

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT ABBOTTABAD.

Appeal No. 1933/2023

Pir KhanAppellant

VERSUS


Govt of KP.....Respondents

JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS

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Dated: 31-10-2024


Iftikhar Ul Ghani
District Education Officer (M)
Abbottabad
(Respondent No. 03)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR CAMP COURT ABBOTTABAD.

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JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS 1, 2, 3

Respectfully Sheweth:-

Comments on behalf of Respondents are submitted as under:-

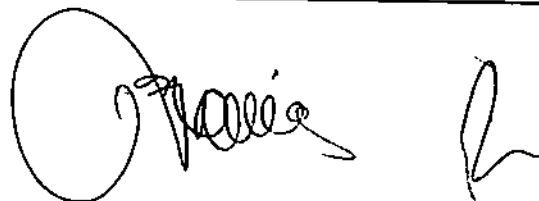
Khyber Pakhtunkhwa
Service Tribunal

Diary No. 17868

Dated 12.11.24

Preliminary objection:-

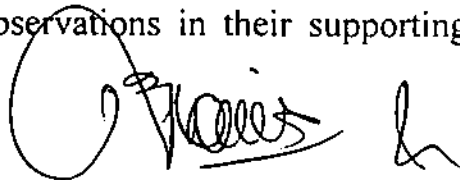
1. That this Honorable Tribunal has got no jurisdiction to entertain the present appeal as per judgment reported as 2013-SCMR-99.
2. That the appeal is hopelessly time barred hence, liable to be dismissed.
3. That the instant appeal is hit by the Principal of Latches.
4. That the instant appeal is not maintainable in its present form.
5. That the appellant has no locus standi to file instant appeal.
6. That the appellant has filed the present appeal just to pressurize the respondents.
7. In pursuance to letter Endst No. SO (PE) 4-5 /SSRC/Meeting/2012/Teaching Cadre/2012 dated 13-11-2012 requisite qualification for promotion as SPST BPS-14 was FA while appellant was merely matriculate till DPC for promotion as SPST held on 16-12-2016. Furthermore, said policy for promotion was amended vide letter Endst No. SO (PE) 4-5/SSRC/Meeting/2012/Teaching Cadre/2017 dated 30-01-2018 and promotion criteria for SPST BPS-14 was elevated from FA to BA and appellant could not acquire requisite qualification i.e BA till next DPC held on 30-05-2018. Hence, appellant was not entitled for promotion.



8. That the appellant has not come to this Honorable Tribunal with clean hands hence, not entitled for any relief.
9. That the appellant is estopped to sue due to his own conduct.
10. That the instant appeal is against the Law, Rules and Policy hence, liable to be dismissed.

Factual Objections:-

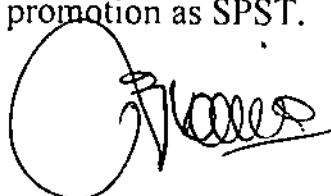
1. That the Para No. 01, of the instant appeal relates to the record.
2. That the Para No. 02, of the instant appeal relates to service record.
3. That the Para No. 03, of the instant service appeal is correct.
4. That the Para No. 04, of the instant service appeal relates to record.
5. That the Para No. 05, of the instant service appeal relates to record.
6. That the Para No. 06, of the instant service appeal is correct.
7. That the Para No. 07, of the instant service appeal as composed is incorrect hence, denied as in pursuance to letter Endst No. SO (PE) 4-5 /SSRC/Meeting/2012/Teaching Cadre/2012 dated 13-11-2012 requisite qualification for promotion as SPST BPS-14 was FA while appellant was merely matriculate till DPC for promotion as SPST held on 16-12-2016. Furthermore, said policy for promotion was amended vide letter Endst No. SO (PE) 4-5/SSRC/Meeting/2012/Teaching Cadre/2017 dated 30-01-2018 and promotion criteria for SPST BPS-14 was enhanced from FA to BA and appellant could not acquire requisite qualification i.e. BA till next DPC held on 30-05-2018. Hence, appellant was not entitled for promotion. (Copy of letter Endst No. SO (PE) 4-5 /SSRC/Meeting/2012/Teaching Cadre/2012 dated 13-11-2012 already annexed as **Annexure "B"** with instant appeal and letter Endst No. SO (PE) 4-5/SSRC/Meeting/2012/Teaching Cadre/2017 dated 30-01-2018 is annexed as **Annexure "A"**)
8. That the Para No. 08, of the instant appeal as composed is incorrect hence, denied as teachers who were promoted vide promotion order dated 02-10-2017 were already deferred in DPC held on 16-12-2016 due to deficiencies and observations in their supporting documents



and their documents / files were to be submitted vide letter Endst: No. 7487-88/Prom of PST to SPST dated 05-07-2017 whereas appellant was not deferred rather, he was not considered being ineligible for said promotion. (Copy of letter Endst: No. 7487-88/Prom of PST to SPST dated 05-07-2017 is annexed as Annexure "B")

