# FORM OF ORDER SHEET

Court of		

#### Implementation Petition No 957 /2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	29.08.2024	The implementation petition submitted today by Mr. Shah Faisal Nasapi Advocate. It is fixed for
		implementation report before Single Bench at Peshawar
		on 24.09.2024. Original file be requisitioned. AAG has
	•	noted the next date. Parcha Peshi given to counsel for
		the petitioner.
	98.27 <u>1</u> . 1	By order of the Chairman
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# <u>BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER</u> <u>PAKHTUNKHWA, PESHAWAR</u>

Execution petition No. 9 57/2024
In
Service Appeal No.2391/2021

Fazal Ahad S/O	Muhammad	Afzal SPS	T (BPS-	14) GP	S Noshad
Abad, Mardan.					
•				Petit	ioner
		Versus			-
Government of	•		_		,,
Khyber Pakhtunk	hwa, Peshaw	ar & Others	<u>.</u> 	.Respo	ndents

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Through

Dated: 23.08.2024

Applicant

Shah Faisal Nasap

Advocate High Court

Peshawar



# BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

Exec	ution petition No. 957 /2024
In	Khyber Pakhtukhwa Service Tribunal
Servi	ice Appeal No.2391/2021 Diary No. 15278
	Dated 29.08.2024
Faza Abad	Ahad S/O Muhammad Afzal SPST (BPS-14) GPS Noshad , Mardan
	Petitioner
	Versus
1.	Government of Khyber Pakhtunkhwa through Chief
	Secretary, Khyber Pakhtunkhwa, Peshawar.
2.	The Secretary Finance Department, Khyber Pakhtunkhwa,
	Civil Secretariat, Peshawar.
<i>3</i> .	The Secretary Establishment Department, Khyber
	Pakhtunkhwa, Civil Secretariat, Peshawar.
4.	The Secretary Elementary & Secondary Education
	Department, Khyber Pakhtunkhwa, Civil Secretariat,
	Peshawar.
<i>5.</i>	The Director Elementary & Secondary Education Department,
	Peshawar.

EXECUTION/IMPLEMENTATION PETITION
FOR THE IMPLEMENTATION OF THE
JUDGMENT DATED:03.11.2023 PASSED BY
THIS HON'BLE TRIBUNAL IN LETTER AND
SPIRIT.

.....Respondents

#### Respectfully Sheweth:

That the petitioner humbly submits as under;

- That the petitioner filed Service Appeal bearing No.2375/2021 before this August Service Tribunal, against the impugned service rules notified on 24.07.2014 by the Government/Respondents.
- That the appeal of the petitioner was finally heard by this Hon'ble Tribunal on dated:03.11.2023 and is decided as follows:-
  - "8. So appellants having Higher Education in the subject of Computer Science were treated discriminatory as they were deprived from further prospects of promotion which every civil servants have during his service. Appellants are civil servants like all others specially in their own cadre and teaching line, ignoring appellants subject in 2014 service rule by mentioning all other subjects is the disparity and anomaly in service rules of the teaching cadre. Although appellants possessed professional qualification of B.Ed and M.Ed but due to not mentioning their subject of Computer Science in upper portion of qualification and eligibility deprive appellant from promotion, which is against the settled norms of justice and constitution of Islamic Republic of Pakistan beside Section (Appointment, Promotion and Transfer) Rules,

(3)

1989 and Section 9 of Civil Servant Act, 1973. So it is anomaly therefore, we sent the matter to the authority for considering appellant's subject of computer science and its inclusion in column No.03 of the Service Rules of 2014. Costs shall follow the event, Consign". (Copy of the consolidated judgment dated:03.11.2023 is attached as Annexure "A").

