

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL  
PESHAWAR**

CM No. /2024  
In  
SVC Appeal. 870/2024

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 17951

Dated 14-11-24

Ubaid Ali.....Appellant

VERSUS

District Education Officer and others .....Respondents

**APPLICATION FOR SUSPENSION OF OPERATION OF THE  
PRE DEPARTMENTAL SELECTION COMMITTEE  
PROCEEDINGS ISSUED VIDE NOTIFICATION DATED  
05.08.2024 UP TO EXTENT OF POST OF S.S.T. (BIO-  
CHEM) FROM PST, SPST & PSHT OF DISTRICT DIR UPPER  
MALE TILL FINAL DISPOSAL OF THE TITLED APPEAL.**

**Respectfully Sheweth;**

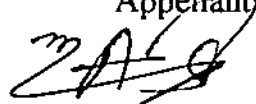
1. That the titled appeal is pending adjudication and is fixed for 03.12.2024.
2. That the private respondents are deficient with the required qualification and they have got no NOC from the competent authority for improving their qualification.
3. That surprisingly, the qualification of the private respondents before the DPC are only two Additional subject of (Bio-Chem) which are not regularly passed but from the bare perusal of their respective degrees, the same carries "Pass Private", hence the same are not to be legally entertained for promotion but the official respondents have been considered the same and ignored/deprived the appellant without any reason and justification.
4. That the passing of higher qualification being regular student is also a questionable mark and that too without any proper NOC.
5. That admittedly some of the private respondent were initially appointed with the qualification of BA, then how they have been considered for promotion against the since subject.
6. That mala fide of the official respondents is even established from the act of the scheduling the pre DPC during pendency of the appeal.
7. That the issue pertains to NOC has already been discussed in detail and has been decline to the petitioners in W.P No-3742-P/ 2021 "Mr. Johar Ali and others vs The Govt. of Khyber Pakhtunkhwa and others" wherein the present Respondent was also party to the petition but even then, he issued the NOC (EX-POST FACTO N.O.C) vide letter dated 31.07.2023 just to fill up the lacuna and to save the skin of the respondents illegally. (Copy of W.P No-

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3742-P/ 2021 and judgment dated 13.06.2023 are attached as ANNEX-A).

8. That it worth mentioned here that the worthy Director E & S E circulated a letter/instruction dated 14.07.2021 to all District Education Officers of the Province in respect of acquiring of higher qualification and obtaining of N.O.C but even then, while disobeying and misusing his power, the District Education Officer facilitated the private respondents without any legal justification. (Copy of letter dated 14.07.2021 is attached as ANNEX-B).
9. That the issue of Additional Subject has also been decided in the earlier minutes of meeting dated 26.10.2022 and clarified that additional subject cannot be considered as Degree. (Copy of minutes of meeting dated 26.10.2022 is attached as ANNEX-C).
10. That any other ground which has not been mentioned may also be permitted to rise at the time of hearing.

It is, therefore, most humbly prayed that the application may graciously be allowed in the best interest of justice.

Appellant  
Through   
Muhammad Arif Jan  
Advocate High Court

**AFFIDAVIT**

I, Ubaid Ali (Appellant) do hereby solemnly affirm and declare on oath that the contents of the **application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

**DEPONENT**



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Annex A

**BEFORE THE PESHAWAR HIGH COURT PESHAWAR**

**WRIT PETITION NO. 3742-P/2021**

**JOHAR ALI & OTHERS VS GOVT: OF KP & OTHERS**

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**PETITIONERS**

**RE-FILED TODAY**  
Deputy Registrar  
02 SEP 2021

**THROUGH:**  
**NOOR MOHAMMAD KHATTAK**  
**ADVOCATE**

**FILED TODAY**  
Deputy Registrar  
17 AUG 2021

Scanned USB Received  
17 AUG 2021  
Signature

cc

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**BEFORE THE PESHAWAR HIGH COURT PESHAWAR**

