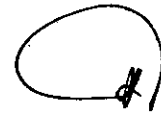


09.05.2022

Appellant present through counsel. Preliminary arguments heard. Record perused.

Points raised need consideration. Instant appeal is admitted for regular hearing subject to all legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notice be issued to respondents for submission of written reply/comments. To come up for reply/comments on 16.06.2022 before S.B.

Pls See
Appellant's Affidavit
Security & Process Fee
19-5



(Rozina Rehman)
Member (J)

16th June 2022

Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Respondents have not submitted written reply/comments. Learned AAG seeks time for submission of written reply/comments. To come up for written reply/comments on 02.08.2022 before S.B.



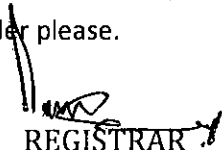

(Kalim Arshad Khan)
Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 133/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	28/01/2022	<p>The appeal of Mst. Sadia Asghar resubmitted today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	31 st March, 2022	<p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>31-3-2022</u></p> <p style="text-align: right;">CHAIRMAN</p> <p>Junior to counsel for the appellant present and requests for adjournment due to engagement of learned senior counsel in Local Government Election. Last opportunity is granted. To come up for preliminary hearing on 09.05.2022 before S.B.</p> <p style="text-align: right;"> CHAIRMAN,</p>

The appeal of Mst. Sadia Asghar, Assistant Treasury Officer, Finance department received today i.e. on 19.01.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

- 1- Copy of regularization order of appellant mentioned in para-9 of the memo of appeal is not attached with the appeal which may be placed on it.
- 2- Copy of impugned seniority list is not attached with the appeal which may be placed on it.
- 3- Sub-rule-4 of rule-6 of the Khyber Pakhtunkhwa Service Tribunal rules 1974 requires that every civil servant to whom the relief claimed may affect shall also be shown as respondents.
- 4- Annexures- C, E & G of the appeal are illegible which may be replaced by legible/better one.

No. 121 /S.T,

Dt. 19/01 /2022

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Noor Muhammad Khattak Adv. Pesh.

Clarifications to the above observations of this Hon'ble Tribunal may be pursued as under:

1. Actually, this is the regularization order pertains to the P.P.S and not pertains to the appellant.
2. The appellant is mainly aggrieved from the impugned Notification dated 4-5-2020 to the extent of condition (Para. 2) which is reproduced as "consequent upon their adjustment, the above employees will be placed at the bottom of the seniority list of the cadre."
3. that in light of the ibid condition (Para. 2) of the impugned seniority has not been issued till date but the appellant is aggrieved from the condition No. 2 mentioned in the impugned order dated 4-5-2020.
4. Better copies of annexure 'C, E & G' are being replaced in file.
Need feel done as requested please

Registrar
S.T.

Noor Muhammad
Counsel for Appellant

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Handwritten notes, possibly bleed-through from the reverse side of the page. The text is extremely faint and illegible.



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR**

SERVICE APPEAL NO. 133 /2022

SADIA ASGHAR

V/S

ESTABLISHMENT DEPTT:

INDEX

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4	Appointment order	A	8-9
5	Judgment	B	10-14
6	Judgment	C	15-17
7	Dismissal order - 15.9.2014	D	18
8	Notification dated 6.1.2019	E	19
9	Office order 4.5.2020	F	20
10	Notification of regularization	G	21-22
11	Regularization notification of appellat	H	23
12	Relevant portion of rules	I	24-28
13	Departmental appeal	J	29-30
14	Wakalat Nama	31

Dated: _____ 01.2022

APPELLANT

Through:

NOOR MOHAMMAD KHATTAK

ADVOCATE

0345/9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

APPEAL NO. 133 /2020

Mst: Sadia Asghar, Assistant Treasury Officer (BS-17),
Treasury & Accounts Office, Finance Department,
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

..... **APPELLANT**

VERSUS

- 1- The Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar.
- 3- The Secretary to Government of Khyber Pakhtunkhwa, Finance Department, Peshawar.

..... **RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED OFFICE ORDER DATED 4.5.2020 WHEREBY THE APPELLANT HAS BEEN PLACED AT THE BOTTOM OF THE CADRE OF ASSISTANT TREASURY OFFICER (BPS-17) AND AGAINST NO ACTION TAKEN ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYER:

That on acceptance of this appeal the impugned order dated 4.5.2020 may very kindly be modified/rectified to the extent of para-2 i.e. by placing the seniority of the appellant at the bottom of the cadre of Assistant Treasury Officer (BPS-17). That the respondents may kindly be directed to place the appellant at due & proper place of the seniority list i.e. with effect from the date of regularization of services i.e 23-07-2005 as per Rule 17(3) of the APT rules, 1989 and verdict of superior courts. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:
ON FACTS:

Brief facts giving rise to the present appeal are as under:-

1. That the appellant is working as Assistant Treasury Officer (BPS-17) in the Treasuries & Accounts Establishment, Finance Department Khyber Pakhtunkhwa Civil Secretariat Peshawar.
2. That the appellant was initially appointed as Agency Finance Officer (BS-17) on contract basis in the Governor's Secretariat FATA (defunct) Administration Wing Peshawar vide order dated 01-12-2004.

Copy of appointment order is attached as annexure ____A.

3. That it is pertinent to mention here the Hon'able Peshawar High Court vide its consolidated judgment dated 17-06-2010 in a case titled "Muhammad Masood Afridi VS ACS FATA & Others" has regularized the appellant along with other colleagues declaring them civil servants.

