



Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 618/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08/05/2018	<p>The appeal of Mr. Daulat Khan resubmitted today by Mr. Amin-ur-Rehman Yousafzai Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	15/05/18	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>25/05/18</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>

25.05.2018

Counsel for the appellant Daulat Khan present. Preliminary arguments heard. It was contended by the learned counsel for the appellant that the appellant was appointed as Mate (BPS-2) in the C&W Department vide order dated 19.09.2011. It was further contended that the appellant alongwith eleven others were terminated by the competent authority vide order dated 09.03.2012 with effect from 01.03.2012 without any reason. It was further contended that the appellant alongwith others approached the Worthy Peshawar High Court for reinstatement but the worthy Peshawar High Court directed to approach the proper forum. It was further contended that the appellant was terminated by the competent authority without giving opportunity of hearing and show-cause notice and the appellant was condemned unheard therefore, the impugned order is illegal and liable to be set-aside. It was further contended by the learned counsel for the appellant that there is some delay in filing of service appeal but he has submitted an application for condonation of delay.

The contention raised by the learned counsel for the appellant needs consideration. The appeal is admitted for regular hearing subject to limitation and deposit of security and process fee within 10 days thereafter, notice be issued to the respondents for written reply/comments for 06.08.2018 before S.B.


(Muhammad Amin Khan Kundi)

Member

06.08.2018

Mr. Khalid Khan, Advocate counsel for the appellant present. Due to non deposit of security and process fee, notices were not issued to the respondents. The learned counsel for the appellant request to give chance as it was misunderstood by the appellant, hence the appellant is directed to deposit the security and process fee within 10 days, thereafter notices be issued to the respondents for submission of written reply/comments on 25.09.2018 before S.B.

Appellant Deposited
Security & Process Fee


Chairman

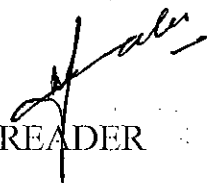
25.09.2018

Counsel for the appellant, Mr. Aminur Rahman Advocate present. Mr. Aurangzeb, SDO alongwith Mr. Kabirullah Khattak, Addl. AG for the respondents present. Written reply not submitted. Requested for adjournment. Granted. To come up for written reply/comments on 13.11.2018 before S.B.


Chairman

13.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 01.01.2019. Written reply received on behalf of respondents by Mr. Aurangzeb SDO and placed on file.


READER

01.01.2019

None for the appellant present. Mr. Aurangzeb, SDO alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Last opportunity granted for arguments. Case to come up for arguments on 04.03.2019 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

04.03.2019

Appellant alongwith his counsel present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Aurangzeb, SDO for the respondents present. Arguments heard. Adjourn. To come up for order on 29.03.2019 before D.B.


(M. HAMID MUGHAL)
MEMBER


(M. AMIN KHAN KUNDI)
MEMBER

29.03.2019

Appellant alongwith counsel present. Mr. Ziaullah, Deputy District Attorney alongwith Mr. Aurangzeb, SDO for the respondents present. Arguments heard and record perused.

Vide our detailed judgment of today consisting of five pages placed in connected Service Appeal No. 604/2018 "Naushad Versus Government of Khyber Pakhtunkhwa, through secretary Work & Services, Civil Secretariat, Peshawar and three others, without touching the merit of the appeal, the present service appeal is hereby dismissed being time barred. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.03.2019


(MUHAMMAD AMIN KHAN KUNDI)
MEMBER



(MUHAMMAD HAMID MUGHAL)
MEMBER

The appeal of Mr. Daulat Khan son of Gokut Khan r/o Kuki Khel Khyber Agency received today i.e. on 03.05.2018 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of appointment order mentioned in respect of appellant mentioned in para-1(Annexure-A) is not attached with the appeal which may be placed on it.

No. 949 /S.T,

Dt. 04/05 /2018.


REGISTRAR 4/5/18
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Amin-ur-Rehman Adv.Pesh.

Re. Submitted
Amirul

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. 618 of 2018

Daulat Khan **Appellant**

VERSUS

Government of Khyber Pakhtunkhwa & 3 others. **Respondents**

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Appellant
Through


Amin ur Rehman Yusufzai

&


Sajjad Mehsud
Advocates, Peshawar,
3-A, Park Avenue, Bheffani Plaza,
University Town, Peshawar
Cell No.0321-9022964, 0333-9981464

Dated: 30.04.2018

(1)

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Khyber Pakhtukhwa
Service Tribunal

Service Appeal No. 618 of 2018

Diary No. 649

Daulat Khan S/O Gukat Khan

Dated 03/5/2018

R/O Kuki Khel, Tehsil Jamrud, District Khyber Agency..... **Appellant**

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Works & Services, Civil Secretariat, Peshawar.
2. Additional Chief Secretary (FATA), FATA Secretariat Warsak Road, Peshawar.
3. Chief Engineering C&W Department (FATA), Warsak Road, Peshawar.
4. Executive Engineering, (XEN) Highway Division, Khyber Agency, Phase-V, Hayatabad, Peshawar..... **Respondents**

SERVICE APPEAL U/S 4 OF THE KP SERVICES TRIBUNAL ACT, 1974 READ WITH CONSOLIDATED JUDGMENT DATED: 28.02.2018 OF THE AUGUST PESHAWAR HIGH COURT, PESHAWAR IN WRIT PETITION NO.1355-P/2012, TITLED "SIKANDAR ZEB & OTHERS..VS..ACS FATA & OTHERS", AGAINST OFFICE ORDER NO.137/7-E(i), DATED: 09.03.2012 OF RESPONDENT NO.4, VIDE WHICH APPELLANT WAS TERMINATED FROM SERVICE WITH EFFECT FROM 01.03.2012.

Prayer in Appeal:

On acceptance of instant service appeal, impugned office order dated; 09.03.2012 of respondent No.4, may be set aside and appellant may be restored in service from the date of his termination from service, with all back benefits, so as to secure the ends of justice.

Filed to-day

Registrar
2/5/18

=====

Respectfully Sheweth:

1. That appellant was appointed as Mate (BPS-2), vide office order dated: 19.09.2011, on regular basis, by the competent authority/respondent No.4, after due process and fulfilment of legal/codal formalities.
(Copy of office order dated: 19.09.2011 is attached as Annexure "A").
2. That appellant was performing his official duties with zeal and devotion, however, astonished to know that after transferring of the competent authority/respondent No.4, their services have been terminated with effect from 01.03.2012, vide office order dated: 09.03.2012, which resulted into departmental appeal dated: 27.04.2012, however, their cries fell to deaf ear.
(Copies of impugned office order dated: 09.03.2012 & Departmental Appeal dated: 27.04.2012 is attached as Annexures "B" & "C" respectively).

Re-submitted to-day
and filed.

Registrar
2/5/18

2

3. That appellant, approached the august Peshawar High Court Peshawar through Writ Petition No.1355-P/2012, instituted on 02.05.2012, while amended writ petition whereof was instituted on 14.01.2015 which were clubbed together with another identical writ petition No.1313-P/2013, and decided through a single consolidated judgment dated: 28.02.2018, on the basis of available record coupled with parawise comments of the respondents, submitted on 20.07.2012, operative part of the judgment ibid is reproduced as under:

"As petitioners were permanent employees and their termination squarely falls within the terms and conditions of their services under Civil Servants Act, 1973, therefore, this court restrain himself to assume jurisdiction, in the matter of terms and conditions of a civil servant, specifically produced by Article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

Petitioners admittedly are civil servants, they should approach the competent forum for the redressal of their grievances if so advised. For the sole reason mentioned herein above both the petitions are dismissed accordingly".

(Copy of consolidated judgment dated: 28.02.2018 alongwith with Writ Petition No.1355-P/2012 & Comments of the respondents is attached as Annexure "D")

4. That appellant being aggrieved of office order dated: 09.03.2012, and having no other efficacious and alternate remedy, particularly in view of the consolidated judgment dated: 28.02.2018 supra, approaches this Hon'ble Tribunal for reinstatement in service, alongwith all back benefits, inter-alia, on the following grounds:

GROUND S:

- A. That the impugned office order dated: 09.03.2012 of respondent No.4 is against the law and facts available on file, hence untenable.
- B. That lawful service of appellant was done away with a single stroke of pen, without affording opportunity of hearing and issuance of mandatory show cause notice, hence has been condemned unheard, which attracts the doctrine of audi alteram partem.
- C. That respondent No.4 has no lawful authority to issue the impugned unilateral office order dated: 09.03.2012, in absence of any good reason, needless to add that all such happened with the transfer of the competent authority / respondent No.4, which attracts indulgence of this Hon'ble Tribunal in order to ensure treatment in accordance with law.

