

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.**

Service Appeal No. 3818/2021

BEFORE: MR. KALIM ARSHAD KHAN, ... CHAIRMAN
MR. MIAN MUHAMMAD, ... MEMBER(E)

**Ali Asghar S/O Karam Dad Senior Clerk Civil Secretariat Khyber
Pakhtunkhwa Agriculture Department.....(Appellant)**

Versus

1. **Chief Secretary** to Government of Khyber Pakhtunkhwa.
2. **Secretary** to Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat,(**Respondents**)

Appellant. ... In person.

Mr. Muhammad Adeel Butt,
Addl. Advocate General ... For respondents.

Date of Institution.....04.03.2021
Date of Hearing.....07.04.2022
Date of Decision.....07.04.2022

JUDGMENT


KALIM ARSHAD KHAN CHAIRMAN. Through the present appeal the appellant Ali Asghar has challenged the decision of the Establishment Department

2. Brief facts of the case are that the appellant was appointed as Junior Clerk in the former Services & General Administration Department on 02.11.1994. The appellant alongwith 33 other employees was terminated by the Provincial Government vide order dated 02.05.1997, on the allegation of illegal appointment; that the appellant did not take any legal proceedings against termination order dated 02.05.1997, due to lack of coordination and residing in a far flung area of Province and also suffering a severe illness of Epilepsy; that after rejection of departmental appeal, the appellant in the first instance filed Service Appeal No. 511/2002 before this

Tribunal but unfortunately the same was clubbed with another Appeal No. 507/2002 which was dismissed and the appellant did not challenge the decision of this Tribunal; that most of the appeals, challenged in the Supreme Court of Pakistan have been remanded to this Tribunal with observations to decide the appeals individually and separately on merits and in accordance with law. This Tribunal after hearing the remanded appeals then decided all the appeals in favour of the appellants and reinstated all the appellants in light of Supreme Court order; that pursuant to the Supreme Court order, the appellant made departmental appeal before the Establishment Department for similar treatment but did not succeed, hence the present service appeal.

3. On receipt of appeal, the preliminary arguments were heard and it was admitted to full hearing. Respondents submitted reply, wherein it was contended that 53 Junior Clerks including the appellant were appointed by the then Services & General Administration Department on 02.11.1994, however, on finding some illegalities in the appointment record, their services were dispensed with on 02.05.1997; that the appellant alongwith others filed service appeals before this Tribunal which were dismissed. Some of the appellants aggrieved by the judgment of this Tribunal filed appeals in the august Supreme Court of Pakistan. The Apex Court set aside the judgment of the Tribunal on 31.10.2001 and appellants therein were reinstated in service on 12.01.2002. However, later on, under Sacked Employees (Appointment) Act No. xvii of 2012, rest of the employees including the present appellant were reinstated subject to the provision contained in Section 5 of the Act *ibid* that they will not be entitled to any claim of seniority, promotion or other back benefits and the appointment shall be considered as fresh appointment; and that the appeal of the appellant was processed and regretted being not covered under the rules and was devoid of merit.

4. We have heard the appellant and learned Additional Advocate General for the respondents and have gone through the record.


07/9/22

5. Learned counsel for the appellant reiterated the grounds stated in the appeal and submitted that the appointment of appellant was made by the competent authority after observing all the codal formalities and on the recommendations of Departmental Selection Committee; that the appellant served for more than two and half years on the post and valuable rights have been accrued in his favour and that similarly placed persons have been reinstated into service from the date of termination, the appellant was therefore also entitled to similar treatment as per verdict of august Supreme Court of Pakistan reported as 2009-SCMR-1.

6. On the contrary, the learned Additional Advocate General controverted the arguments of the appellants and submitted for dismissal of the appeal.

7. Admittedly the appellant had filed service appeal which was dismissed by this Tribunal on 18.12.2003 against which the appellant filed CP No. 199-P of 2004 which was dismissed by august Supreme Court of Pakistan on 30.05.2006. On 04.12.2020 the appellant again moved an appeal to Secretary Government of Khyber Pakhtunkhwa Establishment and Administration Department for reinstatement and regularization of service and hence this appeal. Since the appellant had already gone up to the august Supreme Court of Pakistan for the same relief which was not granted to him even by august Supreme Court of Pakistan, therefore, he could not re agitate the same through this appeal under Rule 23 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. Dismissed. Consign.

8. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 7th day of April, 2022.*



(KALIM ARSHAD KHAN)
Chairman

(MIAN MUHAMMAD)
Member (E)

07th April, 2022

Appellant in person present. Mr. Muhammad Adeel Butt,
Addl. AG for the respondents present. Arguments heard and record
perused.


Vide our detailed judgment of today, containing 03 pages,
the appeal is dismissed. Consign.

3. *Pronounced in open court in Peshawar and given under our
hands and seal of the Tribunal this 07th day of April, 2022.*




(KALIM ARSHAD KHAN)

Chairman


(MIAN MUHAMMAD)
Member (E)

12.07.2021

Learned Addl, A.G be reminded about the omission and for submission of reply/comments within extended time of 10 days.

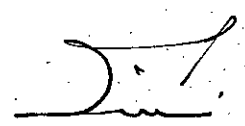

Chairman

Stipulated period passed, reply not submitted.

16.09.2021

Appellant in person present. Mr. Riaz, Superintendent alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present and submitted comments, copy of which handed over to the appellant. To come up for rejoinder, if any, as well as arguments before the D.B on 04.01.2022.



(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

04.01.2022

Counsel for the appellant and Mr. Javidullah, Asstt. AG alongwith Riaz Superintendent for the respondents present.

Former seeks adjournment in order to further prepare the brief. Request accorded. To come up for arguments on 07.04.2022 before the D.B.


(Atiq-ur-Rehman Wazir)
Member(E)


Chairman

27.05.2021

Counsel for the appellant present. Preliminary arguments heard.

Points raised need consideration. The appeal is admitted to regular hearing subject to all legal objections available to the respondents. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days of the receipt of notices positively. If the written reply/comments are not submitted within the stipulated time, the office is required to submit the file with a report of non-compliance. File to come up for arguments on 16.09.2021 before the D.B.

**Appellant Deposited
Security & Process Fee**

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27/5/21

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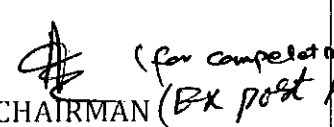
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Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 3818 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	19/03/2021	<p>The appeal of Mr. Ali Asghar resubmitted today by him 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-	01/4/21	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>27/05/21</u></p> <p style="text-align: right;"> CHAIRMAN (Ex post Facto)</p>

The appeal of Mr. Ali Asghar Senior Clerk Civil Secretariat KPK received today i.e. on 04/03/2021 is incomplete on the following score which is returned to the appellant for completion and resubmission within 15 days.

- 1- Affidavit may be got attested by the Oath Commissioner.
- 2- Appeal has not been annexures marks.
- 3- Annexures of the appeal may be attested.
- 4- Appeal has not been paged marked.
- 5- Annexures C&H of the appeal are illegible which may be replaced by legible/better one.
- 6- Four more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.


No. 499 /S.T.

Dt. 05/03 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ali Asghar Appellant in person.

*Re-submitted after
needful den.*


19/03/2021

Before the Services Tribunal, Khyber Pakhtunkhwa Peshawar

Appeal No: 3818 /2021

Ali Asghar

Vs

The Chief Secretary, Govt: of Khyber Pakhtunkhwa etc.

INDEX

S#	Description of documents	Annexures	Pages
1	(a) Memo of appeal (b) Affidavit	-	1-4
2	Copies of appointment letter	F/A	5-7
3	Termination Order of the appellant	F/B	8-10
4	Copy of Judgment dated 13-02-1999	F/C	11-30
5	Copy of Judgment dated 20-04-2000	F/D	31-37
6	Copy of Judgment dated 01-03-2001	F/E	38-47
7	Copy of Judgment dated 29-10-2001	F/F	48-53
8	Copy of Re-instatement Order dated 12-01-2002	F/G	54-55
9	Copy of Departmental appeal dated 09-02-2002	F/H	56-77
10	(a) Copy of Judgment dated 18-12-2003 (b) Copy of appeal No.507/2002	F/I	78-83
11	Copy of Judgment dated 30-05-2006	F/J	84
12	Copy of appointment letter dated 15-02-2013	F/K	85-86
13	Copy of reply of Establishment Department dated 04-02-2021	F/L	87-92
14	Copy of Opinion of Law Department reply to Establishment Department dated 26-04-1997.	93-94

Appellant


Ali Asghar

S/O

Karam Dad

(In Person)

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL PESHAWAR

Appeal No. 3818 /2021

ALI ASGHAR S/O KARAM DAD SENIOR CLERK CIVIL SECRETARATE KHYBER
PAKHTUNKHWA AGRICULTURE DEPARTMENT.....APPLICANT

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3418

Dated 04/03/2021

VERSUS

1. Chief Secretary to Government of Khyber Pakhtunkhwa.
2. Secretary to Government of Khyber Pakhtunkhwa, Establishment
Department, Civil Secretariat, Peshawar.....RESPONDENTS

- Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act 1974.
- Appeal against the decision of the Establishment Department letter No.SOE.IV(E&AD) 4(459)/2018 dated 04-02-2021.
- Re-instatement in service as per direction of Supreme Court of Pakistan same futting case.

Respectfully Sheweth

Facts and Grounds of the Case:-

- (i) That the appellant was appointed as Junior Clerk in the Services & General Administration Department NWFP (KPK) vide order No. SOS.IV(S&GAD)5(252)94 dated 02/11/1994. (F/A)
- (ii) The Government of NWFP terminated 33 employees alongwith applicant on 02.05.1997 on the allegation of illegal appointment, order No. SOS-IV(S&GAD)3(552)94 dated 2nd May, 1997. (F/B)
- (iii) The Thirty (30) employees filed an appeal against the impugned order No. SOS-IV(S&GAD)3(552)94 dated 2nd May, 1997 in the Services Tribunal, Peshawar which was dismissed on 13.02.1999 by Service Tribunal for reinstatement in service. (F/C)
- (iv) That most of the appeals challenged in the Supreme Court of Pakistan, the Supreme Court remanded all the appeals to Service Tribunal with the observations to decide the appeals of the appellants individually and separately on merits and in accordance with law on 20.04.2000. (F/D)
That the Service Tribunal's after hearing the reminded appeals then decided all the appeals in favor of appellants and reinstated all the appellants in light of Supreme Court order on 01.03.2001. (F/E)
- (v) That the Service and General Administration Department challenged the Service Tribunal decisions and approached the Supreme Court of Pakistan, but the same was dismissed and the order of Service Tribunal was kept intact on 31.10.2001. (F/F)

Filed to-day

Registrar

04/03/2021

(v)

Re-submitted to-day

and filed.

Registrar

04/03/21

(vi)

20/3/21

(vii) That in light of Supreme Court order, the Establishment Department reinstated all the appellants vide order No. SOS.IV(E&AD)3(352)/94 VOL:II Dated 12.01.2002. (F/G)

(viii) The appellant did not take any legal proceedings in his termination order dated 02.05.1997, due to lack of coordination and residing in a far flung area of Khyber Pakhtunkhwa and also suffering a severe illness of Epilepsy. (F/H)

(ix) That after rejection of Departmental Appeal, the applicant in the first instance filed Service Appeal in the KPK Service Tribunal vide Appeal No. 511/2002 (F/I), but unfortunately the Service Appeal of Appellant was clubbed with another Appeal No 507/2002 (F/I) which already had gone through the proceedings of Service Tribunal as appeal No.977/1997, which was rejected and he did not challenge the decision of the Service Tribunal of Khyber Pakhtunkhwa Peshawar, both the Appeals were heard on the same day, and the Appeal of the instant a Applicant was on different footings but in the garb of Appeal no. 507/2002(Muhammad Zameer), the Appeal of Appellant, was also dismissed by way of unlawful, unconstitutional Void Order, hence the Applicant feel aggrieved be treated as per the principals of natural justice. It is an established principal of law that no limitation runs against voi. (Limitation applicability is only a type of an illegal Order and it has created certain consequences d Orders, then there may not be any limitation at all to challenge an illegal Order by...2019 SCMR 648, PLD 1969 SC 65, 2010 SCMR 115, 2013 SCMR 120).

(x) The Service Tribunal was deciding other appeal of Muhammad Zameer got misguided and passed a clubbed order with case of the instant applicant in haphazard manner and Supreme Court was also not properly guided and in the garb of Muhammad Zameer Appeal, the same order remained intact, therefore such facts are not mentioned in the re-joinder of department given in the court (F/J).

(xi) That there are number of rulings of Supreme Court, and other material, that similar footing employees be given the same benefit, even if they not gone to the court. One of the order is as follow(Service Tribunal Act LXX1973)

" If the service tribunal or supreme court decided a point of law relating to the terms of service of civil servants which covers not only the case of civil servants who litigated, but also of other civil servants, who may have not taken any legal processing, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal / Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the service tribunal or any other forum."

(xii) The Supreme Court judgment 1996 SCMR 1185 title Hammed Akhter Nazi versus Secretary, Establishment Division, Government of Pakistan and others, 2005 SCMR 499 title Tara Chand and others vs Karachi water and Sewerage

Board, 2009 SCMR 01 Government of Punjab through Secretary Education Civil Secretariat Lahore vs Sameena Parveen and other, 2018 SCMR 380, 2010 SCMR 421 and a Service Tribunal judgment Act (LXX of 1973).

- (xiii) The applecant has entered in service through Sacked Empeoyees Act, 2012 (F/K).
- (xiv) Articles No. 25, 27 and 37 of the Constitution of Pakistan have also been consulted. Article-25 states that " all citizens are equal before law and are entitled to equal protection of law. There shall be no discrimination on the basis of sex alone. Nothing in this article shall prevent the State from making any special provision for the protection of women and children. Article -27 of the Constitution also states that "no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only on race, religion, caste, sex, residence or place of birth. Article-37 of Constitution also enables the people of different areas through education. Training agricultural and industrial development and other methods and also participation in all forms of national activities including employment in the service of Pakistan.


GROUNDS:-

1. That the outcome of Departmental Appeal reply letter No.SOE.IV(E&AD) 4(459)/2018 dated 04-02-2021 is violation of the fundamental rights of the applicant.
2. That the applicant appeal must be decided keeping in view the principal natural justice.
3. That using the same yardstick for different petitioner having different locus standi is not appealing to a prudent mind.
4. That the outcome in the said CP was due to the gross misrepresentation before, and misguidance of this honorable court.
5. That the case of the petitioner is otherwise a fit case on merits.
6. That as per legal principle, "**Justice must not only be done rather it should seem to be done.**"
7. That further arguments if any will be raised before the court for its assistance.
8. The appointment of the appellant was not illegal. Appellant having served for a period ot more than lwo and Half Year i.e. from 10/94 to 5/97 which is sufficient period of life to serving the department Thus under the Civil Servants Act 1975 the previous service ete. rendered under I Establishment Department may be counted.
9. Moreover. it is pertinent to invite your kind attention to the same remedy case wherein Law Department has already made decision vide letter

No.5(90)LD/99/5904 dated 20/09/2000 in light of Supreme Court Decision and convey that the same remedy is to be provided to the persons who have not gone to the Court when a Court of Law grants remedy to others persons with the same merit and rights as of those who have not gone to the Court and the same benefits were also extended to the Board of revenue Department Patwari.

10. That further grounds will be provided the court during the course of hearing.

Appellant




**ALI ASGHAR
S/O KARAM DAD**

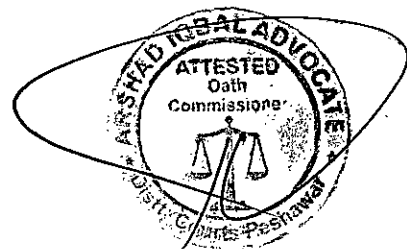
C/O Account Section Agriculture
Department Civil Secretariat
Peshawar.

AFFIDAVIT

I, Mr. Ali Asghar S/O Karam Dad Senior Clerk Establishment Department do hereby the solemnly affirm and declare that the contents of the instant written statement are true and correct to the best of my knowledge and belief and that no material facts has been kept secret from this Hon'able Court.



Mr. Ali Asghar
(In Person)



19:03:22

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A

GOVERNMENT OF N.W.F.P.
SERVICES AND GENERAL ADMINISTRATION
DEPARTMENT

(SERVICES WING)

Dated Pesh: , the 2nd, Nov, 1994.

ORDER.

NO. SOS.IV(S&GAD)5(252)/94. On the recommendations of Departmental Selection Committee, S&GAD, the following candidates are hereby selected and appointed as Junior Clerks in Basic Pay Scale of BBPS-5(1400-86-2390), in NWFP, Civil Secretariat on the terms and conditions as laid down in their offers of appointments and posted in the Departments, from the dates noted against each:-

S.No.	Name	Department.	Date of appointment.
1.	Hafiz Mohammad Abdullah Khan.	PHE Deptt:	16.10.1994. —
2.	Rasool Mohammad.	Finance Deptt:	18.10.1994. —
3.	Aftab Ahmad.	Information Department.	17.10.1994. —
4.	Adil Noonan . .	Irr; Deptt:	12.10.1994.
5.	Shakeel Ahmad.	C&W Deptt:	12.10.1994. —
6.	Arshad Aziz Qureshi.	PHE Deptt:	23.10.1994. —
7.	S Shah Hussain.	Governor's Secretariat.	17.10.1994. —
8.	Ali Nawaz .	Home & T.As Department.	12.10.1994. —
9.	Shah Bakht .	S&GAD.	19.10.1994. —
10.	Khan Raziq.	S&GAD.	18.10.1994. —
11.	Ms Nasira Bibi.	S&GAD.	18.10.1994. —
12.	Naseeb Khan.	Local Govt Deptt:	18.10.1994. —
13.	Abdur Rehman.	S&GAD.	12.10.1994. —
14.	Mohammad Tariq.	Finance Deptt:	24.10.1994. .
15.	Amjad Saeed.	S&GAD.	19.10.1994. .
16.	Abdul Hanan.	Food & Agri: Deptt:	18.10.1994. —
17.	Qamar-uz-Zaman.	Finance Deptt:	18.10.1994. —
18.	Mohammad Rizwan.	Finance Deptt:	23.10.1994.
19.	Fazal-ur-Rehman.	Forest Deptt:	19.10.1994.
20. ✓	Mohammad Farooq.	Finance Deptt:	17.10.1994.
21.	S Mukhtiar Ahmad Shah.	PHE Deptt:	18.10.1994. —

Attested
A. M.

(Page-2).

22.	Mohammad Nadeem.	PE&D Deptt:	18.10.1994. —
23.	Zahid Shams.	PHE Deptt:	18.10.1994. —
24.	Saboor Shah.	Governor's Sectt:	18.10.1994. —
25.	Samin Jan.	PE&D Deptt:	18.10.1994.
26.	Ali Asghar	Food & Agri Deptt:	23.10.1994.
27.	Mohammad Nawaz.	Food & Agri: Deptt:	16.10.1994. —
28.	Pervez.	Food & Agri: Deptt:	17.10.1994. —
29.	Mohammad Amir.	SSGAD.	16.10.1994.
30.	Jamal Shah.	Finance Deptt:	19.10.1994.
31.	Umar Zada.	CS Deptt:	18.10.1994. —
32.	Auranazeb.	Local Govt Deptt:	26.10.1994. —
33.	Amanullah.	Local Govt Deptt:	19.10.1994. —
34.	Ikhthiar Jan.	CS Deptt:	31.10.1994. —
35.	Mohammad Ilyas.	Education Dept	19.10.1994.
36.	Mohammad zia.	Finance Deptt:	19.10.1994.
37.	Feroz Khan.	SSGAD.	17.10.1994. —
38.	Mohammad Ibrahim.	Finance Deptt:	19.10.1994.
39.	Infanullah.	Law Deptt:	16.10.1994.
40.	Sher Bahadur.	SSGAD.	16.10.1994.
41.	Mohammad Iqbal.	Finance Deptt:	23.10.1994.
42.	Iftikhar.	Law Deptt:	16.10.1994.
43.	Mohammad Ishaq.	SSGAD.	12.10.1994.
44.	Ayub Khan.	PE&D Deptt:	13.10.1994.
45.	<u>Khan Mohammad.</u>	<u>PE&D Deptt:</u>	<u>17.10.1994.</u>
46.	Shaukat zaman.	Edu: Deptt:	16.10.1994.
47.	Zahibzada Abass Khan.	SSGAD.	25.10.1994. —
48.	Amir Khusro.	PE&D Deptt:	16.10.1994.
49.	Aqeel Javeed.	Education Deptt:	17.10.1994.
50.	Gul Nabi.	Finance Deptt:	16.10.1994.
51.	Noor Bahadur.	Finance Deptt:	16.10.1994.
52.	Abdullah Jan.	Law Deptt:	16.10.1994.
53.	Obaidullah.	Finance Deptt:	20.10.1994.

