

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA  
SERVICE TRIBUNAL PESHAWAR.**

Service Appeal No: 449/2024

Said Ghani, Senior Clerk (BPS-14), DEO Male Swat .....Appellant

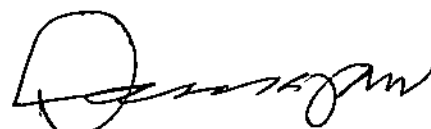
VERSUS

The Director E&SE Department & others..... Respondents

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SAMINA ALTAF  
DIRECTOR



AUTHORIZED OFFICER  
ABDUS SAMAD  
DEPUTY DIRECTOR

E&SE Department Khyber  
Pakhtunkhwa, Peshawar

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA  
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Service Appeal No: 449/2024

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VERSUS

The Director E&SE Department & others.....Respondents

**JOINT PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1 TO 2.**

Respectfully Sheweth,

The Respondents No. 1 to 2 submit as under: -

Khyber Pakhtunkhwa  
Service Tribunal

Date: 16/10/24

**PRELIMINARY OBJECTIONS.**

Dated: 08-10-24

- 1 That the Appellant has got no cause of action/locus standi to file instant appeal.
- 2 That the appellant is not an aggrieved person within the meaning of Section-4 Khyber Pakhtunkhwa Service Tribunal Act 1974 read with Article-212 of the constitution of Islamic Republic of Pakistan 1973.
- 3 That the appellant has concealed material facts from the ambit of this Honorable Tribunal.
- 4 That the appellant has not come to this Honorable Tribunal with clean hands.
- 5 That the appeal in hand is based on mala fide intentions for gaining illegal service benefits from the Respondent Department for his promotion against the senior clerk post w.e.f 15-02-2021 instead of 13-09-2023 in violation of the prescribed Rules & Policy in vogue & has correctly been promoted to the post of senior clerk vide Notification dated 13-09-2023 after due process of law & procedure by the Respondent Department.
- 6 That this Honorable Tribunal has already adjudicated the matter in hand in appeal No. 05/2017 under the said appeal titled & dismissed the same vide Judgment dated 04-03-2020 in favor of the Respondent Department, where against a Civil Petitions No. 2185 to 2186/2020 & 2245/2020 under the same titled was filed by the appellants before the august Supreme Court of Pakistan against the said Judgment dated 04-03-2020 in S/A No. 01 to 06/2017 appeal titled Shahzad etc VS Govt: of KP which was dismissed on 27-04-2017 by the august Court.
- 7 That a WP No. 81-M/2014 under the same petition titled has also been dismissed as withdrawn by the Honorable Peshawar High Court Peshawar.
- 8 That the appeal in hand is time barred under the law of limitation Act, 1908.
- 9 That the appeal in hand is bad for mis-joinder and non-joinder of the necessary parties.
- 10 That the titled appeal is falling within the ambit of Res-Judicata on the grounds that the august Supreme Court of Pakistan has already disposed of

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the matter in question in Civil Petition No. 2245/2020 vide order dated 27-04-2023, hence, the matter in hand has become infructuous & liable to be struck down in favor of the Respondents.

- 11 That the matter in hand is relates to the policy, hence, this learned Tribunal has got no jurisdiction to adjudicate the appeal in hand in view of legal bar.
- 12 That aggrieved from the Notification dated 16-01-2024, the appellant has filed a time bared Departmental appeal to the Respondent Department which was rejected on 16-01-2024 by maintaining the original promotion order dated 13-09-2023 of being legal in terms of Rule & Policy.

#### ON FACTS.

- 1 That Para-1 pertains to the service record of the appellant against the Junior Clerk post in BPS-5 appointed vide order dated 14-06-1997 under the signature of the then District Education Officer (Male) Swat now Respondent No. 2 in the titled appeal.
- 2 That Para-2 is correct that as per seniority list of the then Executive District Officer (E&SE) District Swat for the year 31-08-2011, the Respondent No. 3 namely Tariq Ali S/C has been shown at S.No. 92 as per his service record in the Respondent Department with further submissions that vide orders dated 27-07-2006 & 31-01-2013, the appellant was adjusted against the KPO post purely on temporary/stop gape arrangement, however, vide office No. 11192-98 dated 12-06-2013, the said order of adjustment of the appellant as KPO was re-called by the Respondent No. 2 .(*Copies of the orders dated 27-07-2006, 31-01-2013 & 12-06-2013 are attached as Annex-A, B, & C*).
- 3 That Para-3 is correct to the extent of the order dated 27-07-2006 in the Respondent Department.
- 4 That Para-4 is also correct to the extent of the order dated 12-06-2013, however, it is further submitted that in view of the order dated 24-06-1997, the appellant was appointed as J/C but adjusted against the KPO post vide the cited order, where against, he served the Department till 12-06-2013 & has thus availed all service benefits of KPO from the Department in District Swat & finally re-called the same order on 12-06-2013 which was impugned by the appellant & others in Service Appeals No. 1 to 6/2017, dismissed vide order dated 04-03-2020 by this Honorable Tribunal *attached as Annex-D*, where against the appellants has filed the Civil Petitions No. 2185-86 & 2245/2020 before the Apex Court of law *attached as Annex-E*, hence, he filed an application for Seniority as S/C with his batch mates resulted in the nomination of inquiry committee comprising of:

- i. Mr. Adalat Khan, Deputy Director (F&A) ..... Chairman.
- ii. Mr. Gulzar Ahmad, Assistant Director (Lit-I) ..... Member.