2

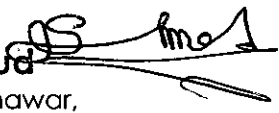
- D. That other employees having their cases at par with the appellant were re-instated in service, evident from office orders dated: 26.04.2012 & 11.06.2012, while appellant has been denied equal treatment, hence has been discriminated within the meaning of Article 25 of the Constitution of Islamic Republic of Pakistan, 1973.
(Copies of office orders dated: 26.04.2012 & 11.06.2012 alongwith salary slips are attached as Annexures "E" & "F" respectively).
- E. That lawful service of appellants was done away by the respondent department, without assigning any reason whereof, however, extreme malafide on their part could easily be adjudged by minutely perusal of office orders dated: 26.04.2012 (4 in numbers), vide which respondent No.4 has appointed his blue-eyed persons as Cooly(s) and Cleaner(s), which has caused grave miscarriage of justice.
(Copies of office orders dated: 26.04.2012 (4 in numbers) are attached as Annexures "G" to "G/3" respectively).
- F. That, admittedly, there is no final order of the departmental authority, however, in view of parawise comments of the respondents, submitted before the august Peshawar High Court, Peshawar, can be considered as final order, in view of PLD 1991 Supreme Court 226(D) and 2015 PLC (CS) 215.
- G. That any other, with the permission of this Honourable Tribunal will be taken at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of on acceptance of instant service appeal, impugned office order dated: 09.03.2012 of respondent No.4, may be set aside and appellant may be restored in service from the date of his termination from service, with all back benefits, so as to secure the ends of justice.


Appellant
Through


Amin ur Rehman Yusufzai

&


Sajjad Mehsud
Advocates, Peshawar,
3-A, Park Avenue, Bhattani Plaza,
University Town, Peshawar

Cell No.0321-9022964, 0333-9981464

Dated: 30.04.2018

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BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____ of 2018

Daulat Khan. **Appellant**

VERSUS

Government of Khyber Pakhtunkhwa & 3 others. **Respondents**

AFFIDAVIT

I, Daulat Khan S/O Gukat Khan R/O Kuki Khel, Tehsil Jamrud, District Khyber Agency, do hereby solemnly affirm and declare on oath that the contents of accompanying **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



DEPONENT

NIC No: 91909-9025522-5



A circular stamp from the Peshawar High Court. The outer ring contains the text 'KHYBER AGENCY' at the top, 'PESHAWAR HIGH COURT' at the bottom, and 'MAHMOOD' on the right side. In the center, there is a handwritten signature and the date '2/10/18'.

5

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Civil Misc. No. _____ of 2018

IN

Service Appeal No. _____ of 2018

Daulat Khan. **Appellant**

VERSUS

Government of Khyber Pakhtunkhwa & 3 others. **Respondents**

APPLICATION FOR CONDONATION OF DELAY

Respectfully Sheweth:

1. That the titled appeal has been filed today wherein no date for onward proceedings has yet been fixed.
2. That facts and grounds of the titled service appeal may be considered as integral part and parcel of instant application.
3. That delay, if occasioned in filing of titled appeal, is not deliberate rather occasioned inadvertently i.e. by pursuing wrong remedy, hence the delay, if any, is condonable, in view of 2004 SCMR 1419 2007 SCMR 1240, PLD 2003 SC 724, PLD 2014 Peshawar 45 & PLD 2016 SC 872.
4. That valuable rights of the applicant/appellant are involved into the matter and if the subject relief has not been granted, appellant will suffer irreparable loss.
5. That applicant/appellant has got good prima facie in his favour and is very much sanguine of its success, therefore, deserves to be prevented from being non-suited, within the meaning of Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.
6. That there is no legal bar to allow instant application, rather it will be in the best interest of justice to provide opportunity of proper hearing to the applicant/appellant.

②

It is, therefore, most humbly prayed that on acceptance of instant application, delay (if any) in filing of instant appeal may please be condoned in the best interest of justice and equity.

Applicant/Appellant
Through

Amin ur Rehman Yusufzai

&

Sajjad Mensud

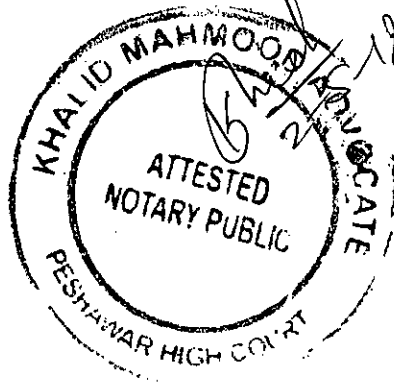
Advocates, Peshawar,
3-A, Park Avenue, Bhattani Plaza,
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Cell No.0321-9022964, 0333-9981464

Dated: 30.04.2018

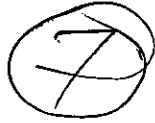
AFFIDAVIT

I, Daulat Khan S/O Gukat Khan R/O Kuki Khel, Tehsil Jamrud, District Khyber Agency., do hereby solemnly affirm and declare on oath that the contents of instant **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



DEPONENT

NIC No, 21902-9025522-5



BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

Service Appeal No. _____ of 2018

Daulat Khan. **Appellant**

VERSUS

Government of Khyber Pakhtunkhwa & 3 others. **Respondents**

ADDRESSES OF PARTIES

APPELLANT:

Daulat Khan S/O Gukat Khan
R/O Kuki Khel, Tehsil Jamrud, District Khyber Agency.

RESPONDENTS

1. Government of Khyber Pakhtunkhwa through Secretary Works & Services, Civil Secretariat, Peshawar.
2. Additional Chief Secretary (FATA), FATA Secretariat Warsak Road, Peshawar.
3. Chief Engineering C&W Department (FATA), Warsak Road, Peshawar.
4. Executive Engineering, (XEN) Highway Division, Khyber Agency, Phase-V, Hayatabad, Peshawar.

Appellant
Through

Amin ur Rehman Yusufzai

&

Sajjad Mehsud

Advocates, Peshawar,
3-A, Park Avenue, Bhattani Plaza,
University Town, Peshawar

Cell No.0321-9022964, 0333-9981464

Dated: 30.04.2018

Annex A

OFFICE OF THE EXECUTIVE ENGINEER
HIGHWAY DIVISION KHYBER AGENCY.

No. 33 /7-E(i) Dated 9/09/2011

OFFICE ORDER

On the recommendation of Departmental Promotion and appointment Committee Mr. Daulat Khan S/O Gulab Khan resident of Tehsil Jamrud Khyber Agency is hereby appointed as Mate. (BPS-2) (4900-170-10000) plus usual allowances as admissible under the rules time to time on the following terms & conditions against the existing vacant post :-

- 1- The appointment is on regular basis against the existing sanctioned vacant post.
- 2- The candidate is required to produce age Health certificate from Medical Superintendent Agency HQ Hospital Landikotal.
- 3- Any conduct of the employee violates the provision of the K.P.K. Govt. servant conduct rules 1987 shall amount to misconduct on the part of the employee.

EXECUTIVE ENGINEER

Copy to the:-

- 1- Agency Accounts Officer Khyber Agency at Jamrud.
- 2- Medical Superintendent AHQ Hospital Landikotal.
- 3- Sub Divisional Officer concerned.
- 4- DAO (Local)
- 5- Official concerned.

EXECUTIVE ENGINEER

wh
ATTESTED

Annex "B"

9

OFFICE OF THE EXECUTIVE ENGINEER
HIGHWAY DIVISION KHYBER AGENCY

No. 137 /7-E(i) Dated 9/3/2012

OFFICE ORDER

The services of the following officials Name and designation noted against
Each are hereby terminated with effect from 1.3.2012 with interest of Government.

S.No. Name & Designation.

1.	Nasir Ali S/O Sardar Ali	WorkMunshi	Mardan
2.	Abid Ali S/O Sardar Ali	DRR Driver	Marda
3.	SacedullahJan S/O Musafar Khan	DRR Driver	Charsadda
4.	Sikandar Zeb S/O Khial Akbar	DRR Driver	Jamrud
5.	Asif Mehmood S/O Muhammad Younis.	Mate	Nowshera
6.	Nausahad S/O Hajeab Khan	Mate	Jamrud
7.	Daulat Khan S/O Gulat Khan	Mate	Jamrud
8.	Muhammad Sarir S/O Rehmatullah	Cooly	Jamrud
9.	Tufail Khan S/O Muslim Khan	Cooly	Jamrud
10.	Shaheen Khan S/O Jangrez	Cooly	Jamrud
11.	Muhammad Perviz S/O Fazal Din	Cooly	Jamrud
12.	Aftab Khan S/O Sikander Khan	Cooly	Swabi

EXECUTIVE ENGINEER

Copy to:-

1. Chief Engineer Works & Serices Deptt: (FATA)K.P.K.Peshawar for information please.
2. Agency Accounts Officer Khyber at Jamrud for information.
3. All Sub Divisional Officer's in Highway Division Khyber for information and necessary action.

