peshawar.
3. The Departmental Promotion Committee through its Chairman, Labour Department Peshawar.
4. The Director Labour Khyber Pakhtunkhwa, 3rd floor FC Trust Building Peshawar.
5. Amir Khaliq former Labour Officer, Labour Department Peshawar.....**Respondents.**

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO. 1, 2, 3, and 4.

Respectfully Sheweth that the respondent submits as under.

Preliminary Objections:

1. That appellant has got no locus standi and cause of action to file the instant appeal.
2. That the appellant has not come to this Honourable Tribunal with clean hands.
3. That the instant appeal is not maintainable.
4. That the instant appeal is based on malafide with ulterior motive to coerce and pressurize the respondents.
5. That the appellant is estopped by his own conduct.
6. That the appeal of the applicant is badly time barred.

ON FACTS:

1. That Para-1 pertains to record. However, it may be clarified here that this office has no idea about an offer letter for promotion vide letter No. DL/Admn:/11/59/5127-29 dated

26-12-2008 and acceptance to the same by the appellant vide his letter dated 02-01-2013. The appellant may be asked to put on file the aforementioned correspondence.

2. That in reply to Para-2 it is submitted that the appellant is misrepresenting the annexure attached by him with para-2 of the appeal. According to the tentative seniority list attached as annexure-B with the appeal Mr. Khawaja Muhammad is at Serial No.1, the appellant is at Serial No.2 and the respondent No.5 is at Serial No.3. Case of the aforementioned employees of the Directorate of Labour was sent to the Departmental Promotion Committee for consideration. The committee was pleased to promote the respondent No.5 (who was at serial No.3) and superseded the appellant (who was at serial No.2) and Mr. Khawaja Muhammad (who was at serial No.1) due to adverse remarks and poor performance indicated in their ACRs.

(Copy of tentative seniority list is attached as annexure- A and copy of the minutes of Departmental Promotion Committee is attached as annexure-B)

3. That in reply to Para-3 it is submitted that although the adverse remarks were communicated to him in the year 2009 formally however the appellant was well aware about his conduct and competence which is evident from his letter of acceptance/willingness which is hereby attached.

(Copy of the acceptance letter is attached as annexure-C)

4. That para-4 pertains to record hence needs no comments.

5. As discussed in para-2 above.

6. That in reply to para-6 it is submitted that on receipt of application from the appellant, in compliance of the Order dated 17-09-2020 of the Hon'ble Supreme Court of Pakistan, adverse remarks from the ACRs have been expunged and communicated to the appellant vide letter No: DL/Estt/1/271/1375 dated 03-02- 2022. So far as claim of the appellant regarding promotion since 2009 is concerned the same was sent for opinion to the Law Department Govt: of KP and Establishment Department Govt: of KP vide letter No. SO(OP-1)/LD/15-1/2012-Vol-XXII/1914-16 dated Peshawar the 15th January, 2021 and letter No. SO(O&M)/E&AD/11-1/2020 Dated Peshawar, the 01st April, 2021 respectively. Opinion from both the forums has been received wherein it has been clarified that the Hon'ble Court has not issued any direction regarding promotion of the petitioner from the back date.

(Copy of the communication letter is attached as annexure D, copies of the letters from Law and Establishment Department are attached as annexure E & F).

7. That in reply to para-7 it is submitted that in compliance of the Hon'ble Peshawar High Court, Peshawar order dated 30-08-2022 the appellant was provided with the opportunity to explain his position on the issue. However, after through deliberation in light of the rules in vogue and opinion received from the Law Department and Establishment Department, the case of the appellant was declined.

(Copy of the letter No. SOL/LD/1-49/2022/Sajjad Ali/ 6853 dated 02-12-2022 is attached as annexure-G)

8. That Para-8 pertains to record hence needs no comments.

9. That Para-9 pertains to record hence needs no comments.

10. As per para-7.

11. That Para-11 needs no comments.

GROUNDS

i) Ground-i is misconceived. The replying respondents have processed the application of the appellant in accordance with law and could not ignore the rules and codal formalities.

ii) Discussed in detail in para-6 of the facts above.

iii) Discussed in detail in para-2 of the facts.

iv) Ground-iv is misconceived. Details have already been provided in para-2 of the facts above.

v) Discussed in para-2 and 3 above

vi) In reply to ground-vi it is submitted that the appellant had been dealt with in accordance with law.

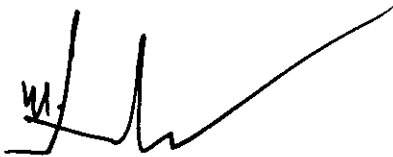
vii) Ground-vii is misconceived and needs no comments.

viii) In reply to Ground-viii it is submitted that adverse remarks from the ACRs had been expunged in accordance with the Judgments of Hon'ble Courts. Neither the Services Tribunal nor the august Supreme Court of Pakistan had made any order for promotion of the appellant from back date i.e., since 2009. The case for promotion of the appellant

was considered, processed and disposed off in accordance with the rules and opinions received from the Law Department and Establishment Department.

