

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1077/2024

Fazeeh Ullah S/O Khan Zaman R/O Mohallah Kausar Abad Tehsil and District
Charsadda, presently working as Naib Qasid BPS-03**Appellant**

VERSUS

Secretary Sports & Youth Affairs Khyber Pakhtunkhwa and OthersRespondents

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Assistant Director 30/10/2024
Youth Affairs

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No. 1077-12024

Fazeeh Ullah S/O Khan Zaman R/O Mohallah Kausar Abad Tehsil and District Charsadda, presently working as Naib Qasid BPS-03Appellant

VERSUS

Secretary Sports & Youth Affairs Khyber Pakhtunkhwa and Others Respondents

**Khyber Pakhtunkhwa
Service Tribunal**

Respectfully Sheweth:

Preliminary Objections:

Diary No. 17441

Dated 31-10-24

1. That the appellant has no cause of action or locus standi to file the instant service appeal and is also estopped by his own conduct to file the instant service appeal in this Hon'ble Tribunal.
2. The appellant has not come to the court with clean hands. The appeal is frivolous and baseless with malafide intentions to block the process of promotion of Class-IV.
3. That the appeal in hand is bad for non-joinder and mis-joinder of necessary parties.
4. That the appellant has concealed material facts from this honorable court and hence the Service Appeal is not maintainable on this score alone.
5. That the appeal is badly time barred.

FACTS.

1. Correct.
2. Correct with further clarification that respondents are law abiding civil Servants and the seniority lists of all the employees working in the Directorate of Youth Affairs are issued from time to time as per prevailing law and rules.
3. It is correct with further clarification that the seniority list of Class-IV was issued on 28-02-2022 as per Service Rules-2022 of Directorate of Youth Affairs on the basis Notification No. SOE-IV(E&AD)/1-35/2014 dated 18.07.2019 whereby the Matriculate Class-IV were exempted from the condition of FAFSC or equivalent qualification for promotion to the post of Junior Clerk BPS-11 for a period of 04 years which was expired on 19-7-2023. The respondent department issued a seniority list as stood on 31-12-2023 on 03-04-2024, based on the Service Rules 2022 of the Directorate of Youth Affairs, placing the appellant at Sr. No. 23. This placement was determined by the appellant's acquisition of the FAF.Sc qualification on 17-09-2021, as per the service rules, which state that seniority for promotion purposes shall be maintained with reference to the dates of appointment or acquiring the FAF.Sc qualification, whichever is later. Since the appellant was appointed in 2019 but acquired the qualification later, in 2021, his seniority was accordingly determined from the date of acquiring the FAF.Sc qualification. The Service Rules, 2022 are reproduced below for ready reference:

(a) *Forty (40%) percent by promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Naib Qasid, Chowkidar, Mali, Sweeper, Cook, Generator Operator, Security Guard, Waiter, Tubewell Operator, Dispatch Rider, Electrician, Daftari cum Duplicate Machine Operator and other equivalent posts possessing F. A/F.Sc qualification or its equivalent qualification from a recognized Board with two (2) years service as such; and*

(b) *sixty percent by initial recruitment:*

Note: *A joint seniority list of the holders of the posts of Naib Qasid, Chowkidar, Mali, Sweeper, Cook, Generator Operator, Security Guard, Waiter, Tubewell Operator, Dispatch Rider, Electrician, Daftari cum Duplicate Machine Operator shall be maintained for the purpose of promotion with reference to the dates of appointment or acquiring the F.A/F.Sc qualification, whichever is later:*

Provided that-

- (i) If two or more officials have acquired the F.A/F.Sc qualification in the same session, the inter-se-seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post; and*
- (ii) where a senior official does not possess the requisite qualification at the time of filling up a vacancy, the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official or official*

Provided further that the condition of F.A/F.Sc or its equivalent qualification from a recognized Board, as laid down at clause (a) shall not apply till the expiration of the period specified in the second proviso of Column No. 5 against Serial No. 4 of the Establishment Department's amendment Notification No. SOE-IV(E&AD)/1-35/2014, dated: 18.07.2019 to the existing matriculate incumbents of the posts of Naib Qasid, Chowkidar, Mali, Sweepers Cook, Generator Operators, Security Guards, Waiters, Tubewell Operators, Dispatch Riders, Electricians, Daftaris cum Duplicate Machine Operators including holders of the equivalent posts for promotion to the post of Junior Clerk (BPS-11). (Annexure-A)