Copy of judgment is attached as annexure-----B.

4. That the august Supreme Court of Pakistan vide its verdict dated 28-03-2013 has not only upheld the aforementioned judgment of the Peshawar High Court rather clarified that the services of the appellant be regularized with effect from 23-07-2005 in accordance with section 19 (2) of the KPK Civil Servants Act, 2005 in grade-16 with back benefits.

Copy of judgment of august court is attached as annexure-----C.

5. That pertinent to mention here that the respondent department (erstwhile FATA Secretariat) after being aggrieved from the above verdict of the august Court, filed a review petition however, the same fall prey to dismissal vide order dated 15-09-2014.

Copy of dismissal order is attached as annexure-----D.

6. That in the wake of 25th Constitutional Amendment in the Constitution of the Islamic Republic of Pakistan 1973, FATA was merged in the Province of Khyber Pakhtunkhwa vide Notification dated 06-01-2019.

Copy of notification is attached as annexure-----E.

7. That sequence to the merger of erstwhile FATA in the Province of Khyber Pakhtunkhwa, vide office order dated 04-05-2020 issued by Finance Department Government of Khyber Pakhtunkhwa the appellant was adjusted in the KP Treasuries & Accounts Establishment, Finance Department, however placed at the bottom of the seniority list of the cadre.

Copy of office order is attached as annexure-----F

8. That astonishingly on one hand, just on merger of erstwhile FATA with Khyber Pakhtunkhwa, the Planning & Development department on the advice of Law & Establishment Departments has revised/re-notified the regularization of services of Planning Officers of Finance & Planning Cell in the Provincial Planning Services|cadre with effect from 23-07-2005.

Copies of Notification regarding regularization in respect of PPS is attached as annexure----- G

9. That unlike the PPS cadre employees, with utter disregard of the rules the respondent department declined to adjust the appellants at due and proper place on the basis of regularization w.e.f 23-07-2005 instead of placing the appellant at the bottom of seniority list.

Copy of regularization notification ~~is attached~~ is attached as annexure----- H

10. That as per Rule 17(3) of the APT Rules 1989 in the event of merger/restructuring of the departments, attached departments or

4

subordinate offices, the inter-se seniority of civil servant affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

Copy of relevant portion of Rules is attached as annexure-

----- **I.**

11. That the appellant feeling aggrieved preferred Departmental appeal before the respondent No.2 but no reply has been received so far.

Copy of the Departmental appeal is attached as annexure

----- **J.**

12. That appellant feeling highly aggrieved and having no other remedy filed the instant service appeal on the grounds inter-alia as under:-

GROUND

A- That the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

B- That the respondents has contravened the very essence of Rule 17(3) of the APT Rules, 1989 as such the omission of respondents is not tenable in the eyes of law and liable to be rescinded.

C- That action and inaction of the respondents by placing the appellant at the bottom of the seniority list of the cadre and not allowing due and proper place of seniority in own cadre is violative of Law and Rules.

3/

D- That the respondents discriminated the appellant by not giving his right of seniority which has already been given to other similarly placed persons of planning cadre.

E- That the respondents acted in arbitrary and malafide intentions by ignoring the appellant from her right place in seniority.

F- That inaction of the respondents by not placing the appellant at right place of seniority w.e.f 23-07-2005 is against the norms natural justice and fair play.

G- That the impugned order dated 4.5.2020 is violative of section-8 of the civil servant Act, 1973 read with rule 17 of the APT rules, 1989.

H- That the respondents violated Article 38(e) of the Constitution of Pakistan, 1973 by not giving rights of the appellant.

I- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 11.01.2022

APPELLANT

SADIA ASGHAR

THROUGH:

**NOOR MOHAMMAD KHATTAK
ADVOCATE SUPREME COURT
&**

KHANZAD GUL ADVOCATE

6

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2022

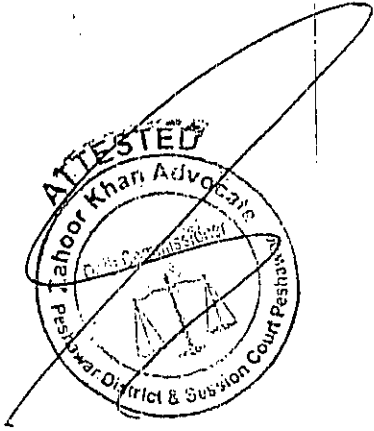
SADIA ASGHAR

VS

ESTTB: DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

CERTIFICATION

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR**

APPEAL NO. _____/2022

SADIA ASGHAR

VS

ESTTB: DEPTT:

**APPLICATION FOR CONDONATION OF
DELAY IN FILING THE ABOVE NOTED
APPEAL**

R.SHEWETH:

- 1- That the appellant has filed an appeal along with this application in which no date has been fixed so far.
- 2- That the appellant prays for the condonation of delay in filing the above noted appeal inter alia on the following grounds:

GROUND OF APPLICATION:

- A- That valuable rights of the appellant are involved in the case hence the appeal deserve to decide on merit.
- B- That it has been the consistent view of the Superior Courts that cases should be decided on merit rather on technicalities including the limitation. The same is reported in 2004 PLC (CS) 1014 and 2003 PLC (CS) 76.

It is therefore prayed that on acceptance of this application the delay in filing the above noted appeal may please be condoned.