The committee submitted its (02) pages inquiry report with the recommendations that the name of the appellant be included in the relevant seniority list of S/C & subsequent promotion against the S/C post with his batch mates *attached as Annex-F*.

Therefore, in view of the inquiry report, working papers was prepared, whereupon, DPC meeting was held on 18-08-2023 under the chair of the Respondent No. 1 & finally vide Notification dated 13-09-2023, the appellant was promoted to the S/C post but with immediate effect in compliance of the order of the Supreme Court of Pakistan dated 27-04-2023 in terms of the

relevant provision of APT Rules 1989 along with his adjustment in the office of the Respondent No. 2 *attached as Annex-G, H & I.*

- 5 That Para-5 is correct as explained in the fore-going Paras by the Respondents.
- 6 That Para-6 is also correct to the extent of dismissal of the service appeal of the appellant vide Judgment dated 04-03-2015 by this Honorable Tribunal.
- 7 That Para-7 is correct.
- 8 That para-8 is also correct.
- 9 That Para-9 is correct that the Departmental appeal was rejected vide order dated 23-12-2016 by the Respondent No. 1 with the observation that the appellant shall continue his services as junior clerk in the Department *attached as Annex J.*
- 10 That Para-10 is correct that the appeal No. 06/2017 was dismissed on 04-03-2020.
- 11 That Para-11 is correct.
- 12 That Para-12 is also correct regarding filing of CPLA against the Judgment dated 04-03-2020 of this Honorable Tribunal which was disposed of on 27-04-2023 by the Apex Court of law in favor of the Department.
- 13 That Para-13 is correct to the extent of the afore-said inquiry committee constituted by the Respondent No. 1, resulted in the promotion of the appellant vide the above-mentioned Notification under the Rules in vogue.
- 14 That Para-14 is incorrect that the CPLA of the appellant was disposed of on merits of the case vide order dated 27-04-2023 by the Apex Court of law resulted in the promotion of the appellant as senior clerk on dated 13-09-2023 under the Rules.
- 15 That Para-15 is incorrect, the order dated 27-04-2023 of the Apex Court has been implemented by the Department vide Notification dated 13-09-2023.
- 16 That Para-16 is correct regarding filing of an appeal dated 04-10-2023 against the Notification dated 13-09-2023 by the appellant to the Respondent No. 1.
- 17 That Para-17 is correct that vide order dated 16-01-2024, the Departmental appeal of the appellant 04-10-2023 has been rejected by the Respondent No. 2 *attached as Annex K.*
- 18 That Para-18 is incorrect as the appellant is not an aggrieved person within the meaning of Section-4 Khyber Pakhtunkhwa Service Tribunal Act 1974 read with Article-212 of the constitution of Islamic Republic of Pakistan 1973 has got no cause of action to approached this Honorable Tribunal in the titled appeal against the Respondents, therefore, the case in hand is liable to dismissed on the following grounds inter alia: -

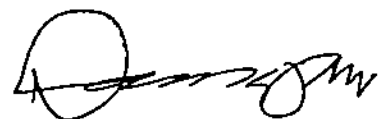
#### ON GROUNDS.

- i. Incorrect & not admitted, the appellant has been treated as per law & rules vide Notification dated 16-01-2024 in the titled appeal by the Respondent Department.

- ii. Incorrect & not admitted. The act of the Department with regard to his promotion as S/C in the year, 2023 is in compliance of the order dated 27-04-2023 of the apex court of law, hence, not entitled for promotion to the said post w.e.f 15-02-2021 under the Rules.
- iii. Incorrect & not admitted. The act of the Department with regard to his promotion as S/C in the year, 2023 is legal & under the Rules.
- iv. Incorrect & not admitted. The appellant has been treated as per Law, rules & policy by the Department with regard to his promotion as S/C in the year, 2023 is in compliance of the order dated 27-04-2023 of the apex court of law,
- v. Incorrect & not admitted. The order dated 23-08-2022 is legal in terms of rules & policy on the subject.
- vi. Incorrect & not admitted. The stand of the appellant is against the facts & legal proposition made by the Respondents in the fore going paras of the present reply, as the Notification dated 16-01-2024 is accordance to the provision of law, hence, liable to be maintained.
- vii. Incorrect & not admitted. The stand of the appellant is against the facts & legal proposition made by the Respondents in the fore going paras of the present reply, as the Notification dated 27-04-2023 & order dated 16-01-2024 are in accordance to the provision of Article-38 (e) of the constitution of 1973, hence, liable to be maintained.
- viii. Incorrect & not admitted. the appellant is not an aggrieved person within the meaning of Section-4 Khyber Pakhtunkhwa Service Tribunal Act 1974 read with Article-212 of the constitution of Islamic Republic of Pakistan 1973.
- ix. Incorrect & not admitted. However, the Respondents also seek leave to this Learned Tribunal to submit additional grounds record & case law at the time on date of hearing

Therefore, in view of the above made submissions, the appeal in hand may kindly be dismissed in favor of the Department by maintaining the Notification dated 27-04-2023 & order dated 16-01-2024 in the interest of justice.