- 4. It is correct with further clarification that the appellant acquired his FAF.Sc qualification on 17-09-2021, whereas respondents No. 3 to 20 acquired their FAFSc qualification prior to the appellant's acquisition date, which is the basis for determining seniority according to the Service Rules 2022 of the Directorate of Youth Affairs.
- 5. Comprehensive reply already given in para-3 above.
- 6. As explained in Para-03 above.
- 7. Correct.
- 8. Correct with further clarification that the appellant submitted an appeal on 24-01-2024 against the Provisional Seniority list, which was considered along with other

appeals. Consequently, the appellant's position in the Final Seniority list issued on 03-04-2024 remained at Serial No. 23, as justified by the service rules.

9. Correct.
10. As explained in the preceding para.
11. Comprehensive reply already given in the preceding paras.

GROUND.

- A. Incorrect, misleading, the final seniority list has been issued by the competent authority after fulfilling all codal formalities in the best public interest. The plea of the appellant is not based on facts, it is the lame excuse to term such lawful order as un law full order.
- B. It is incorrect. The appellant has been treated in accordance with the prevailing rules and regulations and no fundamental rights of the appellant has been violated.
- C. It is incorrect. As per the Service Rules 2022, seniority is based on the date of appointment or acquiring FAFSc qualification, whichever is later. In this case, the respondents had already acquired their FAFSc qualification prior to the appellant's acquisition in 2021, thus they were rightfully placed above the appellant in the seniority list.
- D. It is incorrect in view of the comprehensive reply given in the preceding paras.
- E. It is incorrect in view of the comprehensive reply given in the preceding paras.
- F. It is incorrect. The appellant has been treated in accordance with the prevailing rules and regulations and no fundamental rights of the appellant has been violated.
- G. Incorrect as explained in preceding paras on facts supra. The appellant has been treated in accordance with the prevailing rules and regulations. The plea of the appellant is not based on facts, it is the lame excuse to term such lawful order as un law full order.
- H. It is incorrect. The appellant has been treated in accordance with the prevailing rules and regulations and no fundamental rights of the appellant has been violated.
- I. It is incorrect in view of the comprehensive reply given in the preceding paras.
- J. It is incorrect in view of the comprehensive reply given in the preceding paras.
- K. The respondents may also assist this honorable court with additional grounds at the time of argument.

In view of the above the instant appeal is not maintainable and without any merit, therefore, the appellant does not deserve any relief as prayed for in this appeal. The instant appeal may be dismissed in the public interest.

Respondent No.1 Matiullah Khan (BPS-22)
Secretary to Govt. Khyber Pakhtunkhwa Sports and
Youth Affairs Department Khyber Pakhtunkhwa

Respondent No.2 Noman Mujahid (BPS-19)
Director Youth Affairs Khyber Pakhtunkhwa Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

Service Appeal No.1077/2024

Fazeeh Ullah S/O Khan Zaman R/O Mohallah Kausar Abad Tehsil and District Charsadda, presently working as Naib Qasid BPS-03Appellant

VERSUS

Secretary Sports & Youth Affairs Khyber Pakhtunkhwa and OthersRespondents

AFFIDAVIT

I, Dr. Noman Mujahid, Director Youth Affairs, Khyber Pakhtunkhwa, respondent do hereby solemnly declare and affirm on oath, that the contents of Para wise Comments are correct to the best of my knowledge and belief and that nothing has been concealed therein from this Hon'ble Court.

It is further stated on oath that the respondent have neither been placed ex-parte their defence has been struck off also no cost is imposed.

*answering
nor*
N. Mujahid
Deponent
CNIC No. 13101-0337353-1

ATTESTED

IDENTIFIED BY





GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE OF YOUTH AFFAIRS
Plot # 28, Sector E-8, Phase-7, Hayatabad, Peshawar.
091-9219668, 091-9219073



No.DYA/Litigation/Fazeehullah/1077/2024/ 605

Dated: 30/10/2024

AUTHORITY LETTER

Mr. Iftikhar Ali Shah, Assistant Director (BPS-17), Directorate of Youth Affairs Khyber Pakhtunkhwa is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Peshawar on behalf of Director Youth Affairs Khyber Pakhtunkhwa in the Service Appeal No.1077/2024 titled Fazeehullah VS Secretary Sports & Youth Affairs Khyber Pakhtunkhwa and Others till the decision of the case.