- 3. That after obtaining copy of the judgment dated:03.11.2023 the same was submitted to the respondents for implementation of his grievance coupled with an application, but the respondents/department failed to do so, which is the violation of the judgment of this Hon'ble Tribunal. (Copy of application is attached as Annexure "B").
- 4. That the petitioner having no other remedy but to file this implementation petition under the Khyber Pakhtunkhwa Service Tribunal Act & rules 1974 and enabling provision of CPC read with other enabling provisions on the matter.
- 5. That this Hon'ble Tribunal under the above mentioned enactments has got the jurisdiction to order for the Execution & Direct respondents to implement the order of this Hon'ble Tribunal dated:03.11.2023.

It is, therefore, most humbly prayed that on acceptance of the instant Execution Petition, the



Respondents may kindly be directed implement the judgment dated:03.11.2023 passed by this Hon'ble Tribunal in Appeal No.2375/2021 in letter and spirit.

Any other relief deems proper and not specifically asked for may also be granted in circumstances of the case.

Through

Shah Faisal Nasa

Advocate, High Cou

Peshawar

**Applicant** 

#### AFFIDAVIT

Dated: 23.08.2024

I, Fazal Ahad S/O Muhammad Afzal SPST (BPS-14) GPS Noshad Abad, Mardan (Petitioner), do hereby solemnly affirm and declare on oath that the contents of the accompanying petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT



## BEFORE THE HON'BLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR

execution petition	on Ivo	/2024			
In				• · ·	
Service Appeal I	No.2391/20	21			
		٠.			
Fazal Ahad S/O Abad, Mardan	Muhamma	d Afzal SP	ST (BPS-14)	) GPS N Petition	oshad <i>ner</i>
		Versus		;	
Government of Khyber Pakhtuni	Khyber F khwa, Pesh	Pakhtunkhu	va through hers	Chief .Respoi	Secretar, ndents
APPLIC	ATION	FOR	SUSPENS	ON.	OF
IMPUG	NED OI	FFICE	ORDER	BEAR	ING
NO.487	4-4979 D	ATED:16	.08.2024	TILL '	THE
FINAL		ON OF			
EXECUT	TION PET	ITION.			

#### **Respectfully Sheweth:**

- 1. That the above mentioned Execution petition has been filed before this Hon'ble Tribunal which no date of hearing has not been fixed yet.
- 2. That the respondents on the basis of malafide issued an Office Order NO.4874-4979 DATED: 16.08.2024 with subject "Revised Schedule of PREDPC Meeting for promotion to SST Post BPS-16" which is in clear cut violation of the order of this Hon'ble Tribunal dated:03.11.2023.



- That petitioner are hopeful for success of Execution petition.
- 4. That balance of convenience also lies in suspension of impugned office order by maintaining status quo.
- 5. That if the impugned office order is not suspended the petitioner will suffer irreparable loss.

It is, therefore, respectfully prayed that on acceptance of this application, the impugned office order dated:16.08.2024 may kindly be suspended till the final disposal of the instant Execution petition.

Applicant 7

Through

Shah Faisal Nasapi

Advocate, High Court

Peshawar

#### **AFFIDAVIT**

Dated: 23.08.2024

I, Fazal Ahad S/O Muhammad Afzal SPST (BPS-14) GPS Noshad Abad, Mardan (*Petitioner*), do hereby solemnly affirm and declare on oath that the contents of the accompanying **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Court.

DEPONENT



#### KHYBER PAKHTUNKHWA SERVICE TRIBU **PESHAWAR**

Service Appeal No.2375/2021

BEFORE:

MRS. RASHIDA BANO

MR. MUHAMMAD AKBAR KHAN

MEMBER (J)

Annea

MEMBER (E)

Mr. IkramUllah, PST (BPS-12) GPS Dawa Khan Kalay, District Malakand.