SAMINA ALTAF  
DIRECTOR



AUTHORIZED OFFICER  
ABDUS SAMAD  
DEPUTY DIRECTOR  
E&SE Department Khyber  
Pakhtunkhwa, Peshawar  
Respondents No. 1 & 2

**BEFORE THE HONORABLE KHYBER PAKHATUNKHWA  
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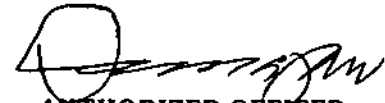
VERSUS

The Director E&SE Department & others..... Respondents

**AFFIDAVIT**

I, Samina Altaf, Director E&SE Department Khyber Pakhtunkhwa, do hereby solemnly affirm & declare on oath that the contents of the instant para wise Comments are true & correct to the best of my knowledge & belief. It is further stated on oath that in this appeal the answering Respondents have neither been placed Ex-Partee nor their defense has been struck off/cost.

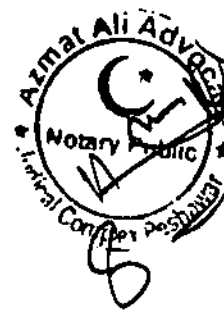
SAMINA ALTAF  
DIRECTOR



AUTHORIZED OFFICER  
ABDUS SAMAD  
DEPUTY DIRECTOR

E&SE Department Khyber  
Pakhtunkhwa, Peshawar

**ATTESTED**



10-2024



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

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**AUTHORITY LETTER**

I, Samina Altaf, Director (E&SE) Khyber Pakhtunkhwa Peshawar do hereby authorized Mr. Behramand Khan, Assistant Director (Litigation-II) of this Directorate for submission of Joint Para Wise Comments in Service Appeal No. 449/2024 case titled Said Ghani, District Swat Vs Government of Khyber Pakhtunkhwa & others, hence, an authority letter is hereby issued in favor of the above-named officer.

**(SAMINA ALTAF)  
DIRECTOR**

**AUTHORIZED OFFICER  
(ABDUS SAMAD)  
DEPUTY DIRECTOR**

**E&SE Department Khyber  
Pakhtunkhwa, Peshawar.**



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A

OFFICE OF THE:-

EXECUTIVE DISTRICT OFFICER,  
SCHOOLS & LITERACY SWAT.

16

ADJUSTMENT.

M/S Liaqat Ali and Shahzad Humair Clerks of this Office who are  
~~Declared surplus in the wake of devolution~~ are hereby adjusted against the  
newly created posts of Computer Operators Swat-07-2006 till further orders.

*Sher Afzal Khan*  
(SHER AFZAL KHAN)  
EXECUTIVE DISTRICT OFFICER,  
SCHOOLS & LITERACY SWAT.

Endst: No. 1191-45T

Dated: 27/7 2006.

- Copy of the above is forwarded to:
- 01. The District Accounts Officer, Swat.
  - 02. The B & AO Local Office.
  - 03. PA to EDO (S&L) Swat.
  - 04-05. Official concerned.

Attested  
*[Signature]*  
Advocate

EXECUTIVE DISTRICT OFFICER,  
SCHOOLS & LITERACY SWAT

Attested

*[Signature]*  
1-11-19  
Assistant District Officer  
Swat

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*[Handwritten signature]*

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# DISTRICT EDUCATION OFFICER (MALE) SWAT AT GULKADA



## OFFICE ORDER.

The following officials being qualified as Computer Operator are hereby posted as Computer Operators with immediate effect and in the interest of public service.

1. ~~Mr. Shahzad~~
2. Mr Amjad Ali.

Necessary entries to this effect should be made in their Service Books and other relevant service record..

(GUL ZAMAN KHAN)  
District Education Officer (Male),  
Swat at Gulkada.

Endstr: No: 5051-4 /ESTT/CO

Dated 31-1 /2013.

Copy of the above is forwarded for information to the:-

1. District Account Officer Swat at Saidu Sahrif.
2. Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
3. Director EMIS Cell Khyber Pukhtonkhwa Peshawar.
4. Official Concerned.

*[Handwritten signature]*  
District Education Officer (Male),  
Swat at Gulkadal

*[Handwritten signature]*  
*[Handwritten signature]*  
1-11-13  
Assistant District Officer (Ped)  
Elementary & Secondary Edu.  
Swat.

Attested

*[Handwritten signature]*

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Signature *D*

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**OFFICE OF THE DISTRICT EDUCATION OFFICER MALE SWAT AT GULKADA.**

**OFFICE ORDER:-**

It is hereby notified that the adjustment/promotion order of Mr, Said Ghani, Abdul Khaliq, Amjad Ali and Shahzad Junior clerk B-7, against the posts of Key Runch/Computer Operators BPS-12 in the Office of the District Education Offices swat, made as a result of stop gap arrangement, is hereby cancelled in the interest of public service. All kinds of extra and over Financial Advantage received by the above mentioned officials on the same posts w.e.f their adjustment order be deemed as nullity, which be recovered from the concerned officials if any.

(GUL ZAMAN KHAN)  
DISTRICT EDUCATION OFFICER  
MALE SWAT.

Endst; No. 11192-98  
the 12-6- /2013.

Dated, Gulkada,

Copy forwarded for information and necessary action to the:-

1. Secretary E&SE Govt. of Khyber Pakhtunkhwa at Peshawar.
2. Director E&SE Govt. of Khyber Pakhtunkhwa at Peshawar.
3. District Accounts Officer Swat at Saidu Sharif.
4. Deputy District Education Officer Male Local Office.
5. Deputy District Education Officer Female/Incharge DEO(F) Swat.
6. Officials concerned.
7. PA to DEO (M) Local Office.

*Gul Zaman Khan*  
DISTRICT EDUCATION OFFICER  
MALE SWAT.