- ix) As discussed in detail in para-2 of the facts above.
- x) As per ground-viii
- xi) In reply to ground-xi it is submitted that due consideration was granted to the plea of the appellant raised in the instant ground but after thorough discussions and deliberations the replying respondents reached to the conclusion which was conveyed to the appellant vide letter No. SOL/LD/1-49/2022/Sajjad Ali/ 6853 dated 02-12-2022 (already annexed as annexure-G)
- xii) In reply to ground-xii it is submitted that the appellant had either failed to ask for promotion from back date and financial benefits in the previous rounds of litigation or the Hon'ble Courts have not considered his plea for the same. He may not be allowed to ask at this stage as the previous judgments have already attained finality.

It is therefore, prayed that on acceptance of this instant para-wise comments the appeal of the appellant may kindly be dismissed with cost.



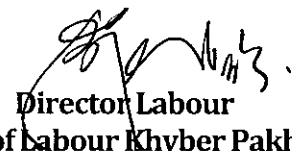
**Secretary to Govt. of Khyber Pakhtunkhwa
Labour Department
(Respondent No.1)**



**Deputy Secretary
Labour Department
(Respondent No. 2)**



**Chairman
Departmental Promotion Committee
Labour Department
(Respondent No.3)**



**Director Labour
Directorate of Labour Khyber Pakhtunkhwa
(Respondent No.4)**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 2008/2022

Sajjad Ali, former Assistant Labour Officer Directorate of Labour, Khyber Pakhtunkhwa, District Peshawar Appellant.

Versus

- 1. Government of Khyber Pakhtunkhwa through Secretary Labour Department Peshawar.
- 2. Deputy Secretary Labour Department Peshawar.
- 3. The Departmental Promotion Committee through its Chairman, Labour Department Peshawar.
- 4. The Director Labour Khyber Pakhtunkhwa, 3rd floor FC Trust Building Peshawar.
- 5. Amir Khaliq former Labour Officer, Labour Department Peshawar.....**Respondents**

AFFIDAVIT

I, Jamil Ahmad Qureshi Assistant Director Labour (Litigation), Directorate of Labour, Khyber Pakhtunkhwa at Peshawar, do hereby solemnly affirm and declare on oath that the contents of the accompanying Comments are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

It is further stated on oath that in this appeal the answering respondents have neither been placed ex parte nor their defenses struck off/cost.

DEPONENT

CNIC No: 17301-1392156-3

Contact Number: 0343-7779998

**Assistant Director Labour
(Litigation)
Directorate of Labour KP**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWARAppeal No. 2008/2022

**Sajjad Ali, former Assistant Labour Officer Directorate of Labour, Khyber
Pakhtunkhwa, District Peshawar..... Appellant.**

Versus

1. Government of Khyber Pakhtunkhwa through Secretary Labour Department Peshawar.
2. Deputy Secretary Labour Department Peshawar.
3. The Departmental Promotion Committee through its Chairman, Labour Department Peshawar.
4. The Director Labour Khyber Pakhtunkhwa, 3rd floor FC Trust Building Peshawar.
5. Amir Khaliq former Labour Officer, Labour Department Peshawar.....**Respondents**

AUTHORITY

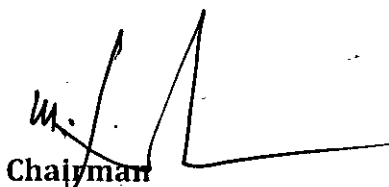
Mr. **Jamil Ahmad Qureshi**, Assistant Director Labour (Litigation), is hereby authorized and deputed to appear before the Honourable, Khyber Pakhtunkhwa Service Tribunal, Peshawar on behalf of the respondents No. 1, 2, 3, and 4 in the above title case and to produce necessary documents to the Honourable Tribunal required during the proceedings of instant service appeal. The officer shall attend the Court regularly on each date of hearing till the decision of the case and will be responsible for obtaining certified copy of the final order/ judgment in the above case for submission to the department well in time.