**WRIT PETITION NO. 3742-P/2021**

- 1- Mr. Johar Ali, SPST, GPS Ghari Usmani Khel, Tehsil Dargai, District Malakand.
- 2- Mr. Muhammd Dawood, SPST, GPS No.1 Tehsil Dargai, District Malakand.
- 3- Mr. Tariq Hussain, PST, GPS Salgaro Tehsil Dargai, District Malakand.
- 4- Mr. Muhammd Arif, PST, GPS, Tootai Tehsil Batkhela, District Malakand.
- 5- Mr. Mukamil Khan, PST, GPS Jhando Tootai, District Malakand.
- 6- Mr. Fazal Masood, SPST, GPS Doda Banda, Pir Khel, Tehsil Batkhela District Malakand.

..... **Petitioners**

**VERSUS**

1- The Govt: Of Khyber Pakhtunkhwa through Secretary, Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.

2- The Director Elementary & Secondary Education Department, Khyber Pakhtunkhwa, Peshawar.

3- The District Education Officer (Male), District Malakand.

..... **Respondents**

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17 AUG 2021

**R/SHEWETH:**  
**ON FACTS:**

**Brief facts giving rise to the present writ petition are as under:**

- 1- That the petitioners are the peaceful and law abiding residents of union council District Malakand.
- 2- That petitioners were appointed PST (BPS-12) vide different dates in the respondents department and started performing their duties quite efficiently and whole heartedly and yep to the entire satisfaction of their high ups. Copies of the appointments orders are attached as annexure.....**A.**
- 3- That petitioners for advancing their educations, preferred applications for the grant of NOC to acquire higher education in the evening shifts. That the petitioners have obtained the degrees in B.Sc from a recognized university. Copies of the educational testimonials and B.Sc DMCs are attached as annexure .....**B.**

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- 4- That after getting the Bachelor of Science from a recognize university the petitioners preferred a number of applications for the grant of ex-post facto NOC but the same has been denied to the petitioners. Copies of the applications for the grant of permission for ex-post facto NOC is attached as annexure.....C.
- 5- That it important to mention here that the respondents department vide letter dated 23-09-2020 has withdrawn the ban on the ex-post facto NOCs for the higher education. Copy of the letter dated 23.09.2020 is attached as annexure.....D.
- 6- That vide letter dated 14.07.2021 the respondents department has cercualted to the all District Education Officers that not to accept the degree without prior permission/ NOC but the fact is that the petitioners have already submitted their applications for the grant of the same. Copy of the letter dated 14.07.2021 is attached as annexure .....E.
- 7- That vide seniority list dated 30.05.2021 the petitioners are at serial No. 216 and serial No. 225 are not referred for the upcoming DPC where as the candidates at serial No. 255 and serial No. 266 cases have been submiited for the upcoming DPC in utter violation of the Khyber Pakhtunkhwa Civil Servant Act, 1973 and the relevant rules. Copies of the seniority list dated 30.05.2021 is attached as annexure .....F.

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That petitioners are entitled for the NOC for the expost facto as the higher qualification is their fundamental rights but even then the respondents are denying it on the pretext which are not justified.

- 9- That it is important to mention here that one Raham Qayum who also has obtained the BSc degree in the same way as the petitioners have obtained but he has been promoted. But the petitioners are ignored without any justifiable reasons. Copy of the promotion order is attached as annexure .....G.
- 10- That feeling aggrieved from the inaction of the respondents and having no other remedy the petitioners filed this writ petition on the following grounds amongst the others.

**GROUND:**

- A- That the inaction of the respondents by not issuing the ex-post facto no objection certificate to the petitioner for

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acquiring higher education qualification is against the law, facts, norms of natural justice and having no legal effect and are liable to be set aside.