9. That the Para No. 09, of the instant appeal is correct to the extent that he was retired from service on the basis of superannuation, however, it may ^{be} noted that after the appellant got eligibility, no DPC was held and no promotion was made from PST-12 to SPST-14 till his retirement order, because considerable vacancies for promotion from PST-12 to SPST-14 were not available, therefore in the intervening period no DPC could be held and promotion made. In the meantime the appellant reached to the age of superannuation and was retired accordingly. Thus his right of promotion does not accrue till his retirement. In addition, it is a settled principle of law that promotion cannot be claimed as a matter of right. Reference in this respect is made to "Secretary Schools of Education and others Vs Rana Arshad Khan & others" (2012 SCMR126). Furthermore, Proforma promotion is ordinarily given to remedy the loss sustained by civil servant on account of denial of promotion upon his legitimate turn due to any reason but not a fault of his own and in case where temporary embargo was created against his right for such promotion or a legal restraint was posed against his claim owing to any departmental proceedings /inquiry against him and the said obstacle is done away with ultimately then in such situation his monetary loss and loss of rank is remedied through Proforma promotion, however his case does not fall amongst any of the above mentioned conditions, rather, he was ineligible when last DPC was held and promotion order issued. R

10. That the Para No. 10, of the instant appeal as composed is incorrect hence, denied. Appellant remained ineligible till DPC held 16-12-2016 hence, not entitled for promotion as SPST.

 R

11. That Para No. 11, of the instant appeal as composed is incorrect hence, denied. Appellant preferred his departmental appeal on 24-08-2023 after a lapse of 05 years & 06 months which is hopelessly time barred.

Grounds:-

- a. **Incorrect hence, denied.** No maltreatment has been done to the appellant. He was treated in accordance with law, rules & policy; however, being ineligible for promotion the same was not granted to him as explained in Para 7 and 9 of the facts.
- b. **Incorrect hence, denied.** Already explained in Para 7 and 9 of the facts.
- c. **Incorrect hence, denied.** Section 9 of Khyber Pakhtunkhwa Civil Servant Act 1913 does not confer any vested right of promotion on every servant. Law, rules & policy prescribes which person under what conditions may be promoted. However, promotion cannot be claimed as a matter of right in the light of Honorable Supreme Court judgment. Likewise Rule-7 of APT Rules 1989 also does not favor any vested right to be conferred upon an ineligible civil servant.
- d. **Incorrect hence, strongly denied.** The appellant is not entitled for grant of Proforma promotion as thoroughly explained in latter part of Para 9 of the facts.
- e. **Incorrect hence, denied.** Already explained in Para 9 of the facts.
- f. **Incorrect hence, denied.**
- g. **Incorrect hence, denied.**
- h. No comment.
- i. **Incorrect hence, denied.**
- j. That the respondents also seek leave of this Honorable Tribunal to raise additional grounds at the time of arguments.





Under the circumstances, it is humbly prayed that the instant appeal is meritless against the Law, Rules, Policy and facts hence, liable to be dismissed without further proceedings.



(Mr. Faiz Alam)

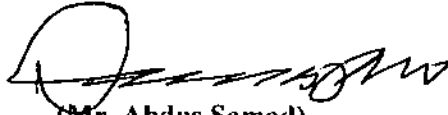
Additional Secretary (Establishment), E&SED

On behalf of

(Masood Ahmed)

Secretary E&SED

(Respondent No. 01)



(Mr. Abdus Samad)

Deputy Director (Legal), Directorate of E&SE

On behalf of

(Samina Altaf)

**Director (E&SE) Khyber Pakhtunkhwa
Peshawar**

(Respondent No. 02)



(Iftikhar Ul Ghani)

District Education Officer (M)

Abbottabad

(Respondent No. 03)

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JOINT PARA WISE COMMENTS ON BEHALF OF RESPONDENTS

AFFIDAVIT

I, Mr. Iftikhar Ul Ghani, District Education Officer (M) Abbottabad, do hereby affirm and declare on oath that the contents of forgoing comments are correct and true according to the best of my knowledge and belief and nothing has been suppressed from this Honorable Tribunal.

