


Form- A
FORM OF ORDER SHEET

Court of _____

Implementation Petition No. 1085/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	23.09.2024	<p>The implementation petition of Mr. Muhammad Nabi submitted today by Mr. Mir Zaman Safi Advocate. It is fixed for implementation report before Single Bench at Peshawar on 30.09.2024. Original file be requisitioned. AAG has noted the next date. Parcha Peshi given to counsel for the petitioner.</p> <p>By order of the Chairman  REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 1085 /2024
In

Appeal No.868/2019


MUHAMMAD NABI VS GOVT: OF KP & OTHERS

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PETITIONER/APPLICANT

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

MOBILE NO.0333-9991564

0317-9743003

-/-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. 1085 /2024

In

Appeal No.868/2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 15993

Dated 23-09-2024

Mr. Muhammad Nabi, Assistant (BPS-16),
Khyber Pakhtunkhwa Service Tribunal, Peshawar.

.....APPELLANT

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary, Establishment Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.
- 4- The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

.....RESPONDENTS

IMPLEMENTATION PETITION FOR DIRECTING
THE RESPONDENTS TO OBEY THE JUDGMENT
OF THIS AUGUST TRIBUNAL DATED 14.01.2021 IN
LETTER AND SPIRIT

R/SHEWETH:

- 1- That one of the colleague of the petitioner filed Service appeal bearing No. 868/2019 before this august Service Tribunal for amendments in the service rules notified on 03.04.2018 for the employees of the this august Service Tribunal. Copy of the service rules is attached as annexure.....A.
- 2- That the above titled appeal was finally heard by this august Tribunal and accepted the same vide judgment dated 14.01.2021 with the view that *“As regard the dictum relied upon by the learned Assistant Advocate General appearing on behalf of respondents in utmost deference and regard thereto the principles laid down in the precedents relied upon by appellant viably resolve the controversy vis-à-vis the precedents relied upon by the learned Assistant Advocate General. While looking at the human conduct the chances of errors and mistakes are there and a forum must be there to have jurisdiction in the matter to address the issue otherwise the inevitable result would be perpetuating the anomaly to the entire prejudice of the suffers. Needless to mention here that government has been invested with*

powers to frame rules but in accordance with the true spirit of the law and precedents referred to above.

The upshot of what has been discussed above is that on the acceptance of the instant appeal respondents are directed to give effect to the rules in the light of observations mad above". Copy of the judgment is attached as annexure.....B.

- 3- That the establishment department issued the amended service rules vide dated 01.04.2024 in implementation of the judgment mentioned above but not in its true spirit and as such the establishment added the criteria of the qualification for promotion to the posts of Additional Registrar/Superintendent/ Budget and Accounts Officer (BPS-17) beyond the judgment of this august Tribunal which badly affected the petitioner and other employees, eligible for promotion to the next higher post. Copy of the amended service rules/Notification dated 01.04.2024 is attached as annexure.....C.
- 4- That the petitioner has no other remedy but to file this implementation petition.

It is, therefore, most humbly prayed that on acceptance of this implementation petition the respondents may very kindly be directed to implement the judgment of this august Tribunal dated 14.01.2021 in its true spirit by deleting the qualification criteria for promotion to the next higher scale from the amended service rules/Notification dated 01.04.2024. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the petitioner.

Dated: 23.09.2024.

PETITIONER


MUHAMMAD NABI

THROUGH:


MIR ZAMAN SAFI
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Implementation Petition No. _____/2024
In

Appeal No.868/2019

MUHAMMAD NABI VS GOVT: OF KP & OTHERS

AFFIDAVIT

I **Mir Zaman Safi, Advocate** on behalf of the petitioner, do hereby solemnly affirm that the contents of this **implementation petition** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.


MIR ZAMAN SAFI
ADVOCATE

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EXTRAORDINARY
GOVERNMENT



REGISTERED NO. P.III.

GAZETTE

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, MONDAY, 15th APRIL, 2019.

GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT
(Establishment)

NOTIFICATION

Dated 03-04-2018

No. SOE-V/E&AD/13-02/2018: In pursuance of the provisions contained in Sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 and supersession of this Department Notification No. SOR-I(S&GAD)4-2/82, dated 08-06-1988, Establishment Department, in consultation with the Finance Department, hereby lays down the method of recruitment, qualification and other conditions specified in column 3 to 5 of the following Appendix which shall be applicable to the posts in the office of Services Tribunal Khyber Pakhtunkhwa, specified in column 2 of the Appendix with immediate effect.

APPENDIX

S#	NOMENCLATURE OF POST	MINIMUM QUALIFICATION FOR APPOINTMENT BY INITIAL RECRUITMENT	AGE	METHOD OF RECRUITMENT
1	2	3	4	5
1.	Registrar (BS-18)	By promotion on the basis of seniority-cum-fitness, from amongst the Additional Registrars, Superintendents and Budget & Accounts Officers (BPS-17), with at least five years service as such: Provided that if no suitable officer is available for promotion, then by transfer. Note: A joint seniority list of Additional Registrars, Superintendents and Budget & Accounts officers shall be maintained for the purpose of promotion to the post of Registrar.
2.	Additional Registrar (BS-17) A. M. [Signature] ED	By promotion on the basis of seniority-cum-fitness, from amongst the Assistant Registrars and Law Drafters (BPS-16), with at least five years service as such: Provided that if no suitable officer is available for promotion, then by transfer.