EXECUTIVE ENGINEER

ATTESTED

حضرت جناب جینٹ انجینئر C ایڈ لڈ لڈا دفتر فائنل سیکرٹریٹ لڈا

"Ames"

(19)

لہذا :- ایسا عمل آفس آڈر ۵۹/۵۳ اور ۵۹/۵۸ جیسے ڈالو گے
ڈالو است گزاردوں کو نوٹری سے برخاست کیا گیا

جینٹ عالی :- یہ تم سالانہ کو محکمہ پانی و برقی ذیلوں کے جینٹ ڈائری
چیز ایسی اور کوئی لڈا لڈا آفس آڈر ۵۹/۵۸ اور ۵۹/۵۳ جیسے ڈالو گے
اور ۵۹/۵۳ کے ترقیب مستقل بنیادوں پر بحال Authority نے تیسٹ کے باقاعدہ
ڈیلوں کے ایس ایم کے لئے (احکامات تعیناتی ایس ایم کے لئے)

۱۲۔ یہ تم سالانہ ڈیلوں کی اسٹیٹس اور کسٹ ڈالو گے سے اس ایس ایم کے لئے کسی کو کوئی
شکایت ہی اور نہ ہی کسی بھی آفسر یا لڈا کوئی یا فادری لڈا کوئی اختیار کیا
مگر مندرجہ ایس ایم کے لئے اسٹیٹس ہی کے لئے وائے آفسر یا لڈا کوئی اور ج
بیل سٹ سالانہ کوئی وقت آفس آڈر ۵۹/۵۳ کو نوٹری سے برخاست کر کے لڈا
ایس ایم کے لئے ضرورت لگتی ہوگی

۱۳۔ یہ تم حکم ۵۹/۵۳ کے خلاف قانون و قواعد کے - اور قابل مستعمل ہے
۱۴۔ یہ تم سالانہ کو نوٹری سے برخاست سے یہ کوئی سنوئی ایس ایم اور کوئی لڈا کوئی کوئی بنیادی
حقوق سے ملتی ہے

۱۵۔ یہ تم سالانہ کے ساتھ تو اس سے برخاست کر کے ملانے میں سے آفٹ محمود کو فیلوٹ
کم ۵۹/۵۳ کے وائس بحال کر کے لڈا لڈا اور سالانہ کے امتیازی سلوک کا
برتاؤ نہیں ملتا ہے۔ اور بحال میں لڈا لڈا کے لئے خلاف قانون اور آفس
کے آرڈر کے لئے یہ آفسر کو کوئی تعیناتی لڈا لڈا کے لئے جس احکامات
۵۹/۵۳ کے لئے - جسے نوٹری سے برخاست، اعجاز خان، اور لڈا لڈا
کوئی ترقیب لڈا اور کسٹ کے لئے احکامات کے لئے جس سے عاز آفسر
لڈا لڈا عیاں ہیں

لڈا لڈا کے لئے منظور محکمہ پانی و برقی لڈا لڈا کے لئے
جائز سالانہ کوئی لڈا لڈا کے لئے لڈا لڈا کے لئے لڈا لڈا کے لئے
الغایت سلوک لڈا لڈا

لڈا لڈا کے لئے لڈا لڈا کے لئے لڈا لڈا کے لئے

- سالانہ ۱۰ سلڈہ رزیب
- ۱۲ لڈا لڈا
- ۱۳ لڈا لڈا
- ۱۴ لڈا لڈا
- ۱۵ لڈا لڈا

۵۹/۵۳

Attestd

Amir

(D)

(15)

**JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT**

Writ Petition No.1355-P of 2012

**Slkandar Zalb & others
Vs.**

**The Additional Chief Secretary FATA Secretariat,
Warsak Road, Peshawar & others**



JUDGMENT

Date of hearing 28.02.2018.

Petitioner(s) by: Asad Zeb Khan Advocate.

Respondent(s) by: M. Farooq Akhbari & Salman Fayaz Min
have by Farooq Akhbari & Salman Fayaz Min
Advocates

IKRAMULLAH KHAN, J. We intend to dispose

of both these constitutional petitions i.e W.P No1313-P/2013 and instant W.P No.1355-P/2012 through our this single judgment, as similar question of law is involved.

2. In essence, Petitioners have challenged their termination orders dated 09.032012, whereby the services of petitioners were terminated.

3. Learned counsel for petitioners contended that the impugned order is against law as neither the petitioners were afforded opportunity of hearing nor any inquiry in this regard was conducted, in order to find out any fault of the petitioners in the matter of their appointment.

4. No doubt the impugned order of termination did not disclose any reasons, in

[Signature]
PESHAWAR HIGH COURT
08 APR 2018

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regard to termination of petitioners and a number of other employees, however, in their comments, they had raised question of illegal appointment done by previous competent authority, in the matter of appointment of petitioners and others, but as petitioners were permanent employees and their termination squarely falls within the terms and conditions of their services under Civil Servant Act 1973, therefore, this Court restrain himself to assume jurisdiction, in the matter of terms and conditions of a civil servant, specifically produced by Article 212 of the Constitution of Islamic Republic of Pakistan.

5. Petitioners admittedly civil servant, they should approach the competent forum for the redressal of their grievance, if so advice.

6. For the sole reason mentioned hereinabove, both the petitions are dismissed accordingly.

Announced.
28.02.2018.

JUDGE

JUDGE

Hon'ble Mr. Justice Ikramullah Khan
Hon'ble Mr. Justice Qalandar Ali Khan

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Large handwritten signature

CERTIFIED TO BE TRUE COPY
Examined
Peshawar High Court, Peshawar
Authorised Under Article 27 of
The Oath-taking Act of 1984

05 APR 2018

Ijaz

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**BEFORE THE PESHAWAR HIGH COURT
PESHAWAR**

W.P 1355-P/2012



1. Sikandar Zaib S/O Khayal Akbar DRR Driver
R/O Jamrud Khyber Agency .
2. Naushad S/O Hajeab Khan (Mate)
R/O Jamrud Khyber Agency .
3. Daulat Khan S/O Gukat Khan (Mate)
R/O Jamrud Khyber Agency .
4. Muhammd Sarir S/O Rehmatullah (Cooly)
R/O Jamrud Khyber Agency .
5. Tufail Khan S/O Muslim Khan (Cooly)
R/O Jamrud Khyber Agency .
6. Asif Mehmood S/O Muhammad Yunis (Mate)
R/O Phase -1 Hayatabad Peshawar .
7. Aftab Khan S/O Sikandar Khan (Cooly)
R/O H.No 617 , F-6 Phase 6 Hayatabad Peshawar .

Petitioners

Versus

1. The Additional Chief Secretary
Fata Secretariat
Warsak Road Peshawar .
2. Chief Engineer, C & W Deptt. (FATA) K.P.K
Warsak Road Peshawar .
3. XEN Highway Division Khyber Agency
Phase V Hayatabad , Peshawar .

Respondents

**PETITION UNDER ARTICLE 199 OF
CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN FOR DECLARATION TO THE
EFFECT THAT THE IMPUGNED OFFICE ORDER
DATED 09-03-12 TERMINATING THE SERVICES
OF THE PETITIONERS ISSUED BY EXECUTIVE
ENGINEER HIGHWAY DIVISION KHYBER
AGENCY IS VOID AB INITIO, ILLEGAL AND
WITHOUT ANY LAWFUL AUTHORITY AND
RESPONDENTS BE DIRECTED TO RECIND
/WITHDRAW THE IMPUGNED OFFICE ORDER
BEARING NO . 137/7-E(i) DATED 09/03/2012
AND REINSTATE THE PETITIONERS BEING
WRONGLY TERMINATED.**

REGISTERED
EXAMINED
Peshawar High Court

28/9/2018 - 28/9/2018

14



Respectfully Sheweth:

1. That the petitioners were appointed against the sanctioned vacant post as regular employees in BPS 1-4 and posted at Highway Division Khyber Agency in BPS 1-4, as driver and coolies mentioned in their respective appointment letter (Copy of the respective appointment letters are attached as *Annexure A to A/4*)
2. That their appointment was made after fulfillment of all the codal formalities thereafter they were medically examined by Medical Office, their services book were prepared and their monthly salaries were disbursed to them duly sanctioned by AGPR.
3. That the petitioners were regularly drawing their pay & Allowances and were performing their duties in their respective places when to their utter surprise the impugned office order bearing No.137/7-E(i) Dated 9/03/2012, issued by Respondent No.3 terminating the service of the petitioners, without showing any reason therefore and with one stroke of pen vide order dated 9/03/2012. (Copy of the impugned Order is Annexed as *Annexure -B*)
4. That the impugned order is in utter disregard of the Laws /rules governing the subject matter, hence this petition inter alia on the following amongst other grounds

GROUND

- a. That the impugned order terminating the services of the petitioner is against law governing services of the petitioner and also against the natural justice hence untenable.
- b. That by terminating the services of the petitioners the respondents have totally violated the Constitutional Provisions providing protection to the petitioners under article 25 & 27 of the Constitution of Islamic Republic of Pakistan, besides the service law which otherwise provides that before taking any action against the employ whether regular or on contract should be given a notice or advance reasons therefor.
- c. That in the instant case petitioners have been condemned unheard as neither they have been shown any reason for their sudden termination nor any notice whatsoever have been served upon them least to say about chance of personal hearing.
- d. That the petitioners have been discriminated and their fundamental Rights have been infringed by the unwarranted actions of the respondents.
- e. That the petitioners have moved the department but with no response rather the impugned action has been taken against them unilaterally for no fault of them.