**Secretary to Govt. of Khyber Pakhtunkhwa
Labour Department
(Respondent No.1)**



**Deputy Secretary
Labour Department
(Respondent No. 2)**



**Chairman
Departmental Promotion Committee
Labour Department
(Respondent No.3)**



**Director Labour
Directorate of Labour Khyber Pakhtunkhwa
(Respondent No.4)**

Notification

Representative seniority list of Assistant Labour Officer (BPS-11) as stood on 31.12.2007

Sanction post of Assistant Labour Officers = 04 (i) Permanent: 04 (ii) Temporary = NIL

S.No.	Name of official with qualification	Date of birth with domicile	Date of Ist entry into Govt. service	Regular appointment/promotion to the present post.	BPS	Method of recruitment.	Present appointment with date.	Remarks
01	02	03	04	05	06	07	08	09
01.	Mr. Khawja Muhammad FA	27.9.1950 Peshawar.	13.6.1978	31.3.84	11	a. Seventy five per cent by promotion on the basis of seniority-cum-fitness from amongst the Labour Inspector five years service as such and b. Twenty five percent by initial recruitment.	Labour Inspector 31.3.1984	-
02.	Mr. Sajjad Ali B.A.	15.5.1955 Peshawar.	01.8.1975	10.1.2004	11	---do---	Asstt Labour Offr. 10.1.2004	-
03.	Mr. Amir Khaliq B.A. (Tribal area)	04.9.1958	21.10.1976	10.1.2004	11	---do---	Asstt Labour Officer 10.1.2004	-
04.	Mr. Shujaul Mulk M.A.	01.4.1956 Mingora	01.6.1976	20.8.1995	11	---do---	Asstt Labour Officer 20.8.1995	-

Endst.No. DL/Admn/11/2/3802-05

Dated. 22/11/08

Sd/- Director, ICL, NWFP.

Copy of the above is forwarded to all concerned officials for information and necessary action. They are required to confirm their placement in the list and if there is any objection on their placement in the list, they can submit 15 days of the receipt of this communication, otherwise it will be presumed that their placement are correct and seniority will be finally notified.

Jawid
Assistant Director Labour

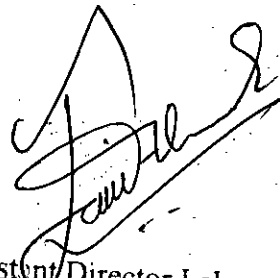
Abdul Rauf Jan
(Abdul Rauf Jan)
Assistant Director (Admn) Peshawar.

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**MINUTES OF THE MEETING OF DEPARTMENTAL
PROMOTION COMMITTEE**

A meeting of the Departmental Promotion Committee of Industries, Commerce, Labour, Mineral Development and Technical Education Department, NWFP, was held on 26/02/2009 at 1000 hours under the Chairmanship of Secretary to Government of NWFP, Industries Department in his office. The following attended the meeting:-

- | | | |
|----|--|-----------|
| 1) | Mr. Shah Wali Khan,
Secretary to Govt. of NWFP,
Industries Department. | Chairman |
| 2) | Mr. Robina Haider Bukhari,
Section Officer (Reg: II),
Establishment Department | Member |
| 3) | Mr. Sardar Ali,
Section Officer (SR-II),
Finance Department. | Member |
| 4) | Mr. Mumtaz Khan Khalil,
Director General, Mines & Minerals
NWFP. | Member |
| 5) | Mr. Khalid Jan Durrani,
Director, Industries, Commerce & Labour,
NWFP. | Member |
| 6) | Mr. Misal Khan,
Section Officer (Admn),
Industries Department. | Secretary |


 Assistant Director Labour
 (Litigation)
 Directorate of Labour KP

The following decisions were taken in the meeting:-

Item No. 1

**PROMOTION TO THE POSTS OF LABOUR OFFICER BPS-16
IN THE DIRECTORATE OF INDUSTRIES, COMMERCE & LABOUR NWFP**

The case for promotion to the vacant post of Labour Officer BPS-16 in the Directorate of Industries, Commerce & Labour was examined by the Departmental Promotion Committee. The Committee recommended Mr. Amir Khaliq, Assistant Labour Officer BPS-11 for promotion to the post of Labour Officer (BPS-16) on regular basis with immediate effect. Mr. Khawaja Mohammad, Assistant Labour Officer and Mr. Sajjad Ali, Assistant Labour Officer at Sr. No. 1 & 2 of the seniority list were superseded due to adverse remarks and poor performance indicated in their ACRs.

Item No. 2

**PROMOTION TO THE POST OF MINERAL DEV: OFFICER (NON-TECHNICAL)
BPS-16 IN THE DIRECTORATE GENERAL, MINES & MINERALS NWFP**

The case for promotion to the vacant post of Mineral Dev: Officer (Non-Technical) BPS-16 in the Directorate General, Mines & Minerals, NWFP was examined by the Departmental Promotion Committee. The Committee recommended Mr. Noor-ul-Islam, Royalty Inspector (BPS-11) to the post of Mineral Dev: Officer (Non-Technical) BPS-16 on regular basis with immediate effect.

- 1) Mr. Shah Wali Khan,
Secretary to Govt. of NWFP,
Industries Department.
- 2) Mr. Robina Haider Bukhari,
Section Officer (Reg: II),
Establishment Department
- 3) Mr. Sardar Ali,
Section Officer (SR-II),
Finance Department.
- 4) Mr. Mumtaz Khan Khalil,
Director General, Mines & Minerals
NWFP.
- 5) Mr. Khalid Jan Durrani,
Director, Industries, Commerce & Labour,
NWFP.
- 6) Mr. Misal Khan,
Section Officer (Admn),
Industries Department.