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				<p>Note: A joint seniority list of Assistant Registrars & Law Drafters shall be maintained for the purpose of promotion to the post of Additional Registrar.</p>
3.	Superintendent (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant (BPS-16), with at least five years service as such.
4.	Budget & Accounts Officer (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst the Cashier-cum-Assistant (BPS-16), with at least three years service as such. Provided that if no suitable officer is available for promotion, then by transfer.
5.	Private Secretary (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst the Personal Assistants (BPS-16) with at least two years service as such.
6.	Manager (MIS) (BPS-17)			By promotion, on the basis of seniority-cum-fitness, from amongst the Computer Operators (BPS-16), with at least five years service as such.
7.	Assistant Registrar (BPS-16)	At least Second Class Bachelor Degree from a recognized University.	21 to 30 Years	By initial recruitment.
8.	Office Assistant (BPS-16)	At least Second Class Bachelor's Degree from a recognized University.	20 to 32 Years	a) Seventy Five percent by promotion, on the basis of seniority-cum-fitness, from amongst the Senior Clerks (BPS-14), with at least five years service as such; and b) Twenty Five per cent by initial recruitment.
9.	Cashier Cum Assistant (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Store Keepers (BPS-14) with at least five years service as such. Provided that if no suitable person is available for promotion, then by transfer.
10.	Personal Assistant (BPS-16)			By promotion, on the basis of seniority-cum-fitness, from amongst the Senior Scale Stenographers (BPS-16) with at least three years service as such.

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11.	Senior Scale Stenographer (BPS-16)	(a) At least Second Class Bachelor's Degree from a recognized university; (b) A speed of seventy (70) words per minute in shorthand in English and forty five (45) words per minute in typing in English; and (c) Knowledge of Computer in using MS Word and MS Excel.	20 to 32 Years	By promotion, on the basis of seniority-cum-fitness, from amongst Junior Scale Stenographers (BS-14), with three years service as such: Provided that if no suitable person is available for promotion, then by initial recruitment.
12.	Law Drafter (BPS-16)	At least Second Class L.L.B from a recognized University.	25 to 32 Years	By initial recruitment.
13.	Computer Operator (BPS-16)	(a) At least Second Class Bachelor's Degree in Computer Science / Information Technology (BCS/BIT four years) from a recognized University; or (b) At least Second Class Bachelor's Degree from a recognized University with one year Diploma in Information Technology from a recognized Board of Technical Education.	18 to 32 Years	By initial recruitment.
14.	Senior Clerk (BPS-14)	By promotion, on the basis of Seniority-cum-fitness, from amongst Junior Clerks (BPS-11), with at least two years service as such.
15.	Store Keeper (BPS-14)	At least Diploma in Commerce or Business Administration in Second Division from a recognized Board of Technical Education.	18 to 30 Years	By initial recruitment.
16.	Junior Scale Stenographer (BPS-14)	i. At least Intermediate or its equivalent qualification in Second Division from a recognized Board; and ii. A speed of fifty (50) words per minute in Shorthand in English and thirty-five (35) words per minute in typing in English; and iii. Knowledge of Computer in using MS Word and MS Excel.	18 to 30 Years	By initial recruitment.

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17.	Junior Clerk (BPS-11)	i) At least Secondary School Certificate with Second Division or equivalent qualification from a recognized Board; and ii) A speed of Thirty (30) words per minute in typing in English.	18 to 30 Years	a) Thirty-three percent by promotion; on the basis of Seniority-cum-fitness from amongst Daftaries, Bailiff, Generator Operators, Photostat Operators, Naib Qasids, Process Servers, Chowkidars and Sweepers with two years service as such, who have passed Secondary School Certificate Examination; and b) Sixty-seven per cent by initial recruitment.
18.	Driver (BPS-06)	Literate having LTV driving license. Preference shall be given to those who have sufficient experience in driving, repair and maintenance of vehicles.	18 to 40 Years	By initial recruitment.
19.	Daftari (BPS-04)	At least Second Class Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 40 Years	By initial recruitment.
20.	Bailiff (BPS-04)	At least Second Class Secondary School Certificate or equivalent qualification from a recognized Board.	18 to 40 Years	By initial recruitment.
21.	Generator Operator (BPS-04)	Relevant Certificate from a Recognized Technical Institute.	18 to 40 Years	By initial recruitment.
22.	Photostat Operator (BPS-04)	At least Second Class Secondary School Certificate or equivalent qualification from a recognized board with one year experience as Photocopier.	18 to 40 Years	By initial recruitment.
23.	Naib Qasid (BPS-03)	Literate	18 to 40 Years	By initial recruitment.
24.	Process Server (BPS-03)	Literate	18 to 40 Years	By initial recruitment.
25.	Chowkidar (BPS-03)	Literate with sound physique	18 to 40 Years	By initial recruitment.
26.	Sweeper (BPS-03)	Literate	18 to 40 Years	By initial recruitment.