It is further, stated on oath that in this appeal the answering Respondents have neither been placed ex-parte nor has their defense been struck off.



 OATH
 COMMISSIONER
 Licence No. 22/J dated 18-5-2023
 Enrolment No. 4847-2023
 Abbottabad Pakistan
 05/11/2024
 DEPONENT



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**

Annexure 'A' (6)



NOTIFICATION

Peshawar, dated the 30th January, 2018.

No.SO(PE)-4-5/SSRC/Meeting/2012/Teaching Cadre/2017:- 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 Elementary and Secondary Education Department, in consultation with the Establishment Department and the Finance Department hereby directs that, in this Department's Notification No.SO(PE)-4-5/SSRC/Meeting/2012/Teaching Cadre, dated 13-11-2012, the following further amendments shall be made, namely:-

AMENDMENTS

in the Appendix,-

(i) against Serial No.1, in columns No.3 and 4, for the existing entries, the following shall be substituted, namely:

3	4
(i) At least Second Class Bachelor's Degree or four (4) years BS Degree in the relevant subject; and (ii) nine months in service mandatory professional training at Regional Institute for Teacher Education (RITE) or Provincial Institute for Teacher Education (PITE).	21 to 35 years";

*Support
AWJEE
For Compliance
as requested*

(ii) against Serial No.1B, in columns No.3 and 4, for the existing entries, the following shall be substituted, namely:

3	4
(i) At least Second Class Bachelor's Degree from a recognized University from the following groups with two subject on need basis. (a) Chemistry, Botany or Zoology; or	19 to 35 years";


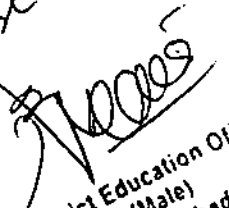
17/2/18

[Signature]
District Education Officer,
(Male)
Peshawar

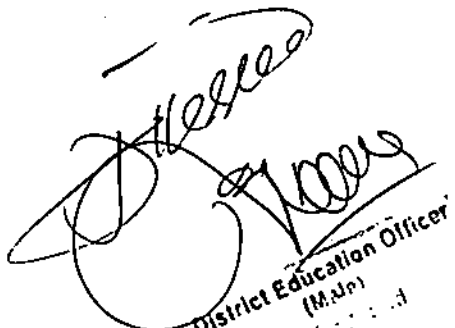
18.	Physical Education Teacher (BPS-15).	Bachelor's Degree from a recognized University with one year junior Diploma in Physical Education course or Army equivalency or other equivalent qualification.	18 to 35 years.	<p>(a) Eighty per cent by initial recruitment; and</p> <p>(b) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst the Primary School He Teachers with at least five years service and having qualification prescribed for initial recruitment of Physical Education Teacher.</p> <p>Provided that if no suitable candidate is available for promotion then on the basis of seniority-cum-fitness from amongst Senior Primary School Teachers with at least five years service and having qualification prescribed for initial recruitment of Physical Education Teacher.</p> <p><u>Note:</u> In case of non-availability of suitable candidate for promotion, then by initial recruitment.</p>
19.	Primary School Head Teacher (PSHT) (BPS-15).			By promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least ten years service and having qualification prescribed for initial recruitment of Primary School Teacher.
20.	Senior Primary School Teacher (BPS-14).			By promotion, on the basis of seniority-cum-fitness, from amongst Primary School Teachers.

[Handwritten Signature]
 District Education Officer
 (Male)
 Abbottabad

				with at least five years service as such : having qualification prescribed for ini recruitment of Primary School Teacher.
21.	Primary School Teacher (BPS-12).	(i) Intermediate or equivalent qualification, from a recognized Board with Primary School Teacher Certificate/ Diploma in Education from a recognized Institute; or (ii) Secondary School Certificate, from a recognized Board in second Division with two years Associate Degree in Education from a recognized University.	18 to 35 years.	By initial recruitment on merit at Union Cou: level: provided that if no suitable candidate within the Union Council is available, then fr the adjacent Union Councils on merit.
22.	Qari (BPS-12).	Intermediate with Hifz-e-Quran and Qirat Sunad from a recognized Institution.	18 to 35 years.	By initial recruitment.