[Handwritten signatures and initials, including a large signature at the top right and several smaller ones below it.]

[Handwritten signature]
 Assistant Director Labour
 (Litigation)
 Directorate of Labour KP

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Annex - C

10

To

The Assistant Director (Admin)
H. Quarter office, Peshawar

Subject: OPTION FOR PROMOTION TO THE POST OF LABOUR OFFICER (BPS-16)

Sir

Kindly refer to your letter No. 3962-64 dated 01 December, 2008 on the subject noted above and to submit if prompted to the post of Labour Officer (BPS-16), I shall be willing to perform my duties at Labour Office D.I.Khan.

Thanks

Yours Obediently,

Signature

Signature
(Sajjad Ali)
Assistant Labour Officer,
Charsadda

EA-I

Signature

Assistant Director Labour
(Litigation)
Directorate of Labour KP

920

78 Annex "D"

(11)

DIRECTORATE OF LABOUR
KHYBER PAKHTUNKHWA PESHAWAR

DL/Estt/1/271/2375

Dated 03/02/2022

Mr. Sajjad Ali
Ex-Assistant Labour Officer (BPS-12).

Subject: EXPUNCTION OF ADVERSE REMARKS IN ACR OF SAJJAD ALI, ASSISTANT LABOUR OFFICER (BPS-12) IN PURSUANCE OF ORDER DATED 17-09-2020 PASSED BY HONORABLE SUPREME COURT OF PAKISTAN.

In compliance of the order dated 17-09-2020 passed by Honorable Supreme Court of Pakistan, the adverse remarks in the Annual confidential report in respect of Mr. Sajjad Ali, Ex-Assistant Labour Officer (BPS-12) for the year 2004, 2005, 2006, 2007 and 2008 are hereby expunged. Copy of the ACRs are attached herewith.

Assistant Director Labour
(Administration)
Directorate of Labour KP

Assistant Director Labour (Admin)
Hqtr: Office Peshawar

o/c

79 Annex "E"

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12



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

No. SO(OP-I)/LD/15-1/2012-VOL-XXII-1914-16
DATED: PESH: THE 15 JANUARY, 2021.

To,

The Secretary to Government of Khyber Pakhtunkhwa,
Labour, Department.

Attention: Section Officer (Gen)

Subject:

EXPUNCTION OF ADVERSE REMARKS IN ACR OF SAJJAD ALI,
ASSISTANT LABOUR OFFICER IN PURSUANCE OF ORDER
DATED 17-09-2020 PASSED BY HON'BLE SUPREME COURT OF
PAKISTAN.

Dear Sir,

I am directed to refer to your Department's letter No. SOG/LD/3-6/LD/2021/538-40 dated 25-01-2020 on the subject noted above and to state that the judgment of Supreme Court of Pakistan dated 17-09-2020 is clear with regard to expunction of adverse remarks for the period 01-01-2008 to 31-12-2008. As far as promotion of the applicant is concerned, the ibid judgment is silent regarding the same.

2. The Administrative Department is further advised to obtained views of Establishment Department in the matter.

Yours Faithfully,

Section Officer (Opinion-I)

Encl: of even No. & date.

Copy is forwarded for information to the:-

1. PS to Secretary, Law Department.
2. PA to Law Officer, Law Department

Assistant Director Labour
(Litigation)
Directorate of Labour KP.

Section Officer (Opinion-I)

80 Annex-F

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13



GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN. DEPARTMENT
(REGULATION WING)

No. SO (O&M)/E&AD/11-1/2020
Dated Peshawar, the 01st April, 2021

To


The Secretary to Govt. of Khyber Pakhtunkhwa,
Labour Department.

Subject: - EXPUNCTION OF ADVERSE REMARKS IN ACR OF SAJJAD
ALI, ASSISTANT LABOUR OFFICER IN PURSUANCE OF
ORDER DATED 17.09.2020 PASSED BY HONORABLE SUPREME
COURT OF PAKISTAN.

Dear Sir,

I am directed to refer to your department letter No. SOG/LD/3-
6/DL/2021, dated 04.03.2021 on the subject cited above and to state that Labour
Department shall be proceeds as per decision of the Court which is very clear.

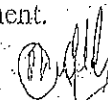
Yours faithfully,

 1/4/2021

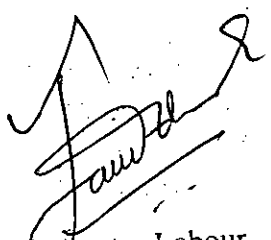
(SHAMIM ULLAH)
SECTION OFFICER (O&M)

Copy to the:-

1. PS to Secretary, Establishment Department.
2. PS to Special Secretary (Regulation), Establishment Department.
3. PS to Additional Secretary (Reg-1), Establishment Department
4. PA to Deputy Secretary (Policy), Establishment Department.