SECRETARY ESTABLISHMENT
GOVT. OF KHYBER PAKHTUNKHWA

Printed and published by the Manager,
Staty. & Ptg. Deptt., Khyber Pakhtunkhwa, Peshawar

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"B" - 8 -

~~"A"~~

~~"C"~~

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 868/2019

Date of Institution ... 20.08.2018

Date of Decision ... 14.01.2021



Iftikhar Khan, Assistant (BPS-16),
Khyber Pakhtunkhwa, Service Tribunal, Peshawar.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary,
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and three other
respondents.

... (Respondents)

Mr. IFTIKHAR KHAN,
Appellant

In person.

MR. RIAZ-AHMAD PAINDAKHEIL,
Assistant Advocate General

For respondents.

MUHAMMAD JAMAL KHAN
MIAN MUHAMMAD
ATIQU-UR-REHMAN WAZIR

--- MEMBER (Judicial)
--- MEMBER (Executive)
--- MEMBER (Executive)

JUDGEMENT:

MUHAMMAD JAMAL KHAN, MEMBER:- By virtue of the
instant service appeal submitted under Section-4 of the Khyber
Pakhtunkhwa Services Tribunal Act, 1974, the vires of notification/rules
dated 03.04.2018 have been challenged.

2. That on establishment of the Khyber Pakhtunkhwa Services
Tribunal, while adhering to the provisions contained in Article 212 of the
Constitution of Islamic Republic of Pakistan the Service Tribunal has
been conferred exclusive jurisdiction in the matter pertaining to terms
and conditions of civil servants of the Province, Appellant being a civil
servant is also rendering duties as Office Assistant in BPS-16 in this

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KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

25/1/21

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Tribunal since 25.08.2017 and he is acting as such to the entire satisfaction of his higher-ups. On 03.04.2018, the Secretary Establishment Department Khyber Pakhtunkhwa Civil Secretariat, Peshawar, notified Service Rules which are not only irrational but also disadvantageous to the service career of appellant as the number of officials working in each cadres and their prospects of promotion have not been brought under consideration. For bringing the matter into the notice of competent authority, departmental appeal was moved on 24.04.2018 waiting for the expiry of the statutory period but without having any response, therefore having no other adequate remedy the instant service appeal was instituted.

3. Respondents were summoned, in compliance thereof they attended the Tribunal through their authorized representative thereby controverting the claim of appellant by submitting reply/comments by raising legal and factual objections.

4. We have heard arguments of the appellant as well as learned Assistant Advocate General and were able to go through the record on file with their valuable assistance in view of which our findings are recorded in the following paras.

5. Here it is deemed appropriate to mention that in the past due to split judgment, pro and contra of the Divisional Bench of this Tribunal one Hon'ble Member declared and accepted the appeal whereas the other Hon'ble Member dismissed the same, therefore, the instant appeal was referred to Larger Bench for the decision.

6. Before embarkation on adjudicating the issue involved in the instant case it is appropriate to have a look at the arguments advanced by the appellant himself. According to appellant in the service structure there are three contestants/aspirants for a single post of Registrar in BPS-18, that are, Additional Registrar, Superintendent and Budget & Accounts Officer all holding posts in BPS-17, according to the rules notified for the Ministerial Establishment of the Service Tribunal separate rather distinct seniority lists have been provided for all cadres. For Law Drafter and Assistant Registrar both falling in BPS-16 each cadre having one post has to be promoted to the post of Additional Registrar. As regard Office Assistants holding nine posts in BPS-16 have

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Peshawar

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to be promoted to the post of Superintendent (BPS-17) and still further a Cashier-cum-Assistant holding BPS-16 having one post has to be promoted as Budget & Accounts Officer in BPS-17. It is worth to be noted that seniority list of all the three cadres have been merged when the official of each cadre attains BPS-17 where-after a common seniority list have to be maintained. Appellant opined that while keeping in view the number of posts available for Office Assistant holding BPS-16 which are nine in numbers whereas other cadres of Additional Registrar and Budget & Accounts Officer having two and one post respectively would be promoted to higher grade with accelerated pace as compared to the chances of promotion available to the Office Assistants when he is promoted to BPS-17 on his turn thus having dismal chances of promotion and at the same time lagging behind by remaining junior to the lateral entrants in service. That except the post of Law Drafter qualification for all the remaining posts is a Bachelor Degree and B.Com. While keeping in view the principles of parity and maintaining equilibrium such scheme of things as provided in the rules would not uphold the cardinal principles of justice, therefore, he submitted that each official having different cadre but having the same grade should have equal chances of promotion, he placed reliance on **PLD 1980 S C 153**; wherein it has been held that Article 212 read with Civil Servants Act, 1973, Section-25 of the Act *ibid* vires of rules competency to determine-Rules having altered terms and conditions of service, bar of Article 212 applicable with full force- question of vires of rules vis-à-vis with section-25 of Civil Servants Act, 1973, in such exercise to be necessarily considered *vide* citation (e) and last two paras of the aforesaid judgement. He referred to **1991 SCMR 1041**, wherein it has been held that if a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of Section-4 (1) of the Service Tribunal Act (LXX of 1973) and can file an appeal in the Service Tribunal, even if the fundamental rights of a civil servant are bypassed or violated, it has been further provided in the aforesaid dictum that all citizens are equal before law and entitled to equal protection of law, state however is not prohibited to treat its citizens on the basis of reasonable qualification *vide* citations (d), (e), (i) of the referred to dictum. He referred to **PLD 2004 S C 317**, wherein it has been held if