District Education Officer,
(Male)
Abbottabad

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 District Education Officer
 (M.A.)
 Aht : : : :

Primary School Head Teachers for promotion then the post shall be filled by promotion, on the basis of seniority-cum-fitness, from amongst Senior Primary School Teachers with at least seven years service as Senior Primary School Teachers and Primary School Teachers and having qualification mentioned in column No.3:

Provided further that if no suitable candidate is available from amongst Senior Primary School Teachers for promotion then the post shall be filled from amongst Primary School Teachers with at least seven years service as such and having qualification mentioned in column No. 3; and

(ii) twenty five percent by initial recruitment.

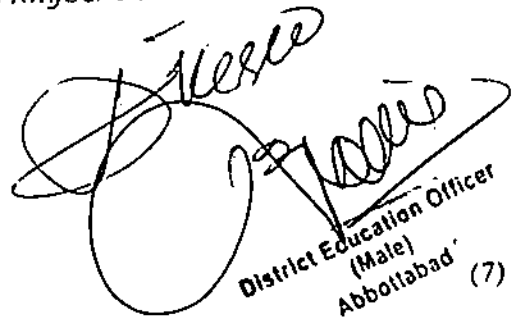
Note:

- I. If no suitable candidate is available in the relevant cadre of the above teachers, the post falling in their promotion quota shall be filled by initial recruitment.
- II. Posts of General SST and SSTs-1 Science and SST-2 Science shall be filled by promotion or initial recruitment, each on need basis separately."

SECRETARY TO GOVERNMENT OF KHYBER PAKHTUNKHWA
ELEMENTARY & SECONDARY EDUCATION DEPARTMENT

Endst : of even No & date:

1. The Secretary to Government of Khyber Pakhtunkhwa, Establishment and Administration Department Peshawar.
2. The Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.
3. The Secretary to Government of Khyber Pakhtunkhwa, Law Department Peshawar
4. The Secretary Khyber Pakhtunkhwa, Public Service Commission Peshawar.
5. The Accountant General Khyber Pakhtunkhwa Peshawar.
6. The Director, Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
7. The Director of Education (FATA) Peshawar.
8. The Director, Curriculum and Teacher Education Khyber Pakhtunkhwa Abbottabad.
9. The Director, (PITE) Khyber Pakhtunkhwa Peshawar.
10. The Director, ESRU Elementary and Secondary Education Department Khyber Pakhtunkhwa Peshawar.
11. Manager Government Printing Press Khyber Pakhtunkhwa Peshawar.
12. The Deputy Director, EMIS (S&SE) Department Khyber Pakhtunkhwa Peshawar.
13. All District Education Officer (M&F) in Khyber Pakhtunkhwa.
14. All District Account Officer in Khyber Pakhtunkhwa.
15. All Agency Education Officer in FATA
16. All Agency Account Officer in FATA.
17. PS to Governor Khyber Pakhtunkhwa. Peshawar.
18. PS to Chief Minister Khyber Pakhtunkhwa. Peshawar.
19. PS to Chief Secretary Khyber Pakhtunkhwa. Peshawar.
20. PS to Minister E&SE Khyber Pakhtunkhwa. Peshawar.
21. PS to Secretary E&SE Khyber Pakhtunkhwa. Peshawar.
22. Master file



District Education Officer
(Male)
Abbottabad (7)

(ZAMIN KHAN MOMAND)
SECTION OFFICER (PRIMARY)

Annexure 'B'

11

OFFICE OF THE DISTRICT EDUCATION OFFICER (MALE) ABBOTTABAD

No. 7487-88 /Prom of PST to SPST

Dated 5-7 /2017

1. The Sub Divisional Education Officer
(Male) Abbottabad
2. The Sub Divisional Education Officer
(Male) Havelian

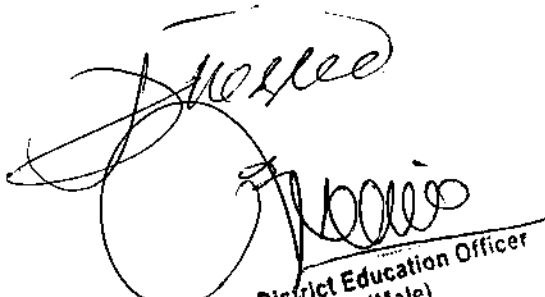
Subject: **APPEALS FOR PROMOTION**

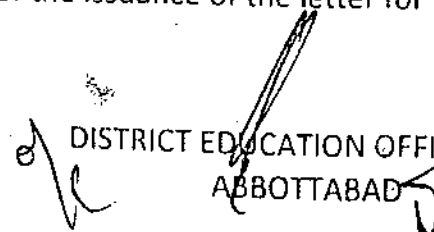
Memo:

This is to inform you that the following PSTs were deferred for promotion to SPSTs.