Dated Pesh: the
2nd, Nov, 1994.

SECRETARY TO GOVERNMENT OF PESH
SSGAD

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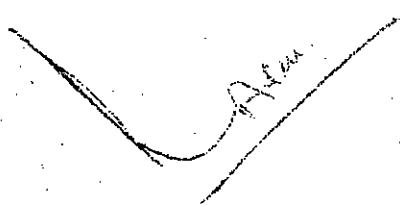
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(Page-3).

Endst: No. SOS.IV(S&GAD)5(252)/94, dated Pesh: the 2nd, Nov, 1994.

Copy forwarded for information and necessary action to:-

1. The Accountant General, NWFP, Peshawar.
2. The Section Officer(Admn:) Finance Department.
3. The Section Officer(Estt:) PE&D Department.
4. The Section Officer(General), Law Department.
5. The Section Officer(General), Education Department.
6. The Section Officer(General), S&GAD.
7. The Section Officer(Admn:) Food & Agri: Department.
8. The Section Officer(Admn:) Governor's Secretariat.
9. The Section Officer(General), Forest Department.
10. The Section Officer(General), S&W Department.
11. The Section Officer(General), Local Govt Department.
12. The Section Officer(General), PHE Department.
13. The Section Officer(General), Home Department.
14. The Section Officer(General), Information Department.
15. The Section Officer(Estt:) Irrigation Department.
16. The Section Officer(Secret), S&GAD.
17. The Estate Officer, S&GAD.
18. Officials concerned.
19. P. Files of the officials.


(M ALAM MARWAT)
SECTION OFFICER(SERVICES.IV)

B 8

GOVERNMENT OF N.W.F.P.
SERVICES AND GENERAL ADMN: DEPARTMENT
(SERVICES WING)

Dated Peshawar, the 2nd May, 1997.

OFFICE ORDER

No. SOS-IV(S&GAD)3(552)/94. On perusal of the relevant record, the appointment of the following Junior Clerks have been found illegal, ^{عقود} ab initio void and against the prescribed rules. Their services are, therefore, hereby dispensed with, with immediate effect:-

<u>S.No.</u>	<u>Name with parentage</u>	<u>Present posting</u>
1.	Hafiz Muhammad Abullah Khan s/o Haji Muhammad Hafizullah. ✓	PHE Department.
2.	Rasool Muhammad s/o Muhammad Kamal. ✓	Finance Department
3.	Aftab Ahmad s/o Shah Alam. ✓	Information Deptt
4.	Adil Nauman s/o Abdur Rab.	Irrigation Deptt:
5.	Shakeel Ahmad s/o Wajid Gul. ✓	C&W Department.
6.	Arshad Aziz Qureshi s/o Azizur Rehman Qurdshi. ✓	PHE Department
7.	S. Shah Hussain s/o Syed Chiragh Hussain.	Governor's Secretariat.
8.	Ali Nawaz s/o Hassab Badshah. ✓	Home Department.
9.	Shah Bakht s/o Hazrat Muhammad. ✓	PP&H Department.
10.	Khan Raziq s/o Abdul Khaliq. ✓	Estate Office S&GAD.
11.	Nasira Bibi d/o Muhammad Akhtar. ✓	S&GAD.
12.	Naseeb Khan s/o Shah Wazir Khan ✓	Local Govt Deptt:
13.	Abdur Rehman s/o Abbas Ali. ✓	Chief Minister's Secretariat.
14.	Abdul Hanan s/o Alam Shah. ✓	Governor's Secretariat.
15.	Qamar-uz-Zaman s/o Muhammad Zaman. ✓	Finance Deptt:
16.	S. Mukhtiar Ahmad Shah s/o Noor Muhammad Shah. ✓	PHE Department

Contd....p/2

Attended
A.C.M.

- 9
17. Muhammad Nadeem s/o Muhammad Maroof. ✓ PE&D Deptt.
 - ✓18. Zahid Shams s/o Shams Tabrez. ✓ Industries Department.
 - ✓19. Zahoor Shah s/o Noor Shah. ✓ Governor's Secretariat.
 - ✓20. Ali Asghar s/o ~~Aziz-ur-Rehman~~ **Karam Dad**. ✓ Food & Agri: Department.
 - ✓21. Muhammad Nawaz s/o Muhammad Gulab. ✓ Food & Agri: Department.
 - ✓22. Pervez s/o Gul Ahmad. ✓ Food & Agri: Department.
 23. Muhammad Zamir s/o Muzaffar Gul. ✓ S&GAD.
 - ✓24. Umar Zada s/o Muhammad Roz. ✓ C&W Deptt:
 - ✓25. Aurangzeb s/o Mir Bahadur. ✓ PHE Deptt:
 - ✓26. Amanullah s/o Karim Gul. ✓ Local Govt: Department.
 - ✓27. Ikhtiar Jan s/o Gul Muhammad. ✓ C&W Department.
 - ✓28. Feroz Khan s/o Ghulam Ayub. ✓ S&GAD.
 - ✓29. Sahibzada Abbas Khan s/o Sikandar Sahibzada. ✓ Minority Affairs Deptt.
 - ✓30. Shah Hussain s/o Dost Muhammad. ✓ Estate Office S&GAD.
 - ✓31. Khalig-ur-Rehman s/o Amir Nawab. ✓ Finance Deptt:
 - ✓32. Rehmat Khan s/o Khalil Khan. ✓ PE&D Deptt:
 33. Muhammad Intiaz s/o Alhaj Rafiullah. ✓ Minister for Irrigation, N.W.F.P.

SECRETARY TO GOVT: OF N.W.F.P.
SERVICES & GENERAL ADMINISTRATION DEPARTMENT.


Endot. No. SOS-III(S&GAD)3(552)/94 dated Peshawar, the 2-5-1997.

Copy forwarded for information and necessary action

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- 6- Section Officer (Estt) PE&D Department.
- 7- Section Officer (Admn) Food & Agriculture Department.
- 8- Section Officer (Admn) Governor's Secretariat, NWFP.
- 9- Section Officer (General) C&W Department.
- 10- Section Officer (General) Local Govt Department.
- 11- Section Officer (General) P.H.E. Department.
- 12- Section Officer (General) F.P.&H. Department.
- 13- Section Officer (General) Home & T.As Department.

- 14- Section Officer (General) Information Department.
- 15- Section Officer (General) Irrigation Department.
- 16- Section Officer (General) Minority Affairs Department
- 17- Section Officer (Coordination) Chief Minister's
Secretariat, N.W.F.P.
- 18- Section Officer (Admn) Industries Department.
- 19- Officials concerned.
- 20- Personal Files.



(SYED KAMRAN SHAH)
Section Officer (Services-IV)

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11

BEFORE THE N.W.F.P. SERVICE TRIBUNAL PESHAWAR

SERVICE APPEAL NO. 587/1997

Date of institution ... 27-05-1997


Date of decision ... 13-02-1999

Abdullah s/o Mohammad Ajan,
Ex-Naib Qasid Office of the Agricultutal
Engineer, Malakand Division Batkhela,
R/O Village Kithyari, District Dir.

... APPELLANT

VERSUS

1- Director Agriculture Engineering NWFP,
Tarnab Farm, Peshawar.

 Agriculture Engineering, Malakand division,
Batkhela.

... RESPONDENTS

Mr. Khushdil Khan,
Advocate.

... For Appellant

Mr. Mohammad Faheem Jan,
Advocate (Govt. Pleader).

... For Respondents.

Mr. Mohammad Qaim Jan Khan,

... Chairman

Sied Abid Hussain Bukhari

... Member

Mr. Mohammad Shawkat Khan

... Member

JUDGMENT

MOHAMMAD QAIM JAN KHAN, CHAIRMAN:- This is a service appeal filed by Abdullah appellant under section 4 of the NWFP Service Tribunals Act, 1974 against the impugned.

Attested
A S

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR.



12

SERVICE APPEAL NO. 587/1997

Date of institution ... 27.5.1997
Date of decision ... 13.2.1999

Abdullah S/o Mohammad Aajan,
Ex-Naib Qasid Office of the Agricultural
Engineer, Malakand Division Batkhela,
R/O Village Kithyari, District Dir. ... APPELLANT

VERSUS

- 1- Director Agriculture Engineering NWFP,
Tarnab Farm, Peshawar.
- 2- Agricultural Engineer, Malakand Division,
Batkhela. ... RESPONDENTS

Mr. Khushdil Khan,
Advocate. ... For appellant

Mr. Mohammad Faheem Jan,
Advocate (Govt. Pleader). ... For respondents.

MR. MOHAMMAD QAIM JAN KHAN, ... CHAIRMAN
 SYED ABID HUSSAIN BUKHARI. ... MEMBER
 MR. MOHAMMAD SHAUKAT KHAN, ... MEMBER

ATTESTED
NWFP Service Tribunal
Peshawar

13.2.99

JUDGMENT

MOHAMMAD QAIM JAN KHAN, CHAIRMAN:- This is a service appeal filed by Abdullah appellant under section 4 of the NWFP Service Tribunals Act, 1974 against the impugned

order dated 19.2.1997 passed by respondent No.2, whereby the services of appellant was dispensed with, with immediate effect.

It is to be noted that alongwith the instant appeal there are 263 other connected appeals. The facts, points of law and the arguments of the learned counsel for the parties in all these appeals are the same as the services of these appellants have been terminated under the General Policy of the Government, so our this single judgment shall dispose of the instant appeal as well as the connected appeals, details of which are as under:-

- 1. Appeal No. 259/97, Sai fullah Khan-Vs-Secretary Industries etc."

Mr. Waqar Ahmad Seth,
Advocate.

.. For appellant

Mr. Mohammad Faheem Jan,
Advocate (Govt. Pleader).

For respondents

312/97 --

- 2- Appeal No./Mohammad Farooq-Vs-DEO(M) Primary, Mardan etc.
- 3- Appeal No.313/97, Zahid Muhammad-Vs- - do -
- 4- Appeal No. 314/97, Mohammad Riaz - Vs- - do -
- 5- Appeal No. 318/97, Neer Dad Khan - Vs- - do -
- 6- Appeal No. 323/97, Israr Ali - Vs- - do -
- 7- Appeal No. 324/97, Taj Alam, - - Vs- - do -
- 8- Appeal No. 460/97, Habib-ur-Rehman - Vs -Distt: Director Edu: (Schools) Mkd, Swat etc.
- 9- Appeal No. 1154/97, Salim-ur-Rehman-Vs-DEO(M) Secy: Swabi et.
- 10- Appeal No. 1164/97, Syed Shahkar Ali Shah-Vs-Director-E&T, NWFP, etc.
- 11- Appeal No. 1433/97, Yanullah Khan, -Vs-XEN, C&W, Divn: Mkd at Bathhela etc.
- 12- Appeal No. 293/97, Javed Khan-Vs-DEO(M) Primary, Mardan etc.
- 13- Appeal No. 294/97, Rahman-ud-Din-Vs- - do -
- 14- Appeal No. 295/97, Nasir Khan- Vs- - do -

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- 15- Appeal No. 296/97, Faqir Muhammad- Vs - DEO(M) Primary, Mardan etc.
- 16- Appeal No. 297/97, Taj Muhammad - Vs - do -
- 17- Appeal No. 298/97, Muhammad Imran - Vs - do -
- 18- Appeal No. 299/97, Muntaz Ali - Vs - do -
- 19- Appeal No. 300/97, Abdul Waris - Vs - do -
- 20- Appeal No. 301/97, Farooq Khan - Vs - do -
- 21- Appeal No. 302/97, Shaukat Ali - Vs - do -
- 22- Appeal No. 304/97, Sikandar Shah - Vs - do -
- 23- Appeal No. 305/97, Missal Khan - Vs - do -
- 24- Appeal No. 306/97, Sabas Ali - Vs - do -
- 25- Appeal No. 307/97, Bakhtiar Ali - Vs - do -
- 26- Appeal No. 308/97, Munir Khan - Vs - do -
- 27- Appeal No. 309/97, Hamid - Vs - do -
- 28- Appeal No. 310/97, Minhas Ali - Vs - do -
- 29- Appeal No. 311/97, Usman Ali - Vs - do -

Mr. Atiq-ur-Rehman Qazi, Advocate ... For appellants
 Mr. Mohammad Faeem Jan, Adv. (Govt. Pleader) For respondents

Appeal No.
 30-/205/97, Nazakat Ali-Vs- Director(P)Edu: NWFP etc.

Mr. Khan Afzal Khan, Adv. .. For appellant
 Mr. Mohammad Faeem Jan, Adv. (Govt. Pleader) .. For respondents

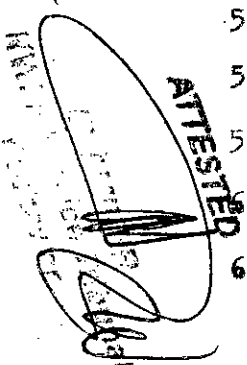
31- Appeal No. 219/97, Shanin Akhtar-Vs-Education Deptt:
 Mr. Muhammad Siddique Awan, Adv. .. For appellant
 Mr. Mohammad Faeem Jan, Adv. (Govt. Pleader). .. For respondents

32- Appeal No. 391/97, Zahid-ur-Rehman-Vs- Divl: Director, Secy: Edu:(s)Mkd: Divn: Swat etc.

- 33- Appeal No. 392/97, Bakht Afsar - Vs- - do -
- 34- Appeal No. 393/97, Yousof Shah - Vs- - do -
- 35- Appeal No. 394/97, Abdul Khabir - Vs- - do -
- 36- Appeal No. 450/97, Najibullah - Vs- - do -
- 37- Appeal No. 451/97, Zahidbar - Vs- - do -
- 38- Appeal No. 452/97, Jamshed Ali- - Vs- - do -

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- 39- Appeal No. 453/97, Gul Namraiz - Vs - Divl: Director, Secy: Edu: (S) Mkd: Diva: Swat.
- 40- Appeal No. 455/97, Mohammad Alan - Vs - - do -
- 41- Appeal No. 456/97, Nasir Hussain - Vs - - do -
- 42- Appeal No. 457/97, Anjad Ali - Vs - - do -
- 43- Appeal No. 527/97, Muzaffar Khan - Vs - - do -
- 44- Appeal No. 626/97, Saeed Zada - Vs - - do -
- 45- Appeal No. 1080/97, Gul Aslam - Vs - Director, Archaeology & Museums, Peshawar etc.
- 46- Appeal No. 1086/97, Abdul Sabeer - Vs - Director, Prg: Education NWFP, Peshawar etc.
- 47- Appeal No. 1087/97, Mohammad Intiaz - Vs - - do -
- 48- Appeal No. 1088/97, Abdur Rahim - Vs - - do -
- 49- Appeal No. 1089/97, Amir Nawaz Khan - Vs - - do -
- 50- Appeal No. 1346/97, Taj Ali - Vs - DEO (F) Secy: Lakki Marwat, etc.
- 51- Appeal No. 1348/97, Ghazib-ud-Din - Vs - Dy: Director, Labour Mr. Saadullah Khan Marwat, Adv.. (Admn:) Peshawar, etc. For appellants.
- 52- Appeal No. 2167/97, Wahid Jan - Vs - Secretary Edu: NWFP, etc.
- 53- Appeal No. 2168/97, Nusrullah Jan - Vs - - do -
Mr. R. Badshah Khattak, Advocate .. For appellants
- 54- Appeal No. 641/97, Mir Badshah - Vs - Secy: Agri: Department etc. Mr. Khushdil Khan, Advocate ... For appellant
- 55- Appeal No. 106/97, Ahmad Nawaz - Vs - Secretary, Food, Agri. Livestock & Coop: Deptt: etc. Mr. Rustam Khan Rundi, Advocate. .. For appellant
- 56- Appeal No. 690/97, Gul Rahim - Vs - Secretary Edu: NWFP, etc. Mr. Saadullah Khan Marwat, Advocate .. For appellant.
- 57- Appeal No. 483/97, Muhammad Amin - Vs - D.C Buner etc.
- 58- Appeal No. 484/97, Bakht Rashid - Vs - - do -
- 59- Appeal No. 485/97, Amra Ali Khan - Vs - - do -
- 60- Appeal No. 487/97, Said Mukhtar - Vs - - do -
- 61- Appeal No. 489/97, Sadagat Ali - Vs - - do -
Mr. Mohammad Shafi, Advocate .. For appellants
Mr. Mohammad Faezan Jan, Advocate (Govt. Pleader) .. For respondents

13/2/97

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- 62- Appeal No. 506/97, Dilshad Begum-Vs-Director, Edu:Secy: NWFP, Peshawar etc.
- 63- Appeal No. 538/97, Fazale Subhan-Vs-Director, Prg:EDU: NWFP, Peshawar etc.
- 64- Appeal No. 539/97, Mohammad Nigar-Vs- - do -
- 65- Appeal No. 540/97, Amir Bahadar -Vs- - do -
- 66- Appeal No. 541/97, Shoukat - -Vs- - do -
- 67- Appeal No. 549/97, Subhan-ud-Din, -Vs- - do -
- 68- Appeal No. 551/97, Bakht Jamal -Vs- - do -
- 69- Appeal No. 552/97, Sher Zamin -Vs- - do -
- 70- Appeal No. 553/97, Ijaz Hussain- -Vs- - do -
- 71- Appeal No. 554/97, Ahmad Ali - -Vs- - do -
- 72- Appeal No. 555/97, Faqir Zaman -Vs- - do -
- 73- Appeal No. 565/97, Ghulam Habib- -Vs- - do -
- 74- Appeal No. 584/97, Assadullah - -Vs- - do -
- 75- Appeal No. 292/97, Noor-ul-Islam -Vs- - do -
- 76- Appeal No. 923/97, Muzamil Shah-Vs-Govt. of NWFP through Secy:Agri:Food, Live-stock & Coop: Deptt: Peshawar etc.
- 77- Appeal No. 925/97, Amanullah-Vs- - do -
- 78- Appeal No. 983/97, Mohammad Salim-Vs-do -
- 79- Appeal No. 985/97, Abdul Mubeen -Vs-do -
- 80- Appeal No. 262/97, Mukhtiar Ali-Vs-Director Prg:Edu: NWFP, Peshawar etc.
- 81- Appeal No. 263/97, Asad Khan- -Vs- - do -
- 82- Appeal No. 266/97, Nihar Ali- -Vs- - do -
- 83- Appeal No. 268/97, Rab Nawaz, -Vs- - do -
- 84- Appeal No. 270/97, Sarzamin, -Vs- - do -
- 85- Appeal No. 273/97, Fazal Amin, -Vs- - do -
- 86- Appeal No. 437/97, Gul Mohammad, Vs- - do -
- 87- Appeal No. 446/97, Mohammad Israr-Vs-- do -
- 88- Appeal No. 478/97, Neerul Islam-Vs-Registrar, Cooperative Societies, NWFP, etc.
- 89- Appeal No. 814/97, Zar Ali Khan-Vs-Director, Agri:Engg: NWFP, Peshawar etc.

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- 90- Appeal No. 815/97, Aziz Khan-Vs-Director Planning, Directorate of Livestock & D.D. NWFP, Peshawar etc.
- 91- Appeal No. 1074/97, Hafeezullah-Vs-Govt. of NWFP through Secy: Agri: Food Livestock & Coop: etc.
- 92- Appeal No. 1220/97, Muhtaram Shah-Vs-Director Education, Secy: NWFP etc.
- 93- Appeal No. 1929/97, Farman Ali -Vs- - do -
- 94- Appeal No. 2062/97, Ashraf Khan-Vs-Director Pys: Education NWFP, Peshawar etc.
- 95- Appeal No. 2153/97, Syed Fareeq Shah-Vs-M.B.R NWFP, etc.
- 96- Appeal No. 2172/97, Waqar-ud-Din-Vs-Govt. of NWFP through Secy: Education NWFP Peshawar, etc.
- 97- Appeal No. 2659/97, Kifayatullah-Vs-Secretary, Industries Commerce, Mineral Dev Labour & Transport, Peshawar, etc.
- 98- Appeal No. 2694/97, Mohammad Asghar-Vs- - do -

Mr. Khushdil Khan, Advocate. ...
 Mr. Mohammad Faheem Jan, Advocate
 (Govt. Pleader).