That the petitioner have drawn their pay & allowances for 6/7 months and there was no allegation against them nor they have committed any wrong.

That the petitioner have no other adequate efficacious remedy hence to approach this Hon'ble Court in the instant Petition.

It is therefore most humbly prayed that on acceptance of this Constitutional petition the impugned office order bearing No. 137/7-E(i) dated 09/03/2012 may graciously be declared as void abinitio and without any lawful authority and respondents be directed to rescind /withdraw the impugned office order bearing No. 137/7-E(i) dated 09/03/2012 and reinstate the petitioners on their own post in the interest of justice

CONFIDENTIAL
07 MAY 2012

ATTESTED
Peshawar High Court

18

[Handwritten mark]

INTERIM RELIEF

It is further prayed that the petitioners have got prima facie case , balance of convenience leans in their favour and if they are not reinstated on their own posts, the said sanctioned vacant post will be filled up and the matter will further become complicated hence they will suffer irreparable loss it is there fore further prayed that the interim relief may also be granted

Petitioners

Through

Salman Fayaz Mir

Salman Fayaz Mir
Advocate High Court

CERTIFIED TO BE TRUE COPY

[Signature]
Peshawar High Court, Peshawar
Authorized Under Article 67 of
The Constitution of Pakistan 1973

05 APR 2018

FILED TODAY
[Signature]
Deputy Registrar
02 MAY 2018

FILED
[Signature]
EXAMINER
Peshawar High Court
05 APR 2018

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Amended Writ petition
In W.P. 1355/2012

1. Sikandar Zaib S/O Khayal Akbar DRR Driver
R/O Jamrud Khyber Agency.
2. Naushad S/O Hajeer Khan (Mate)
R/O Jamrud Khyber Agency .
3. Daulat Khan S/O Gukat Khan (Mate)
R/O Jamrud Khyber Agency .
4. Muhammad Sarir S/O Rehmatullah (Cooly)
R/O Jamrud-Khyber Agency .
5. Tufail Khan S/O Muslim Khan (Cooly)
R/O Jamrud Khyber Agency .
6. Asif Mehmood S/O Yunas Khan (Cooly)
R/O Phase-1 Hayatabad Peshawar.
7. Aftab Khan S/O Sikandar Khan (Cooly)
R/O H.No 617, F-6 Phase 6 Hayatabad Peshawar.

Petitioners

Versus

1. The Additional Chief Secretary
Fata Secretariat
Warsak Road Peshawar .
2. Chief Engineer, C & W Deptt. (FATA) K.P.K
Warsak Road Peshawar .
3. XEN Highway Division Khyber Agency
Phase V Hayatabad , Peshawar .
4. Abdul Haseeb S/O Abdul Latif
Road Cooly BPS-1
Office of Executive Engineer Highway Division Khyber Agency.
5. Ijaz Khan S/O Said Karim
Road Cooly BPS-1
Office of Executive Engineer Highway Division Khyber Agency.

FILED TODAY
Deputy Registrar
14 JAN 2015

- (77)
6. Itbar Gul S/O Didar Gul
Road Roller Cleaner BPS-1
Office of Executive Engineer Highway Division Khyber Agency.
7. Khurshid Khan S/O Israel Khan
Road Cooly BPS-1
Office of Executive Engineer Highway Division Khyber Agency.

Respondents

AMENDED WRIT PETITION UNDER ARTICLE 199
OF CONSTITUTION OF ISLAMIC REPUBLIC OF
PAKISTAN 1973, FOR DECLARATION TO THE
EFFECT THAT THE IMPUGNED OFFICE ORDER
DATED 09-03-12 TERMINATING THE SERVICES OF
THE PETITIONERS ISSUED BY EXECUTIVE
ENGINEER HIGHWAY DIVISION KHYBER AGENCY
IS VOID AB INITIO, ILLEGAL AND WITHOUT ANY
LAWFUL AUTHORITY AND RESPONDENTS BE
DIRECTED TO RECIND /WITHDRAW THE
IMPUGNED OFFICE ORDER BEARING NO . 137/7-
E(i) DATED 09/03/2012 AND REINSTATE THE
PETITIONERS BEING WRONGLY TERMINATED,
AND

APPOINTMENT OF RESPONDENT NO. 4-7 IN PLACE
OF THE PETITIONERS VIDE OFFICE ORDER
BEARING NO. 332/7-E(I), 333/7-E(I), 334/7-E(I), 335/7-
E(I) DATED 26.04.2012 ARE ILLEGAL AND VOID
ABINITIO, EFFECTING RIGHTS OF THE
PETITIONERS.

FILED TODAY
Deputy Registrar
14 JAN 2015

Respectfully Sheweth:

1. That the petitioners had filed the subject writ petition initially impugning order of their termination from service, notified vide No. 137/7-E(i) dated

09/03/2012 as illegal, void *abinitio* and without any legal authority and reinstatement of the petitioners by rescinding/withdrawal of the same.

2. That upon the directions of the court respondents No. 2-3 filed their written comments. [Annexure-A].
3. During the pendency of the writ petition, petitioners came to know services of some of the affecties of the impugned order are restored vide order No 329/7-E(I) dated 26.04.2012 and vide order No. 332/7-E(I), 333 /7-E(I) dated 26.04.2012, 334 /7-E(I) and 335/7-E(I) dated 26.04.2012 respondents No. 4-7 have freshly been appointed in the place of petitioners. [Annexure -B]. This fact was brought into the notice of this august court by filing a C.M. and during the course of arguments petitioners were directed to file amended writ petition by impleading the fresh appointees hence this writ petition.
4. That the petitioners were appointed against the sanctioned vacant posts as regular employees in BPS 1-4 and posted, at Highway Division Khyber Agency in BPS 1-4 as driver and coolies mentioned in their respective appointment letter (Copy of the respective appointment letters are attached as [Annexure C])
5. That their appointment was made after fulfillment of all the codal formalities thereafter they were medically examined by Medical Office, their services book were prepared and their monthly salaries were disbursed to them duly sanctioned by AGPR.
6. That the petitioners were regularly drawing their pay & Allowances and were performing their duties in their respective places when to their utter surprise the impugned office order bearing No.137/7-E(i) Dated 9/03/2012, issued by Respondent No.3 terminating the service of the petitioners, without showing any reason therefor and with one stroke of pen vide order dated 9/03/2012. (Copy of the impugned Order is Annexed as [Annexure -D])
7. That after removal of the petitioners, not only services of some of the affecties were restored but fresh appointments were also made.
8. That the impugned order is in utter disregard of the Laws /rules governing the subject matter, hence this petition *inter alia* on the following amongst other grounds.

GROUNDS

- a. That the impugned order terminating the services of the petitioner is against law governing services of the petitioner and also against the natural justice hence untenable.
- b. That by terminating the services of the petitioners the respondents have totally violated the Constitutional Provisions providing protection to the petitioners under article 25 & 27 of the Constitution of Islamic Republic of Pakistan. Besides, the service law which otherwise provides that before taking any action

FILED TODAY

Deputy Registrar

14 JAN 2015

- against the employ whether regular or on contract should be given a notice or advance reasons therefor.
- c. That according to para No.1 of the comments submitted by respondents No. 2 & 3 there existed no vacant post which fact is contrary to their own order dated 26.04.2012, which shows clear cut *mala fide* of the respondents.
 - d. That in para 2 of the comments the respondents stating that appointment of the petitioners were made in gross violation of rules/regulations and in absence of regular vacancies but on the other hand the respondents have not only made fresh appointment but have also reinstated some of the persons who were affected by the impugned notification.
 - e. That in the instant case petitioners have been condemned unheard as neither they have been shown any reason for their sudden termination nor any notice whatsoever have been served upon them least to say about chance of personal hearing.
 - f. That the petitioners have been discriminated and their fundamental Rights have been infringed by the unwarranted actions of the respondents.
 - g. That the petitioners have moved the department but with no response rather the impugned action has been taken against them unilaterally for no fault of them.
 - h. That the petitioner have drawn their pay & allowances for 6/7 months and there was no allegation against them nor they have committed any wrong.
 - i. That the petitioner have no other adequate efficacious remedy hence to approach this Hon'ble Court in the instant Petition.