- B- That the petitioners have not been treated by the respondents Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That the respondent Department discriminated the petitioners on the subject noted above and as such the respondents violated the principle of natural justice.
- D- That the respondent Department acted in arbitrary and malafide manner by declaring petitioner ineligible and not issuing the ex-post facto no objection certificate to the petitioner for acquiring higher education qualification.
- E- That petitioners are fully entitled for the ex-post facto no objection certificate for acquiring the higher education for qualification.
- F- That the petitioner seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that on acceptance of this writ petition the inaction of the respondents by not issuing the ex-post facto no objection certificate to the petitioner for acquiring higher education qualification and not considering the petitioners for promotion to the post of SST (BPS-16) may kindly be declared as illegal, unlawful, unconstitutional and ineffective upon the rights of the petitioners. That the respondents may kindly be directed to issue/ grant ex-post facto NOC to the petitioners and consider the petitioners for promotion to the post of SST (Science) (BPS-16) in the upcoming DPC. Any other remedy which this august Court deems fit may also be awarded in favor of the petitioner.

**INTERIM RELIEF:**

That the respondents may kindly be restrained not to convene the DPC for the post of SST (BPS-16) till final disposal of the instant petition.

PETITIONERS

*Johar*  
JOHAR ALI & OTHERS

THROUGH:

FILED TODAY  
Deputy Registrar  
17 AUG 2021

RECEIVED  
*[Signature]*

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**PESHAWAR HIGH COURT, MINGORA BENCH**  
**(DAR-UL-QAZA), SWAT**

**FORM OF ORDER SHEET**

Court of .....

Case No..... of.....

Serial No. of order or proceedings 1	Date of Order or Proceedings 2	Order or other Proceedings with Signature of Judge and that of parties or counsel where necessary. 3
	13.06.2023	<p><b><u>W.P No.3742-P/2021</u></b> <b><u>(Mr. Johar Ali and others Vs. The Govt. of Khyber Pakhtunkhwa through Secretary Elementary &amp; Secondary Education Khyber Pakhtunkhwa, Peshawar and others)</u></b></p> <p><b>Present:</b> <u>Mr. Noor Muhammad Khattak, Advocate for Petitioners.</u> <u>Mr. Inayat Ullah Khan, A.A.G for official Respondents.</u></p> <p align="center">***</p> <p><b><u>MUHAMMAD NAEEM ANWAR, J.</u></b>- By invoking the writ jurisdiction of this Court under Article 199 of the Constitution of Islamic Public of Pakistan, 1973, through instant petition, the petitioners seek directions against the respondents for issuance of ex-post facto (retrospective) No Objection Certificate (NOC) in their favour for acquiring higher education qualification and that the act of the respondents for non-inclusion of their names in promotion list to the post of SST (BPS-16) may be declared illegal, unlawful and unconstitutional.</p> <p><b>2. <u>C.M No.1203-P/2022:</u></b> Through this Civil Miscellaneous Application, the applicant namely Noor Wali Khan s/o Said Zamin is seeking his impleadment in the</p>

Sabz Ali\* (D.B)

HON'BLE MR. JUSTICE MUHAMMAD NAEEM ANWAR  
HON'BLE MR. JUSTICE SHAHID KHAN

REGISTERED

array of the petitioners in the main writ petition on the ground that he is necessary party in the petition and that there is no clash of interest between him and the petitioners rather their relief is one and same. As the learned A.A.G has got no objection on acceptance of this application besides the contents of the application have been duly verified through an affidavit by the applicant, as such, this application is allowed. Office is directed to add the applicant as petitioner No.7 in the array of petitioners.

3. The petitioners who seven in number have filed the instant writ petition with the plea that petitioners No.1, 6 & added petitioner No.7 were appointed on 16.07.2011, petitioner No.2 on 02.06.2012 and petitioners No.3 to 5 on 29.02.20016 as Primary School Teachers (BPS-12); that during service they have acquired degrees of Bachelor of Science (BSc) from a recognized university and thus were eligible for their promotion in accordance with law; that as prior permission of the respondent-department was a precondition for acquiring higher qualification, therefore, they have submitted their applications for grant of retrospective ex-post facto NOC. It was also pleaded that the ban for grant of ex-post facto NOC was lifted on 23.09.2020 and that vide letter dated 14.07.2021, the respondents have directed all concern that no such



permission shall be granted or NOC shall be issued. Lastly, it was averred that as per seniority list dated 30.05.2021, the petitioners were at serial No. 216 & 225 but their cases were not referred to the upcoming Departmental Promotion Committee (DPC), which resulted into grave miscarriage of justice as this act of the respondents is violative to the Constitution.