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an objection is raised qua the validity of amendment in the rules by a civil servant on the ground that the same had adversely affected his right in the service as to promotion, jurisdiction of the High Court was barred by virtue of Article 212 of the Constitution. It was ordained that the civil servant should approach the Services Tribunal for redressal of his grievance, which was vested with the jurisdiction not only to go in to the question of validity or vires of the rules qua right of such a civil servant but also the question of mala-fides if raised in the appeal vide citation (b) and para-5 of the referred to judgement. While making reference to **2002 PLC (C.S) 94**, vide discussing the vires of Section-4 of the Services Tribunal Act (LXX of 1973) vis-à-vis the Constitution of Pakistan 1973 Articles 199 & 212 it has been held that the matter relating to the terms and conditions of service would not come within the jurisdiction of the High Court- even if a statutory rule was ultra vires, the Services Tribunal would have the jurisdiction to strike down the same vide para-8 of the referred to judgement. He referred to **2012 PLC (C.S) 142**, while discussing the scope of Section-4 (1) of the Balochistan Services Tribunal Act, 1974, that appeal challenging the vires of law, statutory service rules or notification adversely affecting terms and conditions of civil servants such law/rules/notification could be in turn an order in term of Section 4 (1) of Balochistan Services Tribunal Act, 1974, and could be challenged in an appeal before Services Tribunal. It has further been provided that the jurisdiction conferred upon Services Tribunal is not limited and all service matters including vires of service laws can be challenged before it vide citation c of the referred to judgement. Similar question of jurisdiction has also been tackled in **2012 PLC (C.S) 1211**. He made reference to **2015 PLC (C.S) 215**, it has been held categorically that the Services Tribunal has got exclusive jurisdiction to entertain and adjudicate upon the matters relating to the right to be considered for promotion to a higher grade vested in the Khyber Pakhtunkhwa Services Tribunal Act, 1974, vide citation-a read with para-12 of the referred to judgement. He referred to **2018 PLC (C.S) 40**, wherein it has been held unequivocally that the Service Tribunal was fully competent to entertain and decide the cases wherein vires of Service Rules or notification had been challenged on the touch stone of being violative of Fundamental Rights and to direct the authority for framing such rules beneficial to the

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prospect of promotion of civil servants and was held that the claim of petitioner/employees would fall in terms and conditions of service vide citation (a) and paras-10 & 11 of the referred to judgment. He referred to **2019 PLC (C.S) 995**, wherein it has been held that the vires of rules could be challenged before Service Tribunal vide summarized para at the inception of judgement read with para-7 ibid of the referred to dictum. He made reference to Services Appeal No. 231/2011 Captioned Mian Farooq Iqbal Versus Mines and Minerals Department Khyber Pakhtunkhwa decided on 19.01.2013, the rules in vogue in the Mines and Minerals Department till 16.10.2010 were revoked and new rules were notified where clause-b of the rule was replaced on mala-fide intention which notification was set-aside by dent of which rules were notified on 17.10.2010 by restoring clause-b of notification No. SOI(IND)1-688-Vol-V dated 10.12.2003 and furthermore that promotion to be made strictly keeping in view section-9 (2)(a)(b) of Civil Servants Act, 1973, and Esta Code directions. He placed reliance on Service Appeal No. 1218/2011 titled Fozia Shehzadi Versus Education Department Government of Khyber Pakhtunkhwa decided on 19.12.2017, wherein the department of Elementary & Secondary Education Government of Khyber Pakhtunkhwa amended method of recruitment in exercise of the powers under sub-rule 2 of Rule-3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 which changed the qualification for promotion, was challenged to be ultra vires of the Fundamental Rights and it was held by this Tribunal that it is now a settled position of law that vires of any rules or law touching the terms and conditions of civil servants can be decided by this Tribunal and reference was made to the dictums laid down in **PLD 1980 Supreme Court 153 and 1991 SCMR 1041** which were stated to be much clear, therefore, it was held that this Tribunal has the jurisdiction to look into the vires of law and rules touching the terms and conditions of the Civil Servants vide para-6 of the referred to judgement. He placed reliance on **PLD 1990 SC 1092**, while elaborating discretion, it has been held that where ever wide worded powers conferring discretion exist, there remains always the need to structure the discretion and courts when can interfere with the discretion vide citation (s) of the judgement. In **1997 SCMR 1804**, it has been held that the general principles that discretionary decision