It is therefore most humbly prayed that on acceptance of this Constitutional petition the impugned office order bearing No. 137/7-E(i) dated 09/03/2012 may graciously be declared as void *abinitio* and without any lawful authority and respondents be directed to rescind /withdraw the impugned office order bearing No. 137/7-E(i) dated 09/03/2012 and reinstate the petitioners on their own post in the interest of justice and appointment of respondent no. 4-7 in place of the petitioners vide office order bearing no. 332/7-E(I), 333/7-E(I), 334/7-E(I), 335/7-E(I) dated 26.04.2012 are illegal and void *abinitio*, effecting rights of the petitioners.

Petitioners

Through

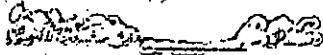
FILED TODAY
Deputy Registrar
14 JAN 2015

Salman Fayaz Mir
Advocate High Court

26



**BEFORE THE PESHAWAR HIGH COURT,
PESHAWAR**



In W.P 1355/2012

Sikandar Zaib & Others

Petitioners

Versus

The Additional Chief Secretary & Others

Respondents

AFFIDAVIT

I, Sikandar Zaib S/O Khayal Akbar R/O Jamrud Khyber Agency, do hereby solemnly affirm and declare that the contents of this amended Writ Petition are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Sikandar Zaib
Deponent.

I.D # 21202-7255026-1

Identified by

Salman Fayaz Mir

Salman Fayaz Mir
Advocate High Court

No: 7951
 Certified that the above was verified on solemnly affirmation before me in office, this 10th day of Feb 2015 by Sikandar Zaib s/o Khayal Akbar R/O Jamrud Khyber Agency who was identified by Salman Fayaz Mir who is personally known to me:
 Oath Commissioner
 Peshawar High Court, Peshawar.

FILED TODAY
Deputy Registrar

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Amended Writ Petition
In W.P. 1355/2012

Sikandar Zaib & Others

Petitioners

Versus

The Additional Chief Secretary & Others

Respondents

ADDRESSES OF THE PARTIES

Petitioners

1. Sikandar Zaib S/O Khayal Akbar DRR Driver
R/O Jamrud Khyber Agency .
2. Naushad S/O Hajeab Khan (Mate)
R/O Jamrud Khyber Agency .
3. Daulat Khan S/O Gukat Khan (Mate)
R/O Jamrud Khyber Agency .
4. Muhammd Sarir S/O Rehmatullah (Cooly)
R/O Jamrud Khyber Agency .
5. Tufail Khan S/O Muslim Khan (Cooly)
R/O Jamrud Khyber Agency .
6. Asif Mehmood S/O Yunas Khan (Cooly)
R/O Phase-1 Hayatabad Peshawar.
7. Aftab Khan S/O Sikandar Khan (Cooly)
R/O H.No 617, F-6 Phase 6 Hayatabad Peshawar.

FILED TODAY
Deputy Registrar
14 JAN 2015

22



Respondents

1. The Additional Chief Secretary
Fata Secretariat
Warsak Road Peshawar .
2. Chief Engineer, C & W Deptt. (FATA) K.P.K
Warsak Road Peshawar .
3. XEN Highway Division Khybewr Agency
Phase V Hayatabad , Peshawar .
4. Abdul Haseeb S/O Abdul Latif
Road Cooly BPS-1
Office of Executive Engineer Highway Division Khyber Agency.
5. Ijaz Khan S/O Said Karim
Road Cooly BPS-1
Office of Executive Engineer-Highway Division Khyber Agency.
6. Itbar Gul S/O Didar Gul
Road Roller Cleaner BPS-1
Office of Executive Engineer Highway Division Khyber Agency.
7. Khurshid Khan S/O Israel Khan
Road Cooly BPS-1
Office of Executive Engineer Highway Division Khyber Agency.

Petitioners

Through

Salman Fayaz Mir
Advocate High Court

FILED TODAY
Deputy Registrar
14 JAN 2015

23

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR
WRIT PETITION NO.1355-P/2012

1. Sikandar Zeb S/O Khayal Akbar DRR Driver R/O Jamrud Khyber Agency
2. Naushad S/O Hajeer Khan (Mate) R/O Jamrud Khyber Agency
3. Daulat Khan S/O Gukat Khan (Mate) R/O Jamrud Khyber Agency
4. Muhammad Sarir S/O Rehmatullah (Cooly) R/O Jamrud Khyber Agency
5. Tufail Khan S/O Muslim Khan (Cooly) R/O Jamrud Khyber Agency
6. Asif Mehmood S/O Muhammad Yunis (Mate) R/O Phase-1 Hayatabad, Peshawar
7. Aftab Khan S/O Sikandar Khan (Cooly) R/O H.No.617, F-6, Phase 6, Hayatabad, Peshawar

(Petitioners)

VERSUS

1. Additional Chief Secretary FATA Secretariat Peshawar
2. Chief Engineer W&S FATA
3. XEN Highway Division Khyber Agency

Joint Parawise comments on behalf of Respondents No. 2 and 3

Respectfully Sheweth

Preliminary Objections

- a) That the petitioners have no locus standi, to come to this honourable c
- b) That the petitioners have no cause of action.
- c) That the petitioners are not aggrieved persons within the meaning Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.
- d) That due to jurisdictional Bar as contained in Article 212 of Constitution of Islamic Republic of Pakistan, 1973, petition is not maintainable and liable to be dismissed.
- e) That the writ petition is premature
- f) That the writ petition is bad due to non-joinder of necessary parties
- g) That the petition is time barred.

FACTS

1. In-correct, that the petitioners were appointed by Ex-Executive Engineer Highway Division Khyber Agency in gross violation of rules and regulations, since there was no vacant post in the Division, therefore, the appointments made were gross irregularity committed in the instant case, furthermore, the Ex-Executive Engineer at his own appointed 12 Nos Class-IV employees in BS-01 to BS-05 in various categories, whereas, 6 Nos employees on roll were available who were appointed earlier by the then Executive Engineer in accordance with the rules and regulations and

21/7/12

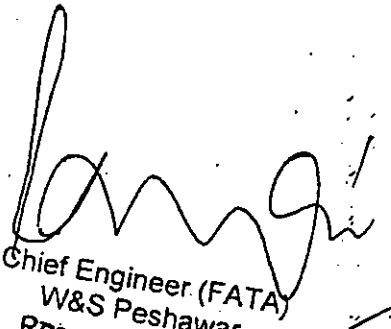
JUL 2012

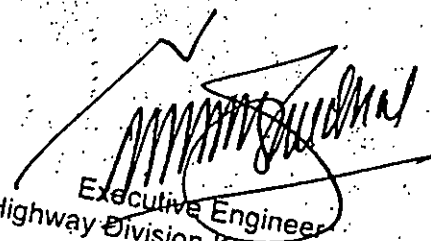
24



- c. In-correct, the petitioners are well aware of the facts that due favour with them of the Ex-Executive Engineer by way of stop of other legal employees, against which they were appointed violation of rules, which resulted in their termination from service.
- d. In-correct, the petitioners had not been discriminated.
- e. In-correct, being illegal appointees, have no right to appeal against termination orders.
- f. Correct to the extent, that due to misuse of powers by the Ex-Executive Engineer, the petitioners had drawn their salaries but subsequent services were terminated in order to regularize the irregularity.
- g. In-correct, as stated in above paras, the petitioners were appointed illegally by the Ex-Executive Engineer, therefore, the petitioners have right to claim or sue the case before this Hon'able court.

In view of the above, it is prayed that the petition being without merit any substance is not maintainable and incompetent, may kindly be dismissed with costs.


 Chief Engineer (FATA)
 W&S Peshawar
 Respondent No.2


 Executive Engineer
 Highway Division Khyber Agency
 (Respondent No. 3)

25

were belonging to the Khyber Agency, however, their salaries were simply stopped by the Ex-Executive Engineer on the change proforma source-Pay 02 (Annex-I), in order to make a room for the illegal appointee (petitioners). It is further added to mention here, that after transfer of Ex-Executive Engineer on 30.01.2012 the Respondent No.3 on assuming the charge of the Division on 30.01.2012, was approached by the regular employees (6 Nos) as stated above who were earlier appointed after fulfillment of all codal formalities/procedure. Whereas, 12 Nos appointments of Class-IV were made some of them at Serial no. 1, 2, 3, 11 & 12 (SI: # 11 & 12 are appellants in this writ petition at No: 6 & 7) are not the resident of Khyber Agency for which the details are annexed-II. The facts of the case were reported to the higher ups and finally it was decided that in order to restore the legal appointees, the illegal appointees were terminated from service forthwith.

