

Service Appeal No.1104/2022 titled "Tariq Khan versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others", Service Appeal No.1105/2022 titled "Muhammad Nasir versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" Service Appeal No.1106/2022 titled "Tufail Khan versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" Service Appeal No.1107/2022 titled "Noman versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" Service Appeal No.1108/2022 titled "Wali Ur Rahman versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" and Service Appeal No.1109/2022 titled "Muhammad Tariq Khan versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" declared on 21.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,PESHAWAR

BEFORE: **KALIM ARSHAD KHAN** ... **CHAIRMAN**
MUHAMMAD AKBAR KHAN ... **MEMBER(Executive)**

Service Appeal No.1104/2022

Date of presentation of Appeal.....07.07.2022
Date of Hearing.....21.10.2024
Date of Decision.....21.10.2024

Tariq Khan Office Assistant (B-16) (ACB), o/o District Public Prosecutor, District Charsadda.....(***Appellant***)

Versus

1. **The Government of Khyber Pakhtunkhwa**, Secretary Home Department, Civil Secretariat, Peshawar.
2. **Director General Prosecution**, Khyber Pakhtunkhwa, Peshawar.
.....(***Respondents***)

Service Appeal No.1105/2022

Date of presentation of Appeal.....07.07.2022
Date of Hearing.....21.10.2024
Date of Decision.....21.10.2024

Muhammad Nasir, Office Assistant (B-16) (ACB), o/o Directorate of Prosecution, Peshawar.....(***Appellant***)

Versus

1. **The Government of Khyber Pakhtunkhwa**, Secretary Home Department, Civil Secretariat, Peshawar.
2. **Director General Prosecution**, Khyber Pakhtunkhwa, Peshawar.
.....(***Respondents***)

Service Appeal No.1106/2022

Date of presentation of Appeal.....07.07.2022
Date of Hearing.....21.10.2024
Date of Decision.....21.10.2024

Tufail Khan Office Assistant (B-16) (ACB), o/o District Public Prosecutor, District Mardan.....(***Appellant***)

Versus

1. **The Government of Khyber Pakhtunkhwa**, Secretary Home Department, Civil Secretariat, Peshawar.

Service Appeal No.1104/2022 titled "Tariq Khan versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others"; Service Appeal No.1105/2022 titled "Muhammad Nasir versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" Service Appeal No.1106/2022 titled "Tufail Khan versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" Service Appeal No.1107/2022 titled "Noman versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" Service Appeal No.1108/2022 titled "Wali Ur Rahman versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" and Service Appeal No.1109/2022 titled "Muhammad Tariq Khan versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" declared on 21.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

2. **Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.**
.....(**Respondents**)

Service Appeal No.1107/2022

Date of presentation of Appeal.....07.07.2022
Date of Hearing.....21.10.2024
Date of Decision.....21.10.2024

Noman Office Assistant (B-16) (ACB), o/o District Public Prosecutor,
District Bajaur.....(**Appellant**)

Versus

1. **The Government of Khyber Pakhtunkhwa, Secretary Home Department, Civil Secretariat, Peshawar.**
2. **Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.**
.....(**Respondents**)

Service Appeal No.1108/2022

Date of presentation of Appeal.....07.07.2022
Date of Hearing.....21.10.2024
Date of Decision.....21.10.2024

Wali Ur Rehman Office Assistant (B-16) (ACB), o/o District Public
Prosecutor, District Mansehra.....(**Appellant**)

Versus

1. **The Government of Khyber Pakhtunkhwa, Secretary Home Department, Civil Secretariat, Peshawar.**
2. **Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.**
.....(**Respondents**)

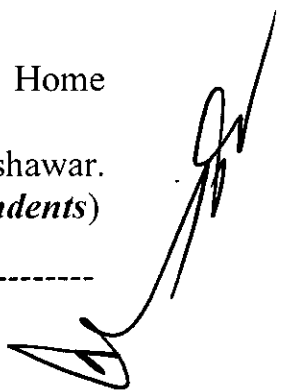
Service Appeal No.1109/2022

Date of presentation of Appeal.....07.07.2022
Date of Hearing.....21.10.2024
Date of Decision.....21.10.2024

Muhammad Tariq Khan Office Assistant (B-16) (ACB), o/o District
Public Prosecutor, District Lakki Marwat.....(**Appellant**)

Versus

1. **The Government of Khyber Pakhtunkhwa, Secretary Home Department, Civil Secretariat, Peshawar.**