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SECRETARY
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
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M. A. J. I. E. D.

should be made according to rational reasons needs (a) that there be findings of primary fact based on good evidence and (b) that decision about the fact be made for reasons which serve the purpose of the statute in an intelligible and reasonable manner. The actions which do not meet these threshold requirements are arbitrary and may be considered a misuse of powers vide citation(c) of the referred to dictum. In **1999 SCMR 467**, while elaborating Article 25 of the Constitution of Pakistan wherein the principles of equality of citizens has been enunciated, it has been held that Government is not supposed to discriminate between the citizens and its functionaries cannot be allowed to exercise discretion at their whims, sweet will or as they please rather they are bound to act fairly, evenly and justly vide citation (a) of the referred to dictum. He made reference to **2005 SCMR 25**, wherein distinction has been drawn in discretionary decision and arbitrary decision it was held that discretionary decisions should be made according to rational reasons. In discretionary decision there must be findings of primary facts based on good evidence and the decision about the fact be made for reasons which serve the purpose of statute in intelligible and reasonable manner and the actions which do not meet the threshold requirements are arbitrary and may be considered as misuse of powers. It has further been held that discretion powers have certain pre-conditions and that are seven instruments useful in structuring of discretionary powers, are open plans, open policy statement, open rules, open findings, open reasons, open precedents and fair informal procedure. Still further it has been held that functionaries of any organization or establishment cannot be allowed to exercise discretion at their whims, sweet will or in arbitrary manner, rather they are bound to act fairly, evenly and justly vide citation (c) (d) (e) para-15 of the referred to judgement. He placed reliance on **2015 SCMR 630**, while discussing Section-24-A of the General Clauses Act, (X of 1897) wherein it has been held that the executive authority having discretionary powers, its exercise and scope--when legislature conferred a wide range of power it must be deemed to have assumed that the powers would be firstly, exercised in good faith, secondly, for the advancement of the objects of the legislation, and, thirdly, in a reasonable manner--- where the authorities failed to regulate their discretion by the framing of rules, or policy statements or

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 Ministry of Public Health
 Services Tribunal
 Islamabad

M. Ali
 ATTORNEY

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precedents it became mandatory for the courts to intervene in order to maintain the requisite balance for the exercise of statutory powers vide citation (e) and para-10 of the referred to dictum. He made reference to **2015 SCMR 1257**, wherein it has been held that every public functionary is supposed to function in good faith, honestly and within the precincts of his powers so that person concerned should be treated in accordance with law as guaranteed by Article-4 of the Constitution. It has also been held that the objects of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but the objective can be achieved by following the rules of justness, fairness, and openness, in consonance with the command of the Constitution enshrined in different Articles including Articles 4 & 25 vide paras-11 & 12 of the referred to judgement. He made reference to **PLD 2017 Sindh High Court 690**, wherein it has been held that when legislature confer powers on the government to frame rules, it is expected that such powers have been used only bonafide, in a responsible spirit and true interest of public and in furtherance of the object for attainment of which such powers have been conferred---powers conferred upon government to frame rules is not unlimited but subject to certain per-requisites and pre-conditions---unlimited right of delegation is not inherent in legislative power itself---court may reject a regulation as invalid and ultra vires if it fails to comply with statutory essential. It has also been held that where authority failed to regulate their discretions by framing of rules, policy statements or precedents, it becomes mandatory for courts to intervene in order to maintain requisite balance for exercise of statutory powers vide citations (c) & (d), and para-15 (a) (b) (c) (f) (g) (h) (i) of the judgement.

7. The appellant pointed out that the Khyber Pakhtunkhwa Services Tribunal had submitted draft rules and dispatched it to SSRC but the same have not been brought under consideration by the forum concerned without assigning any reason. Appellant referred to Section-24-A of the General Clauses Act, 1897, elaborating that when powers are conferred on the authority, it has to be exercised reasonably and also referred to **Sections 21 and 23 of the Act ibid**. Registrar of the Khyber Pakhtunkhwa Services Tribunal represented the Institution at