2. In-correct, as explained in para-1 of the facts, the appointment of the petitioners were made in gross violation of rules / regulations and in absence of regular vacancies, therefore, all the process i.e. medical examination and maintaining of Service Books had been become illegal as well and void.
3. Correct to the extent, that the petitioners were allowed by Ex-Executive Engineer illegally for drawing their pay and allowances since the appointment of all the petitioners was found illegal, therefore, termination from service of the petitioners is legally covered in accordance to the rules as there was no place for their appointment in the Division and hence they had not been paid salaries after their termination as they have not worked physically.
4. The impugned order is correct and in accordance with law/regulation as the illegality since carried was recalled and made good in accordance to the rules/ regulations and the Ex: Executive Engineer was posted out on the report of the Chief Engineer (FATA) (Annexure-III).

GROUND

- a. In-correct. The impugned order terminating the services of the petitioners is in accordance with the law governing services of the petitioners, and also in accordance with natural justice, needs not to be restored.
- b. In-correct, as explained in para-1 of the facts, there was no place available in the Division against which the petitioners had to be appointed or paid. The Ex-Executive Engineer has misused his powers, illegally by stopping the salaries of other legal appointees (6 Nos) referred to in the above paras and made a room for the illegal appointees, furthermore, some Nos of appointees did not belong to the Khyber Agency and tribal territory i/c appellant No: 6&7 and were appointed in violation of the rules local / District / Agency Cadre, hence no violation has been made of termination from service under any law of the land, as there was no for them to be retained in the Division in Khyber Agency.

FILED
Deputy F.
21 JUL 2012

11

BEFORE PESHAWAR HIGH COURT PESHAWAR

W.P.No.1355-P/2012

Sikander Zaib S/o Khayal Akber etc

Petitioner:

VERSUS

Additional Chief Secretary (FATA) & Others.

Respondent

AFFIDAVIT

I, Engr. Noor-us-Saeed Shah Executive Engineer, Highway Division Khyber Agency do hereby solemnly affirm and declare that the contents of the accompanying Para-wise comments submitted by Respondent No. 2&3 are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Honourable Court.

DEPONENT

Identified by

Amir d. Supri
Advocate General Khyber Pakhtunkhwa
Peshawar.

Engr. Noor-us-Saeed Shah
KHYBER

KEN H/WAY KHYBER

FILED TODAY

Deputy Registrar

21 JUL 2012

No. 641
Certified that the above was verified on solemnly affirmation before me in office, this 2nd day of July 2012 by Engr. Noor-us-Saeed Shah who was identified by Advocate General Who is personally known to me: [Signature]

Saeed

Amir "E" (27)

OFFICE OF THE EXECUTIVE ENGINEER
HIGHWAY DIVISION KHYBER AGENCY.

No. 332 /E(I)

Dated Jamrud the 26 /4/2012

OFFICE ORDER

Mr. Abdul Haseeb S/O Abdul Latif is hereby appointed as Road Cooly BPS-I (2970-90-5670) against the existing vacancy with effect from actual date of arrival for duty plus usual allowance as admissible under the rules time to time on the following terms and conditions.

1. The appointment is purely on temporary basis for a period of two years which can be extended on satisfactory performance of the employee.
2. The candidate is required to produce Age Health certificate from the Medical Superintendent Agency HQ Hospital Landikotal.
3. Your services can be terminated at any time without assigning any reasons.
3. Any conduct of the employee violates of the provision the K.P.K Govt: servant conduct rules 1987 shall amount to misconduct on the part of the employee.

EXECUTIVE ENGINEER

Copy to:-

1. Agency Accounts Officer Khyber Agency.
2. Medical Superintendent AHQ Hospital Landikotal.
3. Sub Divisional Officer Highway Sub Division Landikotal.
4. DAO (Local)
5. Official concerned

EXECUTIVE ENGINEER

Attested
★

28



OFFICE OF THE EXECUTIVE ENGINEER
HIGHWAY DIVISION KHYBER AGENCY

No. 333 /17-E(I)

Dated Jamrud the 26 /4/2012

OFFICE ORDER

Mr. Ijaz Khan S/O Said Karim is hereby appointed as Road Cooly BPS-I (2970-90-5670) against the existing vacancy with effect from actual date of arrival for duty plus usual allowance as admissible under the rules time to time on the following terms and conditions.

1. The appointment is purely on temporary basis for a period of two years which can be extended on satisfactory performance of the employee.
2. The candidate is required to produce Age Health certificate from the Medical Superintendent Agency HQ Hospital Landikotal.
3. Your services can be terminated at any time without assigning any reasons.
3. Any conduct of the employee violates of the provision the K.P.K Govt: servant conduct rules 1987 shall amount to misconduct on the part of the employee.

EXECUTIVE ENGINEER

Copy to:-

1. Agency Accounts Officer Khyber Agency.
2. Medical Superintendent AHQ Hospital Landikotal.
3. Sub Divisional Officer Highway Sub Division Landikotal.
4. DAO (Local)
5. Official concerned

Attested

EXECUTIVE ENGINEER

Fresh appointment

Amree
OFFICE OF THE EXECUTIVE ENGINEER
HIGHWAY DIVISION KHYBER AGEN

(F)



(29)

No. 532 /7-E(I)

Dated Jamrud the 11 /6/2012.


OFFICE ORDER

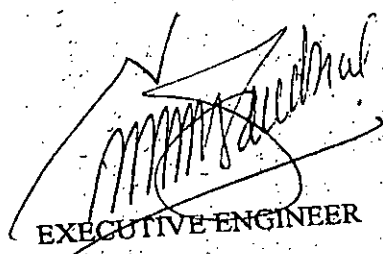
The following operational staff/Class-IV employees are hereby re-instated with immediate effect in the interest of Govt:

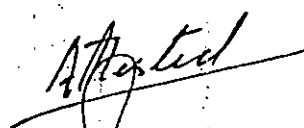

1. Mr. Shaheen Cooly S/O Jengez Khan.
2. Mr. Muhammad Perviz Cooly S/O Fazal Din.

EXECUTIVE ENGINEER

Copy to:-

1. Agency Accounts Officer Khyber for information.
2. Sub Divisional Officer Highway Sub Division ~~Bara~~  Bara for information.
3. Official concerned.


EXECUTIVE ENGINEER



xen Highway Khyber



GOVERNMENT OF PAKISTAN
ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA
DISTRICT khyber
PAY ROLL SYSTEM

SH: 3

PAYMENT ADVICE

P. Sec: 001 Month: July 2013
KH0014 - Executive Engineer Highway
Min: Min. Of K.A & M.A & S.F.R
NTN:
GPF #:
Old #:

Pers #: 00649067 Buckle:
Name: ASIF MEHMOOD
Dsg: COOLI
CNIC No. 1720121854969

GPF Interest Free
GPF 02 Active Temporary

DEPTT CODE - KH0014

PAYS AND ALLOWANCES:		
0001-Basic Pay		5,070.00
1000-House Rent Allowance		910.00
1210-Convey Allowance 2005		1,700.00
1300-Medical Allowance		1,000.00
1528-Unattractive Area Allow		1,000.00
1971-Adhoc Allowance 2011@ 15%		455.00
1973-Adhoc Allowance 2011@ 50%		1,517.00
2118-Adhoc Relief Allow (2012)		1,014.00
2151-Adhoc Allowance 2013 @10%		507.00
Gross Pay and Allowances		13,273.00
DEDUCTIONS:		
GPF Balance	373.00	
3701-Benevolent Fund(Exchange)		120.00
3704-Group Insurance(Exchange)		58.00
3711-Addl Group Insuranc(Exch)		3.00
		Subrc: 373.00
		120.00
		58.00
		3.00
Total Deductions		554.00
		NET AMOUNT PAYABLE 12,719.00

QUALIFYING SERVICE
YRS MON
01 Years 09 Months 021 Days

D. O. B
20.01.1979
Days

FP Quota:
Payment through DDO.

Attested

At 3.No 5

37



GOVERNMENT OF PAKISTAN
ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA
DISTRICT ^{khyber}
PAY ROLL SYSTEM



Pers No: 00647445 Buckle:
Name: SHAHEEN KHAN
Des: COOLI
CNIC No: 2120284286929
GPF: Interest Free

PAYMENT ADVICE
P Sec: 001 Month: July 2013
KH0014 Executive Engineer Highway
Min: Min. Of K.A & H.A & S.F.R
NTH:
GPF #:
Old #:

		DEPTT CODE	
01-Active-Temporary		1410014	
PAYS AND ALLOWANCES:			
0001-Basic Pay			4,950.00
1000-House Rent Allowance			891.00
1210-Convey Allowance 2005			1,700.00
1300-Medical Allowance			1,000.00
1528-Unattractive Area Allow			1,000.00
1973-Adhoc Allowance 2011@ 50%			1,485.00
2118-Adhoc Relief Allow (2012)			990.00
2151-Adhoc Allowance 2013 @10%			495.00
6156-Adj. E. E. F (Exchange)			100.00
Gross Pay and Allowances			12,611.00
DEDUCTIONS:			
GPF Balance	212.00		
3701-Benevolent Fund(Exchange)			120.00
3704-Group Insurance(Exchange)			58.00
3711-Addl Group Insurance(Exch)			3.00
Subtotal			393.00
Total Deductions			393.00

NET AMOUNT PAYABLE 12,218.00

QUALIFYING SERVICE
YES MOH
01 Years 10 months 001 Days

D.O.B
01.07.1985
Days

LFP Quota:
Payment through DDO.