For appellants
 For respondents

- 99- Appeal No. 556/97, Alangir-Vs-EA Director, Agri: Mardan et
- 100- Appeal No. 711/97, Mohammad Afzal-Vs-Divl: Director, Secy: Edu: (S) Mkd: Swat et
- 101- Appeal No. 712/97, Abdur Rehman-Vs- - do -
- 102- Appeal No. 714/97, Kifayatullah-Vs- - do -
- 103- Appeal No. 715/97, Akbar Shah -Vs- - do -
- 104- Appeal No. 716/97, Bahre Alam -Vs- - do -
- 105- Appeal No. 717/97, Ali Himat -Vs- - do -
- 106- Appeal No. 718/97, Nazakat Begun-Vs- - do -
- 107- Appeal No. 719/97, Mohammad Nisar-Vs- - do -
- 108- Appeal No. 720/97, Abdul Wadeed- Vs- - do -
- 109- Appeal No. 722/97, Ikramullah- Vs- - do -
- 110- Appeal No. 723/97, Mohammad Riaz-Vs- - do -
- 111- Appeal No. 724/97, Mohammad Zaib-Vs- - do -
- 112- Appeal No. 725/97, S. Didar Ali -Vs- - do -
- 113- Appeal No. 726/97, Usman Ghani- -Vs- - do -
- 114- Appeal No. 528/97, Muhammad Anar-Vs- - do -

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- 115- Appeal No. 729/97, Gul Zamin-Vs- - do -
- 116- Appeal No. 730/97, Ajmal Khan-Vs- - do -
- 117- Appeal No. 731/97, Akhtar Ali-Vs- - do -
- 118- Appeal No. 732/97, Miraj Khalid-Vs- - do -
- 119- Appeal No. 733/97, Amir Zeb- Versus- - do -

Mr. Saadullah Khan Marwat, Advocate ... For appellants
 Mr. Mohammad Faheem Jan, Advocate ... For respondents
 (Govt. Pleader).

- 120- Appeal No. 839/97, Ayaz Mohammad-Vs-Divl: Director, Secy: Edu: A/Abad. etc.
- 121- Appeal No. 840/97, Rahimullah -Vs- - do -
- 122- Appeal No. 841/97, Iftikhar - -Vs- - do -
- 123- Appeal No. 842/97, Sardar Mohammad Anjad Ali-Vs- - do -
Edu: Peshawar etc.
- 124- Appeal No. 843/97, Zulfiqar Ali-Vs- Divl: Director Secy: Edu: A/Abad etc.
- 125- Appeal No. 844/97, Mukhtiar Ali-Vs- - do -
- 126- Appeal No. 960/97, Riaz Mahneed-Vs-DEO(M)Secy: Mardan etc
- 127- Appeal No. 961/97, Mohammad Ibrahim-Vs- do -
- 128- Appeal No. 991/97, Zahid Ali-Vs- - do -
- 129- Appeal No. 995/97, Javaid Hayat Akhtar-Vs-Divl: Director, Secy: Edu: A/Abad, etc.
- 130- Appeal No. 1091/97, Mohammad Raziq-Vs- - do -
- 131- Appeal No. 1456/97, Fazal Rahim-Vs- - do -
- 132- Appeal No. 1534/97, Zahoor Ahmad-Vs- - do -

Mr. Adam Khan, Advocate. ... For appellants
 Mr. Mohammad Faheem Jan, Advocate ... For respondents
 (Govt. Pleader).

- 133- Appeal No. 564/97, Noor Zamin-Vs-Govt. of NWFP through Chief Secretary, NWFP etc.
 Mr. Muzammil Khan, Advocate .. For appellant.

- 134- Appeal No. 661/97, Habib-ur-Rehman-Vs-Commissioner, Mkd: Divn: Saidu Sharif, etc. Swat.
- 135- Appeal No. 662/97, Zia-ul-Haq - Vs- - do -

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 T. J. J. J. J.
 NWFP

- 136- Appeal No. 697/97, Muhammad Ibrahim-Vs- - do -
- 137- Appeal No. 1383/97, Fazale Subhan- Vs- - do -
- 138- Appeal No. 1384/97, Mohammad Arif, - Vs- - do -

Mr. Mohammad Waris Khan, Advocate ... For appellants
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader). ... For respondents

- 139- Appeal No. 965/97, Hamidullah-Vs-D.C Buner, etc.
- 140- Appeal No. 966/97, Naseeb Gul-Vs- - do -
- 141- Appeal No. 967/97, Bacha Hussain-Vs-- do -
- 142- Appeal No. 968/97, Shaheen Wahab-Vs-- do -
- 143- Appeal No. 969/97, Sardar Ahmad -Vs - do -
- 144- Appeal No. 970/97, Gul Ghafoor, -Vs - do -
- 145- Appeal No. 971/97, Said Majeed, -Vs-- do -

Mr. Mohammad Latif Khan, Advocate .. For appellants
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader). For respondents

- 146- Appeal No. 458/97, Maqsood Illahi-Vs-Govt. of NWFP through Secy: Social Welfare Deptt: Peshawar etc.
- 147- Appeal No. 2000/97, Safiullah-Vs-Province of NWFP through Chief Secretary, Peshawa etc.

Shahzada Shahpur Jan, Advocate ... For appellants
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader). For respondents.

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- 148- Appeal No. 1703/97, Abdul Akbar-Vs-D.C Charsadda etc.
- 149- Appeal No. 1704/97, Alif Gul -Vs- - do -
- 150- Appeal No. 1705/97, Naeem Jan, -Vs- - do -
- 151- Appeal No. 1706/97, Rahman Shah-Vs- - do -
- 152- Appeal No. 1707/97, Asad Hussain-Vs- - do -
- 153- Appeal No. 1708/97, Malang Jan -Vs- - do -

Mian Saadullah Janduli, Advocate .. For appellants
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) For respondents.

ATTESTED

- 154- Appeal No. 692/97, Wahid Mehmoed-Vs-Forest Deptt:
- 155- Appeal No. 693/97, Mohammad Ilyas-Vs- - do -

156- Appeal No. 1637/97, Abdul Khaliq-Vs-Govt. of NWFP through Secretary, Board of Revenue, Peshawar etc.

157- Appeal No. 1638/97, Farooq Ahmad-Vs- do -

158- Appeal No. 1920/97, Mohammad Pervez-Vs-Commissioner, Hazara Divn: A/Abad etc.

Mr. Mohammad Asif Yousafzai, Advocate ... For appellant
Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) ... For respondents

159- Appeal No. 832/97, Aziz-ur-Rehman-Vs-Govt. of NWFP through Secretary Agri. Deptt: Peshawar etc.

160- Appeal No. 833/97, Ajab Khan - Vs - do -

Mr. Shahzad Akbar, Advocate ... For appellants
Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) ... For respondents

161- Appeal No. 836/97, Mukhtiar Ali-Vs-DEO(M) Secy: Swabi etc.
Mr. Khushdil Khan, Advocate For appellant.

162- Appeal No. 1268/97, Bashir Mohammad-Vs-Forest Deptt:

163- Appeal No. 1524/97, Khalid - Versus - do -

Mr. Muzammil Khan, Advocate ... For appellants
Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) ... For respondents

164- Appeal No. 2553/97, Raza Ali Khan-Vs-Secretary Forest, NWFP etc.

Mr. Mohammad Asif, Advocate.. For appellant
Mr. Mohammad Faheem Jan, Adv. For respondents

165- Appeal No. 2471/97, Mohammad Zaman-Vs-Director, Information NWFP, Peshawar etc.

166- Appeal No. 2472/97, Irshad Ahmad-Vs- do -

167- Appeal No. 2473/97, Mohammad Naseem-Vs- do -

168- Appeal No. 2474/97, Nisbatullah - Vs- do -

169- Appeal No. 2475/97, Fazle Qayum - Vs- do -

170- Appeal No. 2476/97, Syed Hussain Shah-Vs- do -

171- Appeal No. 2477/97, Iftikhar Ahmad- Vs- do -

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NWFP Peshawar

- 172- Appeal No. 2478/97, Mohammad Tariq-Vs- do -
- 173- Appeal No. 2479/97, Jehangir- -Vs- do -
- 174- Appeal No. 2480/97, Umer Ali, -Vs- do -
- 175- Appeal No. 2481/97, Waheed Gul -Vs- do -
- 176- Appeal No. 2482/97, Syed Wiqar Ali Shah-Vs-do-
- 177- Appeal No. 2508/97, Salim Raza Afridi-Vs- do-
- 178- Appeal No. 2509/97, Gul Hamid, Versus- do-
- 179- Appeal No. 2510/97, Masood , - Versus- do -
- 180- Appeal No. 2512/97, Faisal Khan-Versus- do -

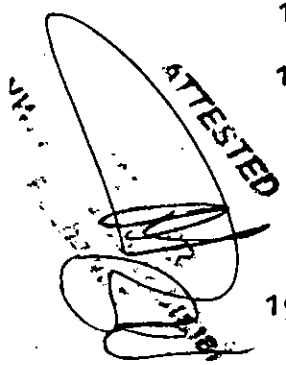
Mr. Mohammad Iqbal Khalil, Advocate .. For appellants
 Mr. Mohammad Faheem Jan, Advocate .
 (Govt. Pleader). .. For respondents

- 181- Appeal No. 2414/97, Muhammad Ajmal-Vs- Secretary Board
of Revenue, Govt.
of NWFP, Peshawar
etc.
- 182- Appeal No. 2415/97, Sharifullah- - Vs- do -
- 183- Appeal No. 2416/97, Abdul Nabi, - Vs- do -
- 184- Appeal No. 2417/97, Sar Muhammad Khan-Vs- do -
- 185- Appeal No. 2418/97, Akhtar Ajab, - Vs- do -
- 186- Appeal No. 2419/97, Sar Taj Khan- Vs- do -
- 187- Appeal No. 2420/97, Sadiq Rehman - Vs- do -
- 188- Appeal No. 2421/97, Fazal Rabbi, - Vs- do -
- 189- Appeal No. 2422/97, Waliullah, - Vs- do -
- 190- Appeal No. 2423/97, Gul Rehman, - Vs- do -
- 191- Appeal No. 2425/97, Ahmed Wali, - Vs- do -
- 192- Appeal No. 2426/97, Muhammad Raziq Vs- do -
- 193- Appeal No. 2428/97, Rehmatullah, - Vs- do -
- 194- Appeal No. 2429/97, Muhammad Ayaz- Vs- do -
- 195- Appeal No. 2424/97, Gul Wali, - Vs- do -
- 196- Appeal No. 2427/97, Muhammad Riaz- Vs- do -

Mr. Naqibullah Khan Khattak, Advocate .. For appellants
 Mr. Mohammad Faheem Jan, Advocate
 (Govt. Pleader). .. For respondents

- 197- Appeal No. 1978/97, Ajmal Hussain-Vs- DEO, Secy: Peshawar
etc.
- 198- Appeal No. 1979/97, Saifullah-Versus- DEO, Secy: Nowshera
etc.

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- 199- Appeal No. 1981/97, Mohammad Shoaib - Vs - do -
- 200- Appeal No. 2084/97, Niaz Ali, - Vs - do -
- 201- Appeal No. 2085/97, Akhtar Zaman, Vs-DEO, Secy: Peshawar etc.

Mr. Khalil Khan Khalil, Advocate .. For appellants
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader). For respondents

- 202- Appeal No. 837/97, Miss. Shagufta Naznin-Vs-Divl: Director Edu:(Schools) D.I. Khan, etc.
- 203- Appeal No. 1437/97, Miss. Rehana Yasmin-Vs- - do -
- 204- Appeal No. 1847/97, Miss. Shakeela Naz -Vs- - do -
- 205- Appeal No. 2014/97, Mohammad Rafiq-Vs-DEO(M)Secy:D. I. Khan, etc.
- 206- Appeal No. 2266/97, Samin Jan-Vs-D.C. D.I. Khan etc.
- 207- Appeal No. 59/98, Muhammad Jehangir-Vs-Medical Supdt: D.I. Khan etc.
- 208- Appeal No. 205/98, Muhammad Jamshed- Vs-Agri: Engineer, D.I. Khan etc.

Sheikh Mohammad Bashir Gohar, Adv. For appellants
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader). For respondents

- 209- Appeal No. 899/97, Syed Shahid Hussain-Vs-Province of NWFP, through Secretary, Edu: Deptt: Peshawar etc.
- Shahzada Shahpur Jan, Advocate .. For appellant
 Mr. Mohammad Faheem Jan, Adv. (Govt. Pleader). For respondents

- 210- Appeal No. 921/97, Miss. Robina Bibi-Vs-D.G. Social Welfare Deptt. NWFP, Peshawar etc.

- 211- Appeal No. 922/97, Miss. Tabassum Naz, Vs- - do -

Mr. Khushdil Khan, Advocate ... For appellants
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader). For respondents.

- 212- Appeal No. 1751/97, Mohammad Rashad-Vs-Secretary. Edu- Govt. of NWFP, Peshawar etc.
- 213- Appeal No. 1752/97, Inran Ali- Vs- - do -
- 214- Appeal No. 1753/97, Sher Ali Shah-Vs- do -
- 215- Appeal No. 1841/97, Ahmad Biland -Vs- do -

Mr. Rooh-ul-Amin, Advocate .. For appellants
 Mr. Mohammad Faheem Jan, Adv. For respondents

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- 216- Appeal No. 631/97, Ashfaq Ahmed-Vs-Govt. of NEFP through Secretary, Edu: NWFP, Peshawar etc.
- 217- Appeal No. 633/97, Bakht Zaman- -Vs- - do -
 Mr. Mohammad Shah Nawaz, Advocate .. For appellants
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) .. For respondents
- 218- Appeal No. 2018/97, Said Karim-Vs-Commissioner, Mkd: Division, Saidu Sharif, Swat etc.
 Mr. Ghulam Naqshband Khan, Advocate. For appellant
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) for For respondents
- 219- Appeal No. 709/97, Nusrat Ali-Vs-Govt. of NWFP through Chief Secretary, NWFP, Peshawar etc.
 Mr. Muhammad Ismail Khalil, Adv. For appellant
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) For respondents
- 220- Appeal No. 197/97, Akbar Shah-Vs-Director, B&A (Forests) NWFP, Peshawar etc.
 Mr. Atiq-ur-Rehman Qazi, Advocate .. For appellant
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) .. For respondents
- 221- Appeal No. 531/97, Inamullah-Vs-D.C Swat etc.
 Mr. Aftab Alam, Advocate .. For appellant
 Mr. Mohammad Faheem Jan, Adv. (Govt. Pleader) For respondents
- 222- Appeal No. 1521/97, Asad Ali-Vs-C.C.F, NWFP, Peshawar etc.
 Mr. Mohammad Nawaz Khan, Advocate .. For appellant
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) .. For respondents
- 223- Appeal No. 1699/97, Salahud Din-Vs-Commissioner, Banna etc.
 Mr. Mohammad Riaz Yousafzai, Adv. For appellant
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) For respondents
- 224- Appeal No. 915/97, Rahim Shah-Vs-DFO, Dir etc.
 Qasi Zaki-ud-Din, Advocate ... For appellant
 Mr. Mohammad Faheem Jan, Advocate, (Govt. Pleader) For respondents
- 225- Appeal No. 532/97, Inayatullah-Vs-Agri: Deptt: etc.
 Mr. Abdul Azis Kundi, Advocate .. For appellant
 Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) For respondents

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226- Appeal No.2089/97, Bakhtiarud Din-Vs-Edu:Deptt: etc.
(Mr. Shahab-ud-Din, Adv. .. For appellant
Mr. Mohammad Faheem Jan) .. For respondents)

227- Appeal No. 2262/97, Ashfaq Ahmad-Vs-Secy:Beard of Revenue etc.
(Mr. Amanullah Khan Khattak, Adv. For appellant
Mr. Mohammad Faheem Jan, Adv. For respondents)

228- Appeal No.634/97, Naseeb Khan-Vs- S&GAD etc.

229- Appeal No.637/97, Ali Nawaz -Vs- - do -

230- Appeal No.638/97, Aftab Ahmad-Vs- - do -

231- Appeal No.701/97, Hafiz Mohammad Abdullah-Vs- do-

232- Appeal No.911/97, Nasira Bibi-Vs- - do -

233- Appeal No.977/97, Mohammad Zamir-Vs- do -

234- Appeal No.829/97, Ikhtiar Jan-Vs- - do -
(Mr. Aslam Khan Khattak & Advocates .. For appellants
Mr. Shahzad Akbar Khan.
Mr. Mohammad Akram, Adv.(AGP) .. For respondents)

235- Appeal No.679/97, Perwez Khan - Vs - S&GAD etc.

236- Appeal No.680/97, Zahoor Shah - Vs - - do -

237- Appeal No.681/97, S. Mukhtar Ahmad Shah-Vs- do -

238- Appeal No.682/97, Arshid Aziz Qureshi -Vs- do -

239- Appeal No.683.97, Feroz Khan - Vs- - do -

240- Appeal No.684/97, Umar Zada - Vs- - do -

241- Appeal No.685/97, Zahid Shams - Vs- - do -

242- Appeal No.686/97, Amanullah - Vs- - do -

243- Appeal No.687/97, Khaliq-ur-Rehman-Vs- - do -

244- Appeal No.688/97, Mohammad Imtiaz, -Vs- - do -

245- Appeal No.689/97, sahibzada Abbas Khan-Vs- do -

246- Appeal No.635/97, Shakeel Ahmad -Vs- do -

247- Appeal No.639/97, Shah Bakht -Vs- - do -

248- Appeal No.824/97, Rehmat Khan -Vs- - do -

249- Appeal No.825/97, Mian Shah Hussain-Vs- - do -

250- Appeal No.858/97, Aurangzeb -Vs- - do -

251- Appeal No.703/97, Khan Raziq -Vs- - do -

252- Appeal No.704/97, Abdur Rehman -Vs- - do -

253- Appeal No. ~~705~~ 705/97, Abdul Hanan-Vs- - do -

254- Appeal No.706/97, Qamar Zaman, -Vs- - do -

255- Appeal No.707/97, Mohammad Nawaz, Vs- - do -

256- Appeal No.708/97, Rasool Mohammad-Vs- - do -

257- Appeal No.990/97, Mohammad Nadeem-Vs- - do -

(Mian Fasihul Mulk, Advocate .. For appellants
Mr. Mohammad Akram, Adv(AGP) .. For respondents)

258- Appeal No. 1989/97, Siddique Mohammad-Vs-Commissioner, Hazara
Divn: etc.

259- Appeal No. 1990/97, Arsala Khan, - Vs- - do -

260- Appeal No. 1991/97, Asadullah Khan- Vs- - do -

261- Appeal No. 1992/97, Amanullah Khan, - Vs- - do -

262- Appeal No. 1993/97, Basir Khan , - Vs- - do -

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263- Appeal No. 1994/97, Hayat Mohammad-Vs-Commissioner, Hazara
Divn: etc.

(Syed Asif Shah, Advocate ... For appellants
Mr. Mohammad Akram, Adv. (AGP) For respondents)

Brief facts of the case are that the appellant is a bonafide resident of village Kithyari, District Dir and also primary educated. That the appellant was appointed as Naib Qasid in BPS-1 in the office of respondent No.2 against the vacant post vide office order No.1332-35, dated 23.5.95. Copy of the appointment order is Annexure-A. That the appellant took over the charge of his post in the office of respondent No.2 on 24.5.95 (F.N), after producing his health and age certificate from the concerned Medical Superintendent. Copies of charge report and medical certificate are Annexures B&C respectively. That respondent No.2 had passed the impugned order dated 19.2.97, whereby the services of the appellant were dispensed with, with immediate effect. Copy of the impugned order dated 19.2.97 is Annexure-D. That appellant has filed his departmental appeal under section 3 of NWFP Civil Services (Appeal) Rules, 1986 before respondent No.1. Copy of the departmental appeal is Annexure-E. That respondent No.1 has not disposed of the appellant's departmental appeal within the statutory period of 90 days, hence the appellant is constrained to approach this August Tribunal inter-alia on the following grounds:-

That respondent No.2 is the appointing authority in the case of the appellant. He made the appointment order of the appellant and the same has been acted upon and carried into effect, so attained finality and vested right is created in the appointee, therefore, the withdrawal, revocation or dispensed with of the appellant's appointment/service is violative of the principles of locus-poenitentiae. That the impugned order is contrary to the

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principle of natural justice as it was passed at the back of the appellant without giving him any opportunity of being heard. Moreover, no notice has been given to the appellant before passing the impugned order. That respondent No.2 has not disclosed any illegality in the impugned order in respect of the appointment of the appellant, therefore, the impugned order is vague, ambiguous and unwarranted by law. That there is no prescribed qualification for the post of Naib Qasid and the appointment is made on ordinary selection by the appointing authority, so the appointment of the appellant is made after adopting proper procedure. Moreover, the appellant cannot be punished for any act or omission of the respondents. That respondent No.2 has already recommended the appellant's case for reinstatement to the higher authority in the light of directions laid down in letter No.1 SOS-III(S&GAD)8-12/96, dated 20.2.1997. Copies of the letter are Annexures F & G. That respondent No.2 has used the word like "dispensed with" in the impugned order dated 19.2.97, so there is no word in the Civil Servants Act like "dispensed with" and thus it is not a legal word, therefore, the impugned order dated 19.2.97 is vague, ambiguous and unwarranted by law. That respondent No.2 has not observed the law and rules in passing the impugned order although the appellant's appointment was made against a vacancy of permanent post, therefore, the impugned order is void and ineffective. In the prayer the appellant has asked for the acceptance of the present appeal, for setting aside the impugned order dated 19.2.97 and for reinstatement of the appellant in service with all back benefits.))

