


FORM OF ORDER SHEET

Court of _____

12(2) CPC Petition No. 1289/2024

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	24/10/2024	<p>The Petition U/S 12(2) CPC in service appeal no. 1900/2022 submitted today Mr. Fazal Shah Mohmand Advocate. It is fixed for hearing before Division Bench at Peshawar on 25.10.2024. Original file be requisitioned. Parcha Peshi given to the counsel for the petitioner.</p> <p>By order of the Chairman</p> <p> REGISTRAR</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

12(2) R/w 151 CPC

Petition No:- 1289 2024
In
Service Appeal No 1900/2022

Abid Usman Khattak.....**Petitioner**

V E R S U S

Chief Secretary & others.....**Respondents**

I N D E X

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Dated:-21-10-2024

Abid USMAN
Petitioner

Through

Fazal Shah Mohmand
Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan,

&
Ibad Ur Rehman Khalil

&
Baseer Shah
Advocates high court

OFFICE:- Cantonment Plaza Flat 3/B Khyber Bazar Peshawar Cell# 0301
8804841

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

12(2) R/w 151 CPC

Petition No:- 1289 2024

In

Service Appeal No 1900/2022

Abid Usman Khattak, District Controller of Accounts, Peshawar.

.....Petitioner

V E R S U S

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Finance, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director, Treasuries and Accounts Khyber Pakhtunkhwa, Peshawar.
4. Mir Azam Khan, Assistant Accountant (BPS-16), Treasury Establishment, Finance Department, Peshawar.

.....Respondents

APPLICATION UNDER SECTION 12(2) R/W SECTION 151 OF CIVIL PROCEDURE CODE AND OTHER RELEVANT PROVISIONS OF LAW FOR SETTING ASIDE THE JUDGMENT/ORDER DATED 25-04-2024 PASSED BY THIS HONORABLE TRIBUNAL IN SERVICE APPEAL NO 1900/2022, WITHOUT PROVIDING OPPURTUNITY OF HEARING TO THE PETITIONER.

PRAYER:

On acceptance of this application, the impugned Judgment/order dated 25-04-2024, passed by this honorable Tribunal in Service Appeal No 1900/2022, with any subsequent Notification/Order if any, may kindly be set aside and opportunity of hearing may kindly be granted in favor of petitioner in the interest of justice thereby deciding the above mentioned Service Appeal on merits.

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Respectfully Submitted:-

1. That the petitioner is presently serving in Finance Department as Assistant Accountants and presently is posted as Assistant Accountant at Peshawar. The petitioner has qualified SAS examination in the year 2015.
2. That respondent No 4 filed the above mentioned Service Appeal before this honorable Tribunal which was accepted vide Judgment dated 25-04-2024, regarding which the petitioner got knowledge on 02-08-2024 (**Copy of Judgment dated 25-04-2024 is enclosed as Annexure A**).
3. That the petitioner along with other filed 12(2) CPC petition jointly, however on 16.10.2024 this honorable Tribunal was pleased to direct for filling of 12(2) CPC petition separately by each petitioner.
4. That respondent No 4 concealed actual facts from this Honorable Tribunal and through misrepresentation and fraud obtained the impugned Judgment/order from this Honorable Court which has an adverse bearing on the career progression of the petitioner.
5. That the petitioner feeling aggrieved from the impugned Judgment & order dated 25-04-2024 of this Honorable Tribunal, are constrained to file the instant petition under Section 12(2) CPC for setting aside the above mentioned Judgment/Order inter-alia on the following grounds:-

GROUNDS:

- A. That the impugned Judgment & order is obtained by respondent No 4 on the basis of fraud, miss-representation and concealment of the actual facts from this Honorable Tribunal, hence not tenable in the eyes of law.