*Attested*  
*Gul Zaman Khan*  
ET - DEO swat

Attested  
*[Signature]*  
Advocate

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D

AKW

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Sr. No	Date of order/proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
<p align="center"><b>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</b>  <b>At Camp Court, Swat.</b>  <b>Service Appeal No. 05/2017</b></p> <p>Date of Institution ..... 02.01.2017  Date of Decision ..... 04.03.2020</p> <p>Amjad Ali: <span style="float: right;">Appellant</span></p> <p align="center">Versus</p> <ol style="list-style-type: none"> <li>The Government of Khyber Pakhtunkhwa through Secretary Elementary &amp; Secondary Education Khyber Pakhtunkhwa Peshawar.</li> <li>The Director Elementary &amp; Secondary Education Khyber Pakhtunkhwa Peshawar.</li> <li>The District Education Officer (Male) at Gulkada, District Swat.</li> <li>District Accounts Officer District Swat at Saidu Sharif, District Swat.</li> </ol> <p align="right">Respondents</p> <p>Mr. Muhammad Hamid Mughal _____ Member (J)  Mr. Hussain Shah _____ Member (E)</p> <p align="center"><b>JUDGMENT</b></p> <p><b>MUHAMMAD HAMID MUGHAL, MEMBER: - Appellant</b></p> <p>with counsel present. Mr. Usman Ghani learned District Attorney present.</p> <p>2. This common judgment in the above captioned service appeal shall also dispose of service appeal bearing No.01/2017</p>		

04.03.2020

4.3.2020

ATTESTED

*[Signature]*  
Secretary  
Swat

Attested

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filed by Said Ghani and service appeal bearing No.06/2017 filed by Shehzad, being identical in nature having arisen from the similar facts and circumstances.

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3. The present service appeals are for setting aside the order dated 12.06.2013 whereby the adjustment/promotion order of the appellants against the post of Key Punch/Computer Operator, made as a result of staff gap arrangement, was cancelled. The appellants have also assailed the order of the appellate authority dated 23.12.2016 whereby departmental appeal of the appellants for their reinstatement against the post of Computer Operator was rejected.

4. Learned counsel for the appellants argued that the appellants were initially appointed as Junior Clerks; that the respondent No.2 asked respondent No.3 to nominate clerks for training in computer operation; that the appellants were as such nominated and adjusted as Computer Operator in the year 2001; that the appellants were placed in the seniority list of Computer Operators; that vide order dated 12.06.2013, the adjustment order of the appellants against the post of Computer Operator was cancelled and feeling aggrieved, the appellants filed Service Appeals before this Tribunal; that this Tribunal while parting with the judgment dated 04.03.2015 passed in the said service appeals, observed that the appellants may approach the competent authority for consideration of their due rights including right to promotion, financial benefits etc.; that consequently the appellants filed departmental appeal

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Attested

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however the same was rejected vide impugned order dated 23.12.2016 hence the present service appeal. Further argued that the impugned orders are not sustainable in the eyes of law; that bringing the name of the appellants on the seniority list of Computer Operators confirms the status of appellant as Computer Operator; that in case there was any irregularity in the adjustment of the appellants as Computer Operator; this lapse shall be considered on the part of competent authority and shall not be attributed to the employees. In support of his arguments learned counsel for the appellants referred to the judgment reported in 2018 SCMR page 349.

5. As against that learned District Attorney argued that the appellants have not come to this Tribunal with clean hands; that the appellants were appointed against the post of Junior Clerks and their claim to be adjusted against the post of Computer Operator on regular basis is baseless and without any lawful backing; that the appellants had earlier challenged the impugned order dated 12.06.2013 before Service Tribunal in service appeals which service appeals were dismissed by this Tribunal in limine vide common judgment dated 04.03.2015. Further argued that since the matter in issue has already been decided, therefore, the present service appeals are not maintainable being barred under Rule-23 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974.

- 6. Arguments heard. File Perused.
- 7. It is not disputed that the appellants earlier challenged the

04.03.2016

ATTESTED  
  
 MEMBER  
 Khyber Pakhtunkhwa  
 Service Tribunal  
 Peshawar

Attested

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impugned order dated 12.06.2013 before this Tribunal in service appeals and this Tribunal vide common judgment dated 04.03.2015 passed in Service Appeals No: 806/2014, 807/2014, 808/2014 and 809/2014 dismissed the same. Findings in the said common judgment are reproduced as under:

*"Perusal of record would suggest that none of the appellants were promoted in the prescribed manners against the posts of KPOs. It was admitted that the cases of the appellants were neither processed by the selection authority including Departmental Selection Committee nor were so promoted and mere allowed/directed to work against the said posts which directions cannot be considered as promotions of the appellants against the said posts. Learned counsel for the appellants also failed to show that such posts were meant for promotion and that the appellants were eligible to be considered for promotion against the said posts and were so considered by the competent authority.*

*In view of the above, there is no substance in the appeals as such the same are dismissed in limine.*

*Before parting with this judgment, it is observed that the appellants shall not be considered debarred on the strength of the judgment of this Tribunal from applying to the competent authority for consideration of their*

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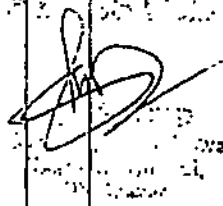
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due rights including right to promotion, financial benefits and recovery of the stated overpayments, if so advised."