DIRECTOR
Youth Affairs
Khyber Pakhtunkhwa
Director Youth Affairs
Khyber Pakhtunkhwa
Peshawar

7

EXTRAORDINARY
GOVERNMENT



REGISTERED NO. P.III
G A Z E T T E

KHYBER PAKHTUNKHWA

Published by Authority

PESHAWAR, TUESDAY, 17th MAY, 2022.

GOVERNMENT OF THE KHYBER PAKHTUNKHWA
SPORTS, TOURISM, ARCHAEOLOGY, MUSEUMS AND YOUTH AFFAIRS DEPARTMENT.

NOTIFICATION

Peshawar, dated the 7th February, 2022

No. SO (YA) Y-9/SR/2022/ 192-206— In pursuance of the provisions contained in sub-rule (2) of rule 3 of the Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion and Transfer) Rules, 1989 and in supersession of all previous Notifications, issued in this behalf the Sports, Tourism, Culture, Archaeology, Museums and Youth Affairs Department in consultation with the Establishment Department and Finance Department hereby lays down the method of recruitment, qualification and other conditions specified in Column No. 3 to 5 of the Appendix to this Notification, which shall be applicable to the posts in the Directorate of Youth Affairs, Khyber Pakhtunkhwa, specified in Column No. 2 of the said Appendix.

Attested
3
[Signature]

APPENDIX

| S. No. | Nomenclature of the post. | Qualification. | Age Limit. | Method of recruitment. |
|--------|---------------------------|----------------|------------|--|
| 1 | 2 | 3 | 4 | 5 |
| 1. | Director (BPS-19). | --- | --- | <p>By Promotion, on the basis of seniority-cum- fitness, from amongst the Deputy Directors with at least seven (7) years service as such in BS-18 or twelve (12) years service as such in BS-17 and above, subject to successful completion of Mid-Career Management Course:</p> <p>Provided that if no suitable officer is available for promotion then by transfer from the PMS/PAS officers.</p> |
| 2. | Deputy Director (BPS-18). | --- | --- | <p>By promotion, on the basis of seniority-cum-fitness, from amongst the holders of the posts of Assistant Director, District Youth Officer, Budget and Account Officers, Media and Communication Officer and Computer Programmer having at least five (5) years service as such:</p> <p>Provided that if no suitable officer is available for promotion, then by deputation or transfer of a suitable officer from Government Department.</p> <p><u>Note:</u> For the purpose of promotion a joint seniority list of holders of the posts of Assistant Director, District Youth Officer, Budget and Account Officer, Media and Communication Officer and Computer Programmer shall be maintained.</p> |

Attested
 D. K. M. B. S.

KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 17th MAY, 2022 1907

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|----|--|--|-----------------|--|
| 3. | Assistant Director /District Youth Officer (BPS-17). | At least Second Class Master's Degree or BS (honor) four (4) years in Social Sciences, Management Sciences, Information Technology or its equivalent qualification from a recognized University. | 21 to 32 Years. | <p>(a) Seventy (70) percent by promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of the Computer Operator, Assistant, Senior Scale Stenographer, Accountant, Legal Assistant and Media and Communication Assistant with at least five (05) years service as such:</p> <p>Provided that if no suitable officer is available for promotion, then by deputation or transfer of a suitable officer from the Government Department; and</p> <p>(b) thirty (30) percent by initial recruitment.</p> <p><u>Note:</u> For the purpose of promotion a joint seniority list of the holders of the posts of Computer Operator, Assistant, Senior Scale Stenographer, Accountant, Legal Assistant and Media and Communication Assistant shall be maintained.</p> |
| 4. | Budget & Accounts Officer (BPS-17). | At least Second Class Master's Degree or BS (four years) in Business Administration (Finance), Commerce (Accounts) or its equivalent qualification from a recognized University. | 22-32 Years. | By initial recruitment. |
| 5. | Computer Programmer (BPS-17). | At least Second Class Master's Degree or its equivalent qualification in Computer Science from a recognized University. | 22-35 Years. | By initial recruitment. |