 1/4/2021

SECTION OFFICER (O&M)


Assistant Director Labour
(Litigation)
Directorate of Labour KP

Annex - "G"

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GOVERNMENT OF KHYBER PAKHTUNKHWA
LABOUR DEPARTMENT

Registered Post

No.SOG/LD/3-6/DL/2021
Dated: 02 / 12 / 2022

To

Mr. Sajjad Ali,
Ex-Assistant Labour Officer, Directorate of Labour,
Present: Shaikh Abad, Gujbarah, Mohallah Sultan Abad. Near
Safi Hotel, Outside Lahori Gate, Peshawar.

SUBJECT: MEETING OF THE DEPARTMENTAL PROMOTION COMMITTEE IN
LIGHT OF ORDER DATED 30-08-2022 OF HONORABLE PESHAWAR
HIGH COURT PESHAWAR IN WP NO.504-P/2022.

I am directed to refer to the subject noted above and to inform that the Labour Department through the Departmental Promotion Committee considered your representation. Since there no provision was available for promotion with retrospective effect, as per promotion policy in vogue, hence, this department is unable to accept your representation.


Section Officer (General)

Encls: No. & date even

Copy forwarded to the:-

1. Director Labour, Directorate of Labour, Khyber Pakhtunkhwa;
2. PS to Secretary, Labour Deptt, Khyber Pakhtunkhwa,
3. PA to the Deputy Secretary, Labour Department.


Section Officer (General)

Next Date of Hearing 7/12/2023
Peshawar

**BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

82

SCANNED
KPST
Peshawar
15/8/23

Service Appeal No. 2008/2022.

Sajjad Ali, Former Assistant Labour Officer, Labour Department,
Khyber Pakhtunkhwa, Peshawar.

Present:- Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, near
Safi Hotel, outside Lahori Gate Peshawar.

----- Petitioner

VERSUS

1. Government of Khyber Pakhtunkhwa,
through Secretary Labour Department, Peshawar.
2. Deputy Secretary, Labour Department, Peshawar.
3. The Departmental Promotion Committee through its
Chairman, Labour Department, Peshawar.
4. Director Labour Department, Khyber Pakhtunkhwa,
3rd Floor, F.C Trust Building, Peshawar Cantt.
5. Amir Khaliq farmer Labour Officer,
Labour Department, Peshawar.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 7011

Dated 15/8/2023

----- Respondents

PARA WISE COMMENTS

REPLICATION

Sir,

REJOINDER

1. The Respondents fail to defend the case in the court of law. Due to no fault of Appellant. The stance of the Appellant has been concurred by The Apex Supreme Court of Pakistan and this Honourable Tribunal.
2. All adverse remarks in the ACR's have been set aside by legal forum on 04/01/2010 and 17/09/2020.
3. The Appeal has been maintain on the basis of facts and solid ground.
4. There is no pressure on Respondent from the Petitioner.
5. Case is on facts and supported by judgments.

6. The Appeal is well within time.

ON FACTS

1. The department was fully aware from Letter No.DL/Admin/11/59/2127 dated 26/12/2008

2. The Appellant is senior to Amir Khaliq.

3. The adverse remarks were communicated after the laps of 5 years.

4. All adverse remarks have been set aside by the legal forums.

5. The Respondent blocked the path of promotion by creating hurdles of adverse remarks.

6. Adverse remarks were expunge after the laps of 13 years.

7. The case of Appellant was not decided within shorted possible time nor any statement was taken from the Appellant.

8. After personal hearing no response was conveyed to the Petitioner.

9. The Representation was regret with refusal.

The Appellant grieved of from the office order dated 02/12/2022.

GROUND

i) (a) That the representation was regret with refusal is the violation of proforma promotion.

Sec 8(5)

(b) DPC fail to inform Petitioner that why his promotion was differ.

2022 PLC(CS)304

(c) The right of promotion cannot be stopped due to the fault of department.

2022 PLC(CS)338

(d). The Petitioner was entitle to be promoted.

(i) There was no department proceeding or action against the Appellant

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(ii) There was no enquiry or punishment against Petitioner.

1994 PLS (CS) 825 SC

There is a plethora of instances and ruling that a promotion can be made from the date when a person has illegally been deprived of his lawful promotion.

(ii) The opinion of Law and Establishment Department was taken on the expungement of adverse remarks not on the promots promotion.

(iii) According to tentative seniority list I Mr. Sajjad Ali was senior than junior colleague Mr. Amir Khalid which was promoted from BP-11 to BP-12.

on 21/03/2009

(iv) Mr. Amir Khalid was junior from Mr. Sajjad Ali.

(v) The Appellant was deprived of his legal lawful right of promotion by communication 5 Years Adverse remarks after the laps of Five Years.

(vi) Personal adverse remarks were recorded in the ACR's of Appellant to deprived of him from promotion and to promote junior colleague.