- B. That the impugned Judgment & order has adversely effected the career progression of the petitioner as respondent No 4 has not qualified the SAS examination despite the fact that he had appeared in the same but could not qualify the same, thus the impugned Judgment is liable to be set at naught.
- C. That the petitioner was not arrayed party despite the fact that respondent No 4 knew that in case of acceptance of his appeal, the petitioner would also be aggrieved, thus the petitioner was condemned unheard.
- D. That the petitioner is better qualified which is also very much relevant to the job description of Assistant Treasury Officer (BPS-17), hence too the impugned Judgment is liable to be set aside.
- E. That even the rules are very much clear on the point, according to which 60% quota has been reserved for the PIPFA or SAS qualified Assistant Accountants while for 20% quota has been reserved for Assistant Accountants who have not qualified PIPFA or SAS, hence only seniority is not the sole factor rather qualifying PIPFA or SAS provide for prior right of promotion, hence too the impugned Judgment is liable to be set aside. **(Copy of Notification dated 10-08-2018 is enclosed as Annexure B).**
- F. That even the previous Judgments rendered by this honorable Tribunal, also favor the view taken by the petitioner, which also provide for mechanism to be followed while processing promotion cases of those who are PIPFA or SAS qualified and those who do not have such qualification. **(Copy of Judgment dated 16-07-2009 is enclosed as Annexure C).**
- G. That according to the law, as well as plethora of Judgments of superior courts, that no one condemned unheard, hence the

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impugned Judgment & order of this Honorable Tribunal is also against the norms of justice.

6. That the petitioner is badly suffering subsequent to the mentioned Judgment & order and in the interest of justice opportunity of hearing be given to him for proper assistance of this Honorable Tribunal from the record.
7. That any other grounds will be raised at the time of arguments with kind permission of this Honorable Tribunal.

It is therefore, prayed that application of petitioner may kindly be accepted as prayed for, in the heading of the application.

Any other remedy which deems fit by this Honorable Tribunal may also be granted in favor of petitioner.

Dated:-21-10-2024

Abdul Usman
Petitioner

Through

Fazal Shah Mohmand
Fazal Shah Mohmand
Advocate,

Supreme Court of Pakistan,

&

Ibad Ur Rehman Khalil
Ibad Ur Rehman Khalil

&

Baseer Shah
Baseer Shah
Advocates high court

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CERTIFICATE:-

It is certified that no such like Petition has earlier been filed by the petitioner/Petitioner in this Honorable Tribunal. Further stated that being Service Appeal on the score that since there is no adequate and alternate legal remedy is available or previously avail or approach lower forum, thus this case may be fixed before the Worthy Division Bench (D.B) of this Honorable Tribunal.

Dated:-06-08-2024

Abid USMAN
Petitioners

Through

Fazal Shah Mohmand
**Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan**

List of Books:-

1. Constitution of Islamic republic of Pakistan 1973.
2. Case laws as per need

AFFIDAVIT

I, Abid Usman Khattak, District Controller of Accounts, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Abid USMAN
DEPONENT



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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

12(2) R/w 151 CPC

Petition No:- _____ 2024

In

Service Appeal No 1900/2022

Abid Usman Khattak.....**Petitioner**

V E R S U S

Chief Secretary & others.....**Respondents**

ADDRESSES OF THE PARTIES

PETITIONER:-

Abid Usman Khattak, District Controller of Accounts, Peshawar.


RESPONDENTS:

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Secretary Finance, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director, Treasuries and Accounts Khyber Pakhtunkhwa, Peshawar.
4. Mir Azam Khan, Assistant Accountant (BPS-16), Treasury Establishment, Finance Department, Peshawar.

Dated:-21-10-2024

Petitioner

Through


Fazal Shah Mohmand
Advocate,
Supreme Court of Pakistan,

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

CM.NO _____/2024

In

12(2) R/w 151 CPC

Petition No:- _____2024

In

Service Appeal No 1900/2022

Abid Usman Khattak.

.....Petitioner

V E R S U S

Chief Secretary & others.

.....Respondents

APPLICATION FOR SUSPENSION OF OPERATION
OF IMPUGNED JUDGMENT DATED 25.04.2024
PASSED IN SERVICE APPEAL NO. 1900/2022
TILL FINAL DECISION OF TITLED 12(2) PETITION.

Respectfully submitted:

1. That the above titled 12(2) petition is pending adjudication before this hon'ble Tribunal.
2. That the grounds of main petition may kindly also be considered as integral part and parcel of this application.
3. That the impugned judgment dated 25.04.2024 was passed at the back of petitioner, as the petitioner was not made party to the case, despite the fact that the present petitioner will be direct effect of the decision of appeal.
4. That on merit the petitioner is a good prima-facie case in his favor and is also sanguine about success of his case.
5. That if the operation of impugned judgment is not suspended and the official respondents are not restrained from implementing the same, then the very purpose of titled petition will become infructuous and the petitioner will suffer great loss.

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It is, therefore, prayed that on acceptance of this application, the operation of impugned judgment dated 25.04.2024 passed in Service Appeal No. 1900/2022 may graciously be suspended till final decision of titled 12(2) Petition.