4. Pursuant\* to the directions of this Court, the respondents submitted their parawise comments to this petition, wherein they opposed the issuance of writ on various legal and factual objections.

5. Arguments of Mr. Noor Muhammad Khattak, Advocate representing the petitioners and learned A.A.G representing the official respondents heard and with their able assistance, record perused.

6. At the very outset, when learned counsel for the petitioners was confronted with the documents pertaining to the degrees of graduation/BSc or the provisional certificates or Detailed Marks Certificate (DMC), who referred to the DMC of petitioner No.1 pertaining to supplementary examination, 2020, wherein he appeared as a candidate of Part-II and obtained 345 out of 550 marks, DMC pertaining to Part-II annual examination, 2020 of petitioner No.5 who secured 343 out of 550 and DMC pertaining to annual

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examination, 2020 Part-II of petitioner No.6 who obtained 369 out of 550 marks whereas, to the extent of petitioners No.2, 3 & 4, he could not produce either DMC, degree or provisional certificate of BSc while to the extent of added petitioner N.7, he referred only to DMC of Part-I Supplementary Examination, 2020 but neither degree nor DMC of Part-II is available on record. Thus, the instant petition to the extent of petitioners No.2 to 4 & added petitioner No.7 is hereby dismissed as nothing is available on record to substantiate their contention whereas, instant petition is being decided to the extent of petitioners No.1,5 & 6, on merits.

7. There is no denial of the fact that petitioner No.1 has completed his BSc in the subjects of chemistry, Botany, Zoology and Pak Studies from University of Peshawar being a regular student of Quaid-e-Azam Degree College, Peshawar and passed BSc in supplementary examination 2020, which was held from 22<sup>nd</sup> March 2021 to 24<sup>th</sup> April, 2021 and DMC was issued on 16<sup>th</sup> July, 2021. Petitioners No.5 & 6 remained the students of University of Peshawar did their BSc in same subjects of Chemistry, Botany, Zoology and Pak Studies being regular students of Quaid-e-Azam Degree College, Peshawar. They appeared in Part-II annual examination, 2020 held from 23<sup>rd</sup> September, 2020


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to 24<sup>th</sup> October, 2020, the result was declared on 31<sup>st</sup> December, 2020 whereas, the examination of Part-I of BSc was held in annual, 2019, but the question that they being civil servants were legally required to get permission from their department/respondents as they are shown to be regular students of BSc. When confronted, learned counsel for the petitioners submitted at the bar that their admissions were in the evening shift as reflected from the Para No.3 of the facts of the petition but this Para was outrightly denied by the respondents and apart from that, nothing is available on record to substantiate the contention of the petitioners for their admission as regular students in the evening shift. It may be noted here that as per the memorandum of petition, petitioner No.1 was posted at Government Primary School (GPS) Ghari Usman Khel, Tehsil Dargai, District Malakand, petitioner No.5 at GPS Jhando Tootai, District Malakand and petitioner No.6 at GPS Doda Banda, Pir Khel, Tehsil Batkhela District Malakand, thus, while posting at their respective stations how the petitioners No.1, 5 & 6 could be the regular students and that too of Quaid-e-Azam Degree College, Peshawar for the session when they were posted at District Malakand. Even if they were the students of evening shift, which is a question mark on part of the petitioners for their admission in Quaid-e-Azam