Attended

32 Annex (S)

Sheet no. 1



GOVERNMENT OF PAKISTAN
 ACCOUNTANT GENERAL KHYBER PAKHTUNKHWA
 DISTRICT Khuber
 PAY ROLL SYSTEM

PAYMENT ADVICE

P Sec: 001 Month: July 2013
 KH0014 - Executive Engineer High
 Min: Min. Of K.A & N.A & S.F.R
 NTN:
 GPF #:
 Old #:

Pers #: 00647462 Buckle:
 Name: MUHAMMAD PERVEZ
 Dsg: COOLI
 CNIC No 1730193148421

DEPTT CODE KH0014

GPF Interest Free
 LPS 01 Active Temporary

PAYS AND ALLOWANCES:		
0001-Basic Pay		4,950.00
1000-House Rent Allowance		891.00
1210-Convey Allowance 2005		1,700.00
1300-Medical Allowance		1,000.00
1528-Unattractive Area Allow		1,000.00
2118-Adhoc Relief Allow (2012)		990.00
2151-Adhoc Allowance 2013 @10%		495.00
6156-Adj. E.E.F (Exchange)		100.00
Gross Pay and Allowances		11,126.00
DEDUCTIONS:		
GPF Balance	212.00	
3701-Benevolent Fund(Exchange)		Subtr: 212.00
3704-Group Insurance(Exchange)		120.00
3711-Addl Group Insuranc(Exch)		58.00
		3.00
Total Deductions		393.00
	NET-AMOUNT PAYABLE	10,733.00

QUALIFYING SERVICE
 YRS MON 01.09.1990
 01 Years 09 Months 01 Days

LFP Quota:
 Payment through DDO.

Attested

At Serial No. 11

Amma

33

G/11



OFFICE OF THE EXECUTIVE ENGINEER
HIGHWAY DIVISION KHYBER AGENCY

No. 334 / 17-E(I)

Dated: Jamrud the 26 / 2012

OFFICE ORDER

Mr. Iltbar Gul S/O Didar Gul is hereby appointed as Road Roller Cleaner BPS-I (2970-90-5670) against the existing vacancy with effect from actual date of arrival for duty plus usual allowance as admissible under the rules time to time on the following terms and conditions.

1. The appointment is purely on temporary basis for a period of two years which can be extended on satisfactory performance of the employee.
2. The candidate is required to produce Age Health certificate from the Medical Superintendent Agency HQ Hospital Landikotal.
3. Your services can be terminated at any time without assigning any reasons.
3. Any conduct of the employee violates of the provision the K.P.K Govt: servant conduct rules 1987 shall amount to misconduct on the part of the employee.

EXECUTIVE ENGINEER

Copy to:-

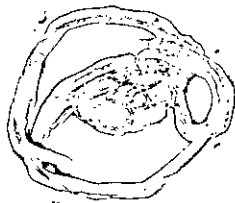
1. Agency Accounts Officer Khyber Agency.
2. Medical Superintendent AHQ Hospital Landikotal.
3. Sub Divisional Officer Highway Sub Division Landikotal.
4. DAO (Local)
5. Official concerned

Accepted

EXECUTIVE ENGINEER

Ordn.

Annex 9/2, (34)



OFFICE OF THE EXECUTIVE ENGINEER
HIGHWAY DIVISION KHYBER AGENCY

No. 335 7-11(1)

Dated January 26, 2012

OFFICE ORDER

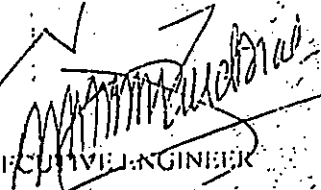
Mr. Khurshid Khan S/O Israel Khan is hereby appointed as Road Roller Cleaner BPS-I (2970-90-5670) against the existing vacancy with effect from actual date of arrival for duty plus usual allowance as admissible under the rules time to time on the following terms and conditions.


1. The appointment is purely on temporary basis for a period of two years which can be extended on satisfactory performance of the employee.
2. The candidate is required to produce Age & Health certificate from the Medical Superintendent Agency HQ Hospital Landikotal.
3. Your services can be terminated at any time without assigning any reasons.
3. Any conduct of the employee violates of the provision the K.P.K Govt. servant conduct rules 1987 shall amount to misconduct on the part of the employee.

EXECUTIVE ENGINEER

Copy to:-

1. Agency Accounts Officer Khyber Agency.
2. Medical Superintendent AHQ Hospital Landikotal.
3. Sub Divisional Officer Highway Sub Division Landikotal.
4. DAO (Local)
5. Official concerned


EXECUTIVE ENGINEER

Attested


Green

Ames 11
5/3, (35)



OFFICE OF THE EXECUTIVE ENGINEER
HIGHWAY DIVISION KHYBER AGENCY.

No. 329 11-E(i)
Dated Jamrud the 26/4/2012.

OFFICE ORDER

The Office Order of Mr. Asif Mehmood S/O Muahmmad Younas

Mate issued vide this office No/304/7-E(i) dated 1.10.2011 is hereby restored with
immediate effect in the interest of Govt:

EXECUTIVE ENGINEER

Copy to:-

1. P.S to Governor Khyber Pakhtunkhawa for information.
2. Agency Accounts Officer Khyber for information.
3. Sub Divisional Officer Highway Sub Division Bara for information.
4. Official concerned.

Attested

EXECUTIVE ENGINEER

At Serial No. 5.

بعدالت صدر محترم محترم

بنام حکومت صدر محترم محترم (وغیرہ)

مخاب ایڈووکیٹ ڈیوٹی اجرم

تھانہ ایف آئی آر تاریخ

باعث تحریر آنکے

مقدمہ مندرجہ بالا عنوان میں اپنی طرف سے واسطے بیروی و جوابدہی بمقام

سیکریٹری

امین الرحمن یوسفزئی ایڈووکیٹ ہائی کورٹ، فیڈرل شریعت کورٹ آف پاکستان اینڈ آفاق عالم ایڈووکیٹ ہائی کورٹ،

کو برائے شرط وکیل مقرر کیا ہے کہ میں ہر پیشی پر خود یا بذریعہ مختار خاص رو برو عدالت حاضر ہوتا رہوں گا۔ اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا اگر پیشی پر من مظهر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کے کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بذریعہ تعطیل بیرونی کرنے کے ذمہ دار نہ ہوں گے۔ اگر مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بذریعہ تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نامہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ برداشتہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و گمرانی ہر قسم کی درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کے اجراء کرنے اور ہر قسم کا روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپرد تاشی و راضی نامہ کو فیصلہ برخلاف کرنے، اقبال و کوی دینے کا بھی اختیار ہوگا۔ اور بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم انتاعی یا ترقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا سنگی علیحدہ مختار نامہ بیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا اس کے کسی جزو کی کارروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے کسی دوسرے وکیل یا ہیرٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو ہر امر میں وہی اور ایسے ہی اختیارات حاصل ہوں گے۔ جیسے کہ صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ وہ صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی بیرونی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا یہ مختار نامہ لکھ دیا کہ سند سے مورخہ 2/5/2018 مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

ATTESTED & ACCEPTED:

Amin ur Rehman Yousafzai
Advocate High Court,
& Federal Shariat Court
of Pakistan.

Sajjad Mehsul
Advocate

BEFORE THE SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO 618 /2018

Dulat Khan S/O Ghukat Khan

Petitioner

VS

Additional Chief Secretary (FATA) & 3 Others

Respondent

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S.No	PARTICULAR	ANNEXURE	PAGES
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3)	Stopage of Pay of Existing Employees	C	5-10
4)	Termination Order of Petitioner	D	11

**Respondents
Through**

Dated /11/2018


**Sub Divisional Officer
Highway Sub-Divisional Landikotal**

BEFORE THE SERVICES TRIBUNAL, KPK, PESHAWAR

In Re: Service Appeal No. 616 of 2018

Mr. Daulat Khan _____ Appellant

Vs

Govt of Khyber Pakhtunkhwa and others _____ Respondents

WRITTEN REPLY TO THE SERVICE APPEAL ON

BEHALF OF RESPONDENTS NO. 1 TO 4.

Respectfully sheweth,

Preliminary objections:

1. That appeal of the appellant is not maintainable in its present form and the Hon'ble tribunal has got no jurisdiction to entertain the instant appeal.
2. That appellant has not come to this Honorable tribunal with clean hands.
3. That appellant has got no cause of action to file the instant appeal.
4. That the appeal of the appellant is badly time-barred, long and unexplained delay could not be condoned at this stage by any law, rules or by any stretch of imagination.
5. That the appeal is also not maintainable due to non-joinder of necessary parties.