Abid USMAN

Dated:-21-10-2024

Petitioner

Through

Fazal Shah Mohmand

Advocate,
Supreme Court of Pakistan

AFFIDAVIT

I, Abid Usman Khattak, District Controller of Accounts, Peshawar, do hereby solemnly affirm and declare on oath that the contents of this **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this honorable Tribunal.

Abid USMAN
DEPONENT



(10) "A"
(9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 1900/2022

BEFORE: MRS. RASHIDA BANO ... MEMBER
MISS FAREEHA PAUL ... MEMBER



Mr. Mir Azam Khan Assistant Accountant (BPS-16) Treasury Establishment, Finance Department, Peshawar. (Appellant)

Versus

1. The Chief Secretary, Khyber Pakhtunkhwa, Civil Secretariat Peshawar.
2. The Secretary Finance, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. Mr. Ayub Ur Rehman, Assistant Treasury Officer BPS-17, Office of the District Accounts Officer, Bannu and 6 others. (Respondents)

Mr. Taimur Ali Khan,
Advocate

... For appellant

Mr. Asif Masood Ali Shah,
Deputy District Attorney

... For official respondents

Date of Institution..... 22.12.2022
Date of Hearing..... 25.04.2024
Date of Decision..... 25.04.2024

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[Signature]
25/04/24
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the order dated 29.11.2018 whereby the private respondents No. 04 to 10, despite being junior to the appellant, were promoted to the post of Assistant Treasury Officer (BPS-17) and against the order dated 17.12.2022 whereby the departmental appeal of the appellant was rejected. It has been prayed that on acceptance of the appeal, the impugned orders might be set aside and the respondents be directed to consider the appellant for promotion to the post of Assistant Treasury Officer BPS- 17 from the date

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when his junior colleagues were promoted, alongwith any other remedy which the Tribunal deemed appropriate.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was appointed in the year 1990, while private respondent No. 4 was appointed in the year 1993, respondent No. 5 in the year 1988, respondents No. 6, 7 and 8 in the year 1995 and respondents No. 9 and 10 were appointed in the 2004. The appellant was at Serial No. 62, while the private respondents No. 4, 5, 6, 7, 8, 9 and 10 were at serial No. 78, 85, 90, 92, 99, 125 and 129 respectively in the seniority list as on 31.12.2017, issued on 15.01.2018, of Assistant Accountants (BPS- 16), meaning thereby that the appellant was senior to private respondents No. 4 to 10. The respondent department issued the rules on 10.08.2018, wherein promotion to the post of Assistant Treasury Officer/Sub Treasury Officer was mentioned as sixty percent (60%) by promotion on the basis of seniority cum fitness from amongst the Assistant Accountants, who had qualified PIP/A or SAS examination. The appellant had passed the SAS exam alongwith other officials on 15.01.2018. Private respondents No. 4 to 10 were promoted to the post of Assistant Treasury Officer (BPS-17) vide order dated 29.11.2018; while the appellant, despite being senior to respondents No. 4 to 10, was deprived from his legal right of promotion to the post of Assistant Treasury Officer (BPS- 17) by the respondent department. The departmental appeal against the impugned order was not responded within the statutory period of ninety days. After the stipulated period of ninety days, the appellant filed service appeal No. 952/2019 in the Service Tribunal and during the

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proceedings of the case, the respondent department submitted the comments in which they relied on the judgment dated 16.07.2009 of the Tribunal passed in service appeal No. 301/2009 and other connected appeals as the Tribunal disposed of those appeals with certain observations about framing of fresh rules of the department and mentioned that the vacancies of SAS qualified Assistant Accountants should be filled through them on the basis of their seniority fixed with respect to the dates of their passing of SAS examination and not on their simple seniority as Assistant Accountants. When the rules were proposed, certain observations were made by the Law Department vide letter dated 13.04.2010. When the rules were framed and notified on 10.08.2018, the Establishment Department through its letter dated 16.01.2020 to the Finance Department mentioned that the case had been examined in light of Service Tribunal judgment dated 16.07.2009 and the new Service Rules of Treasury Establishment of Finance Department notified on 10.08.2018 were quite clear and there was no need of further amendments in the said Rules. The Service appeal of the appellant was heard and disposed of on 17.10.2022 with the directions to the appellate authority to decide the departmental appeal of the appellant through a speaking order within the period of one month of the receipt of copy of that judgment but the appellate authority rejected the departmental appeal of the appellant on 07.12.2022; hence the instant service appeal.