Dated:

APPELLANT

SADIA ASGHAR

THROUGH:

**NOOR MOHAMMAD KHATTAK
ADVOCATE**

GOVERNOR'S SECRETARIAT (FATA)
ADMIN WING PESHAWAR

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On the recommendations of Selection/Promotion Committee, the competent authority has been pleased to appoint the following candidates as Agency Finance Officer in (GS-17) with admissible allowances on contract basis as prescribed in the following term & conditions:-

S. NO	NAME	FATHER'S NAME	PERMANENT ADDRESS
1	Shah Nawaz Khan	Shah Jehan Khan	Village Landkai Goli Bagh P.O Hoti. Tehsil & Distt Mardan
2	Majeed Ullah	Shah Nawaz Khan	R/O Shega Wazirpagai P.O & Tehsil Ladha SW Agency
3	Sadia Asghar	Muhammad Asghar	Mohalla Qureshian Akora Khattak Distt & Tehsil Nowschra
4	Mahid-ur-Rehman	Wazir Khan	Village Meri Khel Zarghun Khel Dara Adam Khel FR Kohat
5	M. Masood Afridi	Gul Bahadar	FR Kohat

TERM AND CONDITIONS OF EMPLOYMENT ON CONTRACT BASIS.

1. BS-17 Pay (6210-465-15510)
2. Period of contract will be One year. The contract will automatically be terminated on expiry of the stipulated period however it can be extended only through a fresh order in writing by the competent authority prior to the expiry of contract period.
3. Annual Increment will be admissible after completion of one year of service
4. Conveyance allowance as per Government rules.
5. House Rent allowance (As per Government Rules)
6. Leave, TA/DA and medical allowance (as per Government Rules)
7. Notice period for termination of contract:- Two months notice or two months salary in lieu thereof.
8. Benevolent Fund:- Same facilities as admissible to government Servants.
9. Contributory Provident Fund:- 5% of minimum of pay by the employees and 5% of contribution by the Government.
10. The employees appointed on contract will not contribute to G.P. Fund and shall not be entitled to Pension and Gratuity benefits
11. Subsequent to appointment, the employee will remain on probation for a period of 6 months and if he does not come up to the required standard and skill or fails to fulfil the requirement of the post, he will be straightaway terminated from service.

If you agree to the above terms & condition, you should report for duty and sign the agreement as well as produce medical fitness certificate from the authorized Medical Officer within 10 days of the issuance of this order. In case of non joining the duty by any appointee within the stipulated period, his appointment order will stand cancelled, automatically.

Sd/-
Deputy Secretary (Admin)

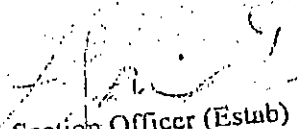
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3358-71
01/12/2004

1. Deputy Secretary (Finance)
2. Additional Accountant General (PR) Sub Office Peshawar
3. Chief Engineer (FATA) Works & Services Department.
4. All Political Agents
5. All DCOs (FRs)
6. Director Irrigation & Hydle Power
7. All Executive Officers (Finance & Planning)
8. Section Officer (Budget & Accounts)
9. Section Officer (Audit)
10. All Executive Engineer Irr & Hydle Power Divns in all Agencies.
11. All Agency Accounts Officers.
12. PS to Secretary to Governor
13. Bill Clerk (Admn Wing)
13. Officers concerned


Section Officer (Estab)

ATTESTED

Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

W.P. No. 917 of 2007

JUDGMENT

Date of hearing 17-06-2010

Applicant/Petitioner (s) M. Muhammad Masood (Yarhi) by Ejaz Afzal Advocate

Respondent (s) Addl. Chief Secretary by Sardar Ali Raza AAG, Muzamil Khan OAG, Jehanzeb Muhammad Zai

EJAZ AFZAL KHAN, C. J. By this single E. Shumail
judgment, we propose to decide Writ Petitions Advocate

Nos. 917, 970, 971, 972, 1002, 1003, 1004, 1005, 1006,

112, 1013, 1072, 1335 of 2007 and 2899 of 2009,

wherein the petitioners have asked for the issuance

of an appropriate writ directing the respondents to

regularize them in accordance with the requirements

of NWFP Civil Servants (Amendment) Act, 2005

(IX of 2005) adding subsection (2) to section 19 of

the Civil Servants Act, 1973.

2. Learned counsel appearing on behalf

of the petitioners contended that where the

petitioners were appointed on contract against the

sanctioned posts and were selected in a prescribed

manner, their case clearly and squarely fell within

the purview of section 19(2) of the Act, therefore,

they are to be regularized at par with those who are

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BY
Peshawar High Court

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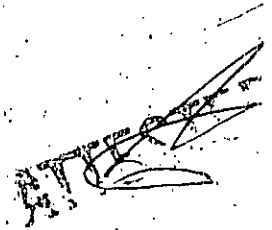
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similarly placed and positioned. The learned counsel to support their contentions also placed reliance on the cases of Dr. Rizwanullah and 42 others-Vs-Government of NWFP through Chief Secretary, NWFP, Peshawar and 4 others (2009 PLC (C.S) 389, Miss S. Iqbal Syed-Vs- Govt. of NWFP through Secretary Zakat, Ushr, Welfare and Women Development Department Peshawar in Writ Petition No 1731/2006 decided on 4.7.2007 and Inayatul Haq etc.-Vs-E.D.O. etc. in Writ Petition 1662/2007 decided on 14.1.2010.

3. As against that, the learned counsel appearing on behalf of the respondents contended that where the law requires that the posts of grade-16 and above are to be filled through Public Service Commission even on contract, the appointments of the petitioners made otherwise cannot be said to have been made in a prescribed manner. The learned DAG by referring to the relevant portion of the order of appointing the petitioners contended that where the petitioners themselves accepted the terms and conditions of their appointments and agreed to be employees on contract, they could not

@w.



turn round after a couple of years to say that they be regularized.