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the SSRC but was not able to emphatically forward the stance of the institution thus remaining just a signatory to the same. He further placed reliance on **2018 SCMR 598** wherein it was held that the terms and conditions of service cannot be unilaterally altered by the employer to the disadvantage of the employees vide citation (a) and para-6 of the judgement. The office of Registrar Khyber Pakhtunkhwa Services Tribunal has to perform functions of Trio nature i.e scrutiny of record, judicial and accounts. A person rich in experience in manifold fields and spheres would contribute to proper functioning of the office of Registrar and such a scheme of things could not be ensured when seniority of different cadres have been split. He submitted that when they are on better footing or in a position of advantage, reference is being made to the issue of specialization but when they have no such advantage no reference to it at all is being given. He referred to Article 25 & 38E of the Constitution of Islamic Republic of Pakistan wherein it has been held that all citizens are to be treated equally ruling out possibilities of discrimination. He further placed reliance on **2003 PLC (C.S) 965**, wherein it has been held that state subjects are equal before law and are entitled to equal protection of law---state subject could not be discriminated or refused their rights of services---rights of service would mean and include appointment, promotion and all other ancillary matters attached to the service of a citizen. It has further been held that rules prescribed being subservient to the original Act--- any rule enacted in derogation of original Act or defeating the spirit of the constitution could not be allowed to prevail vide citations (c) (d) of the referred to dictum. In **2015 PLC (C.S) 1495**, similar principle has been laid down while making reference to Article 25 of the Constitution of Pakistan vide citation (b) and para 12 of the judgement he added. He placed reliance on **2004 CLD 260**, while discussing mala fides it was held that an action taken with mala fides is an action taken maliciously for personal motives whether to hurt the person against whom action is taken or to benefit oneself. The term mala fides is equated with bad faith. Some of the instances of mala-fides are evasion of the spirit of bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms and interference with or failure to cooperate in the other party's performance vide citation (c). He placed reliance on **2010 SCMR 512**,

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Khyber Pakhtunkhwa
Services Tribunal
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wherein it has been held, that no employee had vested right in promotion but where rules, regulation and policy had been framed for appointment or promotion for mala-fide reason or due to arbitrary act of the competent authority, aggrieved person was entitled to challenge the same vide citation (e) of the referred to judgement. He further submitted that in other departments such as Education, Agriculture, Live Stock and C&W similar principles have been adopted by maintaining common seniority list of the officials having the same grades but holding different cadres. He submitted that adoption of the rules in other departments in the circumstances is indispensable, for full delivery of services by each and every official of the Services Tribunal, therefore, providing for efficient service structure is need of the hour and norm of the day. He placed reliance on **2010 SCMR 511** and submitted that the acts done in the promulgation and adoption of rules suffers from elements of mala-fide.

8. On the contrary, the learned Assistant Advocate General contended that the notion regarding the lesser chances of promotion is just a misnomer having no nexus with ground reality. The present appeal is not competent due to conduct of appellant who is estopped to have recourse to this Tribunal. In fact the Registrar of this Tribunal has attended the meeting of SSRC and has participated in the rules framing process, the rules are based on sound reasons and are consensus oriented which are not just whimsical rather having a pragmatic approach to the actual realities. As regard the assertion of appellant regarding mala-fide the learned Assistant Advocate General submitted that it is in fact an abstract concept carrying broad implications, no mala-fide could be attributed to the rules framing bodies. Whether there was any mala-fide on the part of rule framing body with the rest of officials who have greater chances of promotion while exemplifying that a Primary School Teacher is required Bachelor of Science qualification whereas at the eve of his retirement he would reach Grade-16 although channel of promotion are open to him or he can become District Education Officer or even a Director of the institution. For Senior English Teacher the criteria of qualification is the same. While making reference to the post of Law Drafter he submitted that the holder of the same post in the High Court is having grade 17 whereas the appointment of

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the Civil Judge is made in BPS-18. As regard the job descriptions of various posts of distinct cadres the appellant remained mum. The appellant has not made recourse to this Tribunal with clean hands as he has instituted the present case on petty grounds with mala-fide intention and intends to infringe upon the rights of other employees of the Tribunal. However, the prospects of promotion is just like pyramid which narrows down in every department in higher scale. The Service Rules were notified after thorough deliberation by the SSRC Committee in which the representative of Services Tribunal was also present and all the stake holders have developed consensus while finalizing the service rules. He placed reliance on **2015 SCLR 269** (citation d) that under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, a criteria has been laid down and domain has been provided which falls exclusively within the ambit of the concerned department/legislature, therefore, extinguishing right of appellant. He placed reliance on **2019 PLC (C.S) 995** and submitted that the government has prerogative to frame rules which fall within its exclusive domain. He placed reliance on **2019 PLC (C.S) 282, 2018 PLC (C.S) 1135** that every legislation is subject to judicial review. It is not a vested right of a civil servant to seek amendment in the rules.

9. The perusal of record clarifies the fact that there are four different cadres working in this Tribunal i.e the Law Drafter (BPS-16) one post, Assistant Registrar (BPS-16), Cashier-cum-Assistant (BPS-16) and Office Assistant (BPS-16). Out of the four cadres, the officials of former three cadres are having one post each whereas the cadre of Office Assistant have nine posts. The academic qualification for initial recruitment to the post of Law Drafter (BPS-16) is L.L.B, for Assistant Registrar and for the Office Assistant a Bachelor Degree is required whereas for Cashier-cum-Assistant qualification is D.Com. According to the rules notified, there are just two posts of Grade-16 to be promoted to the post of Additional Registrar (BPS-17) i.e Law Drafter and Assistant Registrar, a Cashier-cum-Assistant is having a single post to be promoted as Budget & Accounts Officer (BPS-17) whereas the Office Assistants (BPS-16) have nine posts to be promoted to a single post of Superintendent (BPS-17). On attainment of promotion in BPS-17 a common seniority list has to be maintained who in turn would get promotion to the single post of