8. Consequent upon the common judgment/order dated 04.03.2015 of this Tribunal, the appellants again submitted departmental appeal (reconsideration appeal), which departmental appeal was rejected vide impugned order dated 23.12.2016 on the ground that posting/adjustment of the appellants against the post of Computer Operator was not found in line with the prescribed service rules and therefore the appellants should continue against their substantial post as Junior Clerk as usual.

9. This Tribunal is of the considered view that the matter in issue in the present service appeals has already been decided vide common judgment dated 04.03.2015 of this Tribunal passed in service appeals No. 806/2014, 807/2014, 808/2014 and 809/2014. Above mentioned service appeals were dismissed by this Tribunal on the basis of findings that none of the appellants was promoted in the prescribed manner against the posts of KPOs and that their cases were not processed by the selection authority/departmental selection committee nor were so promoted and mere permission/direction to work against the post of KPO cannot be considered as promotions of the appellants against the said posts and that learned counsel for the appellants failed to show that such posts were meant for promotion and that the appellants were eligible to be considered for promotion against the said posts and

4. J. 10.10





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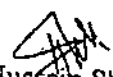
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were so considered by the competent authority.

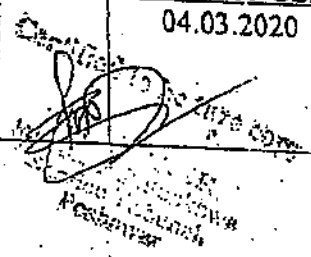
10. The observation in the last para of the common judgment dated 04.03.2015 cannot be stretched for the grant of right of appointment or promotion against the post of KPO/Computer Operator.

11. As a sequel to above the captioned service appeal and the connected service appeals as mentioned in Para-02 of this judgment, are dismissed. Parties are left to bear their own costs. File be consigned to the record room.


  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member  
Camp Court, Swat.

**ANNOUNCED**  
04.03.2020



Date of Judgment: 18-5-2020  
Number of Pages: 2400  
Number of Copies: 2600  
No. of Bundles: 4  
Date of Filing: 20-00  
Date of Appeal: 18-5-2020  
Date of Disposal: 18-5-2020

Attested  
  
Advocate

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E  
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# سپریم کورٹ آف پاکستان، اسلام آباد

www.supremecourt.gov.pk کے لیے دیکھیے

## نوٹس مع عکس عدالتی حکم برائے تاریخ سماعت مقدمہ

C.P.2185/2020 etc.

سید غنی بنام حکومت خیبر پختونخواہ

آپ کو بذریعہ نوٹس ہذا اطلاع دی جاتی ہے کہ درج بالا مقدمہ کی سماعت کے دوران سپریم کورٹ آف پاکستان، اسلام آباد کے مورخہ 15-03-2023 کو درج ذیل حکم جاری کیا ہے:-

"... Issue notice to the respondents as well as Advocate General Khyber Pakhtunkhwa, who shall be accompanied by an officer of the department concerned, well conversant with the facts of the case, on the next date of hearing."

آپ کو اس ضمن میں مطلع کیا جاتا ہے کہ درج بالا مقدمہ کی سماعت سپریم کورٹ آف پاکستان، اسلام آباد میں مورخہ 19-04-2023 صبح 9:00 بجے یا عدالت کی سہولت کے مطابق بعد میں کسی بھی وقت ہوگی۔

مقررہ تاریخ کو اسلام آباد آنے سے پہلے عدالت عظمیٰ کی ذمہ داری سے کازسٹ میں اپنے کسی کی تاریخ سماعت کی تصدیق کر لیں۔

آپ کو مزید آگاہ کیا جاتا ہے کہ آپ اپنے اصل ترمیمی پیشکش کی تصدیق سے پہلے عدالت عظمیٰ کے سامنے آکر اپنا کیس پیش کرنا ضروری ہے۔ (الف) معزز وکلاء (ب) فریقین مقدمہ اور (پ) دو افراد جنہیں عدالت عظمیٰ نے طلب کیا ہو، عدالت میں پیش ہوں۔ باقی تمام غیر حلقہ افراد کو آئین کی جانے سے کہ وہ عدالت عظمیٰ آنے سے گریز کریں اور دلچسپی رکھنے والے افراد کسی مقدمہ سے متعلقہ معلومات عدالت عظمیٰ کی ویب سائٹ 1818 سے حاصل کر سکتے ہیں۔

اسلام آباد 2023-03-15  
پتہ:-  
C.P.2185/2020, C.P.2186/2020, C.P.2245/2020

ایڈووکیٹ جنرل خیبر پختونخواہ  
ایمیر آرمی سروس

س حکومت خیبر پختونخواہ، ڈیڑھ بیگنری، ایسٹری ایڈ سیکٹوری ایجوکیشن، خیبر پختونخواہ، پشاور معرفت اسٹنڈ رجسٹرار پشاور  
س ڈائریکٹر ایڈمنسٹریشن، خیبر پختونخواہ، پشاور معرفت اسٹنڈ رجسٹرار پشاور  
ہڈ ماسٹر ایجوکیشن آفیسر (سینئر) گلگندہ، ضلع سوات  
ایڈ ماسٹر کال کونسل آفیسر، سیدو شریف، ضلع سوات  
بطابق عدالتی حکم مورخہ 15.03.2023  
ایڈووکیٹ جنرل خیبر پختونخواہ

Annexure

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(F)

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**OFFICE OF THE DEPUTY DIRECTOR (F&A), DIRECTORATE OF  
E&SE, PESHAWAR**

**Subject** INQUIRY REGARDING APPEAL RECEIVED FROM AMJAD ALI & OTHERS WORKING AS  
COMPUTER OPERATOR IN DEO (F) SWAT

**Background of the case:-**

An appeal received by worthy Director E&SE, Peshawar from Mr. Amjad Ali Mr. Shahzad Khan and Mr. Said Ghani who are working against the post of computer operators in DEO (M/F) Swat.