(Appellant)

#### **VERSUS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.

2. The Secretary Finance Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

3. The Secretary Establishment Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

4. The Secretary Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

5. The Director Elementary & Secondary Education Department, Peshawar.

(Respondents)

Mr.Noor Muhammad Khattak

Advocate -

For Appellant

Mr. Muhammad Jan

District Attorney

For Respondents

Date of Institution.......08.02.2023 Date of Hearing......03.11.2023

#### **JUDGMENT**

RASHIDA BANO, MEMBER (J): The instant service appeal has been instituted under section 4 of the Khyber Pakhtunkhwa Service Tribunal, Act 1974 with the prayer copied as below:

"On acceptance of this appeal, the impugned service rules Notified on 24.07.2014 may kindly be amended/modified to the TESTED extent of serial No.1B column No.3 of the table by



including/inserting the Computer Science subject of the appellant in column No.3 and the impugned service rules dated 24.04.2018 may kindly be amended/modified to the extent of Serial No. 2 in column No.5 of the table by allocating promotion quota for the appellant's cadre i.e PST and the respondents may further please be directed to consider the appellant for promotion to the posts of SST or SST-IT with all back benefits.

- 2. Through this single judgment we intend to dispose of instant service appeal as well as connected service appeals which are given as under.
  - 1. Service Appeal No.12220/2020
  - 2. Service Appeal No. 11498/2020
  - 3. Service Appeal No. 2376/2021
  - 4. Service Appeal No. 2377/2021
  - 5. Service Appeal No. 2378/2021
  - 6. Service Appeal No. 2379/2021
  - 7. Service Appeal No. 2380/2021
  - 8. Service Appeal No. 2381/2021
  - 9. Service Appeal No. 2382/2021
  - 10. Service Appeal No. 2383/2021
  - 11. Service Appeal No. 2384/2021
  - 12. Service Appeal No. 2385/2021
  - 13. Service Appeal No. 2386/2021
  - 14. Service Appeal No. 2387/2021
  - 15. Service Appeal No. 2388/2021
  - 16. Service Appeal No. 2389/2021
  - 17. Service Appeal No. 2390/2021
  - 18. Service Appeal No. 2391/2021
    - 19. Service Appeal No. 2392/2021
    - 20. Service Appeal No. 2393/2021
    - 21. Service Appeal No. 2394/2021
    - 22. Service Appeal No. 2395/2021
    - 23. Service Appeal No. 2396/2021
    - 24. Service Appeal No. 2397/2021
    - 25. Service Appeal No. 2398/2021
    - 26. Service Appeal No. 2399/2021
    - 27. Service Appeal No. 2400/2021
    - 28. Service Appeal No. 2401/2021

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EXAMINER

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Jeshawar



29. Service Appeal No. 1331/2022

As in all these appeals common question of law and facts are involved.

- Brief facts of the case as given in the memorandum of appeal are that, the appellants were appointed as Primary School Teacher in Education Department vide order dated 02.06.2012 and was performing duties up to the entire satisfaction of their superiors. Respondents framed service rules of appellant cadre as well other teaching cadre vide notification dated 24.07.2014, wherein at Sr. No. 1B the of post SST (BPS-16) for which the qualification and eligibility has been mentioned in column No. 3. Respondent included all subjects except the subject of appellant i.e. Computer Science in the eligibility criteria. Respondents vide another notification dated 24.04.2018 notified Service Rules for the different cadre of Information Technology including the post of SST-IT mentioned at Sr. No. 2 in column No.5 of the table wherein eligibility for promotion to the post of SST-IT was fifty percent by initial recruitment and fifty percent by promotion on the basis of senioritycum-fitness from amongst the CT-IT with five year service as such and having the qualification prescribed for the post of SST-IT. But in the said rules again the cadre/subject of the appellants have been ignored i.e PST-Computer Science. Feeling aggrieved from both the notifications, appellant alongwith others filed departmental appeal, which was not responded, hence the instant service appeal.
- 4. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned District Attorney for the respondents and perused the case file with connected documents in detail.
- 5. Learned counsel for the appellant argued that by not including the ATTESTED subject of computer science in the impugned service rules dated 24.07.2014

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and not allocating the quota for appellant cadre i.e PST Computer Science in the impugned service rules dated 24.08.2018 is against the law, facts, norms of natural justice and material on the record, hence not tenable and liable to be modified/rectified to the extent of inclusion of subject of computer science in the eligibility criteria in the service rules. He further argued that theappellant has not been treated in accordance with law and rules and respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973. He contended that the said service rules are violative of Section 9 of the Civil Servant Act, 1973 read with Rule-7 of the (Appointment, Promotion and Transfer) Rules, 1989.