3. Respondents were put on notice. The official respondents submitted their joint parawise comments on the appeal while private respondent No. 4 to 10 were placed ex-parte vide order sheet dated 16.02.2023. We heard the

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 Service Tribunal
 Peshawar

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learned counsel for the appellant as well as learned Deputy District Attorney for the official respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant, after presenting the case in detail, argued that the impugned order dated 29.11.2018 and rejection order dated 07.12.2022 was against the law, facts, norms of justice and material on record, therefore, not tenable in the eyes of law and liable to be set aside. The appellant was senior to the private respondents in the seniority list as on 31.12.2017 but they were promoted to the post of Assistant Treasury Officer while he had been discriminated. He further argued that the department notified the rules on 08.12.2018 wherein promotion to the post of Assistant Treasury Officer/Sub Treasury Officer was mentioned as Sixty percent (60%) by promotion on the basis of seniority cum fitness, from amongst the Assistant Accountants, who had qualified PIPFA or SAS examination without mentioning in the rules that seniority of Assistant Accountant would be fixed with respect to the dates of their passing of SAS examination, which meant that the post of Assistant Treasury Officer/Sub Treasury Officer would be filled on the basis of seniority cum fitness from amongst the Assistant Accountants who had qualified PIPFA or SAS examination. The appellant had good service record but was deprived of his legal rights while his juniors were promoted in violation of law and rules. He requested that the appeal might be accepted as prayed for.

5. Learned Deputy District Attorney, while rebutting the arguments of learned counsel for the appellant, argued that the private respondents were

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promoted earlier than the appellant to the post of Assistant Treasury Officer/Sub Treasury Officer in the light of judgment dated 16.07.2009 of the Service Tribunal. He further argued that the respondent department had been amending its service rules of 1981 from time to time without affecting the laid down criteria of promotion of the appellant as well as private respondents. As far as passing of SAS exam of the appellant was concerned, his seniority on the basis of said qualification was intact and he would be promoted on his own turn in 60% quota. He further argued that departmental appeal of the appellant was examined and regretted, being contrary to the decision dated 16.07.2009 of the Service Tribunal. He requested that the appeal might be dismissed.

6. Arguments and record presented before us transpire that the appellant is Assistant Accountant in the Treasuries and Accounts attached with the provincial Finance Department and stood at sr. no. 62 of the seniority list as on 31.12.2017. He has impugned a promotion order dated 29.11.2018 before this Tribunal vide which his colleagues, junior to him in the seniority list of 2017, were promoted to the post of Assistant Treasury Officer but he was not considered for that promotion. The reason stated by the respondents before us was that he had not qualified the SAS examination which was a prerequisite for promotion. They referred to a judgment of this Tribunal dated 16.07.2009 in a service appeal no. 301/2009 according to which "the vacancies of SAS qualified Assistants shall be filled through them on the basis of their seniority fixed with respect of the dates of their passing of the SAS examination, and not on their simple seniority as Assistant

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Accountants." According to them, the promotions were made in the light of service rules read with the judgment dated 16.07.2009 of Service Tribunal.

7. Coming to the service rules notified on 10.08.2018, rules no. 6 is reproduced as follows:-

Assistant Treasury Officer/
Sub-Treasury Officer.

- (a) Sixty per cent by promotion, on the basis of seniority -cum-fitness, from amongst the Assistant Accountants who have qualified PPIFA or SAS Examination.
- (b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Accountants.
- (c) twenty per cent by initial recruitment;

A simple perusal of the rules shows that promotion is to be made on the basis of seniority-cum-fitness. Seniority has been very clearly defined in Part-VI of the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules 1989 and is determined from the date of regular appointment. This means that in the case in hand, the seniority of the Assistant Accountants would be determined from the date when they were regularly appointed on that post as a result of promotion from the post of Sub-Accountants. For their further promotion to the post of Assistant Treasury Officer/Sub Treasury Officer, only those Assistant Accountants would be considered who have qualified the SAS Examination. Those who are senior and fulfill the criteria would be promoted whereas those who have not qualified the SAS examination would be either deferred for the sake of fulfilling the criteria or placed in the category of part (b) of rule 6 of the service rules which is meant for those Assistant Accountants who have not qualified the

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Service Tribunal
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SAS examination. In case an Assistant Accountant qualifies the required examination, he becomes eligible for promotion under part (a) of rule (6).