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		<p>Degree College Peshawar as it is reflected that they were "<u>Regular</u>" students of <i>ibid</i> College and did their BSc from University of Peshawar. Moreover, the ban was imposed on ex-post facto NOC for M. PHIL and PH.D w.e.f 01.04.2019 whereas, the petitioners have taken their admission in the Quaid-e-Azam Degree College, Peshawar in the year 2019 earlier to the imposition of ban but without any such permission from respondent-department, therefore, within the period when there was a ban, no question would arise regarding the ex-post facto NOC and even the said ban was for M.PHIL and PH.D, which was relaxed by the Government of Khyber Pakhtunkhwa vide notification dated 23<sup>rd</sup> September, 2023 and even then when the ban was relaxed, the petitioners have never approached to the respondent-department for getting proper approval/ permission for their admission in BSc. It has specifically been notified by respondents that the degree without prior permission/NOC or study leave shall not be accepted which pertains to the policy decision of the respondents, reference whereof was given in the letter dated 14.07.2021. The case of the petitioners was that they have acquired additional qualification, on the basis whereof, they were entitled for their enlistment for promotion and their cases were required to be placed before the DPC, however, as discussed above,</p>
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the petitioners have never submitted any application before the respondent-department for their admission or no permission was granted to them, especially when they remained civil servants posted at particular stations of District Malakand but did their BSc from University of Peshawar being the regular students of Quaid-e-Azam Degree College, Peshawar, which question also raises eyebrows regarding their qualification being regular students of *ibid* College and at the same time they were civil servants and in said period, they were getting/drawing their salary against their duties at their respective stations of posting.

g. Apart from the above, the matter to the extent of promotion relates to the terms and conditions of civil servants, regarding which, there is a specific prayer in the instant petition which could not be entertained by this Court in view of the bar of Article 212 of the Constitution of Islamic Republic of Pakistan, 1973. When asked, learned counsel for the petitioners submitted that the petitioners have submitted their departmental appeal being aggrieved from the promotion of other PSTs, therefore, the instant petition may be sent to the Services Tribunal, however, except an application with title:

درخواست برائے حصول NOC مورخہ 25.2.2020

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nothing is available on record to substantiate that being aggrieved from the decision of DPC, they have filed any departmental appeal before the appropriate forum and after expiry of the requisite period, they could approach to the Services Tribunal and even otherwise the matter regarding the acquisition of additional qualification is still requiring resolution in the perplexed circumstances, could not be the question of promotion *ipso facto*. The petitioners No.1, 5 & 6 could not substantiate their contention for acquisition of additional qualification i.e., BSc from University of Peshawar being regular students of Quaid-e-Azam Degree College, Peshawar for grant of retrospective NOC irrespective of the fact that the ban has been relaxed. It is pertinent to mention that the respective degrees of the petitioners could not be questioned but acquisition thereof being civil servants posted at District Malakand and regular students of University of Peshawar in an institute known as Quaid-e-Azam Degree College Peshawar, is a question mark and an intriguing aspect, as such, they have not been able to make out a case for issuance of a writ as prayed for by the petitioners.

dl

9. Thus, for the reasons discussed above, we have not been persuaded to issue any writ in favour of petitioners against the respondents, hence this petition, being devoid of

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merits, is hereby dismissed in limine.

Date of Announcement

13.06.2023

Date of Writing of Judgment,

16.06.2023



JUDGE



JUDGE

TESTED

1139-509

(16) (860)

DIRECTORATE OF E&SE, KHYBER PAKHTUNKHWA  
NO. 4395/P NO:160/Ombuds/PE/M.Afzal  
Dated Peshawar the 14/07/2021

Amra - B

Most Immediate

To

All the District Education Officers.  
Khyber Pakhtunkhwa.

Subject: - REQUEST FOR ACTION.  
Memo:

I am directed to refer to the letter No:PO/Complaints/514/06/2021/5062 dated 30-6-2021 on the subject noted above and to enclose herewith a self contained application/complaint received from the inhabitants of District Malakand filed by Muhammad Afzal and others, resident of District Malakand for consideration and appropriate action as per direction of the Provincial Ombudsman Secretariat Khyber Pakhtunkhwa

I am further directed to ask you to direct your respective SDEOs/ASDEOs(M&F) that no degree will be acceptable without prior permission/NOC /Study leave. The instant case received from the Provincial Ombudsmen Secretariat Khyber Pakhtunkhwa, filed by PSTs of District Malakand which is self explanatory wherein it has been stated that without observing the codal formalities, i.e. Distance certificate from place of duty station and college as usually observed in such cases regular or private examination BSc Degree is considered on regular and age limit etc. were 22 years while the candidate having 35 years. Usually for improving Bachelor Degree inspite of having B.S. or M.Phil Degree particularly Degree from Quaid-e-Azam Degree college Faqir Abad Peshawar. Such fake and bogus Degree may not be entertained/ considered in future.