- 6. Conversely, learned District Attorney on behalf of respondents contended that appellants have been treated in accordance with law and rules. He further contended that framing service rules/structure for promotion to different teaching cadre employee of the department including the appellant against the SST (Science/General) posts under the specified reserved quota for promotion are prerogative of respondent department which they notified vide notification dated 24.07.2014. He further contended that service rules/structure are mainly based on natural justice and equality, wherein, each and every teaching cadre has a prospect of promotion to the higher post in the department on the basis of seniority-cum-fitness.
- 7. Perusal of record would reveals that appellants seeks modification in the service rules notified on 24.07.2014 to the extent of inserting the computer science subject of the appellant in Column No. 3 and service rules dated 24.04.2018 in column No. 5 by allocating promotion quota for the appellant's cadre i.e PST. The appellants were appointed as PST BPS-12 in education department vide order dated 10.05.2010, having qualification of B.Sc in Computer Science and B.Ed and M.Ed. In accordance with service rules

EXAMINER
Khyber Pakhtukhwi
Servige Tribunat
Pakhtuk

framed and notified on 24.07.2014 qualification and eligibility for the post of SST BPS-16 thas been mentioned in column No.3 of organogram, wherein

subject of the appellant computer science was not mentioned and includes all

other subjects which is as under:

1. At least second class Bachelor Degree's from a recognized University on need basis from the following groups with two subject

- (a) Chemistry, Botany or Zoology or
- (b) Physics, Maths "A" or "B" or Statistics or
- (c) Humanities and other equivalent groups at degree level with English as compulsory subject; and
- (II) Bachelor of Education or Master of Education (Industrial Art or Business Education) or M.A Education or equivalent qualification for a recognized University.

So subject of the appellant was ignored in 2014 service rules. Appellant also ignored in service rules framed in the field of information technology by the respondents notified on 24.04.2018 wherein post of Secondary School Teacher Information Technology (BPS-16) was included at serial No.2 and in column No.5 of the table of eligibility for promotion to the post of SST-IT which is as follows:

- (a) 50% by promotion on the basis of seniority cum fitness from amongst the CT-IT with 5 year service as such and having the qualification prescribed for the post of SST-IT.
- (b) 50% by initial recruitment
- So appellants having higher education in the subject of Computer Science were treated discriminatory as they were deprived from further prospects of promotion which every civil servant have during his typice.

Appellants are civil servants like all others specially in their own cadre and teaching line, ignoring appellants subject in 2014 service rule by mentioning all other subjects is the disparity and anomaly in service rules of the teaching cadre. Although appellants possessed professional qualification of B.Ed and M.Ed but due to not mentioning their subject of Computer Science in upper portion of qualification and eligibility deprive appellants from promotion, which is against the settled norms of justice and Constitution of Islamic Republic of rakistan beside Section 7 of (Appointment, Promotion and Transfer) Rules, 1989 and Section 9 of Civil Servants Act, 1973. So it is anomaly therefore, we sent the matter to the authority for considering appellant's subject of computer science and its inclusion in column No. 3 of

Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10th day of November, 2023.

the Service Rules of 2014. Costs shall follow the event. Consign.

(MUHAMMAD AKBAR KHAN) Member (E)

(RASHIDA BANO) Member (J)

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ORDER 10.11.2023

- 1. Learned counsel for the appellant present. Mr. Muhammad Jan learned District Attorney alongwith Behramand Khan, A.D and Faheem Khan, Assistant for the respondents present.
- 2. Vide our detailed judgement of today placed on file, we sent the matter to the authority for considering appellant's subject of computer science and its inclusion in column No. 3 of the Service Rules of 2014. Costs shall follow the event. Consign.
- 3. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 10<sup>th</sup> day of November, 2023.