(vii) Unlawful tactic used from Respondent to deprive of the Appellant.

(viii) (a) The adverse remarks were expunged after the laps of 13 years.

(b) The case of Appellant was for expungement of adverse remarks

not for promotion case.

(ix) To promote junior colleague rules violated personal remarks were communicated to the Appellant after the laps of 05 years and immediately

DPC was called and not wait the decision of representation pending with

Chairman DPC (Secretary Labour Welfare).

(x) As per ground (viii).

(xi) The consideration was not paid to the plea of Appellant.

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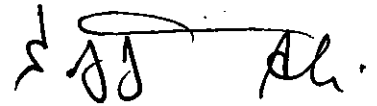
(xii). The Appellant plea in the Honourable NWFP Service Tribunal and August Supreme Court of Pakistan expungement ^{for} of adverse remarks only in the ACR's. After removal of hurdle the Appellant became eligible for promotion.

It is, therefore, humbly requested that the Appellant promotion was blocked without any fault of Appellant and without any solid ground where as all adverse remarks have been expunged.

The Appellant has the right to be promoted from 23/03/2009 with all back benefits when junior Amir Khaliq was promoted.

Thank

Dated: - 15 / 8 / 2023



Sajjad Ali
Ex-Assistant Labour
Officer Peshawar

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2008/2022.

Sajjad Ali, Former Assistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Peshawar.

Present:- Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, near Safi Hotel, outside Lahori Gate Peshawar.

----- Petitioner

VERSUS

- 1. Government of Khyber Pakhtunkhwa, through Secretary Labour Department, Peshawar.
- 2. Deputy Secretary, Labour Department, Peshawar.
- 3. The Departmental Promotion Committee through its Chairman, Labour Department, Peshawar.
- 4. Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor, F.C Trust Building, Peshawar Cantt.
- 5. Amir Khaliq former Labour Officer, Labour Department, Peshawar.

----- Respondents

PARA WISE COMMENTS REPLICATION

REJOINDER

Sir,

- 1. The Respondents fail to defend the case in the court of law. Due to no fault of Appellant. The stance of the Appellant has been concurred by The Apex Supreme Court of Pakistan and this Honourable Tribunal.
- 2. All adverse remarks in the ACR's have been set aside by legal forum on 04/01/2010 and 17/09/2020.
- 3. The Appeal has been maintain on the basis of facts and solid ground.
- 4. There is no pressure on Respondent from the Petitioner.
- 5. Case is on facts and supported by judgments.

6. The Appeal is well within time.

ON FACTS

1. The department was fully aware from Letter No.DL/Admin/11/59/2127 dated 26/12/2008~~8~~

2. The Appellant is senior to Amir Khaliq.

3. The adverse remarks were communicated after the laps of 5 years.

4. All adverse remarks have been set aside by the legal forums.

5. The Respondent blocked the path of promotion by creating hurdles of adverse remarks.

6. Adverse remarks were expunge after the laps of 13 years.

7. The case of Appellant was not decided within shorted possible time nor any statement was taken from the Appellant.

8. After personal hearing no response was conveyed to the Petitioner.

9. The Representation was regret with refusal.

The Appellant grieved of from the office order dated 02/12/2022.

GROUND

i) (a) That the representation was regret with refusal is the violation of proforma promotion.

Sec 8(5)

(b) DPC fail to inform Petitioner that why his promotion was differ.

2022 PLC(CS)304

(c) The right of promotion cannot be stopped due to the fault of department.

2022 PLC(CS)338

(d). The Petitioner was entitle to be promoted.

(i) There was no department proceeding or action against the Appellant

(ii) There was no enquiry or punishment against Petitioner

1994 PLS (CS) 625 SC

There is a plethora of instances and ruling that a promotion can be made from the date when a person has illegally been deprived of his lawful promotion.

(ii). The opinion of Law and Establishment Department was taken on the expungement of adverse remarks not on the proforma promotion.

(iii) According to tentative seniority list I Mr. Sajjad Ali was senior ~~than my~~ junior colleague Mr. Amir Khaliq which was promoted from BPS-11 to BPS-16

~~on 16/03/2009.~~ on 21/03/2009.

(iv) Mr. Amir Khaliq was junior from Mr. Sajjad Ali.

(v). The Appellant was deprived of his legal lawful right of promotion by communication 5 Years Adverse remarks after the laps of Five Years.

(vi) Personal adverse remarks were recorded in the ACR's of Appellant to deprived of him from promotion and to promote junior colleague.

(vii) Un lawful tactic used from Respondent to deprive of the Appellant.

(viii) (a) The adverse remarks were expunged ^{after} of the laps of 13 years.

(b) The case of Appellant was for expungement of adverse remarks not for promotion case.

(ix). To promote junior colleague rules violated personal remarks were communicated to the Appellant after the laps of 05 years and immediately DPC was called and not wait the decision of representation pending with chairman DPC (Secretary Labour Welfare).