In order to proceed further into the matter, therefore, it is requested to inform all the concerned to observe the existing policy/rules, strictly and no degree will be acceptable without prior permission/NOC /Study leave within prescribed Age limit, otherwise strict disciplinary action will be taken against the defaulter.

Assistant Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa

- Copy forwarded to the:-
1. Registrar Provincial Ombudsman Secretariat w/r to his letter NO, & date cited above.
  2. P.A. to Director E&SE, Local Directorate.

Assistant Director (Estab)  
Elementary & Secondary Education  
Khyber Pakhtunkhwa

ATTACHED





(17)

Annex-C

**GOVERNMENT OF KHYBER PAKHTUNKHWA**  
**ELEMENTARY & SECONDARY EDUCATION DEPARTMENT**  
**CIVIL SECRETARITE PESHAWAR**  
**(PHONE NO. 091-9223587)**

**Subject: MINUTES OF THE MEETING REGARDING ADDITIONAL SUBJECTS FOR PROMOTION OF SENIOR CADRE TO SST (GEN. MATH/PHY AND BIO/CH) HELD ON 26.10.2022**

The subject meeting was held on 26-10-2022 at 11.00 AM under the Chairmanship of the Secretary Elementary & Secondary Education Department Khyber Pakhtunkhwa. The following attended the meeting:

1. Mr. Motasim Billah Shah Secretary E&SE Department..... (in chair)
2. Mr. Abdullah, Additional Secretary(Estab) E&SE Department
3. Mr. Sher Baz Khan Section Officer-I (Establishment Department)
4. Mst. Hamsheeda Begum DLO-IV (Law Department)
5. Dr. Iqbal Khan Additional Director E&SE KPK
6. Mst. Naghmana Sardar Additional Director E&SE KPK
7. Mr. Fazle Wahid Deputy Director E&SE KPK
8. Mr. Muhammad Ishaq Section Officer (Primary) E&SED

2. The meeting started with the recitation from the Holy Quran. The Chair welcomed the participants. The Additional Director (Estab) Directorate of E&SE, KPK explained the agenda items and briefed the forum regarding the issues raised in promotion cases due to additional subjects and further elaborated the case in light of the Service Rules of SSTs.


3. It was clearly noted by all participants of the meeting that Column-03 of Secondary School Teacher Service Rules provides that "At least second class Bachelor Degree from a recognized University" means that additional subjects cannot be considered as Degree. The representative of Law and Establishment Department also observed that the prescribed rules are related to Bachelor Degree and there is no mention of word "additional subject" etc.

4. After threadbare discussion the participants of the meeting agreed to consider only the degree which is entered in the Service Book of the teachers for the first time, for promotion.


The meeting ended with a vote of thanks from the Chair.  
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(Mr. Muhammad Ishaq)  
Section Officer (Primary)  
E&SE Department


  
(Mr. Sher Baz Khan)  
Section Officer (R-I)  
Establishment Department

  
(Mst. Hamsheeda Begum)  
DLO-IV  
Law Department

  
(Mr. Fazle Wahid)  
Deputy Director (Estab)  
E&SE KPK

  
(Mst. Naghmana Sardar)  
Additional Director (Estab)  
E&SE KPK

  
(Dr. Iqbal Khan)  
Additional Director (Estab)  
E&SE KPK

  
(Mr. Abdullah)  
Additional Secretary (Estab)  
E&SE Department

  
(Mr. Motasim Billah Shah)  
Secretary  
E&SE Department