(Muhammad Akbar Khan) Member (E) (Rashida Bano) Member (J)

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(TS4), benul A basilad? +Vppeal No.2377/2021 (T29) Islia M (502/9785.oN leadqA Aluhammad Raees GUI (SPS1) 2. Appeal No.11498/2020 Foral Mayar (CT) 1502012221 IN hoop FOR INVI-PORT both with an indianamialquii od ozgala gam alasquis, soi mod ai algestest representation, the judgment dated 03 11 2023 of Services. Uribunal KP. still to swindered no first beginsted that on acceptance of this enumpfoldpnos sag 3 of the Service Rules of 2014. Copy of indiment is intuched harrowth 901 तार annula") no noisuloni sii ban sonsio8 ranqmo" Fo tosidus 'sanodispa partially accepted and the matter send to the authority for considering ston doidar, islanger, bai nos blait gadt sound grabingen for and that teching aggressed, the applicants filed department appeals, a bach April Computer Science. विजेलिकों मध्यतं अवस्ति स्थामध्योत्त्वा अपि कि विभोतार अधिक अपि मोद्दा अवतः por our of the (11) 188 to find an following seminaring up to gui and bans dans sit sani ans smoa è chia 11, 10 ingroun, undi scortifi with a gifter that the risard add the distinguishing of with land designation being relatively some CHI ISS to using other medianical not difficult about a tolder all to 3 of number in 2 of third is boundman with less to किन्द्र जी। क्षांक्रियों सुप्रविवधिको एक्षांसामनीस १० अभित्र सञ्जीसि योग्य है आ। 251-72; Califor 811/2 page trait materillan valtura ober bratis arc mounting के अपे क्षित्रकांग्य होतितंत्रकें विभागितं अधिक क्षित्र कार्यात्र कार्यात्व कार्यात्व to tooply out Proses istosithe off the federloui bolirouse, in normages मी स्थापिक को (ते।-श्विद्धा) १४% कारी की कि सि-। की brane के लंकला व participants house notheritains state other uniquest to some the coa thus standalde la salar pai mas bambil bandaman mammasbadi neli International indication (internality Auremobilia) in a fit -2.181 (adams I trodas), quantill an baltinique, amailtique ad batt barrie a il La palantain WEILENSIA WY TUN 19181 J. H (VES 10) FEBETHEO GETTER EXTREMENT TO VOLLVENTIANT Harand Proper Chand अस्यायो जी अस्तिमासी मेरी - मं सूचे a 8,1 puny मानामकेर है इस्ताव्याच्या क्राक्यांस हत्।

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To

The Director Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar.

#### Through Proper Channel

Subject:

# REPRESENTATION FOR IMPLEMENTATION OF JUDGMENT DATED 03/11/2023 OF SERVICE TRIBUNAL KP. PESHAWAR

#### Respected sir

- 1. It is stated that the applicants appointed as Primary School Teacher BPS-12 in the Elementary & Secondary Education Department.
- 2. That the department concerned framed service rules of applicant's cadre as well other in teaching cadre vide notification dated 24/07/2014, wherein at Serial no 1-B of SST (BPS-16) for which the qualification and eligibility has been mentioned in Column No 03. The department concerned included all the subjects, except the subject of applicants i.e. Computer Science in the eligibilitycriteria, the department concerned anther notification dated 24/04/2018 notified service rules for the different cadres of information technology included the post of SST (IT), mentioned at Serial No. 2 in column No.5 of the table, wherein eligibility for promotion to the post of SST (IT) was 50% by initial recruitment and 50% by promotion on the basis of seniority cum-fitness from among CT-IT with 5 years services as such and having the qualification as prescribe for the post of SST (IT), but in the said rules again the cadre/subject of the applicants have been ignored i.e. Computer science.
- 3. That feeling aggrieved, the applicants filed department appeals, which were not respondent hence they field Service Appeals, which were partially accepted and the matter send to the authority for considering applicants subject of Computer Science and its inclusion on column No 3 of the Service Rules of 2014, copy of judgment is attached herewith for ready reference.