8. The appellant qualified the SAS examination in January 2018. The meeting of Departmental Promotion Committee was held in October 2018 but he was not considered for promotion, rather his junior colleagues were promoted. The arguments presented by the learned District Attorney, that he qualified the SAS examination at a later date and hence was not considered, does not appeal to a prudent mind. How could the department go against the service rules which clearly state two points; first, seniority-cum-fitness and second, qualifying the SAS examination. The moment the appellant qualified the SAS examination, he was eligible for promotion on the basis of seniority-cum-fitness, and the department could not deny promotion to him in such a scenario where they promoted certain officials junior to him.

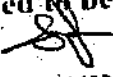
9. In view of the above discussion, we are unison that the appellant was eligible and qualified for promotion to the post of Assistant Treasury Officer/Sub-Treasury Officer under rule 6(a) of the service rules notified on 10.08.2018. The service appeal is, therefore, allowed. Respondents are directed to promote him from the date when his junior colleagues were promoted i.e. w.e.f. 29.11.2018. Cost shall follow the event. Consign.

10. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 25th day of April, 2024.*


(FARZINA PAUL)
Member (I)


(RASHIDA BANO)
Member (I)

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EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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25th Apr. 2024 . 01. Mr. Taimur Ai Khan, Advocate for the apellant present.

Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgment consisting of 07 pages, we are unison that the apellant was eligibile and qualified for promotion to the post of Assistant Treasury Officer/Sub-Treasury Officer under rule 6(a) of the service rules notified on 10.08.2018. The service appeal is, therefore, allowed. Respondents are directed to promote him from the date when his junior colleagues were promoted i.e. w.c.f 29.11.2018. Cost shall follow the event. Consign.


03. *Pronounced in open court in Peshawar and given under our hunds and seal of the Tribunal on this 25th day of April, 2024.*


(FAREENA PAUL)
Member (J)



(RASTIIDA BANO)
Member(J)

Faisal Subhan PS

Certified to be true copy


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

25/08/24


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B(13) (17) "B"



NOTIFICATION

Result: 15/1/2018

GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT
Dated Pesh: the 10-08-2018

"B"
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NO. SO/ESTT/FDA-16/2014/SSRC/Vol-III/Try/ In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Finance Department, in consultation with Establishment Department, and in supersession of previous notifications issued in this behalf, hereby directs that in the Khyber Pakhtunkhwa Treasuries (Recruitment and Appointment) Rules, 1981, the following further amendments shall be made, namely:-

APPENDIX

S.No.	Nomenclature of post	Minimum qualification prescribed for appointment by initial recruitment or by transfer	Minimum qualification prescribed for appointment by promotion	Age limit	Method of recruitment.
1	2	3	4	5	6
1.	Director, Treasuries & Accounts.				By selection on merit from amongst the District Comptrollers of Accounts having three (03) years service as such: Provided that if no suitable person is available for promotion then by transfer from amongst officers of equivalent grade having three (03) years experience in finance and accounting.
2.	District Comptroller of Accounts (7)		D.A.O		By promotion, on the basis of seniority-cum-fitness, from amongst the Deputy Directors, District Accounts Officers and Agency Accounts Officers and Treasury Officer with at least twelve (12) year service in BPS-17 and above. Note: For the purpose of promotion, a joint seniority list of the Officers mentioned above shall be maintained.
3.	Deputy Director, Treasuries & Accounts.	D.A.O (with 10 yrs)			By promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Directors Treasuries & Accounts having five (05) years service as such; Provided that if no suitable person is available for promotion then by transfer from amongst the District Accounts Officers, Agency Accounts Officers or Treasury Officers.