(x). As per ground (viii).

(xi). The consideration was not paid to the plea of Appellant.

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(xii). The Appellant plea in the Honourable NWFP Service Tribunal and August Supreme Court of Pakistan expungement ^{for} of adverse remarks ~~only~~ in the ACR's. After removal of hurdle the Appellant became eligible for promotion.

It is, therefore, humbly requested that the Appellant promotion was blocked without any fault of Appellant and without any solid ground where as all adverse remarks have been expunged.

The Appellant has the right to be promoted from 23/03/2009 with all back benefits when junior Amir Khaliq was promoted.

Thank

Dated: 15 / 8 / 2023



Sajjad Ali
Ex-Assistant Labour
Officer Peshawar

**BEFORE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

Service Appeal No. 2008/2022.

Sajjad Ali, Former Assistant Labour Officer, Labour Department,
Khyber Pakhtunkhwa, Peshawar.

Present:- Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, near
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----- Petitioner

VERSUS

1. Government of Khyber Pakhtunkhwa,
through Secretary Labour Department, Peshawar.
2. Deputy Secretary, Labour Department, Peshawar.
3. The Departmental Promotion Committee through its
Chairman, Labour Department, Peshawar.
4. Director Labour Department, Khyber Pakhtunkhwa,
3rd Floor, F.C Trust Building, Peshawar Cantt.
5. Amir Khaliq former Labour Officer,
Labour Department, Peshawar.

----- Respondents

PARA WISE COMMENTS **REPLICATION**

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2. All adverse remarks in the ACR's have been set aside by legal forum on 04/01/2010 and 17/09/2020.
3. The Appeal has been maintain on the basis of facts and solid ground.
4. There is no pressure on Respondent from the Petitioner.
5. Case is on facts and supported by judgments.

91
6. The Appeal is well within time.

ON FACTS

1. The department was fully aware from Letter No.DL/Admin/11/59/2127 dated 26/12/2008
2. The Appellant is senior to Amir Khaliq.
3. The adverse remarks were communicated after the laps of 5 years.
4. All adverse remarks have been set aside by the legal forums.
5. The Respondent blocked the path of promotion by creating hurdles of adverse remarks.
6. Adverse remarks were expunge after the laps of 13 years.
7. The case of Appellant was not decided within shorted possible time nor any statement was taken from the Appellant.
8. After personal hearing no response was conveyed to the Petitioner.
9. The Representation was regret with refusal.

The Appellant grieved of from the office order dated 02/12/2022.

GROUND

i) (a) That the representation was regret with refusal is the violation of proforma promotion.

Sec 8(5)

(b) DPC fail to inform Petitioner that why his promotion was differ.

2022 PLC(CS)304

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(ii). The opinion of Law and Establishment Department was taken on the expungement of adverse remarks not on the proforma promotion.

(iii) According to tentative seniority list I Mr. Sajjad Ali was senior than my junior colleague Mr. Amir Khaliq which was promoted from BPS-11 to BPS-16

~~16~~ on 21/03/2009.

(iv) Mr. Amir Khaliq was junior from Mr. Sajjad Ali.

(v). The Appellant was deprived of his legal lawful right of promotion by communication 5 Years Adverse remarks after the laps of Five Years.

(vi) Personal adverse remarks were recorded in the ACR's of Appellant to deprived of him from promotion and to promote junior colleague.

(vii) Un lawful tactic used from Respondent to deprive of the Appellant.

(viii) (a) The adverse remarks were expunged ^{after} the laps of 13 years.

(b) The case of Appellant was for expungement of adverse remarks not for promotion case.

(ix). To promote junior colleague rules violated personal remarks were communicated to the Appellant after the laps of 05 years and immediately DPC was called and not wait the decision of representation pending with chairman DPC (Secretary Labour Welfare).

(x). As per ground (viii).

(xi). The consideration was not paid to the plea of Appellant.

93

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It is, therefore, humbly requested that the Appellant promotion was blocked without any fault of Appellant and without any solid ground where as all adverse remarks have been expunged.

The Appellant has the right to be promoted from 23/03/2009 with all back benefits when junior Amir Khaliq was promoted.

Thank

Dated: -15 / 8 / 2023



Sajjad Ali
Ex-Assistant Labour
Officer Peshawar

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BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2008/2022

Sajjad Ali, Former Assistant Labour Officer, Labour Department, Khyber Pakhtunkhwa, Peshawar.

Present:- Sheikh Abad, Gulbahar Road, Mohallah Sultan Abad, near Safi Hotel, outside Lahori Gate Peshawar.

----- Petitioner

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Labour Department, Peshawar.
2. Deputy Secretary, Labour Department, Peshawar.
3. The Departmental Promotion Committee through its Chairman, Labour Department, Peshawar.
4. Director Labour Department, Khyber Pakhtunkhwa, 3rd Floor, F.C Trust Building, Peshawar Cantt.
5. Amir Khaliq former Labour Officer, Labour Department, Peshawar.