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Registrar (BPS-18) on the principle of seniority-cum-fitness. Thus while looking at the scenario in this context, the Law Drafter and Assistant Registrar as well as Cashier-cum-Assistant would have rapid chances of promotion as compared to the promotion chances of Office Assistants (BPS-16). The question arises that when the holders of all the three posts sans Law Drafter having more or less the same academic qualification whether they should not have equal chances of promotion? For best delivery of services and for amelioration of the lot of the public at large, each cadre should have equal chances of promotion so that no official of any cadre have a feeling of discrimination. How an official can render duties to the best of his abilities in the public interest when he is not provided equal chances of promotion and are thus discriminated. The officials of each cadre would have a bright career when the channel of promotion is open to all equally so that the possibility of deprivation of one cadre at the cost of other is ruled out subject to an exception of Law Drafter who stands on a high pedestal as far as his respective qualification is concerned, therefore, a mechanism can be set making of his adjustment in the seniority list at appropriate place; however, maintaining of equilibrium for the entire set of the officials by maintaining a common seniority list would be the only solution for addressing the problem: When the seniority of the officials have later on being merged when they get promotion in BPS-17 whether it cannot be equated at initial stage. The guiding principles for formulation of rules should be devised in a manner to safeguard the rights of all and similarly placed employees who are to be treated across the board. A single institution having different categories of services must have rules devised in such manner to provide equal opportunity of promotion. Since all the employees are part of the same institution, therefore, employees of one set of cadre can conveniently get adequate knowledge of other cadres and in this regard appropriate opportunities can be provided by making internal arrangements. While giving effect to the rules the case of Office Assistants have not been taken case of or taken into account vis-a-vis other office holder resulted into infringements of their rights. The rules must not have a negative impact on employees of one cadre at the cost of other employees serving in other cadres. Such a scheme of thing shall definitely distort and malign the whole atmosphere and a workable peaceful environment and a

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smooth working with cohesion would be an impossible phenomenon having a negative impact on the overall performance of the institution the ultimate sufferer of which would be civil servants and their dependents. Injustice or discrimination of course begets a sense of deprivation leading to distortion in thoughts entailing on the mental cognitive faculties; which play havoc by creating chaos which are elements detrimental to the public serenity which unbalances the whole fabric of society. It destroys career, to handicap families which results in financial problems. Discrimination which leads to a sense of deprivation rather consternation foreclosing the doors of creative mind the beginning of this sort of tension results into the end of talent. Accordingly, healthy mental activities abates. When there are no creative minds or there is dearth of creative minds the progress of institution stops and its down fall commences which have a far reaching repercussions on other institution and the society at large, therefore ensurance of complete justice can be ensured only when similarly placed employees are treated at par without an iota of discrimination.

10. The reasons assigned in the preceding paras are to be converged on a single principle to give effect to the rules in a concrete form by devising of a mechanism so that the issue is addressed in a manner to give everyone his due otherwise the action so taken would have momentous consequences. The SSRC which seized with the matter must have acted in perspicacity by encompassing all aspects and facets so that the accomplishment so made should have not resulted into deprivation of one cadre. Formulation of rules for promotion must be in a way to have equal avenues of promotion for each cadre which is not possible without merger of seniority list by maintaining common seniority list at all levels indiscriminately. Similar principles of maintaining a common seniority list of officials having different cadres but the same grade and working in the same institution/department have been provided such as C&W Department, Agriculture Department, Mines and Minerals Department and Irrigation Department etc. Such actions, acts are explicitly in contravention of **Section-24-A** of the **General Clauses Act, 1897** and violative of **Articles 25 & 38-E** of **Constitution of Islamic Republic of Pakistan** wherein it has been provided that all citizens are to be treated equally rulling out possibility

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of discrimination. The authorities referred to by appellant clearly enunciate when service rules are based on discrimination the Services Tribunal is conferred with jurisdiction to take cognizance of the matter and in this regard reliance is placed on the entire set of precedents produced by appellant in support thereof.

11. As regard conferment of discretionary powers on the competent authority/forum it has been provided in a number of precedents of the Hon'ble Supreme Court of Pakistan that it should always be exercised judiciously in a reasonable way without any sort of discrimination and to the prejudice of none. Certain principles of lofty nature have been laid down by the august Supreme Court of Pakistan adherence to which is a pre-requisite for exercising discretionary powers when it has been vested in the authority. The matter regarding exercise of discretionary powers is not paltry in nature and utmost care and caution is required, it must be for the betterment and good of all. The principles so laid down are seven instruments i.e useful in structuring of discretionary powers that are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure, reliance in this regard is placed on PLD 1990 Supreme Court 1092, 1997 SCMR 1804, 1999 SCMR 467, 2005 SCMR 25, 2015 SCMR 630, 2015 SCMR 1257, PLD 2017 Sindh 690. The jurisdiction of the Services Tribunal is not limited and all service matters falling within the ambit of service rules can be challenged before it when statutory rules or a notification adversely affecting the terms and conditions of a civil servant and the same can be treated an order passed under the provision of the Service Laws.