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4.	District Accounts Officer / Agency Accounts Officer / Treasury officer.				<p>(a) Fifty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Treasury Officers and Sub-Treasury Officers with at least five (05) year service as such.</p> <p><u>Note:</u> For the purpose of promotion, a joint seniority list of the Assistant Treasury Officers and Sub-Treasury Officers shall be maintained; and</p> <p>(b) Fifty per cent by deputation, for a specified period, from amongst Accounts Officers of the Audit Department of Government of Pakistan.</p>
5.	Assistant Director, Treasuries & Accounts.				<p>By promotion, on the basis of seniority-cum-fitness, from amongst the Superintendents having five (05) year service as such.</p> <p>Provided that if no suitable person is available for promotion then by Transfer from amongst the Assistants / Sub-Treasury Officers.</p>
6.	Assistant Treasury Officer / Sub-Treasury Officer.	At least Second Class Master's Degree in Statistics, Economics, Business Administration or Commerce, from a recognized University.		22 to 30 years.	<p>(a) Sixty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Accountants, who have qualified PIPFA or SAS Examination.</p> <p>(b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Assistant Accountants.</p> <p>(c) twenty per cent by initial recruitment.</p>
7.	Superintendent.				<p>By promotion, on the basis of seniority-cum-fitness, from amongst the Assistants and Senior Scale Stenographers, having five (05) years service as such.</p> <p><u>Note:</u> For the purpose of promotion a joint seniority list of Assistants and Senior Scale Stenographers shall be maintained.</p>
8.	Assistant Accountant.				By promotion, on the basis of seniority-cum-fitness, from amongst the Sub-Accountants, having five (05) years service as such.
9.	Senior Scale Stenographer.				<p>By promotion on the basis of seniority-cum-fitness, from amongst the Junior Scale Stenographers with at least five (05) years service as such.</p> <p>Provided that if no suitable candidate is available for promotion then by transfer of a suitable officer.</p>

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Accountant

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10.	Assistant.	Atleast 2 nd class Bachelor's Degree from a recognized University.		20 to 32 years	(a) Seventy-five per cent by promotion, on the basis of seniority cum-fitness, from amongst the Senior Clerks with at least five (05) years service as Junior Clerk and Senior Clerk; and (b) twenty-five per cent by initial recruitment.
11.	Sub-Accountant.	At least 2 nd Class Bachelor's Degree in Commerce / Business Administration or ACMA or MBA from a recognized University.		21 to 35 years	By initial recruitment.
12.	Junior Scale Stenographer	i. At least 2 nd Division Intermediate or equivalent qualification from a recognized Board; ii. a speed of seventy (70) words shorthand in English and forty five (45) words per minute in typing; and iii) knowledge of Computer in using M.S. Words and M.S. Excel.		18 to 30 years	By initial recruitment.
13.	Computer Operator	(i) Second Class Bachelor's Degree in Computer Science / Information Technology (BCS/ BIT four years), from a recognized University; or (ii) Second class Bachelor's Degree from a recognized University with one year diploma in Information Technology from a recognized Board of		21 to 32 years	By initial recruitment.

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14.	Senior Clerk.			By promotion, on the basis of seniority-cum-fitness, from amongst the junior clerks with at least three (03) years service as such;
15.	Junior Clerk	i) At least 2 nd division Intermediate or its equivalent qualification from a recognized Board; and ii) a speed of thirty (30) words per minute in typing.	18 to 30 years	i) Thirty three (33) per cent by promotion, on the basis of seniority-cum-fitness, from amongst Dafnaries who possess qualification for initial recruitment having at least two (02) years service as such; and ii) sixty seven per cent by initial recruitment.
16.	Driver.	i) Secondary School Certificate from a recognized Board; and ii) Valid LTV/HTV Licence with three years practical experience as Driver. <u>Note:</u> Preference shall be given to those who have sufficient experience in driving, repair and maintenance of vehicles.	18 to 30 years	By initial recruitment.
17.	Dafnari.	At least second division Secondary School Certificate from a recognized Board.	18 to 30 years.	By promotion, on the basis of seniority-cum-fitness, from amongst Naib Qasids and other Class-IV employees of the Department having Secondary School Certificate from a recognized Board. Provided that if no suitable person is available for promotion then by initial recruitment.
18.	Naib Qasid.	Literate.	18 to 40 Years	By initial recruitment.
19.	Bahishvi.	Literate.	18 to 40 Years	By initial recruitment.

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20.	Chowkidar.	Literate.		18 to 40 years	By initial recruitment.
21.	Sweeper.	Literate.		18 to 40 years	By initial recruitment.
22.	Mali	Literate.		18 to 40 years	By initial recruitment.

SECRETARY
Government of Khyber Pakhtunkhwa
Finance Department

Dated 10-08-2018

No. NO.SO(ESTT)FD/1-16/2014/SSRC/Vol-III/Try/.

Copy of the above is forwarded for information to:-

1. The Secretary to Govt of Khyber Pakhtunkhwa, Establishment Deptt, Peshawar.
2. The Secretary to Govt of Khyber Pakhtunkhwa, Law Department, Peshawar.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The Secretary Public Service Commission, Peshawar.
5. The Director Treasuries & Accounts, Peshawar.
6. PS to Chief Secretary Khyber Pakhtunkhwa, Peshawar.
7. PS to Finance Secretary.
8. The Manager, Govt Printing Press, Peshawar for publication in official Gazette. Fifty copies of the Gazette Notification when published may be supplied.