According to them, they were initially appointed as junior clerks, later on the Executive District Education Officer Swat posted/adjusted them against the post of computer operator/Data Entry Operator BPS-12.

Amjad Ali was adjusted / posted as KPO on 17-9-2009, Said Ghani was adjusted/posted KPO on 18-7-2011 while Shahzad was adjusted/ posted 27-7-2006.

They also stated in their appeal that they have prescribed qualification of computer operator, also got training & seminar regarding Computer operator in 2013, sudden & without any notice, the Executive District Education Officer cancelled our office order of computer operator with the remarks that it was just for stop gap arrangement.

The applicant requesting for re-instatement against the post of computer operator.

The worthy Director, constituted an inquiry of the following officers to investigate the facts.

1. Mr. Adalat Khan, Dy: Director (F&A) Local Directorate as a Chairman.
2. Mr. Gulzar Muhammad, Assistant Director (Lit) Local Directorate as a member

**Fact & Finding.**

Mr. Adalat Khan, Dy: Director (F&A) Local Directorate alongwith Mr. Gulzar Muhammad, Assistant Director (Lit), Local Directorate visited the DEO(M&F) Swat offices & checked the whole records/orders & documents.

*Attested*



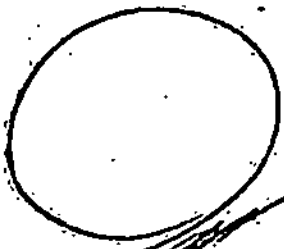
VP 39

We found that the applicants are basically appointed as Junior Clerks & posted against the post of computer operator/Data Entry Operator by the concerned Executive District Education Officer, which is wrong & against the law/rules & policy, because cadre of post cannot be changed.

There is no such rules to change the cadre of an employee on district level on need basis for some time. They can work on said posts but cannot be merged in it.


Recommendations

1. The case of the applicants is subjudice / under trail in the August Supreme Court of Pakistan so the mentioned recommendation may be implemented after the outcome of the CPLA filed by the applicants.
2. Their names should be included in the seniority list of J/Clerk from the 1<sup>st</sup> appointment.
3. They may be promoted in their own cadre.
4. They may be promoted in their own cadre to the posts as their other colleagues/person got promotion.



Gulzar Muhammad  
Assistant Director Lit  
Local Directorate

Attested  
  
Attestate

  
Adalat Khan  
Deputy Directorate (F&A)  
Local Directorate



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

Phone: 091-9225344

Email: ddadm.ece@gmail.com

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**Minutes of the meeting regarding DPC for promotion of Junior Clerk BPS-11 to the Post of Senior Clerks BPS-14 of Elementary & Secondary Education Department Khyber Pakhtunkhwa/ Khyber Pakhtunkhwa held on 18/08/2023 in the light of the decision of August Supreme Court.**

Meeting of the Departmental Promotion Committee was held on 18/08/2023 at 11:00 AM in the committee room under the Chairmanship of Director E&SE Khyber Pakhtunkhwa to discuss/scrutinized the promotion case of ministerial staff i.e Junior Clerks (B-11) to the post of Senior Clerks (B-14) of District Swat working under the Directorate of Elementary & Secondary Education Department Khyber Pakhtunkhwa.

1. Dr. Muhammad Iqbal, Director,  
E&SE KPK Peshawar **Chairman**
2. Representative of Admin Department E&SE **Member**
3. Mr. Munir Ullah Shah Deputy Director (F&A)  
Directorate of E&SE **Member**
4. Mr. Muhammad Ali Assistant Director (Admn)  
Directorate of E&SE **Member**

**Promotion of Junior Clerk BPS-11 to the Post of Senior Clerk BPS-14.**

the Departmental Promotion Committee (DPC) checked/Scrutinized the service records of the following Junior Clerks (B-11) of District Swat to the post of Senior Clerks (B-14) working under the Directorate of Elementary & Secondary Education Department Khyber Pakhtunkhwa with reference to their ACRs/ Non-involvement and Decision of the Supreme Court of Pakistan as reflected in the working papers.

Ser No	Name	Father's Name	Domicile	D.O.A	Recommendation of DPC
1.	Amjad Ali	Pardil Khan	Swat	09/07/1990	Recommended in the light of court decision. <i>S.No. 18</i>
2.	Said Ghani	Said Faqir	Swat	26/05/1991	Recommended in the light of court decision. <i>S.No. 27</i>
3.	Shehzad	Fazli Manah	Swat	25/06/1997	Recommended in the light of court decision. <i>S.No. 122</i>

1. Dr. Mohammad Iqbal, Director,  
E&SE KPK Peshawar
5. Representative of Admin Department E&SE
2. Mr. Munir Ullah Shah Deputy Director (F&A)  
Directorate of E&SE
3. Muhammad Ali Assistant Director (Admn)  
Directorate of E&SE

Approved/Authorized ADM/Secretary of Junior Clerk to Senior Clerk post 18/08/2023



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.  
Phone: 091-9225341 Email: [dladmn.esc@gmail.com](mailto:dladmn.esc@gmail.com)

Annexure <sup>6</sup> ~~1~~   
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### NOTIFICATION.