Service Appeal No.1104/2022 titled "Tariq Khan versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others". Service Appeal No.1105/2022 titled "Muhammad Nasir versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" Service Appeal No.1106/2022 titled "Tufail Khan versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" Service Appeal No.1107/2022 titled "Noman versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" Service Appeal No.1108/2022 titled "Wali Ur Rahman versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" and Service Appeal No.1109/2022 titled "Muhammad Tariq Khan versus The Government of Khyber Pakhtunkhwa Secretary to Government of Khyber Pakhtunkhwa Home Department, Civil Secretariat, Peshawar and others" declared on 21.10.2024 by Division Bench comprising of Mr. Kalim Arshad Khan, Chairman, and Mr. Muhammad Akbar Khan, Member Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

2. **Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.**
.....(**Respondents**)

Present:

Mr. Muhammad Maaz Madni, Advocate.....For the appellants
Mr. Muhammad Jan, District Attorney.....For respondents

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED CORRIGENDUM DATED 10.03.2022 WHEREBY REGULAR PROMOTIONS OF THE APPELLANTS TO THE POST OF OFFICE ASSISTANT (BPS-16) HAVE BEEN WITHDRAWN AND CONVERTED INTO ACTING CHARGE BASIS AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEALS DATED 22.03.2022 OF THE APPELLANTS WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment, the above appeals, are jointly taken up, as all are similar in nature and almost with the same contentions, therefore, can be conveniently decided together.

02. Appellants' cases in brief, as per averments of appeals are that they were promoted as Office Assistants (BPS-16) on regular basis vide order dated 04.03.2021; that after lapse of sufficient time, vide impugned corrigendum order dated 10.03.2022, wherein, it was mentioned that the promotion of the appellants may be read as on acting charge basis instead of regular basis; that

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the corrigendum order dated 10.03.2022 was challenged by the appellants through departmental appeals but the same were not responded, hence, the instant service appeals.

03. On receipt of the appeals and their admission to full hearing, the respondents were summoned who put appearance and contested the appeals by filing replies. The defense setup was a total denial of the claim of the appellants.

04. We have heard learned counsel for the appellants and learned District Attorney for respondents.

05. The learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned District Attorney District Attorney controverted the same by supporting the impugned order(s).

06. In the present cases, the appellants assert that they were promoted to the position of Office Assistants (BPS-16) on regular basis, as per the promotion order dated March 4, 2021. However, they contend that the subsequent corrigendum, issued on March 10, 2022, retroactively altered the nature of their promotion from regular to acting charge basis. The appellants further argue that their efforts to challenge this corrigendum through departmental appeals went unanswered, prompting them to file the current service appeals. This situation raises significant concerns

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regarding the legitimacy of the corrigendum and the procedural fairness of the appellants' promotion process.

07. Admittedly, the appellants were promoted on regular basis vide order dated 04.03.2021 on the recommendation of the Departmental Promotion Committee. The promotion order was partially modified vide corrigendum order dated 10.03.2022 and regular promotion was said to be read as acting charge basis instead of regular promotion. The DPC while making recommendation for promotions found as under:

"The meeting commenced with the recitation from the Holy Quran. Thereafter, the chair welcomed the participants. Deputy Secretary Judicial, Home & Tribal Affairs Department apprised the committee that there are (17) vacant posts (15 clear+02 resultant) of Assistant (BS-16) falling under the promotion quota in the Directorate of Prosecution and District Prosecution offices. He added that according to Khyber Pakhtunkhwa, Prosecution Service Rules, 2010 as amended in 2019, the method of promotion of the Assistant (BS-16) has been prescribed as below:

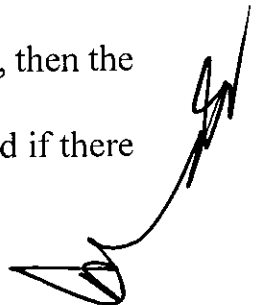
- i) 25% by initial recruitment.
- ii) 75% by promotion on the basis of seniority-cum-fitness from amongst the Senior Clerk with at least five years' service as Senior Clerk and Junior Clerk.