[Signature]
SECTION OFFICER (ESTT)

F.No. (Rule 1981/P/63)

[Signature]
Supdt

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[Signature]

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Director
Treasuries & Accounts
Khyber Pakhtunkhwa

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Encl No & Date Even

Copy for information and necessary action is forwarded to the:

1. All the District Comptroller of Accounts, District / Agency Accounts Officers & Treasury officer in Khyber Pakhtunkhwa / FATA with the request that all concerned may be informed accordingly.
2. Section Officer (ES-II), Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.
3. Office order file.

Deputy Director
Treasuries & Accounts
Khyber Pakhtunkhwa

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Annex-I

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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 301/2009

Date of Institution. ... 21.2.2009
Date of Decision ... 16.7.2009



(Appellant)

Ikramullah, Sub-Accountant,
District Accounts Office, Swabi.

VERSUS

1. The Government of NWFP, through Chief Secretary, NWFP Peshawar.
2. The Secretary Establishment & General Administration Department, NWFP Peshawar.
3. The Secretary, Finance Department, NWFP Peshawar. (Respondents)

APPEAL UNDER SECTION 4 OF THE SERVICE TRIBUNALS ACT 1974 AGAINST THE IMPUGNED NOTIFICATION DATED 24.5.1981 AND AMENDED NOTIFICATION DATED 03.11.2006 WHEREBY DISCRIMINATORY AND IRRATIONAL RULES NOTIFIED AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF APPELLANT WITHIN STATUTORY PERIOD.

MR. MUHAMMAD ASIF YOUSAFZAI,
Advocate.

For appellant.

MR. JAMAL ABDUL NASIR,
Addl. Government Pleader,

For respondents.

MR. JUSTICE (R) SALIM KHAN,
S. MANZOOR ALI SHAH,

CHAIRMAN:
MEMBER.

JUDGMENT

JUSTICE (R) SALIM KHAN, CHAIRMAN: This service Appeal No. 301 of 2009 by Ikramullah, and Service Appeals No. 302 of 2009 by Pervez Khan, No. 303 of 2009 by Muhammad Saeed, No. 304 of 2009 by Ashfaq-ur-Rahman, No. 305 of 2009 by Taj Muhammad, No. 306 of 2009 by Wahid Bakhsh, No. 307 of 2009 by Imtiaz Ali, No. 308 of 2009 by Khalrullah, No. 309 of 2009 by Zahoor Khan, No. 310 of 2009 by Muhammad Naeem-II, No. 311 of 2009 by Sahibzada Khan, No. 312 of 2009 by Shafiq-ur-Rahman, No. 313 of 2009 by Muhammad Shamrez, No. 314 of 2009 by Noor-ul-Anin, No. 316 of 2009 by M. Saifullah, and No. 317 of 2009 by Amjad Khan, are of the same nature, involving the same legal questions. These appeals are, therefore, taken together for discussion and decision:

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2. The appellant of this appeal contended that he was appointed, alongwith other co-appellants, on different dates, in the Treasury Department.

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Rules were framed and notified on 24.5.1981, through which 33% quota was prescribed for promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Assistant Accountants, and 67% quota was reserved for promotion of (a) Assistant Accountants who have qualified S.A.S Examination and (b) if no Assistant Accountants, who have qualified S.A.S examination, were available, then Sub Accountant, who have qualified S.A.S examination, on the basis of seniority-cum-fitness. The rules were modified on 3.11.2006. 20% quota was reserved for Initial recruitment, further 20% quota was reserved for promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of Assistant Accountants, while the remaining 60% vacancies were left for promotion on the basis of seniority-cum-fitness from amongst the holders of the posts of (a) S.A.S qualified Assistant Accountants and (b) if no such Assistant Accountants were available, then from Sub-Accountant, who have qualified S.A.S Examination. The appellant contended that the rules were irrational and discriminatory. The appellants submitted appeals severally and through their union. Writ Petition No. 1978 of 2006 was filed which was returned vide order dated 27.10.2008. Hence the present appeal.

3. The respondents contested the appeals. They contended that the new rules were neither discriminatory nor irrational nor contradictory, that the appeals are against the provisions of Section 22(2) of the NWFP Civil Servants Act, 1973, and that the appellants have not submitted departmental appeals.