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 Mr. P. S. Sharma

Respondents have been served. They appeared through their respective representative/counsel, submitted reply rebutting all the allegations of the appellant. The appellant has also submitted his re-joinder after which detailed arguments of Mr. Khushdil Khan, Advocate for appellant and Mr. Mohammad Faheem Jan, Advocate (Govt. Pleader) for respondents have been heard and record perused.

As far as the preliminary/legal objections are concerned, from the date of the departmental appeal, the present appeal is perfectly within time. The appeal is maintainable in its present form and no mala fide intention is apparent on the record. The rest of the legal issues will be discussed in factual issues.

On factual side, the case is on a different footing. Learned counsel for the appellant mainly argued that the appellant was qualified and has been appointed on a vacant post by the competent authority. His services have been terminated without any show cause notice and without cogent reasons. Learned counsel argued that the appellant should not suffer for the act of respondent department and that respondent department cannot throw their lapses on the fate of the appellant. He stressed that no show cause notice has been issued to the appellant and no cogent reasons have been asserted in the impugned order. In this regard he has referred so many authorities of the Hon'ble Supreme Court of Pakistan such as 1996 SCMR page 413, PLD 1990 SC page 666 and PLD 1991 SC page 973 and so many other authorities of the Hon'ble Supreme Court of the same nature.

The case is not so as depicted by the learned

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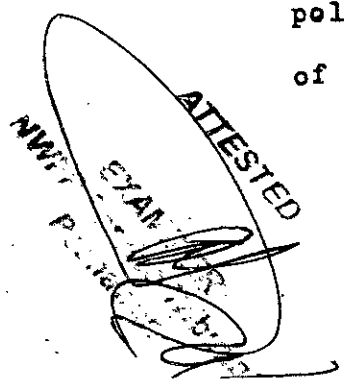
counsel for the appellant, as all these terminations are not routine terminations and the services of these appellants have been terminated under the General Policy of the Government. It is to be noted that the Government of NWFP constituted a Committee under the chairmanship of Chief Secretary. The said Committee framed guidelines for all the departments of the Government of NWFP to scrutinize all illegal, irregular and ab-initio void appointments and inductions specially made through Ministers, MPAs, MNAs and other political figures. So the respective departments after thrashing their records issued the orders of termination of all these appellants and others.

Now before coming at correct conclusion, we should see what is the "POLICY" of the Government. The word "policy" is defined as meaning a settled or definite course or method adopted by a Government, Institution, Body or Individual. There are so many definitions of the word "policy", some of which can be reproduced:

According to Wharton's Law Lexicon, "policy is the general principle by which a Government is guided in its management of public affairs or the Legislator in its measures." According to Oxford Dictionary, "the word policy means, "Political sagacity, state-craft, prudent conduct, sagacity, craftiness and course of action adopted by Government." According to Black's Law Dictionary, (6th Edition), "the general policy by which a Government is guided in its management of public affairs or the legislator in its measures."

Guide-lines and Policy letters are issued

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by the competent authorities of the Administrative Departments competent under the relevant law to make rules. Such guide-lines not being in conflict with any of provision of the Act primarily applies to remove the vacuum whereby the statutory rules are silent. In extra-ordinary situation, policy letters are enforced in consideration of the peculiar purposes regularizing and producing harmony and order in the action of the executive, so that decision may achieve a higher quality of justice. Now it is crystal clear that the "policy" of the Government has got the power and strength of rules and the only criteria is that it should be in accordance with the prevailing law and there should be no negation of the established rules. In PLJ 1985 LHR page 192 para-k, it was held that the Government, has the right of laying down policy and if it choses to do so and there is no law on the subject which it offends, it is not the right of any Court to throw it out, other than hold in any general case that the same is unreasonable or arbitrary. It was also held in "Mohammad Suleman-Versus-Pakistan" (1972 SCMR page 127) that the power of the Tribunal did not extend to strike down the rules and the policy decision of the authority.

We should not go into intricate details of the word "policy", and the nut-shell of the discussion is that "policy" has got the same force of law or rules, if it is not opposed to any law for the time being enforced.

The perusal of these cases clearly show that the selection of the appellant was not made on merit. (The appellant was appointed under the directives of Ex-Minister for Agriculture against the vacant post of Naib

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Qasid in Malakand Agency and so is the case of other appellants.) Merit was flouted and the laid down procedure was not adopted. Orders of Ministers, MNAs, MPAs and other political figures have been followed blindly ignoring the deserving candidates. Departmental Selection Committees and codal formalities have been flagrantly violated and thus all this renders the whole procedure of selection "dubious" as it was made against rules and all canons of justice and fair play.

So as the basic appointment/selection orders are illegal and void, therefore, there was no necessity for issuing any show cause notice, enquiry or codal formalities for the terminations of the services of the appellants. An illegal act can bear no legal fruit and thus no question of locus poenitentiae, vested/accrued right can arise. (In the present cases, some cases are of reversion and some are for the grant of monthly pay but as the basic appointment order is illegal, these cases also cannot succeed.)

In brief, as there is no legal force in the instant appeal as well as in the connected appeals, therefore, this appeal and the connected appeals are hereby dismissed. Parties are left to bear their own costs. File be consigned to the record.

ANNOUNCED

13.2.1999

Mohammad Qaim Jan Khan
 (MOHAMMAD QAIM JAN KHAN)
 CHAIRMAN

(SYED ABID HUSSAIN BUKHARI)
 MEMBER

Mohammad Shaukat Khan
 (MOHAMMAD SHAUKAT KHAN)
 MEMBER

(PLD 1992 SC
 page 207)

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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Irshad Hasan Khan, C.J.
Mr. Justice Muhammad Arif
Mr. Justice Qazi Muhammad Farooq

CIVIL PETITIONS NOS. 1759 TO 1773,
1794 TO 1797 AND 1815 OF 1999.

(On appeal from the judgment dated 27.9.1999
of the NWFP Service Tribunal, Peshawar in
Appeals Nos. 824, 639, 680, 681, 682, 683,
684, 685, 679, 687, 688, 703, 704, 707, 825,
634, 635, 686, 689 and 858 of 1997)

1. C.P. 1759/99 Rehmat Khan Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
2. C.P. 1760/99 Shah Bakht Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
3. C.P. 1761/99 Zahoor Shah Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
4. C.P. 1762/99 Syed Mukhtar Ahmad Shah
Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
5. C.P. 1763/99 Arshad Aziz Qureshi Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
6. C.P. 1764/99 Feroz Khan Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
7. C.P. 1765/99 Umar Zada Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.

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Supreme Court of Pakistan
Islamabad.

8. C.P. 1766/99 Zahid Shams Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
9. C.P. 1767/99 Pervez Khan Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
10. C.P. 1768/99 Khaliq-ur-Rehman Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
11. C.P. 1769/99 Muhammad Imtiaz Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
12. C.P. 1770/99 Khan Raziq Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
13. C.P. 1771/99 Abdur Rehman Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
14. C.P. 1772/99 Muhammad Nawaz Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
15. C.P. 1773/99 Mian Shah Hussain Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
16. C.P. 1794/99 Naseeb Khan Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
17. C.P. 1795/99 Shakeel Ahmed Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
18. C.P. 1796/99 Amanullah Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
19. C.P. 1797/99 Sahibzada Abbas Khan Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.
20. C.P. 1815/99 Aurangzeb Versus
Government of N.W.F.P., through
Chief Secretary, Peshawar.

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Assistant Registrar
Court of Pakistan

For the petitioners : Mian Fasih-ul-Mulk,ASC
Mr.M.S.Khattak,AOR

For the respondents : Mr.A.Sattar Khan,
Addl.Advocate General, NWFP

Date of hearing : 20.4.2000.

JUDGMENT

IRSHAD HASAN KHAN,C.J.- Through this common judgment, we propose to dispose of the above 20 petitions arising out of a consolidated judgment dated 27.9.1999 passed by the NWFP Service Tribunal, Peshawar (hereinafter referred to as the Tribunal) in Appeals Nos. 824; 680, 681, 682, 683, 684, 685, 679, 687, 688, 639, 634, 635, 703, 704, 707, 825, 686, 689 and 858 of 1997.

2. The brief facts are that the Government of NWFP S&GAD (Service Wing) invited applications for the posts of Junior Clerks (BPS-5) in the Civil Secretariat vide advertisement No.SOS-IV(S&GAD)5(252)/90 dated 21.9.1992. The petitioners individually applied for the above posts and were directed to appear in the written/typing test and interview vide letters dated 25.1.1993, 21.6.1993 and 25.7.1993 respectively. However, respondent No.3 (Secretary to Government of NWFP, S&GAD, Peshawar) cancelled the proceedings already undertaken for the purpose of filling the

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Assistant Registrar

posts of Junior Clerks. The Government of NWFP again advertised the aforesaid posts. The petitioners underwent the same process but the proceedings were quashed by the then Chief Minister NWFP. In consequence, the Government of NWFP again advertised the aforesaid posts.

3. The case of the petitioners is that they were appointed as Junior Clerks after fulfilling the due formalities. They also claimed to have successfully completed the training at the Staff Training Institute. It is alleged that the petitioners were performing duties in Services and General Administration Department, NWFP, to the entire satisfaction of their superiors, when suddenly they were dismissed from service after considerable time on the ground that their appointments had been found to be illegal, ab initio void and against the prescribed rules. Being aggrieved, the petitioners herein, after exhausting the departmental remedies, approached the Tribunal but were unsuccessful. Eventually, they filed separate appeals before the Tribunal, but the same were dismissed. In consequence, the petitioners approached this Court by means of Civil Petitions Nos. 466 to 491, 689, 690, 785 and 800 of 1999 for redress of their grievances. The

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petitions were converted into appeals and disposed of, vide order dated 29.6.1999, in these terms that the case was remanded to the Tribunal with the direction to decide the appeals and examine the cases of the petitioners individually and decide the matter in the light of an earlier judgment rendered in the connected petitions [titled *Abdullah and others versus The Director, Agriculture Engineering, NWFP and another* (Civil Petition No. 81-P to 105-P of 1999 decided on 19.5.1999)]. It would be advantageous to reproduce the order passed in pre-remand proceedings by this Court, which reads thus :

" We had already disposed of a number of petitions for leave against the judgment in question at Peshawar Circuit Bench on 19.5.1999 through the judgment rendered in the above petitions for leave, namely Civil Petitions Nos. 81-P to 105-P of 1999 and other connected petitions (Abdullah & others Vs. The Director, Agriculture Engineering NWFP & another) in terms of para-6 thereof which reads as follows:-

'6. Since in the above petitions for leave to appeal, the Tribunal had failed to examine individual cases and has solely relied upon the Government policy, it has failed to exercise the jurisdiction vested in it. We, therefore, convert the above petitions into appeals and

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set aside the impugned judgment. The case is remanded to the learned Tribunal with the direction to decide the appeals and examine the cases of the petitioners individually and to decide the same in the light of the above judgments relied upon by the learned Advocate General. The cases will be disposed of within a period of three months from the date of receipt of copy of this judgment. The petitioners who are still in service will continue till the decision of the above appeals by the learned Tribunal.

2. We would, therefore, convert the above petitions into appeals and dispose of the same in terms of the above quoted para-6 of the earlier judgment."

4. We have heard the learned counsel for the parties and perused the material available on record. The learned Additional Advocate General, NWFP, candidly conceded that the Tribunal has not dealt with the appeals of the petitioners herein individually but disposed of the appeals in a rolled up manner through the impugned consolidated judgment in violation of the remand order dated 29.6.1999.

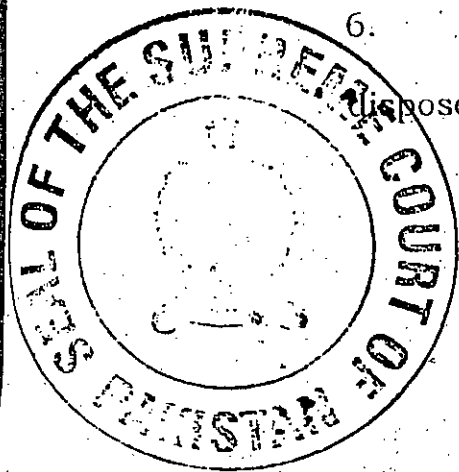
5. Resultantly, all the above petitions are converted into appeals and by allowing the same, the impugned order dated 27.9.1999 of the NWFP Service Tribunal, Peshawar is

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Supreme Court of Pakistan
Islamabad

set aside and the appeals are remanded to the Tribunal for disposal afresh by examining the appeals of the appellants individually and separately on merits and in accordance with law, in the light of the observations made in this Court's order dated 29.6.1999. Needless to say, that the decision rendered by this Court was binding on the Tribunal and should have been implemented in letter and spirit. We further direct that the appeals be disposed of within two months from the receipt of this judgment. The parties and/or their counsel shall appear before the Tribunal on 27.4.2000 for further proceedings.

6. To the extent indicated above all the appeals are disposed of, with no order as to costs.



Sd/-Jehad Hasan Khan, C.J.
 Sd/-Muhammad Afzal, J.
 Sd/-Qazi Muhammad Farooq, J.

Certified to be true copy

M. S. Khan
 Assistant Registrar
 Supreme Court of Pakistan
 Islamabad.

Islamabad,
 20th April, 2000.
 (Zulfikar)

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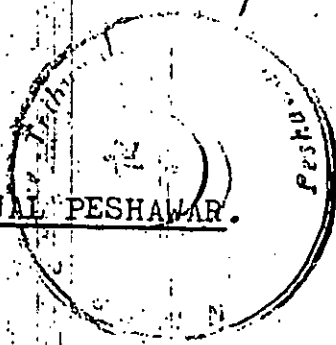
APPROVED FOR REPORTING

Date of Copy 25-4-00
 Date of Delivery 26-4-00
Amrzed

22-4-2000

LXX/1997

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.



Appeal No. 684/1997
Neem

Date of institution - 2.6.1997

Date of decision - 1.3.2001

Umar Zada S/O Muhammad Rez Khan,
R/O Takht Bhai District Mardan.....(APPELLANT)

VERSUS

1. Government of NWFP through Chief Secretary, Peshawar.
2. Chief Secretary NWFP Peshawar.
3. Secretary to Government of NWFP, S & G A D, Peshawar.
4. Section Officer (Services-IV), S&GAD, (Service Wing) N.W.F.P. Peshawar.....(RESPONDENTS)

Mian Fasihul Mulk Advocate.....For appellant.
Mr. Abdul Wajid Khan A.G.P.....For respondents.

MR. MUHAMMAD IRSHAD SWATI .. MEMBER.
MR. MUHAMMAD SHAUKAT .. MEMBER.

JUDGMENT.

MUHAMMAD IRSHAD SWATI, MEMBER:- This order will dispose of an appeal filed by Umar Zada appellant against the order dated 2.5.97 of respondent No. 4 whereby his services were dispensed with and order dated 23.5.97 whereby his departmental appeal was dismissed with the prayer that the impugned orders may be set aside and he be re-instated in service with all back benefits.

It is to be noted that similar appeals filed before this Tribunal by other staff of S&GAD whose services have also been terminated by the department are being heard today. As all the appeals are of similar nature and the

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similar question of law is involved and counsel for the appellants and respondent department are common, so our this single judgment shall dispose of this appeal as well as other connected appeals noted below :-

1. Appeal No. 683/Neem/97 Fereez Khan Vs. Chief Secretary etc.
2. Appeal No. 687/Neem/97 Khaligur Rehman Vs. - do -
3. Appeal No. 685/Neem/97 Zahid Shams Vs. - do -
4. Appeal No. 680/Neem/97 Zahoor Shah Vs. - do -
5. Appeal No. 689/Neem/97 Sahibzada Abbas Vs. - do -
6. Appeal No. 858/Neem/97 Aurangzeb Vs. - do -
7. Appeal No. 704/Neem/97 Abdur Rehman Vs. - do -
8. Appeal No. 688/Neem/97 Muhammad Intiaz Vs. - do -
9. Appeal No. 639/Neem/97 Shah Bakht Vs. - do -
10. Appeal No. 686/Neem/97 Amanullah Vs. - do -
11. Appeal No. 681/Neem/97 Syed Mukhtar Ahmad Shah. Vs. - do -
12. Appeal No. 635/Neem/97 Shakeel Ahmad Vs. - do -
13. Appeal No. 703/Neem/97 Khan Raziq Vs. - do -
14. Appeal No. 679/Neem/97 Pervez Khan Vs. - do -
15. Appeal No. 825/Neem/97 Mian Shah Hussain Vs. - do -
16. Appeal No. 707/Neem/97 Muhammad Nawaz Vs. - do -
17. Appeal No. 824/Neem/97 Rehmat Khan Vs. - do -
18. Appeal No. 682/Neem/97 Arshad Aziz Qureshi. Vs. - do -
19. Appeal No. 634/Neem/97 Naseeb Khan Vs. - do -

Brief facts of the case as averred in the memo of appeal are that the Government of NWFP S&GAD (Service Wing) invited applications for the post of Junior Clerks (BPS-5) in the Civil Secretariat Peshawar and advertisements to that effect were published in the Daily "the Frontier Post" and "Mashriq" Peshawar. The publications appeared on 16th and 17th June 1994 in the newspapers (Annexures-A and B). The appellant in pursuance to the advertisement applied

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NWFP S&GAD TIRAH

EXAMINER

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for one of the posts. He was issued a call letter for interview scheduled to be held on 9.10.94. A departmental selection Committee was constituted and the candidates were duly interviewed. The appellant was appointed as Junior Clerk vide order dated 11.10.94. He then successfully completed the Staff Training Institution Course and was issued a certificate in recognition on completion of 2 months pre-service training course in office procedure and management. That G.P. Fund was also deducted from his salaries. He was performing his duties in the C&W Department Civil Secretariat NWFP Peshawar to the entire satisfaction of his superiors when all of a sudden the department issued the impugned order whereby his services were dispensed with, with immediate effect. The appellant preferred a departmental appeal/representation to respondent No. 2 which was rejected vide order dated 23.5.97. Feeling aggrieved the appellant has filed the present appeal on the grounds that the impugned orders were illegal, unjust, against law/rules/regulations and therefore, untenable. The appellant was selected after fulfilling all the legal requirements. The posts were advertised and the appellant was interviewed by the Committee comprising of senior officers of S&GAD. His appointment could not be termed as illegal, void ab-initio and against the prescribed rules. He also completed 2 months training successfully. He served the department for 2 and a half years and there is no adverse against him. The appellant was not served with any notice prior to the issuance of the impugned order which was violative of the principles of natural justice.

The respondents were summoned. They appeared through their representative/counsel, submitted reply, rebutting all the allegations of the appellant. The appellant has also submitted his re-joinder, who has also rebutted all the preliminary/legal objections of the respondents.