S.No.	Sen No.	Name of teacher /Desg	Name of School
1.	3/70	Muhammad Rafique PST	GPS Bandi Hamza
2.	27/374	Bashir Ahmed PST	GPS Barrian Noormong
3.	29/394	Said Akbar, PST	GPS Maira Passala
4.	45/578	Maqsood Ahmed PST	GPS Kumar Bandi
5.	69/897	Aurangzeb PST	GPS Nari Keri
6.	73/981	Muhammad Irshad PST	GPS Bamochi
7.	90/1180	Muhammad Shafique PST	GPS Sail
8.	126/1439	Zaheer Ahmed PST	GPS Kumaran
9.	131/1489	Rashid Mehmood PST	GMPS Sumbal Dharra
10.	136/1511	Nisar Ahmed PST	GPS Poona
11.	154/1652	Amjad Mehmood PST	GPS Chando Maira
12.	160/1744	Sajjad Ali, PST	GPS Bagh
13.	164/1786	Muhammad Asad, PST	GPS Nammal
14.	172/1860	Muhammad Hanif, PST	GPS Phalkot
15.	177/1941	Shahzeb, PST	GPS Gohri
16.	188/2071	Afraiz Ahmed PST	GPS Ander Seri
17.	194/2158	Muhammad Tariq, PST	GPS Tatial Batangi
18.	226/2194	Muhammad Khalid PST	GPS Todu Maira
19.	227/2195	Muhammad Kabir, PST	GPS Bakote

You are therefore, directed to submit documents of the above named teachers complete in all respect within three days of the issuance of the letter for further proceeding.


District Education Officer
(Male)
Abbottabad


DISTRICT EDUCATION OFFICER (M)
ABBOTTABAD

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Service Appeal. 1933/2023

Pir KhanAppellant

VERSUS

Govt of Khyber Pakhtunkhwa.....Respondent

Joint Parawise Comments on behalf of Respondents

AUTHORITY LETTER

It is certified that Mr. Sohail Ahmed Zeb, Litigation Officer, District Education Office (Male) Abbottabad is hereby authorized to submit parawise comments on behalf of respondents in Service Appeal No. 1933/2023 titled Pir Khan Vs Govt of Khyber Pakhtunkhwa.



(Iftikhar Ul Ghani)
District Education Officer (M)
Abbottabad
(Respondent No. 03)

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

NOTIFICATION

I, Samina Altaf, Director Elementary & Secondary Education Department Khyber Peshawar do hereby authorize, Mr. Abdus Sammad, Deputy Director (Legal) Directorate of Elementary & Secondary Education to sign para-wise comments, replies, implementation report, objection petitions, civil miscellaneous application etc on my behalf for onward submission before the courts of law/triunals as the case may be, with immediate effect in the interest of public service.

DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Endst. No. 9.1.33-413 /F.No. AD(Lit-II)/E&SED/Office Correspondence/Vol-II/2024
Dated Peshawar the 26/07/2024.

Copy of the above is forwarded for information & n/action to the:

1. Chief Secretary Khyber Pakhtunkhwa.
2. Advocate General Khyber Pakhtunkhwa.
3. Secretary Law Department Khyber Pakhtunkhwa.
4. Learned Registrar High Court Peshawar (with one each spare copy for the Honorable Judges).
5. Learned Registrar Khyber Pakhtunkhwa Service Tribunal Peshawar (with one each spare copy for the Honorable Chairman/Members).
6. All Section Officers E&SE Department Khyber Pakhtunkhwa, Peshawar.
7. All District Education Officer (Male/Female) Khyber Pakhtunkhwa.
8. PS to Secretary E&SE Department Khyber Pakhtunkhwa, Peshawar.
9. PA to Additional Secretary (General) E&SE Khyber Pakhtunkhwa, Peshawar.
10. PA to Director E&SE Department Khyber Pakhtunkhwa, Peshawar.
11. Master File.


(SAMINA ALTAF)
DIRECTOR
Elementary & Secondary Education
Khyber Pakhtunkhwa Peshawar

Attested