4. We heard the arguments and perused the record.

5. The Writ Petition could be considered as departmental appeal also, as it served the purpose of informing the official respondents regularly regarding the grievances of the appellants, and providing them an opportunity of the prescribed period to consider their grievances. As the Writ Petition has been sent to this Tribunal, the period spent for pursuing the mentioned Writ Petition is condoned. The present appeals are a challenge to the rules themselves and are not regarding the fitness or otherwise of the appellants for holding or for promotion to a post on ascertaining their eligibility for holding a certain post.

6. The learned counsel for the appellants contended that the quota for S.A.S qualified Assistant Accountants has been decreased while 20% quota for initial recruitment and 20% quota for promotion of the Assistant Accountants, who have not qualified S.A.S qualification, has been carved out and prescribed. The

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Attest
Secretary
Khyber Pakhtunkhwa Public Service Commission

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comparative consideration of both the sets of the rules (Rules dated 24.5.1981 and Rules dated 3.11.2006) show that 20% quota has been reserved for Initial recruitment, by deducting 13% quota from the Assistant Accountants who have not qualified S.A.S, and by reducing 7% from the quota of S.A.S qualified Assistant Accountants/Sub Accountants. The Government has the prerogative to prescribe the rules prospectively, and to create a place for direct recruitment. The quota of both classes of Assistant Accountants, and, consequently, of Sub Accountants, has been reduced, and no discrimination has been made to any of these classes.

7. It is expected that the system of Roster and Cycles shall be strictly adopted for the purposes of recruitment/appointment to the posts of Assistant Treasury Officer. A set of five vacancies available on, or after, 3.11.2006 shall be declared one cycle, and the first of these five vacancies will be allotted to the direct recruit while the second vacancy will be allotted to the Assistant Accountant, who has not-qualified S.A.S examination, on the basis of seniority-cum-fitness; The remaining three vacancies of each Cycle will be reserved for promotion of the S.A.S qualified Assistant Accountants or, if the Assistant Accountants are not available, for the Sub-Accountants, who have passed S.A.S examination. The first vacancy of direct recruits shall not be given to the other two groups, and vice-versa. An Assistant Accountant, on his passing S.A.S examination, shall be given the option to claim vacancy either in the second or in the third category. But once that option is exercised, his category shall not be changed in future. The vacancies of S.A.S qualified Assistant Accountants shall be filled through them on the basis of their seniority fixed with respect to the dates of their passing of the S.A.S examination, and not on their simple seniority as Assistant Accountants.

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8. With the above explanations and observations, we have come to the conclusion that the fresh rules could be framed by the Government, which are neither irrational nor discriminatory, nor prejudicial to the rights of the appellants.

9. We, therefore, dispose of the present appeals with the above explanation and observations. The parties are left to bear their own costs.

ANNOUNCED
16.7.2009

OFFICE OF THE
CHIEF JUSTICE
WEST BENGAL
KOLKATA

sd/- Justice (C) Salimullah
Chairman
sd/- Md. Nazim Ali Shah
Member

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بعد االت عنوان تسرو میں سر سید علی شاہ



پیشنہاں
عابد عثمان بنام
مفت سید سید

موردہ
مقدمہ
دعویٰ
بریم

باعث تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیردی و جواب دہی و کل کارروائی متعلقہ
آن مقام لعل شاہ خوری کیلئے عبدالرشید احمد و محمد رفیع نے اپنی طرف سے
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوفہ کو مقدمہ کی کل کارروائی کا کابض اختیار ہوگا۔ نیز
وکیل صاحب کو راجح نامہ کرنے و تقریرات ہ فیصلہ بر حلف دینے ج اب دہی اور اقبال دعویٰ اور
بناہ ورت ڈگری کرنے اجراء اور صولی چیک درو پیر عرضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیردی یا ڈگری یا بطرف یا اپیل کی براندگی اور منسوخ
نیز دائر کرنے اپیل گمرانی و نظر ثانی و پیردی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکورہ
کے کل یا جزوی کارروائی کے واسطے از وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقریر کا اختیار
ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ
پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ و ہرجا نہ التوائے مقدمہ کے سبب سے ہوگا۔
کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیردی
مذکورہ کریں۔ لہذا اذکالت نامہ لکھ دیا کہ مندر ہے۔

Accepted

التورم _____ ہاہ _____ 2020

_____ گواہ _____
_____ مقام _____

Abid Usmani

Abid Usman