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Therefore, 17 Senior Clerks (BS-14) are required to be promoted as Assistant (BS-16). Keeping in view vacant posts and provision of the Rules ibid, the committee considered the panel of Senior Clerks (BS-14) as per notified seniority list and recommended the following Senior Clerks for promotion to the post of Assistant (BS-16) at Serial No.1 to 19 on regular basis, however, the official reflected at Serial No.5 has to be superseded on his own request while the official reflected at Serial No.16 has not been considered as he opted to be promoted to the post of Assistant Accountant (BS-16) "

08. The record is silent, so are the comments of the respondents, as to what had prompted issuance of corrigendum a year after the regular promotion, promotion order whereby promotion of the appellants on regular basis was said to have been made on acting charge basis. The only contention of the respondents in their reply is that the regular promotion was made inadvertently.

09. Therefore, while disposing the appeals we direct that the respondents shall consider the fact whether the promotion of the appellants made on regular basis on 04.03.2021 was against the clear vacancies or not. If that was against clear vacancies, then the respondents shall make appropriate order accordingly and if there



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was no clear vacancy, the authority shall pass a speaking order in that respect. Costs shall follow the event. Consign.

10. *Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of October, 2024.*



KALIM ARSHAD KHAN
Chairman



MUHAMMAD AKBAR KHAN
Member (Executive)

Mutazem Shah

MEMO OF COSTS
KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No.1104/2022

Date of presentation of Appeal 07.07.2022
Date of hearing 21.10.2024
Date of Decision 21.10.2024

Tariq Khan Office Assistant (B-16) (ACB), o/o District Public Prosecutor, District
Charsadda.....(Appellant)

Versus

1. The Government of Khyber Pakhtunkhwa, Secretary Home Department, Civil Secretariat,
Peshawar.
2. Director General Prosecution, Khyber Pakhtunkhwa, Peshawar.
.....(Respondents)

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED CORRIGENDUM DATED
10.03.2022 WHEREBY REGULAR PROMOTION OF THE APPELLANT TO THE POST
OF OFFICE ASSISTANT (BPS-16) HAS BEEN WITHDRAWN AND CONVERTED INTO
ACTING CHARGE BASIS AND AGAINST NO ACTION TAKEN ON THE
DEPARTMENTAL APPEAL DATED 22.03.2022 OF THE APPELLANT WITHIN THE
STATUTORY PERIOD OF NINETY DAYS..

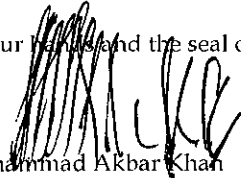
PRESENT

1. Mr. Muhammad Maaz Madni, Advocate, for the Appellant
2. Mr. Muhammad Jan, District Attorney for respondents.

Appellants	Amount	Respondent	Amount
1. Stamp for memorandum of appeal	Rs. Nil	1. Stamp for memorandum of appeal	Rs. Nil
2. Stamp for power	Rs. Nil	2. Stamp for power	Rs. Nil
3. Pleader's fee	Rs. Nil	4. Pleader's fee	Rs. Nil
4. Security Fee	Rs.100/-	4. Security Fee	Rs. Nil
5. Process Fee	Rs. Nil	5. Process Fee	Rs. Nil
6. Costs	Rs. Nil	6. Costs	Rs. Nil
Total	Rs. 100/-	Total	Rs. Nil

Note: Counsel Fee is not allowed as the required certificate has not been furnished.

Given under our hands and the seal of this Court, this 21st day of October 2024.




Muhammad Akbar Khan
Member (Executive)


Kalim Arshad Khan
Chairman

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.1104/2022

Tariq Khan versus Government of Khyber Pakhtunkhwa

S.No. of Order & Date of proceeding	Order or other proceedings with signature of Chairman/Member(s)/Registrar and that of parties or counsel where necessary
<p><u>Order-19</u> 21st October, 2024.</p>	<p>Present:</p> <ol style="list-style-type: none">1. Mr. Muhammad Maaz Madni, Advocate on behalf of appellant.2. Mr. Muhammad Jan, District Attorney for the respondents. <p>Vide our consolidated judgment of today, placed on file, while disposing the appeal we direct that the respondents shall consider the fact whether the promotion of the appellant made on regular basis on 04.03.2021 was against the clear vacancies or not. If that was against clear vacancies, then the respondents shall make appropriate order accordingly and if there was no clear vacancy, the authority shall pass a speaking order in that respect. Copy of the judgment be placed on file of connected appeals. Costs shall follow the event. Consign.</p> <p><i>Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 21st day of October, 2024</i></p> <div style="display: flex; justify-content: space-around; align-items: flex-end;"><div style="text-align: center;"> (Muhammad Akbar Khan) Member (E)</div><div style="text-align: center;"> (Kalim Arshad Khan) Chairman</div></div> <p><small>*Mutazem Shah*</small></p>