A perusal of the record shows that the appeal of the appellant alongwith others was heard by the Service Tribunal earlier and was dismissed on 27.9.1999 on the grounds that their appointments were made in violation of fundamental rights guaranteed by Articles-18, 25 and 27

of the constitution of Pakistan, being against equity, social justice, fundamental rights of those 2800 candidates whose applications were rejected on the flimsy ground of non-attestation or illegibility of documents received with the applications or non-receipt of any documents like NIC copy, Domicile Certificate and Matric certificate etc etc and that while doing so thousands of otherwise eligible candidates who had applied for these posts were barred from participating in selection process. There was nothing on the record to suggest as to how the marking of the candidates selected was done. Therefore, the whole process was violative of justice, fundamental rights and transparency. In the circumstances the Tribunal concluded that the appellant was also not required to have served with a notice and since the posts had been abolished by the Government of NWFP, there was no force in the appeal and it was dismissed.

After dismissal of the case, the appellant lodged an appeal in the Hon'ble Supreme Court of Pakistan which was heard on 20.4.2000. The Supreme Court of Pakistan set aside the impugned order dated 27.9.99 of the NWFP Service Tribunal as discussed above and remanded the case back to the Tribunal for disposal afresh by examining the appellant's appeals individually and separately on merits and in accordance with law in the light of the observations made in their order dated 29.6.99 in the case titled Mr. Abdullah and others Vs. Director Agricultural Engineering NWFP etc (Civil Petition No. 81-P to 105-P of 1999 decided on 19.5.99 which is reproduced below :-

" We had already disposed of a number of petitions for leave against the judgment in question at Peshawar Circuit Bench on 19.5.99 through the judgment rendered in the above petitions for leave, namely civil petitions Nos. 81-P to 105-P of 1999 and other connected petitions (Abdullah and others) Vs. The Director Agricultural Engineering NWFP and Another), in terms of para-6 thereof which reads as follows:-

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'6. Since in the above petitions for leave to appeal, the Tribunal had failed to examine individual cases and has solely relied upon the Government policy, it has failed to exercise the jurisdiction vested in it. We therefore, convert the above petitions into appeals and set aside the impugned judgment. The case is remanded to the learned Tribunal with the direction to decide the appeals and examine the cases of the petitioners individually and to decide the same in the light of the above judgments relied upon by the learned Advocate General. The cases will be disposed of within a period of three months from the date of receipt of the copy of this judgment. The petitioners who are still in service will continue till the decision of the above appeals by the learned Tribunal.

2. We would, therefore, convert the above petitions into appeals and dispose of the same in terms of the above quoted para-6 of the earlier judgment."

It is pertinent to note that the learned Advocate General NWFP had also conceded in the Hon'ble Supreme Court of Pakistan that the Tribunal has not dealt with the cases of the petitioners herein individually but disposed of the appeals in a rolled up manner through the impugned consolidated judgment in violation of the remand order dated 29.6.1999.

It would also be appropriate to mention that the Service Tribunal had once before given its judgment dated 13.2.99 wherein the appeals were dismissed on the grounds that these were similar to appeal lodged by one Abdullah and it was therefore, that the Supreme Court had remanded the case to the Tribunal for separate hearing so this is the second time where this particular case has been remanded to the Service Tribunal for making the judgment on principles of law, rules and regulations on the subject.

In pursuance of the remand order of the Hon'ble Supreme Court of Pakistan the record of the appellant and other appellants was requisitioned from the respondent department and examined individually and the case is examined afresh in accordance with the observations of the Hon'ble Supreme Court of Pakistan on merit as follow :-

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The record of respondent department shows that S&GAD, Government of NWFP advertised the posts of junior Clerks on 16th and 17th June 1994, inviting applications for appointment to the vacant posts. A large number of candidates applied for the said posts and after making thorough scrutiny regarding eligibility or otherwise of the candidates, 334 candidates were called for test and interview whereas 2800 candidates were left out and deprived from participation in the competition. The reasons advanced by the department for ousting a large number of candidates were that their documents were incomplete as far as Domicile, National Identity Cards and academic certificates etc were concerned. Written test of 324 candidates was held. They were also tested in typing. 177 candidates qualified the typing test and their interviews were held by the Selection Committee set-up by the department on 4.8.94. Only 24 candidates including the appellant were declared as successful. Resultantly the appellant was appointed as Junior Clerk on 11.10.94. Later on, he was terminated from service on the plea that his appointment was illegal, ab-initio void, because it was made in violation of the Appointment, Promotion and Transfer Rules, that by appointing him, the basic rights of those 2800 candidates have been adversely affected who were deprived from participating in the examination and therefore, it was in violation of Articles-25, 27 and 37 of the Constitution of Pakistan. The first judgment of the Service Tribunal in respect of the appellant is based upon the judgment of Mr. Abdullah case. Its perusal shows that Mr. Abdullah was appointed as Naib Qasid in BPS-1 against the vacant post on 23.5.95 on the recommendation of the Ex-Minister for Agriculture. This Tribunal had dismissed the appeal of Mr. Abdullah as well as the connected appeals on the pretension that these cases had 100% similarity with the case of Mr.

ATTESTED

EXAMINER
NWFP Service Tribunal
Feshawar.

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Abdullah whereas there is no such similarity in these two kinds of cases. In the case of appellant no such recommendation was ever made by any Minister or political authority, rather he under-went the procedure laid down in the recruitment rules for the post.

Articles No. 25, 27 and 37 of the Constitution of Pakistan have also been consulted. Article-25 states that "all citizens are equal before law and are entitled to equal protection of law. There shall be no discrimination on the basis of sex alone. Nothing in this article shall prevent the State from making any special provision for the protection of women and children. Article-27 of the Constitution also states that "no citizen otherwise qualified for appointment in the service of Pakistan shall be discriminated against in respect of any such appointment on the ground only on race, religion, caste, sex, residence or place of birth. Article-37 of the Constitution also enable the people of different areas through education, training agricultural and industrial development and other methods, and also participation in all forms of national activities including employment in the service of Pakistan.

The intention of these articles is clearly laid down to afford opportunities to all the citizens of different areas of the State/Province to participate in the competition for the vacancies. So far as the instant cases are concerned, a close study of the case shows that by excluding 2800 candidates on the charges of incompleteness of testimonials, in have not proved any way that a special class or group of candidates from certain particular area of NWFP or from amongst a certain race or religion have been deprived to participate in the impugned test and interview. In fact 334 candidates who were called for test/interview belonged

NWFP Services Tribunal
EXAMINER
ATTESTED

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to various parts of the Province and can be considered as sufficient number for selection of 22 suitable candidates out of them for their initial selection. The appointment of the appellant was also not in violation of the said criterion/method regarding Zonal representation as provided in the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, elaborated further in the S&GAD Notification No. SOS-III (S&GAD)3-39/70 dated and No. SOR-I(S & G A D)1-117/91 dated 12.10.1993. The respondents have not been able to

prove that the appellant was appointed in contravention of the rules set forth in the zonal quota and that he was appointed in excess of quota of that zone.

The record produced by the respondent department shows that the vacancies were duly advertised in the press. Applications were invited. These were scrutinized. Written test and type test was held and finally the appellant was interviewed. All the procedure of appointment was followed by the competent selection Board of the department and there does not appear any violation of the Appointment, Promotion and Transfer Rules so far as the selection procedure of the appellant is concerned.

It has been alleged by the respondent department that legitimate rights of thousands of otherwise eligible candidates were deprived by debarring them to participate in the selection process. This charge is to be seen in perspective of ground reality as to whether a candidate for the post of Junior Clerk had any access to the record scrutiny of applications for selection. Naturally he was an outsider and had no such entrance or access in his individual capacity. It was the paramount duty of the Departmental Selection Board/Committee to make the scrutiny in accordance with the rules in-vogue. This was certainly the selection committee set up by the respondents who was responsible for ousting them from the competition and the appellant cannot be held responsible for the lapses on the part of the respondents. It has been held in the

EXAMINER
NWFP Service Tribunal
Peshawar.

ATTESTED

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decision of Supreme Court of Pakistan titled Secretary to Government of NWFP Zakat/Social Welfare Department Peshawar and another Vs. Sadullah Khan (1996-SCMR-413), that "the case of the petitioners was not that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate the services of the respondent merely because they have themselves committed irregularity in violating the procedure governing the appointment.

The respondents could not produce any documentary proof in support of any political pressure applied for the appointment ~~applied for the appointment~~ of the appellant. Further, during the arguments the respondents have also conceded that no political influence was exerted in the case of selection of the appellant. The respondents have also stated that the evaluation of performance of the appellant was not made during the tenure of his service i.e. w.e.f. 11.10.94 till his termination from service i.e. 2.5.97. However, the respondent department have produced the record of the appellant regarding his performance which was prepared after his termination from service. This record has not only been prepared after his termination from service but it also does not indicate that any notice has been served upon the appellant regarding his poor performance or any irregularity committed during his stay in service. The respondents have also produced an unsigned statement of particulars of the appellant wherein it has been shown that he was also overage by 6 months and 18 days for appointment to the post of Junior Clerk. The issue has been examined and it has been established that the respondents have full powers to relax the upper age limit for a maximum

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period of 5 years for recruitment against the post.

The appointment of the appellant was not illegal. He was qualified for the post and we therefore, conclude that he having served for a period of more than 2½ years i.e. from 10/94 to 5/97, has also got a vested right to continue his service because he has spent a sufficient period of his life in serving the department, has put in a lot of physical capabilities in furthering the smooth functioning of the department. His services could not be terminated except under the NWFP Government Servants (E&D) Rules 1973.

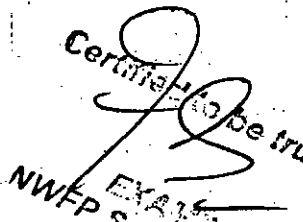
In the circumstances, we accept this appeal as well as the connected appeals mentioned above, set aside the impugned termination order dated 2.5.97 to the extent of the appellants and re-instate them in service from the date of their termination. The period they remained out of service will be treated as extra ordinary leave without pay as they have not served for that period in the department and it has not been proved by them that they were not doing any business/job during that period.

No order as to costs. File be consigned to the record.

ANNOUNCED.
1.3.2001


(MUHAMMAD IRSHAD SWATI)
MEMBER.


(MUHAMMAD SHAUKAT)
MEMBER.


Certified to be true copy
EXAMINER
NWFP Service Tribunal
Peshawar.

9-3-2001
Number of Volumes 4000
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Urgent 2-00
Total 14-00
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Date of Completion of Copy 9-3-2001
Date of Delivery of Copy 9-3-2001

158/01 F/R 40

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Irshad Hasan Khan, CJ
Mr. Justice Muhammad Arif
Mr. Justice Qazi Muhammad Farooq

CIVIL APPEALS NO.1383 OF 2001 TO 1402 OF 2001.

(On appeal from judgment dated 1-3-2001
passed by the NWFP Service Tribunal,
Peshawar in Appeal No.684/97, etc.)

Government of N.W.F.P.
through Chief Secretary and others.

... Appellants
(in all Appeals)

Versus

CA 1383/2001. Umar Zada.
CA 1384/2001. Naseeb Khan.
CA 1385/2001. Shakeel Ahmed.
CA 1386/2001. Shah Bakht.
CA 1387/2001. Pervez Khan.
CA 1388/2001. Zahoor Shah.
CA 1389/2001. Syed Mukhtar Ahmed Shah.
CA 1390/2001. Arshad Aziz Qureshi.
CA 1391/2001. Feroz Khan.
CA 1392/2001. Zahid Shams.
CA 1393/2001. Amanullah.
CA 1394/2001. Khaliq-ur-Rehman.
CA 1395/2001. Muhammad Imtiaz.
CA 1396/2001. Sahibzada Abbass.
CA 1397/2001. Khan Raziq.
CA 1398/2001. Abdur Rehman.

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Superintendent
Supreme Court of Pakistan
ISLAMABAD

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CA 1399/2001. Muhammad Nawaz.
 CA 1400/2001. Rehmat Khan.
 CA 1401/2001. Mian Shah Hussain.
 CA 1402/2001. Aurangzeb.

For the appellants: Mr. Tasleem Hussain ASC.
 (in all Appeals)

For the respondents: Mr. Khushdil Khan, ASC
 (in CA No. 1384 & 1386 of
 2001)

For the respondents: Mr. Fasihul Mulk, ASC
 (in all other Appeals) Mr. M.S. Khattak, AOR

Date of hearing: 29.10.2001.

JUDGMENT

IRSHAD HASAN KHAN, CJ.- These appeals, with the leave of the Court, are directed against the consolidated judgment dated 1.3.2001 passed by the NWFP Service Tribunal, Peshawar (hereinafter referred to as the Tribunal) in Appeal No. 684/1997 whereby the respondents herein were reinstated into service treating the period they remained out of service as extra ordinary leave without pay.

2. Leave grant order dated 22.6.2001 makes the following reading:

"Inter alia, the following points were raised for grant of leave to appeal:

- (i) The judgment of this Court dated 19.5.99 has not been complied as the merits of individual case was not discussed and determined separately.
- (ii) The initial induction in service of the petitioner was against NWFP (Appointment, Promotion and

ATTESTED

Supreme Court
 Islamabad

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Transfer Rules), 1989 and the provision of Civil Servants Act.

"Learned counsel referred to Nasrullah Khan vs. The Registrar, Peshawar High Court, Peshawar and another (PLD 1993 S.C. 195) to support his contention."

"Learned counsel appearing for caveator after referring to certain portions of the judgment explained that these cases were separately scrutinized and the submission that the initial appointment of the petitioner was violative of law, is, also misconceived. In any case, we grant leave in all the above mentioned petitions to consider the over-all effect of the points raised before us. We are not inclined to grant interim relief and direct that the application for interim relief may be fixed along with main case....."

3. The main question for consideration is whether the respondents-Junior Clerks, who were appointed against vacant posts in Civil Secretariat, Peshawar were inducted into service in accordance with the procedure laid down in NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 and the provisions of NWFP Civil Servants Act, 1973.

4. The precise grievance of Mr. Tasleem Hussain, learned ASC appearing on behalf of the appellant-Government was that the respondents were not inducted into service on merit and after complying with the codal formalities but through back door as a result of political pressure. The other grievance of the appellant-Government was that the Tribunal was wrong in deciding the appeals in a rolled-up manner, in that, individual cases were not examined to find out whether the respondents were political appointees or otherwise.

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Superintendent
Supreme Court, Pakistan
IS/Amirabad

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5. The above pleas have been exhaustively dealt with by the Tribunal in the impugned judgment, relevant portion whereof reads thus:-

"The record of respondent department shows that S&GAD Government of NWFP advertised the posts of Junior Clerks on 16th and 17th June, 1994, inviting applications for appointment to the vacant posts. A large number of candidates applied for the said posts and after making thorough scrutiny regarding eligibility or otherwise of the candidates, 334 candidates were called for test and interview whereas 2800 candidates were left out and deprived from participation in the competition. The reasons advanced by the department for ousting a large number of candidates were that their documents were incomplete as far as Domicile, National Identity Cards and academic certificates etc were concerned. Written test of 324 candidates was held. They were also tested in typing. 177 candidates qualified the typing test and their interviews were held by the Selection Committee set-up by the department on 4.8.94. Only 24 candidates including the appellant were declared as successful. Resultantly the appellant was appointed as Junior Clerk on 11.10.1994. Later on, he was terminated from service on the plea that his appointment was illegal, ab-initio void, because it was made in violation of the Appointment, Promotion and Transfer Rules, that by appointing him, the basic rights of those 2800 candidates have been adversely affected who were deprived from participating in the examination and therefore, it was in violation of Articles-25, 27 and 37 of the Constitution of Pakistan. The first judgment of the Service Tribunal in respect of the appellant is based upon the judgment of Mr. Abdullah case. Its perusal shows that Mr. Abdullah was appointed as Naib Qasid in BPS-1 against the vacant post on 23.5.95 on the recommendation of the Ex-Minister

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[Signature]
 Superintendent
 Supreme Court
 ISLAMABAD

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21/10/94
 SUPERINTENDENT
 SUPREME COURT
 ISLAMABAD

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for Agriculture. This Tribunal had dismissed the appeal of Mr. Abdullatif as well as the connected appeals on the pretension that these cases had 100% similarity with the case of Mr. Abdullah whereas there is no such similarity in these two kinds of cases. In the case of appellant no such recommendation was ever made by any Minister or political authority, rather he underwent the procedure laid down in the recruitment rules for the post."

6. In order to avoid multiplicity of proceedings, we have examined the case of each and every respondent to find out whether they were political recommendees or appointed on merits after following the prescribed procedure. The appellant-Government has placed on record some excerpts from 'departmental notings' containing report of the Scrutiny Committee comprising Deputy Secretary (O&M), Deputy Secretary (Services) and Additional Secretary (Services). The report highlights irregularities that have been noticed by the Committee. Pages 122 to 127 of the Paper Book contain findings of the Committee dated 1.4.1997 as also names of 26 recommendees from the Chief Minister's Secretariat. Admittedly, the names of the respondents do not figure in the said list. The record shows that the respondents were inducted into service pursuant to advertisement and test/interview by the competent authority. Clearly, the impugned judgment as to the lawful appointment of the respondents is established on record. The learned counsel for the appellant-Government was unable to substantiate the allegation that the respondents were appointed on extraneous

J.M.

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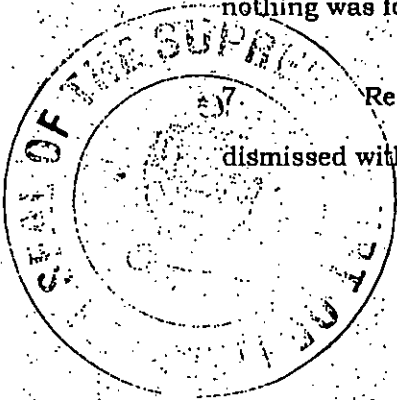
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Superintendent
Supreme Court of Pakistan
ISLAMABAD

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considerations. The Tribunal was, therefore, right in holding that the case of Abdullah v. Director Agricultural Engineering NWFP, etc. (Civil Petition No. 81-P to 105-P of 1999) decided on 19.5.1999 was distinguishable, in that, Abdullah was appointed on recommendation of Ex-Minister whereas no political recommendation was proved to have been made in the case of either one of the respondents. The respondents underwent the prescribed procedure for recruitment and nothing was found amiss in their respective cases.

Resultantly, the appeals fail and are hereby dismissed with no order as to costs.

Sd/- Irshad Hasan Khan, CJ.
Sd/- Muhammad Arif, J.
Sd/- Qazi Muhammad Farooq, J.



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Supintendent
Supreme Court of Pakistan
ISLAMABAD

Islamabad.
29.10.2001.