ON FACTS:

1. In reply to para no. 1 of the appeal, it is submitted that the appellant along with others were appointed by Executive Engineer Highway Division, Khyber Agency against law, rules and regulation, because there was no vacant post in the Division, therefore, in these appointments gross illegalities and irregularities had been committed by the Ex- Executive Engineer. Since the appointments ^{were} ~~was~~ totally illegal and without lawful authority therefore any fictitious process adopted by the Ex-

Executive Engineer becomes in-effective and irrelevant, further the appointments were made on the basis of malafide intentions and personal gains.

2. That in reply to para No.2 of the appeal of the appellant, it is submitted that, since the order of appointment of the appellant was irregular and illegal, therefore, duties (if any) performed by the appellant does not make him entitle for any right or benefit, further, as the appointment of the appellant was illegal, unlawful and without lawful authority, therefore, termination order passed by the competent authority to cure the illegality is in accordance with law, facts and circumstances of the case.
3. That in reply to para No.3 of the appeal, it is submitted that, the writ petition filed by the appellant in the Peshawar High Court, Peshawar was dismissed on 28.02.2018. The Honourable Court after perusal of the whole record of the case and going through the comments filed by the respondents/ department observed that the petitioner has not approached to the proper forum and the High Court has got no jurisdiction to entertain the writ petition filed by the appellant, no relief or beneficial order has been passed in favour of the appellant by the Honourable Peshawar High Court, Peshawar, further no condonation order in favor of the appellant or direction to the Services Tribunal KP Peshawar has been given by the Hon'ble Court which could help the appellant in filing the inordinate delayed appeal in the Services Tribunal.
4. That in reply to para No.4 of the appeal, it is submitted that, the order dated 09.03.2012 passed by competent authority is correct, in accordance with law, regulations, facts and circumstances of the case. Further, the judgment dated 28.02.2018 passed by Peshawar High Court does not give any favour or provide any relief to the appellant in the present circumstances of the case.


Reply to Grounds:

- A. In reply of the para "A" of the appeal it is submitted that the impugned order dated 09.03.2012 is in accordance with law, facts and circumstances of the case and is fully maintainable in the eyes of law.
- B. That para "B" of the appeal is incorrect, as explained in above paras, there was no vacant post available in the Division against

Which the appellant was to be appointed. The Ex- Executive Engineer had misused his authority, illegally stopping the salaries of other legal appointees (6 in numbers) , no violation has been made while passing termination order , the order was under the law and relevant rules, as there was no vacant post for them to be retained in the Division in Khyber Agency.

- C. That para "C" of the appeal is incorrect. The termination order is legal and according to law and prevailing rules and circumstances of the case . All the codel formalities have been fulfilled while passing termination order. Further, being illegal appointee, therefore, having no right to appeal against termination order and the Honorable Tribunal has ceased the jurisdiction to entertain such a time –barred appeal along with other legal infirmities.
- D. That ground" D" of the appeal is incorrect. The appellant had no been discriminated.
- E. That ground "E" of the appeal is incorrect. The appellant was appointed illegally by the Ex- Executive Engineer , therefore, the termination order had rightly been passed by competent authority according to relevant law and rules on the subject.
- F. That ground" F" as drafted in appeal is totally incorrect and irrelevant , the writ petition of the appellant has already been dismissed by the Honorable Peshawar High Court, Peshawar .
- G. That the respondents seek permission to raise additional grounds at the time of arguments.

In view of the above , it is, therefore , prayed that appeal being without merit, not maintainable , time- barred and incompetent, may kindly be dismissed with costs.


Respondent No-1 Secretary Works & Services


Respondent No-2 Additional Chief Secretary (FATA)

**Add: Chief Secretary
FATA, Secretariat
Peshawar**
Respondent No-3 Chief Engineer C&W Department (FATA)

**Chief Engineer FATA
Works & Services Deptt. Peshawar**

Respondent No-4 Executive Engineer Highway Division Khyber

Dated _____ / _____ / 2018.


**EXECUTIVE ENGINEER
HIGHWAY DIVISION TRIBAL DISTRICT
KHYBER**

BEFORE THE SERVICE TRIBUNAL PESHAWAR

MR.DULAT KHAN APPEAL NO 618/2018
MR.SIKANDAR ZEB APPEAL NO 617/2018
MR.NUSHAD APPEAL NO 604/2018
MR.TUFAIL APPEAL NO 616/2018
MR.SAREER APPEAL NO 619/2018

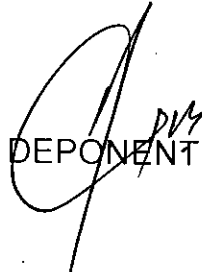
PETITIONERS

VS

ADDITIONAL CHIEF SECRETARY (FATA) & 3 OTHERS

AFFIDAVIT

I, Mr. Aurangzeb Sub Divisional Officer Highway Sub Division Landikotal do hereby solemnly affirm declare that the contents of the accompanying Para-wise comments submitted by respondents No1,2,3,&4 are true and correct to the best of my knowledge on behalf and nothing has been concealed from this Honour able Court.


DEPONENT

(Annexure - I)

**LIST OF EMPLOYEES WHOSE PAY WAS STOPPED BY MR.GOHAR ALI
EX-EXECUTIVE ENGINEER HIGHWAY DIVISION KHYBER AGENCY.**

S#	Name	Personal No.	Designation	Appointment order No. & Date
1.	Said Akbar	00419060	Cooly	No.2550/7-E(i) dt: 27.8.90
2.	Aurangzeb	00419857	Cooly	No.859/7-E(i), dated 24.11.97 ✓
3.	Riwayat	00097089	Cooly	No.1685/7-E(i), dated 22.5.98
4.	Zahir Muhammad	00419869	Cooly	No.3406/7-E(i) dated 5.10.2005 ✓
5.	Naheed Baz	00415880	Cooly	No.524/7-E(i), dated 3.10.2006 ✓
6.	Zali Khan	00488327	Cooly	No.5298/7-E(i) dated 10.11.09 ✓



AMENDMENT FORM
SINGLE EMPLOYEE ENTRY

Executive Engineer
Highway Division
Khyber Agency

FCRM: FK/17

Date: _____

Page No. 1

OFFICE OF THE _____
FOR THE MONTH OF: 10/2011 | 200

DDO Code (Cost Center): 140014 Description: _____

Personnel Number: 00488327

Employee Name: Mr. Zelay Khan

National ID Card Number: _____

Grade (Pay Scale Group): 02

Salary Status: Start Stop

GENERAL DATA CHANGE			CHANGE IN DOCUMENTS / PERMISSIONS					Effective Date	Remarks
Sl. No.	Ref. ID	New Contents	Wage Type	Report	Peris	Adj			
							1/9/2011		
				<u>Day Staff</u>					

Sub Divisional Officer
Highway Sub Division
Khyber Agency

Executive Engineer
Highway Division
Khyber Agency

Entered / Verified By: _____

(11)

ANNEXURE B

OFFICE OF THE EXECUTIVE ENGINEER
HIGHWAY DIVISION KHYBER AGENCY.

No. 137 /7-E(i) Dated 9/3/2012

OFFICE ORDER

The services of the following officials Name and designation noted against each are hereby terminated with effect from 1.3.2012 with interest of Government.

S.No. Name & Designation.

1.	Nasir Ali S/O Sardar Ali	WorkMunshi	Mardan
2.	Abid Ali S/O Sardar Ali	DRR Driver	Mardan
3.	Saeedullah Jan S/O Musafar Khan	DRR Driver	Charsadda
4.	Sikandar Zeb S/O Khial Akbar	DRR Driver	Jamrud
5.	Asif Mehmood S/O Muhammad Younis.	Mate	Nowshera
6.	Nausahad S/O Hajeeb Khan	Mate	Jamrud
7.	Daulat Khan S/O Gulat Khan	Mate	Jamrud
8.	Muhammad Sarir S/O Rehmatullah	Cooly	Jamrud
9.	Tufail Khan S/O Muslim Khan	Cooly	Jamrud
10.	Shaheen Khan S/O Jangrez	Cooly	Jamrud
11.	Muhammad Perviz S/O Fazal Din	Cooly	Jamrud
12.	Aftab Khan S/O Sikander Khan	Cooly	Swabi

EXECUTIVE ENGINEER

Copy to:-

1. Chief Engineer Works & Services Deptt: (FATA) K.P.K. Peshawar for information please.
2. Agency Accounts Officer Khyber at Jamrud for information.
3. All Sub Divisional Officers in Highway Division Khyber for information and necessary action.

EXECUTIVE ENGINEER

ATTESTED