It is, therefore most humbly requested that on acceptance of this representation, the judgment dated 03/11/2023 of Service Tribunal KP, Peshawar in Service Appeals may please be implementation in letter and spirit

Dated: - 17/01/2024

1 Appeal No. 12220/2020

FAZAL HAYAT (CT)

3 Appeal No. 237/621

M.BILAL (PST)

2.Appeal No. 11948/2020

MUHAMMAD RAEES GUL(PST)

4 Appeal No. 2377/21

SHAHZAD AHMED (PST)



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5 Appeal No. 2378/21

SAJID KHAN (PST)

7 Appeal No. 2380/21

AFZAL SHAH (PST)

9 Appeal No. 2382/21

M. SOHAIL (PST)

11 Appeal No. 2384/21

MUBASHIR MEHMOOD (PST)

13 Appeal No. 2386/21

NAIMAT ULLAH KHAN (PST)

15 Appeal No. 2388/21

FIDA HUSSAIN (PST)

17 Appeal No. 23890/21

ABDUL LATIF (PHST)

19 Appeal No. 2392/21

FAZAL SHAH (PST)

21 Appeal No. 2394/21

SHAMS UR REHMAN (PST)

23 Appeal No. 2396/21

M. ASAD ULLAH (PST)

25 Appeal No. 2398/21

SAHIBZADA KALEEM ULLAH (CT)

27 Appeal No. 2400/21

ISHFAQ SAEED (PST)

29 APPEAL NO.1331/2022

SHAHID HUSSAIN (PST)

6 Appeal No. 2379/21 M.SIBTAIN (PST)

8 Appeal No. 2381/21

RIZWAN AMAD (PST)

10 Appeal No. 2383/21

ZEESHAN AHMED (PST)

12 Appeal No. 2385/21

MUSLIM SHAH (PST)

14 Appeal No. 2387/21

KAUSAR KHAN (PST)

16 Appeal No. 2389/21

SHAH HUSSAIN (PST)

18 Appeal No. 2391/21

FAZAL AHMAD (PST)

20 Appeal No. 2393/21

TANVEER AHMAD (PST)

22 Appeal No. 2395/21

JUNAID AHMAD JAMI (AT)

24 Appeal No. 2397/21

WAQAS (DM)

26 Appeal No. 2399/21

RASHID AHMAD KHAN (PST)

28 Appeal No. 2401/21

HAJI REHMAN (SPST)

## Khyber Pakhtunkhwa Peshawar Thredorate of Elementary and Secondary Education

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REVISED SCHEDULE OF PRE-OPC MEETINGS FOR PROMOTION TO SSI POSIS (BES-14) GHI Day · 129iqnS

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### Directorate of Elementary and Secondary Education Khyber Pakhtunkhwa Peshawar

No.4874-4979 no /01/Promotion to SSTs/2024/Estab-1 (M) Dated: Peshawar the 16/8/2024

Τo

As districtEducation Officers (Male) Khyber Pakhtunkhwa

## Subject: REVISED SCHEDULE O PRE-DPC MEETINGS FOR PROMOTION TO SST POSTS (BPS-16)

I am directed to refer to the officer letter no. 1050-78 dated 05/08/2024 on the subject cited above and to state that in the light of this directorate letter No. 4230-J/AD (LIT: II) dated 13/08/2024 (Annex-A), update the seniority lists in respect of those teachers regularized under the (Appointment&Regularization) Act,2017

It is, therefore, requested to attend the Pre-DPC Meetings as per the following revised schedule along with working papers, final seniority list of all cadres duly signed by DEO Concerned (each Page) and personal files/documents as per he give instructions please

Assistant Director (Estab-M-1) Elementary & Secondary Education Khyber Pakhtunkhwa Peshawar

Ends	t No	

Copy forwarded to the

- 1 PS to Secretary E&SED Khyber Pakhtunkhwa Peshawar
- 2 PA to Director E&SED Khyber Pakhtunkhwa
- 3 Master File

Assistant Director (Estab-M-1)

Elementary &Scondary Education Khyber Pakhtunkhwa Peshawar