'NOT APPROVED FOR REPORTING'

31-10-2001

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Date
Compared by

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12/11/2001

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FIG 54

GOVERNMENT OF NWFP
ESTABLISHMENT DEPARTMENT
(ESTABLISHMENT WING)

Dated Peshawar, the 12/01/2002

ORDER

NO.SOS.IV(E&AD)3(552)/94 VOL:II- In compliance to the orders of the Supreme Court of Pakistan delivered vide judgments "Civil Appeals No.1383 of 2001 to 1402 of 2001 dated 29th October, 2001 & Civil Appeals No. 194 of 2000 to 206 of 2000 dated 31st October, 2001", the competent authority is pleased to re-instate the following Junior Clerks into service with effect from the date of their termination subject to the condition that intervening period shall be treated as Extra-ordinary

Leave: -

S.No.	Name	
1.	Mr. Shakeel Ahmad	✓
2.	Mr. Arshad Aziz	✓
3.	Mr. Shah Bakht	✓
4.	Mr. Khan Raziq	✓
5.	Mr. Nasib Khan	✓
6.	Mr. Abdur Rehman	✓
7.	Mr. Fazl-ur-Rehman	✓
8.	Syed Mukhtiar Ahmad Shah	✓
9.	Mr. Zahid Shams	✓
10.	Mr. Zahoor Shah	✓
11.	Mr. Samin Jan	✓
12.	Mr. Muhammad Nawaz	✓
13.	Mr. Pervez Khan	✓
14.	Mr. Umer Zada	✓
15.	Mr. Aurang Zeb	✓
16.	Mr. Amanullah	✓
17.	Mr. Muhammad Ilyas	✓
18.	Mr. Muhammad Zia	✓
19.	Mr. Feroz Khan	✓
20.	Mr. Muhammad Ibrahim	✓
21.	Mr. Irfan Ullah	✓
22.	Mr. Sher Bahadur	✓
23.	Mr. Muhammad Iqbal	✓
24.	Mr. Iffikhar	✓
25.	Mr. Muhammad Ishaque	✓
26.	Mr. Shaukat Zaman	✓
27.	Mr. Sahibzada Abbas Khan	✓
28.	Mr. Aqil Javed	✓
29.	Mr. Obaidullah	✓
30.	Mr. Muhammad Imtiaz	✓
31.	Mr. Khaliq-ur-Rehman	✓
32.	Mr. Rehmat Khan	✓
33.	Mian Shah Hussain	✓

Attested
A M
M Noor

34. Rasool Mohammad ✓
35. Aji Nawaz ✓

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On the re-instatement in service their postings/adjustments are hereby ordered as under: -

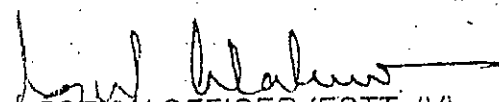
S.No.	Name	Department/Office
1.	Mr. Arshad Aziz	Administration
2.	Mr. Khan Raziq	Administration
3.	Mr. Samin Jan	Agriculture
4.	Mr. Umar Zada	Agriculture
5.	Mr. Aurang Zeb	Agriculture
6.	Mr. Muhammad Ibrahim	Agriculture
7.	Mr. Rehmat Khan	Agriculture
8.	Syed Mukhtiar Ahmad Shah	Establishment
9.	Mr. Pervaz Khan	Establishment
10.	Mr. Khaliq-ur-Rehman	Establishment
11.	Mr. Muhammad Ilyas	Excise & Taxation
12.	Mr. Obaidullah	Excise & Taxation
13.	Mr. Shah Bakht	Finance
14.	Mr. Nasib Khan	Finance
15.	Mr. Zahid Shams	Finance
16.	Mr. Muhammad Nawaz	Food
17.	Mr. Abdur Rehman	Home & T.As
18.	Mr. Muhammad Zia	Law
19.	Mr. Feroz Khan	Law
20.	Mr. Sahibzada Abbas Khan	Law
21.	Mr. Fazi-ur-Rehman	Population Welfare
22.	Mr. Aqil Javed	Population Welfare
23.	Mr. Shakeel Ahmad	Secondary Education
24.	Mr. Amanullah	Social Welfare
25.	Mr. Shaukat Zaman	Staff Training Institute
26.	Mian Shah Hussain	Staff Training Institute
27.	Mr. Zahoor Shah	Works & Services
28.	Mr. Irfan Ullah	Works & Services
29.	Mr. Sher Bahadur	Works & Services
30.	Mr. Muhammad Iqbal	Works & Services
31.	Mr. Iftikhar	Works & Services
32.	Mr. Muhammad Ishaque	Works & Services
33.	Mr. Muhammad Irtiaz	Works & Services

SECRETARY ESTABLISHMENT

Endst: No. and dated even.

Copy forwarded to :-

1. The Accountant General, NWFP, Peshawar.
2. The Section Officer (Admn) Administration Deptt:
3. The Section Officer (Secret) Establishment Deptt:
4. The Estate Officer, Administration Department.
5. The Section Officer (General) Works & Services Deptt:
6. The Section Officer (Admn) STI, E & A Department.
7. The Section Officer (General) Home & T.As Department.
8. The Section Officer (General) Population Welfare Deptt:
9. The Section Officer (Admn) Finance Department.
10. The Section Officer (Admn) Excise & Taxation Deptt:
11. The Section Officer (General) Law Department.
12. The Section Officer (Admn) Agriculture Department.
13. The Section Officer (General) Social Welfare Department.
14. The Section Officer (Admn) Food Department.
15. The Officials concerned.


SECTION OFFICER (ESTT: IV)

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To,

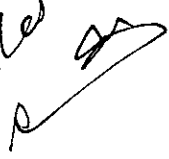
The Chief Secretary
NWFP Peshawar.

Subject:- **APPEAL FOR REINSTATEMENT IN SERVICE.**

Sir,

With profound regard, I humbly submit the following few lines for your kind consideration and worth perusal:-

1. That posts of Junior Clerk were advertise in the press and appeared in Daily Mashriq, Peshawar "The Frontier Post" Peshawar in its issue dated 16th & 17th June, 1994.
2. That I applied for the post of Junior Clerk and subsequently summoned through a call letter for test and interview and accordingly I appeared before the Selection Committee for test/interview on the scheduled date/time and venue.
3. That I was offer a post, on receipt of the offer letter I accepted the post of Junior Clerk and submitted our arrival report for duty accordingly F/A.
4. That I served for about 2 ½ year in Civil Secretariat Peshawar as Junior Clerk to the entire satisfaction of our superior.
5. That all of a sudden, my service was dispensed with along with my other colleague without any notice etc vide Section Officer (Service-IV), S&GAD order dated 2.5.1997 (F/B). Aggrieved of the order also lodged departmental appeals to the then Chief Secretary NWFP, which was also not acceded.
6. Now the Service Tribunal on the direction of the Supreme Court changed their verdict and reinstated my other colleague Twenty Numbers vide their judgment dated 1.03.2001 after that Government of NWFP went to in appeal to the Supreme Court of Pakistan & the court in the judgment dated 29.10.2001 agreed with the judgment of the Service Tribunal NWFP.

Attested


7. That in similar case the Supreme of Pakistan has given its judgment title as " Hameed Akhtar Niazi Versus Secretary Establishment Division Government of Pakistan" and Law Department in the case of M/S Muhammad Iqbal and Muhammad Yousaf Jr. Clerks in the office of Deputy Commissioner Lakki Marwat dated 20.09.2000. the above stated judgment and advice of the Law Department as follow;

" If the service tribunal or supreme court decided a point of law relating to the terms of service of civil servants which covers not only the case of civil servants who litigated, but also of other civil servants, who may have not taken any legal processing, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal / Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the service tribunal or any other forum."

It is therefore, requested that in the light of above judgment, I requested for re-requested in service along with my other colleagues who have been reinstated vide Establishment Department order no. SOS-IV(E&AD)3(539)/94 Vol:II dated 12.01.2002 (F/C).

I shall pray for your long life and prosperity.

Yours Obediently


Ali Asghar
s/o
Karam Dad

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9-2-2002

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To

The Chief Secretary,
N.W.F.P., Peshawar

SUBJECT: APPEAL FOR RE-INSTATEMENT IN SERVICE.
Sir

With profound regard, I humbly submit the following for your kind consideration and worthy perusal:-

1. That posts of Junior Clerks were advertised in the Press and appeared in Daily Mashriq, Peshawar and "The Frontier Post" Peshawar in its issue dated 16th & 17th June, 1994.
2. That I applied for the post of Junior Clerks and subsequently summoned through a call letter for test and interview and accordingly I appeared before the Selection Committee for test/interview on the scheduled date/time and venue.
3. That I was offered a post, on receipt of the offer letter we accepted the post of Junior Clerk and submitted our arrival reports for duty accordingly (W/A).
4. That I served for about 2 ½ years in Civil Secretariat, Peshawar as Junior Clerk to the entire satisfaction of our superior.
5. That all of a sudden, my services was dispensed with alongwith my other colleague without any notice etc vide Section Officer (Services-IV), S&GAD order dated 2.5.1997 (F/B). Aggrieved of the order I also lodged departmental appeals to the then Chief Secretary, N.W.F.P., which was also not needed.
6. Now, the service tribunal on the direction of the supreme Court, changed their verdict and re-instated my other colleague by way of number vide their judgement dated 1-3-2001. After that the Government of N.W.F.P. went into an appeal to the supreme Court of Pakistan & the court in its judgement dated 29.10.2001 agreed with the judgement of the Service Tribunal.
7. That in similar case, the Supreme Court of Pakistan in its judgement titled as "Ismail Akhtar Niazi versus Secretary, Government of Punjab, Government of Pakistan and others" and Law Department in the case of M/S Muhammad Iqbal and Muhammad Yousaf, Jr. Clerks in the office of Deputy Commissioner, Lakki Marwat dated 20.9.2000. The above stated judgement and advice of the Law department stands as follow:-

"If the Service Tribunal or Supreme court decides an issue relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants. If the court has taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgement by Service Tribunal/supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum"

It is therefore, requested that in the light of above judgement/ruling, I requested for re-instatement in service alongwith my other colleagues who have been reinstated vide Establishment Department order No.SOS-IV(E&A) DC/13/2002 dated 12/01/2002 (E/C). I shall pray for your long life and prosperity.

Yours Obediently



(Ali Asghar)
S/O Karim Dad.

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effect of the Supreme Court judgment in Khizar Haider Malik ad others v. Muhammad Rafiq Malik and another 1987 SCMR 73 on the case. [p. 1187] A

Islamabad, here
1980. filed 1.

(b) Civil Servants Act, (LXXI of 1973)---

---Ss. 8 & 23---Seniority---Merger of C.S.P and P.S.P cadres and creation of APUG---Seniority of such an officer, who was working in province or elsewhere, could not be distorted/disturbed to his detriment on account of the merger of said groups and creation of APUG and junior of such civil servant could not be made senior to him nor a junior to his junior could be made senior to him but this has to be done within the framework of the rules of reorganization of services---If the case of any civil servant does not fall within the ambit of said reorganisation rules, S. 23 of the Civil Servants Act, 1973 can be pressed into service by the President of Pakistan to oblivate the inequitable and unjust result arising out of the merger of the two cadres in respect of seniority of any of the civil servants. [p. 1193] B

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ESTACODE, 1989 Edn., pp.1014, 1096 and 1097 ref.

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(c) Service Tribunals Act (LXX of 1973)---

---S. 4---Constitution of Pakistan (1973), Art.212---Appeal to Service Tribunal or Supreme Court---Effect---If the Service Tribunal or Supreme Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal/Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the Service Tribunal or any other forum. [p. 1193] C

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questions:-

Per Mukhtar Ahmad Junejo, J.---

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(d) Service Tribunals Act (LXX of 1973)---

---S. 4---Appeal to Service Tribunal, scope and extent. [p. 1194] D

(d)

M. Bilal, Senior Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellant.
Raja Muhammad Basher, Deputy Attorney-General and Ch. Akhtar Ali, Advocate-on-Record for Respondents.

Dates of hearing: 7th and 8th April, 1996.

(e)

JUDGMENT

AIMAL KHAN, J. This is an appeal with the leave of this Court against the judgment dated 11.12.1995 passed by the Federal Service Tribunal.

1071 > 1 61

GOVERNMENT OF NWFP,
ESTABLISHMENT & ADMN. DEPARTMENT.

(REGULATION WING)

NO.SOR.II(E&AD)2(4)/2000

Dated 4.7.2001

To

The Secretary,
Board of Revenue,
Peshawar.

SUBJECT:-

APPLICATION FOR APPOINTMENT AS PATWARI ON THE
BASIS OF SENIORITY.

P-49/C

I am directed to refer to your letter

No.13818/Admn:VII, dated 19.6.2001 on the subject noted
above.

2. The Establishment and Administration Department
is of the view that the benefit of the NWFP Service Tribunal
judgement can also be extended to the other two Patwaris who
have also been terminated. The Administrative Department is
however, advised to get advice of Law Department in the matter
before finalization of the case.

Shakir
(SHAKIR ULLAH)
SECTION OFFICER (REG.II)

g. Adm. No 1-32

Date

6/7/2001
Board of Revenue, NWFP

No. Op. 5(19)LD/2001/3769
Dated Peshawar the 24.07.2001.

424
56
62

To,

The Senior Member,
Board of Revenue,
North-West Frontier Province,
Peshawar.

SUBJECT:-- APPLICATION FOR APPOINTMENT OF PATWARI
ON THE BASIS OF SENIORITY.

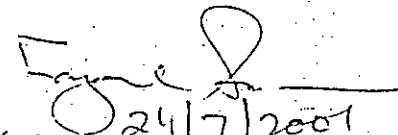
Sir,

P 123/C 53/C

I am directed to refer to your letter
No. 15960/Admn:VII, dated 16.07.2001, on the subject
noted above.

2. The views of the Establishment and Adminis-
tration Department is based on the correct interpreta-
tion of the judgement of the Supreme Court of Pakistan
and the benefit of the judgement of the Service Tribunal
N.W.F.P. shall also be extended to those patwaris/
civil servants who have not approached the Tribunal.

Yours obediently,


(FAZAL SUBHAN)
Section Officer(Opinion)

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26/7/2001
See Ball

S.M.B.R

24/7

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1-3579 288

GOVERNMENT OF N.W.F.P.
LAW DEPARTMENT.

Office of the
Addl. Secretary (Legal)
Sd/- AS Muzaf
Dated 29/9
21/9/2000

No. O. 5(90)LD/997 5904-
Dated Peshawar the 20.09.2000

To,

The Secretary to Government,
North-West Frontier Province,
Services & General Admn. Department,
Peshawar.

SUBJECT:- APPLICATION FOR RE-INSTATEMENT.

Sir,

I am directed to refer to your letter
No. SOR.II(S&GAD)2(4)/98, dated 18.7.2000 and letter
of even number, dated 09.09.2000, on the subject
noted above and to state that the same remedy is to
be provided to the persons who have not gone to the
Court when a Court of Law grants remedy to other
persons with the same merit and rights as of those
who have not gone to the Court, and decision of the
Court is on legal issue and is not merely on separate
issues of facts only.

Yours obediently.

[Handwritten signatures and initials]

(MOHAMMAD RIAZ KHAN)
Section Officer (Opinion)

[Handwritten initials]

Brigadier

Cul Badshah SI (M)

M.B.B.S., M.C.P.S., F.R.C.S.
CERTIFICATE NEUROSURGERY (U.K.)

Professor of Neurosurgery
Army Medical College Rwp.
Adviser in Neuro Surgery
Pakistan Armed Forces

Office : 561-30264
Res : 561-32977
: 592744
CMH RAWALPINDI

Date 20-7-97

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Brigadier

Gul Badshah SI (M)

M.B.B.S., M.C.P.S., F.R.C.S.
CERTIFICATE NEUROSURGERY (U.K.)

Professor of Neurosurgery
Army Medical College Rwp.
Adviser in Neuro Surgery
Pakistan Armed Forces

Office : 561-30264
Res : 561-32977
: 592744

CMH RAWALPINDI

Date 28-10-97

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$2 + 1 = 3\text{of}$

اب

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Brigadier

Gul Badshah SI (M)

M.B.B.S., M.C.P.S., F.R.C.S.
CERTIFICATE NEUROSURGERY (U.K.)

Professor of Neurosurgery
Army Medical College Rwp.
Adviser in Neuro Surgery
Pakistan Armed Forces

Office : 561-30264
Res : 561-32977
: 592744

CMH RAWALPINDI

Date 28-11-93

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Mu Ali Asghar - 24yr

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② Bixidox 1+1

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Brigadier

Gul Badshah SI (M)

M.B.B.S., M.C.P.S., F.R.C.S.
CERTIFICATE NEUROSURGERY (U.K.)

Professor of Neurosurgery
Army Medical College Rwp.
Adviser in Neuro Surgery
Pakistan Armed Forces

Office : 561-30264
Res : 561-32977
: 592744
CMH RAWALPINDI

Date 07-3-98 =

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Mu Ali Aqil = 2940

- ① Tegretol TAB 1+2
- ② Bividox 1+1

3 months

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Dr. Tariq Mufti

M.B.B.S, F.R.C.S., F.I.C.S.

PROFESSOR AND INCHARGE

SURGICAL "B" UNIT
AYUB COMPLEX Hospital, Abbottabad

RESIDENCE

77 - Jinnahabad Town Ship Abbottabad.

Residence

382333

ڈاکٹر طارق مفتی

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پروفیسر اینڈ اینچارج

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رہائش 382333

Ref.

Date

14 Oct, 1998

علی احمد

Dr. Chandrar

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② Nostimid 400g

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ڈاکٹر طارق مفتی

کلینک

COLONY

Dr. Nazeer Ahmed Qureshi

F.C.R.S. Cert. in Neuro Surgery

(Edin)

Neurosurgeon, Armed Forces

کرنل ڈاکٹر نذیر احمد قریشی

نیوروسرجن - افواج پاکستان

نیورو سرجیکل سینٹر

کیاٹھلٹری ہسپتال - راولپنڈی

فون دفتر: 561-30155

26-10-98

CTC seizures

Ali Asghar
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Ad. Tab TEGRETOL

250 - 12.5 mg



CS

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Dr. Ahmed Bakhsh

M.B.B.S. (Pb) M.S. Neuro Surgeon.

Fauji Foundation Hospital Rawalpindi Pakistan.

Ph: 92-51-5487310

Ref No.....2011.....

Date.....21.12.200.....

علی احمد
3077M

Gen AC 75 - 67
O/E NO N. deficit

AN
CT Scan Brain

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(Relapsing Epilepsy)

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Signature
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Dr. Ahmed Bakhsh

M.B.B.S. (Pb) M.S. Neuro Surgeon.

Fauji Foundation Hospital Rawalpindi Pakistan.

Ph: 051-5487310-6, Mobile: 0300-9554695

Ref No. 2011/00

Date 27.09.02

علی احمد
307/14

1 EPILEPSY

AD.

CT Scan Brain c
contrast to rule
out any I.C. lesion

5/11/02

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/2003

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Dr. Ahmed Bakhsh

M.B.B.S. (Pb) M.S. Neuro Surgeon.

Fauji Foundation Hospital Rawalpindi Pakistan.

Ph: 051-5487310-6, Mobile: 0300-9554695

Ref No. 2011/00

Date 27.09.02

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NEUROSURGERY DEPARTMENT CMH ABBOTTABAD

Lt. Col

Dr. Sabir Hussain Bhatti

M.B.B.S., F.C.P.S

NEUROSURGEON

CMH Abbottabad.

Mob:0301-5615161

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عربی لکھنؤ

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Post-traumatic

Fits

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1. I. TERIL 200mg
171

2. I. EPIVAL 250
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3. Cyp. ES50-40
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NEUROSURGERY DEPARTMENT CMH ABBOTTABAD

Lt. Col

Dr. Sabir Hussain Bhatti
M.B.B.S., F.C.P.S

NEUROSURGEON
CMH Abbottabad.
Mob: 0301-5615161

لشٹ کرٹل
ڈاکٹر صابر حسین بھٹی
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مسلمی امیر

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Post Home
FIT

1: I. TERIL
1+1

200mg

2: I. EPIVAL
1+1

500mg

3. Cap - ESSO 40
1 OD

[Signature]

Lt. Col

Dr. Sabir Hussain Bhatti

M.B.B.S., F.C.P.S

لیفٹیننٹ کرنل
ڈاکٹر صابر حسین بھٹی

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سی ایم ایچ ایبٹ آباد

NEUROSURGEON
CMH Abbottabad.

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علی امیر

367m

Posttraumatic
Fils

1. I. TERIL 200mg

171

2. I. EPINAL 500mg

171

3. I. BALAMIN

171

4. Cap. ESSO-40

100

8/102

67 July

Lt. Col

Dr. Subir Hussain Bhatti

M.B.B.S., F.C.P.S

NEUROSURGEON

CMH Abbottabad.

لیفٹیننٹ کرنل
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2. J. EPINAL 50ms

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سی ایم ایچ ایبٹ آباد

علی احمد

Li. Col

Dr. Sabir Hussain Bhatti

M.B.B.S., F.C.P.S

NEUROSURGEON

CMH Abbottabad.

2/10

Post-traumatic
Fibros

Future
medicines
for 3 months

1. I- TB RIL 20mg

141

2. I- SPINAL 50mg

141

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3. I- Balamir

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[Signature]

2/11

BEFORE THE SERVICES TRIBUNAL, NWFP, PESHAWAR.

Appeal No: 511/2002

N.W.F Province
Service Tribunal
Disty: 589
Dated 3/5/2002

Ali Asghar S/O Karam Daad, R/O Vill: & P.O. Nuraal, Havelian, The & Distt.
Abbottabad.

Appellant,

VERSUS,

- 1. The Chief Secretary, Government of NWFP, Civil Secretariat, Peshawar.
- 2. The Secretary S&GAD, Civil Secretariat, Peshawar.

APPEAL AGAINST ILLEGAL, UNJUST DROPPING / DECLINING OF THE DEPARTMENTAL APPEAL OF THE APPELLANT THROUGH DECISION OF THE RESPONDENTS VIDE FILE NO: SOS-IV (S&GAD) 3(552) 94 / VOL-II DATED 7-3-2002 (CONVEYED TO APPELLANT ON 4-4-2002).

Copied by ...

18.12.2003

Parties present. Vide our detailed judgment of today in Appeal No. 507/2002 Muhammad Zameer, this appeal is dismissed. No order as to costs. File be consigned to the record.

ANNOUNCED.

18.12.2003.

Member.

Muhammad Shariat
Member.

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4 - 79

BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR.