Attested


1908 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 17th MAY, 2022

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|----|---|---|-----------------|---|
| 6. | Media & Communication Officer (BPS-17). | At least Second Class Master's Degree in Journalism/Mass Communication with at least three (03) years' experience in the relevant field. | 22-35 Years. | By Initial recruitment. |
| 7. | Assistant (BPS-16). | At least Second Class Bachelor's Degree or its equivalent qualification from a recognized University. | 20 to 32 years. | (a) Fifty (50%) percent by promotion, on the basis of seniority-cum-fitness, from amongst the holders of the post of Senior Clerk with at least five (05) years service as such; and (b) fifty (50%) percent by Initial recruitment. |
| 8. | Computer Operator (BPS-16). | (a) At least Second Class Bachelor's Degree in Computer Science / Information Technology (BCS / BIT four years) or its equivalent qualification from a recognized University; or (b) at least Second Class Bachelor's Degree or its equivalent qualification from a recognized University with one year Diploma in Information Technology from a recognized Board of Technical Education.. | 18 to 28 years. | By Initial recruitment. |

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[Signature]

KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 17th MAY, 2022 1809

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|-----|-------------------------------------|--|-----------------|-------------------------|
| 9. | Senior Scale Stenographer (BPS-16). | (a) At least Second Class Bachelor's Degree or its equivalent qualification from a recognized University; (b) a speed of seventy (70) words per minute in shorthand in English and forty five (45) words per minute in typing; and (c) knowledge of computer in using MS Word, MS Excel. | 20 to 32 years. | By initial recruitment. |
| 10. | Accountant (BPS-16). | At least Second Class Bachelor's Degree in Commerce, Business Administration or its equivalent qualification from a recognized University with Diploma in Information Technology from the recognized Board of Technical Education. | 20 to 32 years. | By initial recruitment. |
| 11. | Legal Assistant (BPS-16). | At least Second Class LLB Degree or equivalent qualification from a recognized University. | 21 to 32 years. | By initial recruitment. |

Attested
D. Khan
2022

1810 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 17th MAY, 2022

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|-----|---|--|-----------------|---|
| 12. | Media & Communication Assistant (BPS-16). | At least Second Class Bachelor's Degree with Journalism/ Mass Communication as a subject or its equivalent qualification from a recognized University. | 21 to 32 years. | By initial recruitment. |
| 13. | Senior Clerk (BPS-14). | --- | --- | <p>By promotion, on the basis of seniority-cum-fitness from amongst the holders of the posts of Junior Clerk, Care Taker, Photographer Telephone Operator, Store Keeper and Receptionist having Intermediate Certificate or its equivalent qualification from a recognized Board and at least two (02) years' service as such:</p> <p>Note: For the purpose of promotion a joint seniority list holder of the posts of Junior Clerk, Care Taker, Photographer, Telephone Operator, Store-Keeper and Receptionist shall be maintained.</p> |
| 14. | Junior Clerk (BPS-11). | <p>(a) At least Second Division F.A/F.Sc or its equivalent qualification from a recognized Board; and</p> <p>(b) a speed of thirty (30) words per minute in typing and capable to work on Computer in MS Office.</p> | 18 to 30 years. | <p>(a) Forty (40%) percent by promotion, on the basis of seniority-cum-fitness, from amongst holders of the posts of Naib Qasid, Chowkidar, Mali, Sweeper, Cook, Generator Operator, Security Guard, Waiter, Tubewell Operator, Dispatch Rider, Electrician, Daftari cum Duplicate Machine Operator and other equivalent posts possessing F.A/F.Sc qualification or its equivalent qualification from a recognized Board with two (2) years service as such; and</p> <p>(b) sixty percent by initial recruitment:</p> <p>Note: A joint seniority list of the holders of the posts of Naib</p> |

Attested
[Signature]

KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 17th MAY, 2022 1911

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| | | <p>Qasid, Chowkidar, Mali, Sweeper, Cook, Generator Operator, Security Guard, Waiter, Tubewell Operator, Dispatch Rider, Electrician, Daftari cum Duplicate Machine Operator shall be maintained for the purpose of promotion with reference to the dates of appointment or acquiring the F.A/F.Sc qualification, whichever is later:</p> <p>Provided that-</p> <p>(i) If two or more officials have acquired the F.A/F.Sc qualification in the same session, the inter-se-seniority in the lower post shall be maintained for the purpose of determining seniority in the higher post; and</p> <p>(ii) where a senior official does not possess the requisite qualification at the time of filling up a vacancy, the official next junior to him possessing the requisite qualification shall be promoted in preference to the senior official or officials:</p> <p>Provided further that the condition of F.A/F.Sc or its equivalent qualification from a recognized Board, as laid down at clause (a) shall not apply till the expiration of the period specified in the second proviso of Column No. 5 against Serial No. 4 of the Establishment Department's amendment Notification No. SOE-IV(E&ADY)1-35/2014, dated: 18.07.2019 to the existing matriculate incumbents of the posts of Naib Qasid, Chowkidar, Mali, Sweepers Cook, Generator Operators, Security Guards, Waiters, Tubewell Operators, Dispatch Riders, Electricians, Daftaris cum Duplicate Machine Operators including holders of the equivalent posts for promotion to the post of Junior Clerk (BPS-11).</p> |
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1912 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 17th MAY, 2022

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| 15. | Care Taker (BPS-11). | At least Second Class Intermediate Certificate or its equivalent qualification from a recognized Board | 18 to 30 Years | By initial recruitment. |
| 16. | Photographer (BPS-11). | (a) At least Second Division Secondary School Certificate in science or its equivalent qualification from a recognized Board; (b) experience in Still and Movie Photography; and (c) experience in the operation of Movies and Slide Projectors | 18 to 30 Years. | By initial recruitment. |
| 17. | Telephone Operator/ Receptionist (BPS-11). | At least Second-Class Intermediate Certificate or its equivalent qualification from a recognized Board. | 18 to 30 Years. | By initial recruitment. |
| 18. | Store Keeper (BPS-11). | At least Second-Class Intermediate certificate or its equivalent qualification from a recognized Board. | 18 to 30 Years. | By initial recruitment. |

Attested
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KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 17th MAY, 2022 1913

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| 19. | Driver (BPS-06). | Literate having LTV driving license issued by the competent authority. Preference will be given to those who have sufficient experience in driving, repair and maintenance of vehicles. | 21 to 35 Years. | By initial recruitment. |
| 20. | Dispatch Rider (BPS-05). | Middle pass. Valid driving License holder and well versed in the traffic rules. | 21 to 35 Years. | By initial recruitment. |
| 21. | Electrician (BPS-05). | At least Second Class Secondary School Certificate from a recognized Board in relevant field with two years practical Experience. | 21 to 35 Years. | By initial recruitment. |
| 22. | Daftari cum Duplicate Machine Operator (BPS-04). | Middle Pass. | 18 to 40 Years. | By initial recruitment. |
| 23. | Naib Qasid (BPS-03). | Literate. | 18 to 40 years. | By initial recruitment. |

Alleged
D. Khan

1914 KHYBER PAKHTUNKHWA GOVERNMENT GAZETTE, EXTRAORDINARY, 17th MAY, 2022

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|-----|------------------------------|--|-----------------|-------------------------|
| 24. | Generator Operator (BPS-03). | Literate with two (2) years relevant experience. | 18 to 40 years. | By initial recruitment. |
| 25. | Cook (BPS-03). | Literate and two (2) year's relevant experience. | 18 to 40 years. | By initial recruitment. |
| 26. | Tube well Operator (BPS-03). | Literate. | 18 to 40 years. | By initial recruitment. |
| 27. | Chowkidar (BPS-03). | Literate with sound physique. | 18 to 40 years. | By initial recruitment. |
| 28. | Security Guard (BPS-03). | Literate with sound physique with two (2) years relevant experience. | 18 to 40 years. | By initial recruitment. |
| 29. | Waiter (BPS-03). | Literate with two (2) years relevant experience. | 18 to 40 years. | By initial recruitment. |
| 30. | Mali (BPS-03). | Literate. | 18 to 40 years. | By initial recruitment. |
| 31. | Sweeper (BPS-03). | Literate. | 18 to 40 years. | By initial recruitment. |

Attested
[Signature]

Secretary
 Government of the Khyber Pakhtunkhwa
 Sports, Tourism, Culture, Archaeology, Museums
 and Youth Affairs Department.