7. We have gone through the record carefully and considered the submissions of the learned counsel for the parties.

8. Before we proceed to discuss the case, it is worthwhile to refer to the relevant provision of law which runs as under:-

"19(1).....

(2) A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointment on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on a regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund along with the contributions

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made by Government to his account in the said fund, in the prescribed manner."

Provided

9. A look at the above quoted provision would reveal that if a person is appointed in a prescribed manner to a service or post on or after the 1st day of July, 2001 till the commencement of the Act, 2005 on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis and he shall be treated as Civil Servant for all intents and purposes except for the purpose of pension or gratuity. Now the question arises whether the case of the petitioners falls within the purview of the provision quoted above. The answer to the question is in the affirmative because it cannot be disputed on the record that they were appointed on contract basis after the crucial date mentioned above against the sanctioned posts and in a prescribed manner.

[Handwritten mark]

10. Next comes the question whether the petitioners have been appointed in a prescribed manner, the answer to this question cannot be given

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without referring to section 25 of the Civil Servants Act, 1973 which reads as under:-

“25 Appointment of persons on contract, etc.—The Governor or any person authorized by the Governor in that behalf may, on such terms and conditions as he may specify in each case, appoint persons on contract basis, or on work-charged basis, or who are paid out of contingencies: Provided.....”

11. A perusal of section quoted above reveals that the Governor or any other person authorized by him in this behalf can, on such terms and conditions, he may specify in each case, appoint person on contract basis. This is the only provision, which deals with the appointment on contract. The appointment of the petitioner made in conformity with this provision shall be deemed to have been made in a prescribed manner. During the course of arguments, we asked the learned DAG point black whether the contract employees who have been regularized under the Act were also appointed through Public Service Commission and if so, he should cite the case, if any, but he could not cite any. When so, the petitioners are required to be

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EXAMINER
Peshawar High Court

ATTESTED

regularized. Quite apart from this, when many other similarly placed and positioned have been regularized under the judgments of this Court rendered in the cases of Dr. Rizwanullah and 42 others-Vs-Government of NWFP through Chief Secretary, NWFP, Peshawar and 4 others (2009 PLC (C.S) 389), Miss Saigufra Syed-Vs- Govt. of NWFP through Secretary Zakat, Ushr, Welfare and Women Development Department Peshawar in Writ Petition No.173 /2006 and Inayatul Haq etc.-Vs-E.D.O. etc. in Writ Petition 1662/2007 (Supra), it would be rather unjust and unfair to deny the same right to the petitioners. We thus allow these writ petitions and direct the respondents to regularize the petitioners.

Dated: 17.6.2010

Sd/- Ejaz Afzal Khan
C-J

Sd/- Easdar Shaukat Hayat
Judge

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SP
 Peshawar
 23/6/2010
 Authorized Officer
 Peshawar
 23/6/2010

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CPIA - Decisi
28.03.2013 14/13

IV

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Jawwad S. Khawaja
Mr. Justice Khalid Aziz Hussain

ANNEX "C"

15

Civil Petitions Nos.437-P to 450-P of 2010

Against the judgment dated 17.6.2010 of the Peshawar High Court, Peshawar passed in Writ Petitions Nos.917, 920, 971, 972, 1002, 1003, 1004, 1005, 1006, 1012, 1011, 1072, 1535 of 2007 and Writ Petition No.2899 of 2009)

The Additional Chief Secretary FATA and others ... Petitioners in all cases
Versus

- | | |
|---------------------------------|-------------------------------|
| Muhammad Masud Afrid and others | (Respondent in CP-437-P/2010) |
| Mohib ur Rehman | (Respondent in CP-438-P/2010) |
| Muhammad Hamid | (Respondent in CP-439-P/2010) |
| Usrar Ahmed | (Respondent in CP-440-P/2010) |
| Muharram Rehman | (Respondent in CP-441-P/2010) |
| Saida Asghar | (Respondent in CP-442-P/2010) |
| Faiz Ullah | (Respondent in CP-443-P/2010) |
| Majeed Ullah | (Respondent in CP-444-P/2010) |
| Qaiser Muneer | (Respondent in CP-445-P/2010) |
| Hadi Hussain | (Respondent in CP-446-P/2010) |
| Faqir Muhammad | (Respondent in CP-447-P/2010) |
| Miftah Ullah | (Respondent in CP-448-P/2010) |
| Anwar Ali | (Respondent in CP-449-P/2010) |

For the Petitioner(s): Mr. Abdel Latif Yousofzai, Sr. ASC
 For Respondent No.1: Mr. Ijaz Anwar, ASC
 For Respondents Nos.2-4: N.R.
 Date of Hearing: 28.03.2013

ORDER

Jawwad S. Khawaja, J.: The petitioner namely the Additional Chief Secretary FATA impugns the judgment of the High Court dated 17.6.2010. We have heard learned counsel for both sides and have also gone through the record and the law including the North-West Frontier Province Civil Servants (Amendment) Act, 2009. The relevant part of the said statute is contained in Section 19(2) thereof. For ease of reference, the same is reproduced as under:-

"(2) A person though elected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointed on contract basis, shall, with effect from the commencement of the said act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servants, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards

ATTESTED

Sup. Intendant
 Supreme Court of Pakistan
 Islamabad

ATTESTED

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

ANNEX

C



Civil Petitions Nos.437-P to 450-P of 2010

Against the judgment dated 17.6.2010 of the Peshawar High Court, Peshawar passed in Writ Petitions Nos.917, 920, 971, 972, 1002, 1003, 1004, 1005, 1006, 1017, 1018, 1072, 1335 of 2007 and Writ Petition No.2899 of 2009)

15

The Additional Chief Secretary FATA and others ... Petitioners in all cases
Versus

Muhammad Masud Afrid and others	(Respondent in CP-437-P/2010)
Mohib ur Rehman	(Respondent in CP-438-P/2010)
Muhammad Hanid	(Respondent in CP-439-P/2010)
Israr Ahmed	(Respondent in CP-440-P/2010)
Muhammad Rehman	(Respondent in CP-441-P/2010)
Saida Asghar	(Respondent in CP-442-P/2010)
Farid Ullah	(Respondent in CP-443-P/2010)
Najeeb Ullah	(Respondent in CP-444-P/2010)
Qaiser Muneer	(Respondent in CP-445-P/2010)
Hadi Hussain	(Respondent in CP-446-P/2010)
Faqir Muhammad	(Respondent in CP-447-P/2010)
Miftah Ullah	(Respondent in CP-448-P/2010)
Anwar Ali	(Respondent in CP-449-P/2010)

For the Petitioner(s): Mr. Abdul Latif Yousafzai, Sr. ASC

For Respondent No.1: Mr. Ijaz Anwar, ASC

For Respondents Nos.2-4: N.R.

Date of Hearing: 28.03.2013

ORDER

Jawwad S. Khawaja, J.- The petitioner namely the Additional Chief Secretary FATA impugns the judgment of the High Court dated 17.6.2010. We have heard learned counsel for both sides and have also gone through the record and the law including the North-West Frontier Province Civil Servants (Amendment) Act, 2005. The relevant part of the said statute is contained in Section 19(2) thereof. For ease of reference, the same is reproduced as under:-

"(2) A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointed on contract basis, shall, with effect from the commencement of the said act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards

ATTESTED

Sub-Attendant:

the Contingent Provident Fund, along with the contribution made by Government to his account in the said Fund, in the prescribed manner".

16

The petitioner is aggrieved to the extent that the High Court has, while deciding the matter, left some ambiguity in its judgment and it is on account of this that the respondents are claiming regularization in a grade, above the grade in which they were employed on contract. Having gone through the above cited legal provisions and the impugned judgment, we are clear that the High Court only allowed the Writ Petition filed by the respondents directing the petitioner to regularize their services in accordance with the above mentioned statute. In this view of the matter, we are of the opinion and make this clarification that the respondents (who were petitioners before the High Court) shall stand regularized in the same grade in which they had been working on contract basis when their contract periods expired. Learned counsel for the respondents does not object to this finding.

2. He does, however, contend that the respondents were entitled to regularization in accordance with Section 19(2) above w.e.f. the date ^{of Jk.} ~~23.7.2005~~ commencement of the said statute. The law itself was enacted on 23.7.2005. As such the respondents are declared to be entitled to regularization w.e.f. 23.7.2005. They are also entitled to back benefits for the period they were not paid their emoluments, ending on 27.6.2011 when they were reinstated in service. This is the purport of the law which expressly stipulates that contract employees falling within the ambit of Section 19(2) of the Amended Act shall be deemed to have been appointed on regular basis w.e.f. the commencement of the said Act i.e. 23.7.2005. Since the law itself had, through a legal fiction, made the respondents regular employees w.e.f. 23.7.2005 it follows that the respondents were also entitled to emoluments w.e.f. the said date.

3. Learned counsel for the petitioners states that the respondents have already received benefits for the said period. He, therefore, requests that in this order it may be clarified that respondents will not be entitled to receive emoluments in respect of

[Handwritten signature]
Subject: *[illegible]*

~~ATTESTED~~

16

17

the Contributory Provident Fund, along with the contribution made by Government to his account in the said Fund, in the prescribed manner".

The petitioner is aggrieved to the extent that the High Court has, while deciding the matter, left some ambiguity in its judgment and it is on account of this that the respondents are claiming regularization in a grade, above the grade in which they were employed on contract. Having gone through the above cited legal provision and the impugned judgment, we are clear that the High Court only allowed the Writ Petition filed by the respondents directing the petitioner to regularize their services in accordance with the above mentioned statute. In this view of the matter, we are of the opinion and make this clarification that the respondents (who were petitioners before the High Court) shall stand regularized in the same grade in which they had been working on contract basis when their contract periods expired. Learned counsel for the respondents does not object to this finding.

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Signature
Secretary
Department of Public Relations

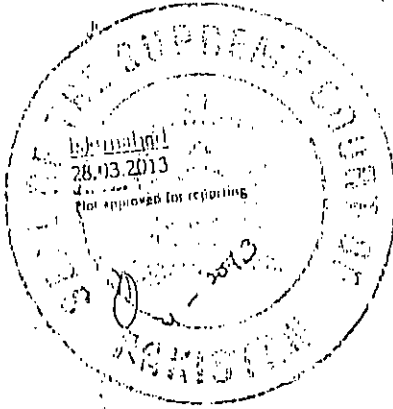
CPs 435-P to 450-P of 2010.doc

the period for which they had already received the same. This is a reasonable request. A clarification is, therefore, made accordingly.