Appeal No. 507/2002

Date of institution - 3.5.2002

Date of decision - 12.2003

Muhammad Zameer, R/O Village
& P.O. Sher Garh, Distt. Mardan. (APPELLANT)

VERSUS

- 1. Chief Secretary NWFP Peshawar.
- 2. Secretary S&GAD NWFP Peshawar. (RESPONDENTS)

Syed Asif Shah Advocate. For appellant.
 Mr. Zulfiqar Khan Govt. Pleader. For respondents.

MR. ATTAULLAH KHAN MEMBER.
 MR. MUHAMMAD SHAUKAT MEMBER.

JUDGMENT.

ATTAULLAH KHAN, MEMBER:- This order will dispose of an appeal filed by the appellant against the order dated 7.3.2002 with the prayer that the impugned order may be set aside and he be re-instated in service with all back benefits.

Brief facts of the case are that the appellant was appointed as Clerk vide order dated 11.10.94 and had rendered 2 and half years service. His services were dispensed with vide order dated 2.5.97 against which he submitted a departmental appeal and then Appeal No. 977/97 before this Tribunal which was dismissed vide judgment dated 13.2.99. Certain employees resorted to the Supreme Court wherein their appeals were accepted and their cases remanded back to this Tribunal for reconsideration. The Tribunal accepted the appeals vide judgment dated 1.3.2001 and directed the re-instatement of the appellants. The respondents went in appeal before the Supreme Court but the same was dismissed. The appellant etc were reinstated

vide order dated 12.1.2002. The appellant preferred a departmental appeal in present concern on 16.1.2002, referring to the judgment of the Supreme Court. The appellant remained awaiting for the reply which was not communicated to him. On 4.4.2002 the appellant approached the concerned office where he was told that the appeal has been declined vide order dated 7.3.2002.

The appellant has assailed the impugned orders on the grounds that the appellant was amongst the employees having been appointed amongst a group and his services dispensed with on the common ground. The services of most of the employees with common order of termination, on similar grounds have been directed to be re-instated by the Supreme Court. In view of the judgment of Supreme Court every employee in such state, should not be compelled/made for the legal resort to Tribunal. The respondents have opted and applied the law laid down by the Supreme Court and made appointments on 20.9.2000 reinstatement like in the cases of Muhammad Yousaf in the office of D.C. Lakki Marwat. The non grant of rights of appellant is an apparent discrimination, hence he deserves re-instatement. He was validly appointed and his services have been terminated on wrong premises of law and facts.

The respondents were summoned. They appeared through their representative/counsel, submitted written reply, contested the appeal and denied the claim of the appellant.

The appellant has also submitted his rejoinder in which he has rebutted all the objections of the respondents.

Arguments of the learned counsel for the appellant and Government Pleader for the respondents have been heard and record perused.

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The learned counsel for the appellant argued that the appellant was appointed as Junior Clerk vide order dated 2.11.94. Later on his services were terminated on the plea of having been found illegal, ab-initio void vide order dated 2.5.97 along with others. The appellant challenged this termination in appeal before the NWFP Service Tribunal vide Appeal No. 977/97 but his appeal was dismissed vide judgment dated 13.2.99. The learned counsel submitted that a number of employees who were appointed commonly in the similar circumstances vide order dated 2.11.94 and were terminated through common orders dated 2.11.97 now have been re-instated in service by the respondent department vide order dated 12.1.2002 in pursuance of the judgments of the Hon'ble Supreme Court in Civil Appeals No. 1385 of 2001 to 1402 of 2001 dated 29.10.2001 and 194 of 2000 to 206 of 2000 dated 31.10.2001 while the appellant was ignored. The learned counsel for the appellant contended that the referred judgments are applicable to the appellant but the respondent department has not considered the appeal of appellant filed with the respondent department on 16.1.2002. The learned counsel urged that the present appeal of the appellant may be accepted by the Tribunal and the respondent department be directed to re-instate the appellant in service.

The learned Government Pleader and respondents argued that the appointment of the appellant was made in violation of the rules and as such his services were terminated by the competent authority on 2.5.97. The appellant made a departmental appeal which was rejected by the department. The appellant subsequently challenged his termination before the NWFP Service Tribunal. The service appeal of the appellant was dismissed by the Service Tribunal vide its

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judgment dated 13.2.99. The appellant did not challenge his termination/order dated 13.2.99 of the Service Tribunal in appeal before the Hon'ble Supreme Court of Pakistan and the judgment of the Service Tribunal in his case has attained finality. The appellant has got no right of second appeal against his termination order dated 2.11.97 under the law. Further the Service Tribunal has already dismissed the appeal of appellant and the appellant cannot re-open the case with the Service Tribunal. The learned Govt. Pleader also argued that the judgments of the Hon'ble Supreme Court of Pakistan referred to by the learned counsel for the appellant in the case are not applicable to the appellant as separate appeals were filed by each individuals which were decided by the apex court on case to case basis. The appeal of the appellant was dismissed by the Tribunal on 13.2.99 and the appellant being contented with the afore-said decision did not seek leave to appeal from the Hon'ble Supreme Court of Pakistan. The court has not given any relief to the appellant and thus he cannot deserve any benefit out of the judgments delivered in the cases of others. The learned counsel submitted that the Supreme Court of Pakistan have ordered the re-instatement of persons who filed an appeal before them. The Supreme Court clearly mentioned in the judgment that they had examined the cases individually with the assistance of the learned counsel for the parties. Since the appellant has exhausted the legal remedies therefore, his case cannot be re-opened. The learned Government Pleader urged that the appeal being not maintainable and time barred be dismissed by the Tribunal.

The Tribunal agrees with the arguments advanced by the learned Government Pleader and observes that the appointment of the appellant was made without merit in

violation of the prescribed rules by ignoring so many other eligible and qualified persons of the respective Zones. The services of the appellant were rightly terminated by the competent authority/respondent department vide the impugned order dated 2.5.97. The appellant had challenged his termination order in Appeal No. 997/1997 before the Service Tribunal but the same was dismissed on 13.2.99. The appellant did not challenge the decision of the Tribunal before the Hon'ble Supreme Court and thus the decision of the Tribunal became final in his case. The respondent department has not re-instated any of the terminated employees except those whose appeals have been accepted by the Hon'ble Supreme Court of Pakistan. There appears no malafides/irregularity on the part of the respondent department in not accepting the appeal dated 16.1.2002 of the appellant for his re-instatement. The appeal of the appellant is dismissed by this Tribunal.

This order will also dispose of the other connected appeals bearing Nos. 508/2002 Noor Bshadar, 509/2002 Salahuddin, 510/2002 Nasira Bibi, 511/2002 Ali Asghar, 512/2002 Gul Nabi, 513/2002 Abdullah Jan, 514/2002 Khan Muhammad, 515/2002 Ameer Khisro, 516/2002 Hafiz Muhammad Abdullah and 517/2002 Aftab Ahmad Versus Chief Secretary NWFP etc, in the same manner as the nature of the case and law points involved are common in all the appeals.

No order as to costs. File be consigned to the record.

ANNOUNCED.
18.12.2003.

(Signature)
(ATTULLAH KHAN)
MEMBER.

(Signature)
(MUHAMMAD SHAUKAT)
MEMBER.

Office of the
Service Tribunal
Peshawar

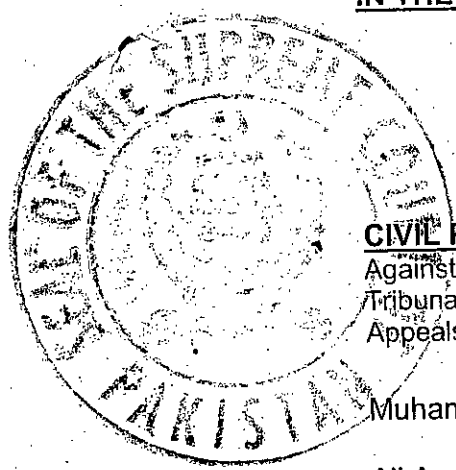
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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)



PRESENT:

Mr. Justice Falak Sher
Mr. Justice Nasir-ul-Mulk

CIVIL PETITIONS NO. 198 TO 202-P/2004

Against the judgment of the NWFP Service Tribunal Peshawar dated 18.12.2003 passed in Appeals No. 507, 511, 514, 516 & 517 /2002

Muhammad Zameer

...Petitioner in CP 198-P/2002

Ali Asghar /

...Petitioner in CP 199-P/2002

Khan Muhammad

...Petitioner in CP 200-P/2002

Hafiz Muhammad Abdullah

...Petitioner in CP 201-P/2002

Aftab Ahmad

...Petitioner in CP 202-P/2002

Versus

The Chief Secretary Government of NWFP, Peshawar & another ...Respondent(s)

For the petitioner (s):
(in all petitions)

Haji M. Zahir Shah, ASC/AOR

For respondent (s)

N.R.

Date of hearing:

30.5.2006

ORDER

This order will dispose of Civil Petitions No. 198 to 202-P/2004 having commonality of facts and stemming out of the same impugned judgment.

2. Subsequent to the turning down of petitioners' appeals by the NWFP Service Tribunal in the year 1999 assailing the orders dispensing with their services three years later they preferred second appeals which have been dismissed vide the impugned judgment dated 18.12.2003, for the reason that the earlier judgment had attained finality having remained un-questioned the second appeal in the absence of any fresh final order passed by the competent authority was not competent, have sought leave to appeal. Wherein the learned counsel could neither dislodge the reasons recorded nor point out any jurisdictional infirmity or illegality justifying interference therewith. Resultantly, the petitions being devoid of any substance fail and are hereby dismissed. Leave declined. /

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sd/- Falak Sher, J.
sd/- Nasir-ul-Mulk, J.

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Certified to be true copy

[Signature]
Assistant Registrar

Supreme Court of Pakistan
Dacca

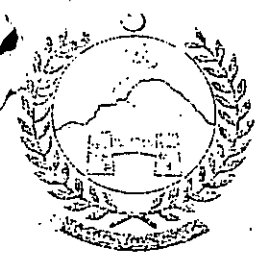
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GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(ESTABLISHMENT WING)

Dated Peshawar the 15th February, 2013

ORDER

No.SOE.IV(E&AD)3(552)1994(Vol-III):- In pursuance of Section 3 read with Section 7 of Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012 and on acceptance of the offers of appointment, the Competent Authority is pleased to appoint the following as Junior Clerk (BS-07), in the Civil Secretariat, Khyber Pakhtunkhwa, Peshawar with immediate effect on the terms and conditions as laid down in their offers of appointment:-

S.No.	Name of official
1	Mr. Ali Asghar S/o Karam Dad ✓
2	Mr. Salahud Din S/o Sar Gul
3	Mr. Muhammad Zamir S/o Mozafar Gul
4	Mr. Amjad Saeed S/o Muhammad Saeed
5	Mrs. Nasira Bibi D/o Muhammad Akhtar
6	Mr. Aftab Ahmad S/o Shah Alam
7	Mr. Abdul Hanan S/o Alam Shah
8	Mr. Muhammad Abdullah Khan S/o Haji Muhammad Hafiz Ullah ✓
9	Mr. Muhammad Tariq Khan S/o Mir Alam Jan
10	Mr. Gul Nabi S/o Ghulam Nabi
11	Mr. Muhammad Farooq S/o Muhammad Anwar
12	Mr. Khan Muhammad S/o Yar Muhammad
13	Mr. Noor Bahadur S/o Jan Bahadur

2. *Radim ✓* Consequent upon the above, they are posted in the Departments mentioned against their names with immediate effect:-

S.#	Name & Designation	From	To
1	Mr. Ali Asghar S/o Karam Dad, Junior Clerk (BS-7) ✓	Newly appointed	C&W Deptt against vacant post.
2	Mr. Salahud Din S/o Sar Gul, Junior Clerk (BS-7)	Newly appointed	Health Deptt against vacant post.

Allestee
S No

S.#	Name & Designation	From	To
3	Mr. Muhammad Zamir S/o Mozafar Gul, Junior Clerk (BS-7)	Newly appointed	E-II Section, Establishment Deptt. Vice No.14
4	Mr. Amjad Saeed S/o Muhammad Saeed, Junior Clerk (BS-7)	Newly appointed	Labour Deptt against vacant post.
5	Mrs. Nasira Bibi D/o Muhammad Akhtar, Junior Clerk (BS-7)	Newly appointed	Law Deptt against vacant post.
6	Mr. Aftab Ahmad S/o Shah Alam, Junior Clerk (BS-7)	Newly appointed	ST&IT Deptt against vacant post.
7	Mr. Abdul Hanan S/o Alam Shah, Junior Clerk (BS-7)	Newly appointed	Information Deptt. against vacant post.
8	Mr. Muhammad Abdullah Khan S/o Haji Muhammad Hafiz Ullah, Junior Clerk (BS-7)	Newly appointed	Sports Deptt. against vacant post.
9	Mr. Muhammad Tariq Khan S/o Mir Alam Jan, Junior Clerk (BS-7)	Newly appointed	PHE Deptt against vacant post.
10	Mr. Gul Nabi S/o Ghulam Nabi, Junior Clerk (BS-7)	Newly appointed	Transport Deptt against vacant post.
11	Mr. Muhammad Farooq S/o Muhammad Anwar, Junior Clerk (BS-7)	Newly appointed	Social Welfare Deptt against vacant post.
12	Mr. Khan Muhammad S/o Yar Muhammad, Junior Clerk (BS-7)	Newly appointed	Food Deptt. against vacant post.
13	Mr. Noor Bahadur S/o Jan Bahadur, Junior Clerk (BS-7)	Newly appointed	Population Welfare Deptt against vacant post.
14.	Mr. Salman, Junior Clerk (BS-7)	E-II Section Establishment Deptt.	P&D Deptt. against vacant post

SECRETARY ESTABLISHMENT

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Section Officer (Secret), Establishment Department.
3. The Section Officer (Transport), Transport Department.
4. **All Section Officers (Admn/Estt/Gen _____) of the concerned Administrative Department of Civil Secretariat.**
5. The Section Officer (Food), Food Department.
6. The Estate Officer, Administration Department.
7. P.A to Addl: Secretary (Estt) Establishment Department
8. P.A to Addl: Secretary (HRD), Establishment Department.
9. P.A. to Deputy Secretary (Estt.), Establishment Department.
10. The Bill Assistant, Administration Department.
11. Officials concerned.
12. Personal Files

(NASIR AMAN)

SECTION OFFICER (E.IV)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(HRD WING)

F/2 86 87

No. SO (HRD-II)/ED/1-10/2021 (RTI)/Ali Asghar
Dated Peshawar the 09th February, 2021

To

Mr. Ali Asghar,
Senior Clerk, Account Section,
Agriculture Department (0336-9923957).

Subject: REQUEST FOR PROVISION OF DOCUMENTS UNDER RTI ACT, 2013.

Kindly refer to your application dated 19-01-2021 on the subject noted above and to forward herewith copy of the requisite information under **Right to Information Act 2013** for information.

Encl: As above:


Public Information Officer (PIO)
Establishment Department

Ali Asghar
A

File No. _____
Date _____
By _____
Signature _____



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(Establishment Wing)

No. SOE.IV (E&AD) 4(459)/2018
Dated Peshawar, the 04.02.2021

To

Section Officer (HRD-II),
Establishment Department

Subject: REQUEST FOR PROVISION OF DOCUMENTS UNDER RTI ACT, 2013.

I am directed to refer to your letter No.SO(HRD-II)/ED/1-10/2021(RTI)/Ali Asghar dated 20.01.2020 on the subject noted above and to enclose herewith the requisite application dated 02-12-2021 of Mr. Ali Asghar Senior Clerk, Agriculture Department.

The said application was processed and filed accordingly on the ground that the applicant had been re-instated into service under Sacked Employees (Appointment) Act. No.XVII of 2012, subject to the provision that "They will not be entitled to any claim of seniority, promotion or other back benefits and the appointment shall be considered as fresh appointment".


(SIRAJ MUHAMMAD)
SECTION OFFICER (E-IV)

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ASE 179
To
04/12

The Secretary Establishment & Administration,
Department Government of Khyber Pakhtunkhwa,
Peshawar.

PS/Secy ER&AD KP
Diary No. 8368we
Date 2/12/2020

SUBJECT: APPEAL FOR REINSTATMENT AND REGULARIZATION OF SERVICE.

Dear Sir,

PS / SS (E) E&AD
Diary No. 2750
Date 04.12.20

The applicant most humbly submits as under:

- > That the applicant was appointed as Junior Clerk in the Services & General Administration Department NWFP on dated 23-10-1994 (Annex- A).
- > That the applicant performed his duties with great zeal, but the department on 02-05-1997 dispensed with the service of applicant along with number of other similar employees without any reason (Annex-B).
- > That the other employees filed departmental Appeal and thereafter knocked the door of Service Tribunal for the redressal of their grievances but their appeals dismissed by Service Tribunal for reinstatement in service (Annex-C).
- > That the most of the Appeals challenged in Supreme Court of Pakistan, the Supreme Court remanded all the appeals to Service Tribunal with the observation to decide the appeals of the appellants individually and separately on merits and in accordance with law (Annex-D).
- > That the Service Tribunal after hearing the remanded appeals then decided all the Appeals in favor of appellants and reinstated all the appellants (Annex-E).
- > That the Services & General Administration Department challenged the Service Tribunal Decisions and approached the Supreme Court of Pakistan, but the same were dismissed and the order of Service Tribunal was kept Remain Intact (Annex-F).
- > That in light of Supreme Court Order, the Establishment Department reinstated all the appellants and they again joined their services accordingly (Annex-G).

That pursuant to the Supreme Court Order, the applicant made departmental Appeal on 29-02-2002 before the Establishment Department Khyber Pakhtunkhwa that applicant may be treated same footing on the analogy of other reinstated employees. After the termination order dated 02-05-1997, the applicant did not take any legal proceeding in his case due to lack of coordination residing in a far flung area of Khyber Pakhtunkhwa and savor illness of Epilepsy (Annex-H).

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- That after rejection of departmental appeal, the applicant in the first instant knocked the door of Service Tribunal through Appeal No. 511/2002, but unfortunately the Service Appeal of Applicant was clubbed with another Appeal No 507/2002 who already had gone to the Service Tribunal through appeal No.977/1997, which was rejected and he did not challenge the decision of the Service Tribunal of Khyber Pakhtunkhwa Peshawar, both the Appeals were heard on the same day, and the Appeal of Applicant was on different footing but in the garb of Appeal no. 507/2002(Muhammad Zameer), the Appeal of Applicant, was also dismissed (**Annex-I**).
 - That later on the case was challenged before the Supreme Court of Pakistan, the Supreme Court consolidated all the similar appeals, and again dismissed the appeal of applicant in the garb of Muhammad Zameer Appeal, before Supreme Court (**Annex-J**).
 - That the applicant again filed an application to the department in which the applicant explained all the facts, and requested for his reinstatement on the analogy of other similar employees reinstated in service, but my case was lingered by the department on one pretext or the other and till yet no positive result (**Annex-K**).
 - The applicant has entered in service through Sacked Employees Act 2012.
 - Therefore, applicant having no other option, but to knock the door of your head of the department for redressal of his rightful grievances.

GROUNDS

- A. That other employees having similar nature case re-instated by Service Tribunal KP, Peshawar which order was also up head by Supreme Court, but the applicant having the same case and being entitle to be reinstate by not taking any legal proceeding in his case after termination order dater 02-05-1997 is still deprived of his legal right.
- B. Service Tribunal of NWFP (KP) had set aside the impugned termination order dated 02-05-1997 for whole employees not for a single employee (**Annex-L**).
- C. That in my case codal formalities as enumerated in the concerned laws have not been adopted nor has any procedure as prescribed in the legal manner been compiled by the issuing authority of reinstated in service i.e. Establishment Department of Khyber Pakhtunkhwa.
- D. That the applicant approached the department umpteenth times for their reinstatement but every time the applicant turned down their genuine prayers.
- E. That the applicant completed 02 months pre service training in Staff Training Institution (STI) (**Annex-M**).