Consequent upon the recommendation of the Departmental Promotion Committee (DPC) in its meeting held on 18-08-2023 and in the light of the judgment of August Supreme Court C.P No. 2185, 2186 dated 2245 of 2020 dated 27-04-2023, the following Junior Clerks (BS-11) working in and under the Directorate of E&SE Khyber Pakhtunkhwa Peshawar are hereby promoted to the posts of Senior Clerk (BS-14) on regular basis and posted/adjusted against the vacant post of Senior Clerk (BS-14) in the offices/institutions as noted against each in the interest of public service with effect from the charge assumption of the newly promotes.

S.No	Name	Father Name	Present Station	Proposed Station	Remarks
1	Amjad Ali	Purdil Khan	DEO (F) Swat	GGHSS Zara khela Swat	AVP
2	Said Ghani	Saud Faqir	DEO (M) Swat	GHSS Shagai Swat	AVP
3	Shehzad	Fazli Manan	DEO (M) Swat.	DEO (M) Swat	AVP

Note:-

1. Charge report should be submitted to all concerned.
2. All the DEOs (M/F) Concerned are directed to handover charge to newly promotees S/Clerks in station mentioned against each, if the said post is filled by your office, the same may be vacated for newly promoted persons.

DIRECTOR  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Peshawar.

5283-86

Endst: No. F.No./Promtion of J/C to SC/Swat

Dated Peshawar the 23/9/2023

Copy forwarded to the: -

1. Registrar Supreme Court of Pakistan, Constitution Avenue G-5/2 Islamabad
2. District Education Officers (M/F) Concerned
3. District Account Officer Concerned
4. Principal/Headmistress Concerned.
5. Officials concerned.
6. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
7. Master File

Attested

Assistant Director (ADMN)  
Directorate E& Secondary Education  
Khyber Pakhtunkhwa, Peshawar

13/9/23

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**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN  
MR. JUSTICE AMIN-UD-DIN KHAN  
MR. JUSTICE JAMAL KHAN MANDOKHAIL

**C.Ps. No. 2185, 2186 & 2245 OF 2020**  
(Against the judgments dated 04.03.2020  
passed by KPK Service Tribunal in Service  
Appeal No. 01, 05 & 06 of 2017)

Said Ghani  
(C.P. No. 2185 of 2020)  
Shehzad  
(C.P. No. 2186 of 2020)  
Amjad Ali  
(C.P. No. 2245 of 2020)

....Petitioners

Versus

The Government of Khyber Pakhtunkhwa  
through Secretary Elementary & Secondary  
Education, Khyber Pakhtunkhwa, Peshawar  
and others

....Respondents

For the petitioners:

Mr. Amjad Ali (Mardan), ASC.

For the respondents:

Sardar Ali Raza, Addl. A.G. KPK.  
Fazal Rehman, DEO (M) Swat.  
Muhammad Jamil, AAO District Swat.

Date of Hearing:

27.04.2023

**ORDER**

**IJAZ UL AHSAN, J.:** After arguing the case at some length, learned counsel for the petitioners does not press this petition. He, however, submits that the department is recovering the benefits which were lawfully given to the petitioners while they were performing functions as Key Punch Operators/Computer Operators. He further submits that on being sent to their respective posts they are entitled to promotion in accordance with law by following the relevant departmental rules. Learned Additional A.G. submits that the promotions in accordance with law and departmental rules will be considered by the competent authority and such process will be completed within three months. As far as recovery of all dues are

**ATTESTED**

Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

Attested

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185 of 2020 etc

concerned, on the principle of locus poeritentialae, in view of the fact that petitioners have already received benefits and such benefits were granted to them by the Government itself without any fault or effort on the part of the respondents to obtain such benefits unlawfully, we are inclined to agree with the argument of learned counsel for the petitioners that such benefits cannot at this stage be recovered from the petitioners. Subject to the above observations, these petitions are disposed of as not pressed.

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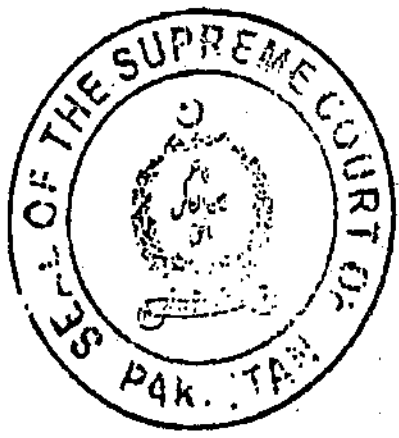
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Senior Court Associate  
Supreme Court of Pakistan  
Islamabad

0941/2023

CR No.	0941/2023	Civil/Criminal
Date of Presentation	27-4-2023	
No of Words	60	
No of Folios	6	
Facquisition Fee Rs.	0	
Copy Fee Int.	3.00	
Court Fee Stamps	0.00	
Date of Completion of Copy	01/5/23	
Date of Delivery of Copy		
Compared by/Prepared by	27/4/23	
Received by		

Islamabad, the  
27th April, 2023  
(Umair)



Attested  
Advocate



**DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION, KHYBER PAKHTUNKHWA**

**NOTIFICATION**

1. WHEREAS, the appellants M/S, Said Chani, Shahzad and Amir; All were initially appointed as Junior Clerks in the Elementary & Secondary Education Department by the then District Education Officer (M) Swat/Divisional Director of Education Malakand Division at Swat.