4. The petitions are disposed of accordingly to the above terms.

Sd/- Jawwad S. Khawaja, J
Sd/- Khilji Arif Hussain, J
Cardinal

[Handwritten signature]
28/03/13
Sd/- Jawwad S. Khawaja, J
Sd/- Khilji Arif Hussain, J
Cardinal



(0107 / 2010)
CPs 435-P to 450-P of 2010

~~ATTESTED~~

17

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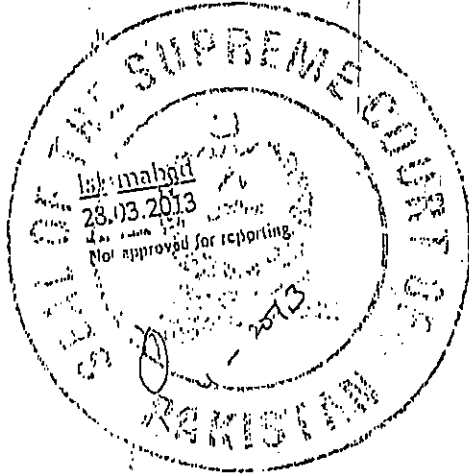
CPs 45-P to 450-P of 2010.doc

the period for which they had already received the same. This is a reasonable request. A clarification is, therefore, made accordingly.

4. The petitions are disposed of accordingly in the above terms.

Sd/- Jawwad S. Khawaja, J
Sd/- Khilji Arif Hussain, J
Certified to be True Copy

[Signature]
24/17
Superintendent
Supreme Court of Pakistan
ISLAMABAD



CPs 45-P to 450-P of 2010

IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja
Mr. Justice Mushir Alam
Mr. Justice Dost Muhammad Khan

CRPs Nos. 133, 134, 137, 139, 141, 143, 145, 147, 149, 151, 153, 155, 157 & 159 of 2014
(For permission to file CRPs against the judgment of this Court dated 28.3.2014 passed in CP-247-C/2010 etc.)

IN

CRP Nos. 437-P to 490-P of 2010

The Additional Secretary FATA and others ... Petitioner(s)
VERSUS
Muhammad Masood Afridi and others ... Respondent(s)

For the applicant(s): Mr. M. Ajmal Khan, ASC/AOR

For the respondent(s): Mr. Ejaz Anwar, ASC
Mr. M. S. Khattak, AOR

For Govt. of KPK: Ms. Ambreen Abbasi, Addl. AG

Date of Hearing: 15.09.2014

ORDER

Jawwad S. Khawaja, J. We have heard learned counsel for the applicants. These applications are barred by 249 days and no valid reason has been given to justify condonation of delay. In fact it has been stated in para 2 of the application that it is on account of internal meetings and procedures of the government that the filing of these applications was delayed. This can hardly be a ground for condoning delay. Additionally, Mr. Abdul Latif Yousafzai, learned Advocate General while appearing on behalf of the petitioner government has given a certificate to the effect that these are not cases fit for review. It was Mr. Yousafzai who had appeared in the petitions when the same were dismissed. In view of the foregoing discussion, we find no reason to allow these applications. The same are, therefore, dismissed.

Sd/- Jawwad S. Khawaja, J
Sd/- Mushir Alam, J
Sd/- Dost Muhammad Khan, J



Certified to be True Copy

Supintendent
Supreme Court of Pakistan
Islamabad

~~ATTESTED~~

GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated Peshawar January 6, 2019

ANNEX E

19

NOTIFICATION

NO. SO(S-E)/E/AD/0-126/21119. In the wake of the 25th Constitutional Amendment in the Constitution of Pakistan 1973, FATA has been merged in Khyber Pakhtunkhwa. Now erstwhile FATA Secretariat Departments and Directorates are to be shifted and placed under the administrative supervision and control of the Khyber Pakhtunkhwa Government Departments to ensure better coordination and seamless transition.

2. In pursuance of the decision by the Competent Authority in the meeting held on the 31st of December, 2018 that "P&D FATA to cease to exist with all functions shifted to P&D Khyber Pakhtunkhwa" the P&D Department Merged Areas (Erstwhile FATA) is hereby placed under the administrative control of P&D Department Khyber Pakhtunkhwa and Secretary P&D Department Merged Areas (Erstwhile FATA) shall report to the Additional Chief Secretary (P&D) Khyber Pakhtunkhwa.

3. The P&D Department Merged Areas (Erstwhile FATA), comprises of the following:-

- A. Regular units of P&D FATA/Merged Areas
- P&D Cell.
 - M&C Cell
 - Bureau of Statistics
 - Agency Planning Cell
 - Agency Finance Cell.
- B. Projects of P&D FATA/Merged Areas
- M&E Directorate FATA.
 - Urban Policy & Planning Unit FATA.
 - Strengthening of P&D
 - Directorate of Projects.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

ENCL. NO. & DATE EVEN.