----- Respondents

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Sir, REJOINDER

1. The Respondents fail to defend the case in the court of law. Due to no fault of Appellant. The stance of the Appellant has been concurred by The Apex Supreme Court of Pakistan and this Honourable Tribunal.
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4. There is no pressure on Respondent from the Petitioner.
5. Case is on facts and supported by judgments.

95

6. The Appeal is well within time.

ON FACTS

1. The department was fully aware from Letter No.DL/Admin/11/59/2127 dated 26/12/2008
2. The Appellant is senior to Amir Khaliq.
3. The adverse remarks were communicated after the laps of 5 years.
4. All adverse remarks have been set aside by the legal forums.
5. The Respondent blocked the path of promotion by creating hurdles of adverse remarks.
6. Adverse remarks were expunge after the laps of 13 years.
7. The case of Appellant was not decided within shorted possible time nor any statement was taken from the Appellant.
8. After personal hearing no response was conveyed to the Petitioner.
9. The Representation was regret with refusal.

The Appellant grieved of from the office order dated 02/12/2022.

GROUND

i) (a) That the representation was regret with refusal is the violation of proforma promotion.

Sec 8(5)

(b) DPC fail to inform Petitioner that why his promotion was differ.

2022 PLC(CS)304

(c) The right of promotion cannot be stopped due to the fault of department.

2022 PLC(CS)338

(d). The Petitioner was entitle to be promoted.

(i) There was no department proceeding or action against the Appellant

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There is a plethora of instances and ruling that a promotion can be made from the date when a person has illegally been deprived of his lawful promotion.

(ii). The opinion of Law and Establishment Department was taken on the expungement of adverse remarks not on the proforma promotion.

(iii) According to tentative seniority list I Mr. Sajjad Ali was senior than my junior colleague Mr. Amir Khaliq which was promoted from BPS-11 to BPS-16

~~10/10/10~~ on 23/03/2009.

(iv) Mr. Amir Khaliq was junior from Mr. Sajjad Ali.

(v). The Appellant was deprived of his legal lawful right of promotion by communication 5 Years Adverse remarks after the laps of Five Years.

(vi) Personal adverse remarks were recorded in the ACR's of Appellant to deprived of him from promotion and to promote junior colleague.

(vii) Unlawful tactic used from Respondent to deprive of the Appellant.

(viii) (a) The adverse remarks were expunged ^{after} the laps of 13 years.

(b) The case of Appellant was for expungement of adverse remarks not for promotion case.

(ix). To promote junior colleague rules violated personal remarks were communicated to the Appellant after the laps of 05 years and immediately DPC was called and not wait the decision of representation pending with chairman DPC (Secretary Labour Welfare).

(x). As per ground (viii).

(xi). The consideration was not paid to the plea of Appellant.

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It is, therefore, humbly requested that the Appellant promotion was blocked without any fault of Appellant and without any solid ground where as all adverse remarks have been expunged.

The Appellant has the right to be promoted from 23/03/2009 with all back benefits when junior Amir Khaliq was promoted.

Thank

Dated: - 15/08 /2023



Sajjad Ali
Ex-Assistant Labour
Officer Peshawar

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SCANNED
KPST
Peshawar

2/10/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

CM No. _____/2023
IN
Service Appeal No. 2008/2022

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 8029

Dated 2/10/23

Sajjad Ali

Versus

Govt. of KPK etc

APPLICATION FOR WITHDRAWAL OF
THE ABOVE TITLED SERVICE APPEAL
WITH PERMISSION TO FILE FRESH
ONE

Respectfully Sheweth:-

1. That the above titled service appeal is pending adjudication before this Honourable Court and is fixed for hearing on 07/12/2023.
2. That the respondents department is likely to address the grievances of the applicant/appellant and the appellant is not interest of further litigation, therefore, it would be in the interest of justice, if the titled Service Appeal is withdrawn.
3. That if the grievances of the applicant/appellant are not addressed by the

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respondents, then the petitioner/
appellant entitled to file fresh appeal.

It is, therefore, humbly prayed
that on acceptance of this application
the applicant/ petitioner may
graciously be allowed to withdraw the
above titled Service Appeal with
permission to file fresh one.



Dated:- 02/10/2023

Applicant-In-person

AFFIDAVIT

I, Sajjad Ali, Former Assistant Labour Officer,
Labour Department Khyber Pakhtunkhwa,
Resident of Sheikh Abad, Gulbahar Road,
Mohallah Sultan Abad, Outside Lahori Gate,
Peshawar, do hereby solemnly affirm and declare on
oath that the contents of accompanying **Application**
are true and correct to the best of my knowledge and
belief and nothing has been concealed from this
Honorable court.



DEPONENT