2. AND WHEREAS, the said Junior Clerks (Appellants) were subsequently posted/adjusted against the post of Computer Operators by the then EDO ERSE / DEO(M) Swat vide office orders No. 3680-85 dated 17-09-2009 and No. 6001-4 dated 31-01-2013 & No. 6098-6102 dated 07-02-2013.

3. AND WHEREAS, later on their posting/adjustment order against the post of computer operators was cancelled by the concerned DEO vide office order No. 11192-98 dated 12-06-2013.

4. AND WHEREAS, the said mentioned computer operators/appellants filed a service appeal No. 809/2014 in the Khyber Pakhtunkhwa, Service Tribunal Feshwar, Camp Court Swat for the redressal of their grievances.

5. AND WHEREAS, the Honorable Judge Khyber Pakhtunkhwa, Service Tribunal Feshwar, Camp Court Swat vide his judgment dated 04-03-2015 directed the appellants to approach to the competent authority for consideration of their due rights etc....

6. AND WHEREAS, consequently the appellant concerned approached to the Director ERSE (Appellate) authority through the DEO (Male/Female) Swat vide letter No. 11793 dated 28-09-2016 requesting for re-assignment against the post of computer operators.

7. AND WHEREAS, the appellate authority in pursuance of Section 17 read with sub rule (1) & (2) of the EAD Rules-2011 called for the comments from the concerned DEO's for consideration of the appeal.

8. AND WHEREAS, the DEO concerned provided the requisite record/comments accordingly vide his letter No. 11792 dated 28.9.2016 & 11793 dated 29.9.2016.

9. AND WHEREAS, having gone through the comments/report and record as provided by the DEO's (Male & Female) Swat in support to the appeal of the aggrieved appellants; it was revealed that the posting/adjustment of M/S, Mr. Said Chani, Shahzad and Amir; All (Appellants) against the post of Computer Operators was not found in-line with the prescribed services rules notified by the ESSE Department dated 22-01-2013.

10. NOW, THEREFORE, in exercise of the powers conferred under Section-17 rule (2), (a) of Khyber Pakhtunkhwa Government Services (Efficiency & Discipline) Rules-2011, the Director ERSE/Appellate authority, upon the order of DEO (M) Swat issued vide No. 11192-98 dated 13-06-2013 and object of the appeal lodged by M/S Mr. Said Chani, Shahzad and Amir; All (Appellants) attached to the concerned Computer Operator post of the DEO (M) Swat (Appellants) it is hereby notified that they should continue against their respective post as Junior Clerks (Appellants).

**DIRECTOR**  
Elementary & Secondary Education  
Khyber Pakhtunkhwa, Feshwar

Reference No. 1390-95  
M.No. 15-23/18/2017 Board Feshwar on the 21-12-2016

Copy of the above is forwarded for information and retention to the:-

- 1- District Education Officer (Male) Swat vide his letter No. 11793 dated 28.9.2016.
- 2- District Education Officer (Female) Swat vide his letter No. 11793 dated 28.9.2016.
- 3- District Accounts Officer Swat.
- 4- Appellants concerned.
- 5- PA to the Director ERSE, Khyber Pakhtunkhwa Feshwar.

Assistant Director (Admin),  
ERSE, Khyber Pakhtunkhwa, Feshwar

Attested

Handwritten marks: 29, 22, and a signature.



DIRECTORATE OF ELEMENTARY & SECONDARY EDUCATION  
KHYBER PAKHTUNKHWA PESHAWAR.  
No. 5629 /F.No./A-23/MS/Appeal/Amjad Ali & other C/Operator Swat  
Dated Peshawar the 16 / 01 /2024  
Phone: 091-9225344 Email: ddndmn.eso@gmail.com

To

District Education officer  
(Male) Swat

Subject:

APPEAL FOR SENIORITY FROM THE DATED AS OTHER COLLEAGUES  
OF THE SAME BATCH WITH BACK BENEFITS.

Memorandum:

I am directed to the subject cited above and to enclose herewith with a copy of letter No SO (P-M)E&SED/2-6/DPC Meeting/Mr.Said Ghani & others/Senior Clerk/Swat/2023 dated 27-12-2023 alongwith its enclosures in respect of Mr. Said Ghani S/Clerk office of DEO (M) Swat received from Section Officer (P-Male) Govt. of Khyber Pakhtunkhwa E&SED Peshawar and to state that his appeal has been examined/analyzed by this office and once again rejected by the appellate authority, hence inform the concerned S/clerk accordingly. H W L

Assistant Director (Admn)  
Directorate E& Secondary Education  
Khyber Pakhtunkhwa, Peshawar

Endst; No. \_\_\_\_\_

Copy forwarded to the: -

1. Section Officer (P-Male) Govt. of Khyber Pakhtunkhwa E&SED Peshawar w/r to his letter No. SO (P-M)E&SED/2-6/DPC Meeting/Mr.Said Ghani & others/Senior Clerk/Swat/2023 dated 27-12-2023
2. Mr. Said Ghani S/Clerk office of DEO (M) Swat
3. PA to Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.
4. Master File.

Assistant Director (Admn)  
Directorate E& Secondary Education  
Khyber Pakhtunkhwa, Peshawar

D:\Admn\Irshad Ali\MS\Appeal Rejected\said ghani appeal rejected 2024.doc

Attested  
Advocate

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23/1/24