12. No evidence has just emanated that prior to the promulgation of the subject rules, the Draft rules were circulated to obtain opinion of the employees who are to be regulated under those rules by providing a service structure whether the rights of the civil servants have not be infringed when the modalities required were not set in motion? The consultative process must have preceded before finalizing and giving effect to the rules as it has put some of the employees at disadvantageous position as compared to the case of others, thus violative of **Section-23 of General Clauses Act, 1897**, therefore, the recasting of the rules in the circumstances becomes essential,

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therefore, unless and until the issue involved is tackled and necessary, appropriate modification and amendments in the rules are made for the purpose of maintaining the joint seniority list of the officials the anomaly and grievance shall remain in the field unresolved and unsettled.

13. As regard the dictums relied upon by the learned Assistant Advocate General appearing on behalf of respondents in utmost deference and regard thereto the principles laid down in the precedents relied upon by appellant viably resolve the controversy vis-à-vis the precedents relied upon by the learned Assistant Advocate General. While looking at the human conduct the chances of errors and mistakes are there and a forum must be there to have jurisdiction in the matter to address the issue otherwise the inevitable result would be perpetuating the anomaly to the entire prejudice of the sufferers. Needless to mention here that government has been invested with powers to frame rules but in accordance with the true spirit of the law and precedents referred to above.

14. The upshot of what has been discussed above is that on the acceptance of the instant appeal respondents are directed to give effect to the rules in the light of observations made above. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
14.01.2021

- Sd -
(MIAN MUHAMMAD)
Member (Executive)

- Sd -
(MUHAMMAD JAMAL KHAN)
Member (Judicial)

- Sd -
(ATIQ-UR-REHMAN WAZIR)
MEMBER (Executive)

M. Ali
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Certified to be true copy

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Service Tribunal
Peshawar

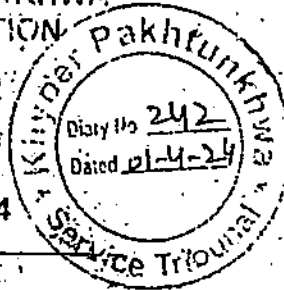
25/7/23



Ph# 091-9210524

GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(ESTABLISHMENT WING)
Email: soeiiisection@gmail.com

Dated Peshawar, the 1st April, 2024



NOTIFICATION

Peshawar, dated the 01/04/2024

NO.SOE-III (E&AD)/5-1/KP-ST/SR-III/2024: In pursuance of the provision contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Establishment Department, in consultation with the Finance Department, hereby directs that in this Department's Notification No. SOE-III/E&AD/13-02/2018, dated: 03-04-2018, the following amendments shall be made, namely:

AMENDMENTS

In the APPENDIX,-

- (a) against Serial No. 2, in column Nos. 2 and 5, for the existing entries, the following shall respectively be substituted, namely:

2	5
"Additional Registrar/ Superintendent/Budget and Accounts Officer (BPS-17).	By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Assistant Registrar, Law Drafter, Office Assistant and Cashier cum Assistant (BPS-16), having graduation, with at least five (05) years service as such. Note: For the purpose of promotion, there shall be maintained a joint seniority list of Assistant Registrar, Law Drafter, Office Assistant and Cashier cum Assistant (BPS-16)." and

- (b) Serial Nos. 3 and 4 shall be deleted.

1. See circulation amongst the entire staff

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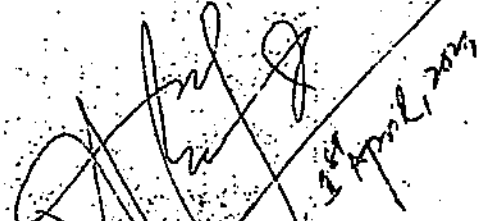
SECRETARY TO
GOVERNMENT OF KHYBER PAKHTUNKHWA,
ESTABLISHMENT DEPARTMENT.

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Endts: of Even No.& dated.

Copy forwarded to:

1. The Additional Chief Secretary (Planning & Development Department) & Additional Chief Secretary (Home & Tribal Affairs Department), Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue.
3. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
4. The Accountant General, Khyber Pakhtunkhwa.
5. The Registrar, Peshawar High Court, Peshawar.
6. The Secretary to Governor, Khyber Pakhtunkhwa.
7. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
8. All Divisional Commissioners in Khyber Pakhtunkhwa.
9. All Deputy Commissioners, Khyber Pakhtunkhwa.
10. All Heads of Attached Departments in Khyber Pakhtunkhwa.
11. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
12. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
13. Manager, Printing Press, Khyber Pakhtunkhwa for publishing in Official Gazette.
14. Master file.


(ARIF MEHMOOD KALEEM)
SECTION OFFICER (E-III)


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