Copy forwarded to this:-

- Additional Chief Secretary, P&D Department.
- Additional Chief Secretary Merged Areas, Warsak Road, Peshawar
- Senior Member Board of Revenue, Khyber Pakhtunkhwa
- Principal Secretary to Governor, Khyber Pakhtunkhwa
- Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
- All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
- COS 11 Corps Headquarters, 11 Corps Peshawar.
- All Divisional Commissioners in Khyber Pakhtunkhwa
- Accountant General, Khyber Pakhtunkhwa
- Accountant General (PR) Sub Office, Peshawar
- All Deputy Commissioners in Khyber Pakhtunkhwa.
- Director General Information, Khyber Pakhtunkhwa
- PS to Chief Secretary, Khyber Pakhtunkhwa
- PS to Secretary Establishment/PS to Secretary Administration Departments
- PS to Special Secretary (E)/D.S.(Admn)/D.S.(Esit.)/SO(Secret)/SO(HRD-1)/SO(E-II)/OD(IT) and ACSO Cypher E&AD.
- Manager, Govt. Printing Press Peshawar

(ISHTIAQ AHMAD)
SECTION OFFICER (E-1)

11/1/19

~~ATTESTED~~



GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Dated, Peshawar January 8, 2019

NOTIFICATION



NO. SO(E-I)/E&AD/9-126/2019. In the wake of the 25th Constitutional Amendment in the Constitution of Pakistan 1973, FATA has been merged in Khyber Pakhtunkhwa. Now erstwhile FATA Secretariat Departments and Directorates are to be shifted and placed under the administrative supervision and control of the Khyber Pakhtunkhwa Government Departments to ensure better coordination and seamless transition.

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A. Regular units of P&D FATA/Merged Areas

- a. P&D Cell.
- b. M&C Cell
- c. Bureau of Statistics
- d. Agency Planning Cell
- e. Agency Finance Cell.

B. Projects of P&D FATA/Merged Areas

- a. M&E Directorate FATA.
- b. Urban Policy & Planning Unit FATA.
- c. Strengthening of P&D
- d. Directorate of Projects.

CHIEF SECRETARY
GOVERNMENT OF KHYBER PAKHTUNKHWA

ENDST. NO. & DATE EVEN.

Copy forwarded to the:-

1. Additional Chief Secretary, P&D Department.
2. Additional Chief Secretary Merged Areas, Warsak Road, Peshawar
3. Senior Member Board of Revenue, Khyber Pakhtunkhwa
4. Principal Secretary to Governor, Khyber Pakhtunkhwa
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa
6. All Administrative Secretaries to Government of Khyber Pakhtunkhwa.
7. COS 11 Corps Headquarters, 11 Corps Peshawar.
8. All Divisional Commissioners in Khyber Pakhtunkhwa
9. Accountant General, Khyber Pakhtunkhwa
10. Accountant General (PR) Sub Office, Peshawar
11. All Deputy Commissioners in Khyber Pakhtunkhwa.
12. Director General Information Khyber Pakhtunkhwa
13. PS to Chief Secretary, Khyber Pakhtunkhwa
14. PS to Secretary Establishment/PS to Secretary Administration Departments
15. PS to Special Secretary (E)/ D.S. (Admn) D.S. (Estl.)/ SO(Secret)/SO(HRD-I)/SO(E-II)/DD(IT) and ACSO Cypher E&AD.
16. Manager, Govt. Printing Press Peshawar

o/c

(ISHTIAQ AHMAD) *ue*
SECTION OFFICER (E-I)



ANNEX F
GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

20 VII

Dated Pesh: the 04-05-2020.

Finance Department Civil Secretariat Peshawar

<http://www.financeknp.gkp.pk>

[facebook.com/GoKPFD](https://www.facebook.com/GoKPFD)

twitter.com/GoKPFD

OFFICE ORDER

NO. SO(ESTT)FD/2-12/2020/T&A/ The competent authority has been pleased to order adjustment of the following officers of erstwhile FATA in the Khyber Pakhtunkhwa Treasuries & Accounts Establishment, on the posts noted against each:-

S#	Name & Designation	Nomenclature of post
1.	Mr. Muhammad Masood Afridi, Agency Finance Officer (BS-17)	Assistant Treasury Officer, (BS-17)
2.	Mr. Mohib-ur-Rehman, Agency Finance Officer (BS-17)	Assistant Treasury Officer, (BS-17)
3.	Mr. Najeebullah, Agency Finance Officer (BS-17)	Assistant Treasury Officer, (BS-17)
4.	M/s Sadia Asghar, Agency Finance Officer (BS-17)	Assistant Treasury Officer, (BS-17)
5.	Mr. Hadi Hussain, Assistant Agency Finance Officer (BS-16)	Sub-Accountant, (BS-16)
6.	Mr. Qaiser Munir, Assistant Agency Finance Officer (BS-16)	Sub-Accountant, (BS-16)
7.	Mr. Anwar Ali, Assistant Agency Finance Officer (BS-16)	Sub-Accountant, (BS-16)

2. Consequent upon their adjustment, the above employees will be placed at the bottom of the seniority list of the cadre.

SECRETARY FINANCE

NO.SO (ESTT)FD/2-12/2020/T&A/

Dated: 04-05-2020.

Copy forwarded to:

1. The Accountant General, Khyber Pakhtunkhwa.
2. The Secretary, Planning & Development Department.
3. The Secretary, Establishment Department.
4. The Director Treasuries and Accounts Khyber Pakhtunkhwa.
5. PS to Secretary, Finance Department.
6. PS to Special Secretary, Finance Department.
7. PA to Additional Secretary (Admn:), Finance Department.
8. PA to Provincial Coordinator (PIAC), Finance Department.
9. Officers concerned.
10. Office Order file.

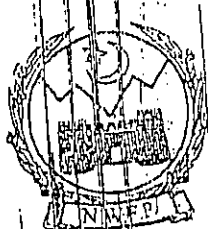
(Dr. Yaqoob Ahmad) 04-05-2020
Section Officer (Estt:I)

F.No.Order 2020 (P-22)

munir.khan@finance.gkp.pk

(091) 9211532

ATTESTED



North-West Frontier Province

Published by Authority

PESHAWAR, SATURDAY, 23RD JULY, 2005.