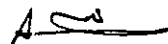
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- F. That the seniority list of Junior Clerks (BS-05) of Civil Secretariat as stood on 14-04-1996 and the name of the applicant was at S.No. 167 (Annex-N).
- G. That the GP-Fund deduction was also being made from applicant pay regularly for two and half years which is still laying in applicant account.
- H. That the Government of NWFP now KP did not take any legal action against the DSC members who selected the applicant at that time.
- I. That such an attitude of hire and fire is not even warranted by any law in the institution where a simple master and servant rule is applicable, whereas the whole procedure of dealing with the Civil Servant has been bulldozed, when other similar employees were reinstated by ignoring the applicant having also right for reinstatement.
- J. That the earlier orders of Services Tribunal and Supreme Court, is not applicable on applicant, as applicant first time knocked the door of Service Tribunal but Service Tribunal while deciding other appeal of Muhammad Zameer misguided the Service Tribunal and passed the order in haphazard manner and Supreme Court was also not properly guided and in the garb of Muhammad Zameer Appeal, the same order remained intact, therefore such facts are not mentioned in the rejoinder of department given in the court.
- K. That there are number of ruling of Supreme Court, and other material, that similar footing employees be given the same benefit, even if they not gone to the court. One of the order is as follow:
" If the service tribunal or supreme court decided a point of law relating to the terms of service of civil servants which covers not only the case of civil servants who litigated, but also of other civil servants, who may have not taken any legal processing, in such a case, the dictates and rule of good governance demand that the benefit of such judgment by Service Tribunal / Supreme Court be extended to other civil servants, who may not be parties to the litigation instead of compelling them to approach the service tribunal or any other forum."
(Annex-O).
- L. That there is a basic principle of Islam as well as of law that no one should be condemned unheard but such rule has been ruined out by passing one sided Order.
- In view of the aforementioned fact the Government of Khyber Pakhtunkhwa deprive to the applicant from his fundamental right and didn't consider the request of the applicant for re-instatement in service as per ruling of Service Tribunal & Supreme Court of Pakistan in accordance with the Tribunal clear cut judgment on 01.03.2001 and the Supreme Court of Pakistan endorsing the judgment of Service Tribunal on 29-10-2001 that the appointment order of the appellant was

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not illegal and set aside the impugned termination order 02-05-1997, its mean that the appointment order of the applicant was not illegal:

- i. It was required that S&GAD (Establishment Department) should have considered the application of the applicant in light of the Supreme Court Judgment 1996 SCMR 1185 title Hammed Akhter Niazi versus Secretary, Establishment Division, Government of Pakistan and others, 2005 SCMR 499 title Tara Chand and others vs Karachi water and Sewerage Board, 2009 SCMR 01 Government of Punjab through Secretary Education Civil Secretariat Lahore vs Sameena Parveen and other, 2018 SCMR 380, 2010 SCMR 421 and a Service Tribunal judgment Act (LXX of 1973).
 - ii. That applicant appointment was not illegal and the S&GAD (Establishment Department) completed all the codal formalities in these appointments, so now as it is totally discrimination with the applicant that his other colleagues who were re-instated at that time are working now as Section Officers (BPS-17) and Senior to the applicant.
 - iii. Law Department Khyber Pakhtunkhwa advice contained in letter No. E&A(LD) 2-3/92/4521 dated 26-04-1997 in response to Establishment Department letter No. SOE-IV(S&GAD)5(252)/94 dated 02-11-1994 that the persons were recruited on the recommendations of the departmental selection committee which would imply that those appointments were regular. In these circumstances, the Government would be estopped from calling those appointments as illegal (Annex-P).
 - iv. In light of Judgment of the August Supreme Court of Pakistan bearing appeal No. 1383 to 1402 of 2001 dated 29-10-2001 which was accordingly compiled with the Establishment department vide order No. SOS.IV(E&AD)3 (552)/94VOL-II dated 12-10-2002.
- In view of the above facts & grounds of my case for reinstatement in service may kindly be decided on humanitarian grounds on its merit in addition to the above as well as following rulings/order & judgment "(PLD 2018 SC 296, 2006 SCMR 678, 2011 PLC (CS) 331, 2002/335, 2018 SCMR 762, 1995 SCMR 1593, 2013 PIC (CS) 928, 2020 CMR 1432)" as the applicant is crossed the age of 47 years please.

Applicant

 02-12-2020

Ali Asghar s/o Karam Dad
Senior Clerk
Agriculture Department
Civil Secretariat Peshawar.
Cell No. 0336-9923957

Best Copy

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GOVERNMENT OF N.W.F.P
LAW DEPARTMENT

NO.E&A(LD)2-3/92/4521-
Dated Peshawar the 26-04-1997

To,

The Secretary to Government of NWFP,
S&GA Department,
Peshawar.

SUPBJCT: OFFICE ORDER (DISPENSION OF SERVICES OF JUNIOR CLERK).

Sir,

I am directed to refer to your department officer order No. SOS, IV(S&GAD)3(552)/94 dated 04-04-1997 regarding dispensation of services of Junior Clerks in the Civil Secretariat.

2- Perusal of the order vide No. SOS.IV(S&GAD)5(252)/94 dated 2nd November, 1994 would show that these persons were recruited on the recommendations of the Departmental Selection Committee which would imply that these appointments were regular.

3- In these circumstances, the Government would be stopped from calling these appointments as illegal.

Yours Obediently,

(MOHAMMAD SHAIKAT)
Deputy Secretary (Administration)

GOVERNMENT OF N.W.F.P.
LAW DEPARTMENT

NO. EEA(LD)2-3/92/ 4521-

Dated Peshawar the 26/4/1997

To:

The Secretary to Government of NWFP,
S&GA Department,
Peshawar.

SUBJECT: OFFICE ORDER (DISPENSION OF SERVICES OF JUNIOR CLERK).

Sir

I am directed to refer to your Department Office Order No. SOS.IV(S&GAD)3(552)/94 dated 4/4/1997 regarding dispensation of services of Junior Clerks in the Civil Secretariate.

2- Perusal of the order vide No. SOS.IV(S&GAD)3(552)/94 dated 2nd November, 1994 would show that these persons were recruited on the recommendations of the Departmental Selection Committee which would imply that these appointments were regular.

3- In these circumstances, the Government would be stopped from calling these appointments as illegal.

Yours Obediently

M. Ad. Khan
(MOHAMMAD SHAUKAT)
Deputy Secretary (Administration)

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 3918/2021

Mr. Ali Asghar **Appellant**

VERSUS

Chief Secretary, Khyber Pakhtunkhwa & Others **Respondents**

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3.	Sacked Employees Act, 2018	I	6-7
4.	Offer of appointment	II	8
5.	Arrival Report	III	9

Dated: **05.08.2021**

Deponent

CNIC No: 17301-6272682-3

Mobile: 0345-5285465

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 3918/2021

Ali Asghar, Senior Clerk (BS-14,) Agriculture Department.

Appellant

VERSUS

Chief Secretary Khyber Pakhtunkhwa and others

Respondents

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS

PRELIMINARY OBJECTIONS.

1. That the appellant has got no cause of action and locus standi against the respondents.
2. The appellant is estopped by his own conduct to file the present appeal in the Court.
3. That the titled appeal is barred by law.
4. The applicant has suppressed and twisted the facts with malafide intention for his own benefit.
5. That the appellant is estopped by his own conduct to file the instant petition.
6. That the appeal of the appellant is hit by rule 23 of Khyber Pakhtunkhwa Services Tribunal Rules 1974 and Section-II of the Civil Procedure Code 1908.

ON FACTS:-

- (i) Correct to the extent that 53 Junior Clerks (BS-11) including the appellant were appointed by the then Service & General Administration Department (Now Establishment and Administration Department) on 02-11-1994 after fulfilling all codal formalities. However, on finding some illegalities in the appointment record, their services were dispensed with on 02-05-1997. The appellant submitted appeal in Service Tribunal, Peshawar which was dismissed. Afterwards, some of the appellants being aggrieved by the judgment of the tribunal filed an appeal in the Supreme Court of Pakistan. The apex Court set aside the judgment of Service Tribunal on 31-10-2001. In pursuance of the said judgment, those 33 Junior Clerks (appellants) were re-instated in the service on 12-01-2002 w.e.f from the date of their termination and intervening period was treated as Extra-ordinary leave. However, later on, under Sacked Employees (Appointment) Act.No.XVII of 2012, rest of the employees including the appellant were also re-instated subject to the provision that they will not be entitled to any claim of seniority, promotion or other back benefits and the appointment shall be considered as fresh appointment. The request regarding entitlement of seniority in the light of *Khyber Pakhtunkhwa, Service Tribunal Act (LXX of 1973)* was thoroughly examined and taken-up with the Law Department. The Advocate General, Khyber Pakhtunkhwa vide letter dated 01-06-2020 supported Sacked Employee Act, 2012 and opined that the said act is clear and unambiguous regarding back benefits. The appellant being appointed as sacked employee ought to be considered as a fresh appointee and not entitled to any back benefit including

seniority. Opinion of Law Department and Advocate General Office are in accordance with the provisions of Sacked Employees Act, 2012 and specify re-appointment/fresh appointment of sacked employees without back benefits. The request was, therefore, regretted.

- (ii) Correct to the extent that after finding some illegalities in the appointment record, their services were dispensed with on 02.05.1997
- (iii) Pertains to record.
- (iv) Pertains to record.
- (v) Pertains to record
- (vi) The appeal of the appellant was rejected being not covered under the rules.
- (vii) Correct. Re-instated under the Sacked Employees Act, 2012 subject to the provision that they shall not be entitled to any claim of seniority, promotion or other back benefits and the appointment shall be considered as fresh appointment.
- (viii) Pertains to record.
- (ix) Incorrect. Para-I of the offer of appointment read with section 5 of the Sacked Employees Act, 2012 wherein it had clearly been mentioned that **"You will not be entitled to any claim of seniority, promotion or other back benefits and your appointment shall be considered as fresh appointment"** (Annex-I & II) and the appellant had accepted the offer alongwith its conditions accordingly (Annex-III). More so, the Act *ibid* was promulgated to provide relief to those sacked employees in Government service who were dismissed, removed or terminated from service, by appointing them into the Government service without claiming seniority, promotion etc and their appointment be considered as fresh which was duly accepted. Hence is estopped by his own conduct.
- (x) Incorrect. The second appeal preferred was dismissed by the Supreme Court of Pakistan through judgment Dated 18.12.2003 because the decision of the Service Tribunal dated 13.02.1999 had attained finality as it was not challenged by the appellant before the supreme court of Pakistan. The appellant had got no right of second appeal against his termination and his appeal was dismissed by the Supreme Court of Pakistan accordingly.
- (xi) Correct to the extent that the appeal of the applicant was processed and regretted after consent of Law Department as judgment of the Hon'ble Court (Tara Chand and others vs. Karachi Water & Sewerage Board Karachi) and Sacked Employees Act was not in line. Law Department is of the view that the judgment of Service Tribunal dated 13.02.1999 passed against the appellant attained finality as it was not challenged by the appellant in the Supreme Court of Pakistan, therefore, in the year 2012 Sacked Employees Act was passed by the provincial Assembly and consequently, the appellant being sacked employee was appointed as fresh employee without seniority,

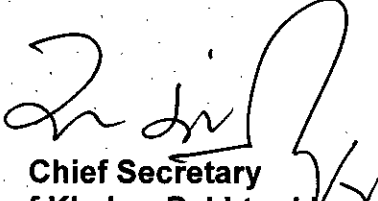
promotion or other back benefits as it has been categorically mentioned in section 5 of the Act ibid that "Sacked employees shall not be entitled and to be considered as fresh appointment".

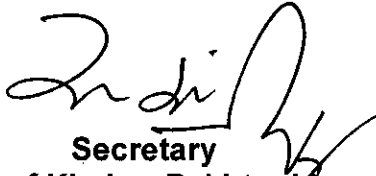
- (xii) As explained at Para-XI above.
- (xiii) Correct. Re-instated under the Sacked Employees Act, 2012 subject to the provision that they will not be entitled to any claim of seniority, promotion or other back benefits and the appointment shall be considered as fresh appointment.
- (xiv) The appeal of the applicant was rejected as it was not covered under rules being devoid of merit. According to Constitution Articles no discrimination, whatsoever, has been done with the appellants.

GROUND:-

1. Incorrect. The appeal of the appellant was processed and regretted being not covered under the rules and was devoid of merit.
2. As explained in para-1.
3. incorrect.
4. Incorrect. The case of the appellant was dealt with in accordance with the rules.
5. Incorrect. The case of the appellant was not a fit case, hence, regretted.
6. No comments.
7. That the respondent also seeks permission to raised further points at the time of arguments.
8. Incorrect. As explained at Para-xiii of the Facts.
9. As explained at Para-xi of the Facts.
10. Respondent also raised further grounds at the time of hearing.

It is therefore, humbly prayed that on acceptance of instant joint Para-wise comments/ reply, the appeal of appellants may be dismissed with costs.


Chief Secretary
Govt. of Khyber Pakhtunkhwa
(Respondent No.1)


Secretary
Govt. of Khyber Pakhtunkhwa
Establishment Deptt
(Respondent No.2)

**THE KHYBER PAKHTUNKHWA
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.**

(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

CONTENTS

PREAMBLE

SECTIONS

1. Short title, extent and commencement.
2. Definitions.
3. Appointment of sacked employees.
4. Age relaxation.
5. Sacked employees shall not be entitled to claim seniority and other back benefits.
6. Preference on the basis of age.
7. Procedure for appointment.
8. Removal of difficulties.
9. Act to override other laws.
10. Power to make rules.

**THE KHYBER PAKHTUNKHWA
SACKED EMPLOYEES (APPOINTMENT) ACT, 2012.**

(KHYBER PAKHTUNKHWA ACT NO. XVII OF 2012)

*[first published after having received the assent of the Governor of
the Khyber Pakhtunkhwa in the Gazette of Khyber Pakhtunkhwa
(Extraordinary), dated the 20th September, 2012].*

**AN
ACT**

*to provide relief to those sacked employees in
the Government service, who were dismissed,
removed or terminated from service, by
appointing them into the Government service.*

WHEREAS it is expedient to provide relief to those sacked employees who were appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience required for the said post, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and were dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on various grounds;

WHEREAS the Federal Government has also given relief to the sacked employees by enactment;

AND WHEREAS the Government of the Khyber Pakhtunkhwa has also decided to appoint these sacked employees on regular basis in the public interest;

It is hereby enacted as follows:

1. Short title, extent and commencement.---(1) This Act may be called the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act, 2012.

(2) It shall apply to all those sacked employees, who were holding various civil posts during the period from 1st day of November, 1993 to 30th day of November, 1996 (both days inclusive).

(3) It shall come into force at once.

2. Definitions.--- In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them that is to say,-

- (a) "civil post" means a post created by the Finance Department of Government for the members of civil service of the Province;
- (b) "Department" means the Department and the Attached Department as defined in the Khyber Pakhtunkhwa Government Rules of Business, 1985, including the Divisional and District Offices working thereunder;
- (c) "Government" means the Government of the Khyber Pakhtunkhwa;
- (d) "Prescribed" means prescribed by rules;
- (e) "Province" means the Province of the Khyber Pakhtunkhwa;
- (f) "rules" means the rules made under this Act; and
- (g) "Sacked employee" means a person who was appointed on regular basis to a civil post in the Province of the Khyber Pakhtunkhwa and who possessed the prescribed qualification and experience for the said post at that time, during the period from 1st day of November 1993 to the 30th day of November, 1996 (both days inclusive) and was dismissed, removed, or terminated from service during the period from 1st day of November 1996 to 31st day of December 1998 on the ground of irregular appointments;

3. Appointment of sacked employees.--- Notwithstanding anything contained in any law or rule for the time being in force, on the commencement of this Act, all sacked employees subject to section 7, may be appointed in their respective cadre of their concerned Department, in which they occupied civil posts before their dismissal, removal and termination from service:

Provided that the sacked employees shall be appointed against thirty percent of the available vacancies in the said Department:

Provided further that the appointment of sacked employees shall be subject to the medical fitness and verification of their character antecedents to the satisfaction of the concerned competent authority.

4. Age relaxation.--- The period during which a sacked employee remained dismissed, removed or terminated from service, till the date of their appointment shall be deemed to have been automatically relaxed and there shall be no further relaxation under any rules for the time being in force.

5. **Sacked employees shall not be entitled to claim seniority and other back benefits.**--- A sacked employee appointed under section 3, shall not be entitled to any claim of seniority, promotion or other back benefits and his appointment shall be considered as fresh appointment.

6. **Preference on the basis of age.**--- On the occurrence of a vacancy in the respective cadre of the concerned Department of the sacked employee against the thirty percent available share, preference shall be given to the sacked employee who is older in age.

7. **Procedure for appointment.**---(1) A sacked employee, may file an application, to the concerned Department within a period of six months from the date of commencement of this Act, for his appointment in the said Department:

Provided that no application for appointment received after the due date shall be entertained.

(2) The concerned Department shall maintain a list of all such sacked employees whose applications are received under sub-section (1) in the respective cadres in chronological order.

(3) If any vacancy occurs against the thirty percent available share of the sacked employee in any Department, the senior in age from such sacked employee shall be considered by the concerned Departmental Selection Committee or the District Selection Committee, as the case may be, to be constituted in the prescribed manner, for appointment:

Provided that no willingness or response is received within a period of thirty days, the next senior sacked employee shall be considered for appointment.

(4) The Concerned Departmental Selection Committee or District Selection Committee, as the case may be, will determine the suitability or eligibility of the sacked employee.

(5) If no sacked employee is available against thirty percent vacancy reserved in respective cadre in a Department, then the post shall be filled through initial recruitment.

8. **Removal of difficulties.**--- If any difficulty arises in giving effect to any of the provisions of this Act, the Chief Minister Khyber Pakhtunkhwa may issue such order not inconsistent with the provision of this Act as may appear to him to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from coming into force of this Act.

9. Act to override other laws.---Notwithstanding anything to the contrary contained in any other law or rules for the time being in force, the provisions of this Act shall have overriding effect and the provisions of any other law or rules to the extent of inconsistency to this Act, shall cease to have effect.

10. Power to make rules.--- Government may make rules for carrying out the purposes of this Act.



**GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT
(ESTABLISHMENT WING)**

Dated Peshawar, the 29th January, 2013

OFFER OF APPOINTMENT

NO.SOE.IV(E&AD) 3(552)/1994:- Under Section 3 of the Khyber Pakhtunkhwa Sacked Employees (Appointment) Act 2012 and subject to Section 7 of the said Act, the Competent Authority is pleased to offer a post of Junior Clerk (BPS-07) to **Mr. Ali Asghar S/O Karam Dad** on the following terms and conditions:-

1. You will not be entitled to any claim of seniority, promotion or other back benefits and your appointment shall be considered as fresh appointment.
2. You will produce a medical certificate of fitness from Medical Superintendent, Civil Hospital Peshawar and character certificate from two gazetted officers.
3. You will get pay at the minimum of BPS-7 including usual allowances as admissible under the rules. You will also be entitled to annual increment as per existing policy.
4. You will be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973 and all the laws applicable to the Civil Servants and the Rules made there-under.
5. You, will for all intents and purposes, be Civil Servant except for the purpose of pension and gratuity. In lieu of pension and gratuity, you shall be entitled to receive such amount as would be contributed by you towards Contributory Provident Fund (C.P.F) alongwith the contributions made by Government to your account in the said fund, in the prescribed manner.
6. You will be initially, on probation for a period of one year extendable for further period of one year.
7. Your continuance in service will be subject to verification of your domicile and testimonial from the concerned authorities/offices.
8. In case you wish to resign at any time, fourteen days notice shall be necessary or in lieu thereof fourteen days pay shall be forfeited.
9. Your appointment will be subject to verification of character and antecedents from the concerned authorities/ offices.
10. Your appointment is on temporary and liable to be terminated at any time without assigning any reason before the expiry of the period of probation/extended period of probation, if your performance during this period is not found satisfactory.
11. You will join duty at your own expenses.
12. If the post is acceptable to you on above conditions, you should report for duty to the undersigned within 30 days of the issuance of this offer.

30-01-2013

Mr. Ali Asghar S/O Karam Dad,
R/O Village Tulpain P.O Bodla Tehsil Havelian,
District Abbottabad.

(NASIR AMAN)
SECTION OFFICER (E.IV)

To

The Section Officer (E-IV),
Establishment Department,
Peshawar.

Subject:- ARRIVAL REPORT.

Dear Sir,

In pursuance of offer of appointment No.SOE-IV(E&AD)3(552)/1994,
dated 29.01.2013, I hereby submit my arrival report for duty as Junior Clerk (BS-7) in
Establishment Department today i.e 30.01.2013 (Forenoon).

Yours faithfully

Dated: 30.01.2013



(Aii Asghar)
Junior Clerk
Establishment Department

Handwritten notes:
Duty only after
order.
apart

SA

Handwritten notes:
31/1/2013
SOE-IV.