PROVINCIAL ASSEMBLY SECRETARIAT
THE NORTHWEST FRONTIER PROVINCE

NOTIFICATION

Dated 23rd July, 2005.

No. PA/NWFP/Legis-Y/2005/2040. The North-West Frontier Province Civil Servants (Amendment) Bill, 2005 having been passed by the Provincial Assembly of North-West Frontier Province on the 5th July, 2005 and assented to by the Governor of the North-West Frontier Province on 12th July, 2005 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

THE NORTH-WEST FRONTIER PROVINCE
CIVIL SERVANTS (AMENDMENT) ACT, 2005.

(N.-W.F.P. ACT NO. IX OF 2005)

[First published after having received the assent of the Governor of the North-West Frontier Province in the Gazette of the N.-W.F.P. (Extraordinary), dated the 23rd July, 2005]

AN
ACT

further to amend the North-West Frontier Province
Civil Servants Act, 1973.

Preamble.—WHEREAS it is expedient further to amend the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973), for the purpose herein after appearing;

It is hereby enacted as follows:

1. Short title and commencement.—(1) This Act may be called the North-West Frontier Province Civil Servants (Amendment) Act, 2005.

(2) It shall come into force at once.

~~TESTED~~

21

ANNEX "G"

The NWFP Civil Servants (Amendment) Act, 2005

NOTIFICATION
Dated 23rd July, 2005.

No. PA/NWFP/Legis-I/2005/20440.-The North-West Frontier Province Civil Servants (Amendment) Bill, 2005 having been passed by the Provincial Assembly of North-West Frontier Province on the 5th July, 2005 and assented to by the Governor of the North-West Frontier Province on 12th July, 2005 is hereby published as an Act of the Provincial Legislature of the North-West Frontier Province.

THE NORTH-WEST FRONTIER PROVINCE CIVIL SERVANTS (AMENDMENT) ACT, 2005.
(N.-W.F.P. ACT NO. IX OF 2005)

[First published after having received the assent of the Governor of the North-West Frontier Province in the Gazette of the N.-W.F.P. (Extraordinary), dated the 23rd July, 2005]

ANACT

further to amend the North-West Frontier Province Civil Servants Act, 1973.

Preamble.--- WHEREAS it is expedient further to amend the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973), for the purpose hereinafter appearing;

It is hereby enacted as follows:

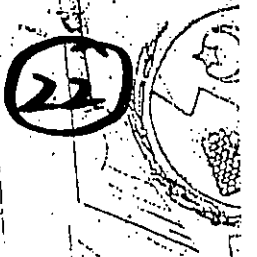
1. Short title and commencement.—(1) This Act may be called the North-West Frontier Province Civil Servants (Amendment) Act, 2005.

(2) It shall come into force at once.

2. Amendment of section 19 of N.-W.F.P. Act No. XVIII of 1973.--- In the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973), for section 19, the following shall be substituted, namely:

"19. Pension and gratuity.—(1) On retirement from service, a civil servant appointed on regular basis in the prescribed manner before the commencement of the North-West Frontier Province Civil Servants (Amendment) Act, 2005 (hereinafter referred to as the said Act), shall be entitled to receive such pension or gratuity as are admissible to him under the West Pakistan Civil Service Pension Rules:

Provided that in the event of death of such a civil servant, whether before or after retirement, his family shall be entitled to receive such pension, or gratuity, or both, as admissible under the said rules.



Amendment of section 19 of N.-W.F.P. Act No. XVIII of 1973. In the North-West Frontier Province Civil Servants Act, 1973 (N.-W.F.P. Act No. XVIII of 1973), for section 19, the following shall be substituted, namely:

"19. Pension and gratuity.—(1) On retirement from service, a civil servant appointed on regular basis in the prescribed manner before the commencement of the North-West Frontier Province Civil Servants (Amendment) Act, 2005 (hereinafter referred to as the said Act), shall be entitled to receive such pension or gratuity as are admissible to him under the West Pakistan Civil Service Pension Rules:

Provided that in the event of death of such a civil servant, whether before or after retirement his family shall be entitled to receive such pension or gratuity, or both, as admissible under the said rules.

(2) A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001 to the commencement of the said Act, but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, along with the contributions made by Government to his account in the said Fund, in the prescribed manner.

Provided that in the event of death of such a civil servant, whether before or after retirement, his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.

(3) No pension to a civil servant who is otherwise entitled to it, shall be admissible to him, if he is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such civil servants, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal:

Provided that a civil servant referred to in sub-section (2), in case of such dismissal or removal, may, in addition to his own contributions to the Contributory Provident Fund, be allowed on account of such compassionate allowance, a sum not exceeding two-third of Government contributions in his account.

(4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualified for pension or gratuity and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family."

BY ORDER OF MR. SPEAKER,
PROVINCIAL ASSEMBLY OF
NORTH-WEST FRONTIER PROVINCE

NAZIR AHMAD
Secretary,
Provincial Assembly of N.-W.F.P.

~~ATTESTED~~

(2) A person though selected for appointment in the prescribed manner to a service or post on or after the 1st day of July, 2001, till the commencement of the said Act, but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis. All such persons and the persons appointed on regular basis to a service or post in the prescribed manner after the commencement of the said Act shall, for all intents and purposes be civil servant, except for the purpose of pension or gratuity. Such a civil servant shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by him towards the Contributory Provident Fund, along with the contributions made by Government to his account in the said Fund, in the prescribed manner:

Provided that in the event of death of such a civil servant, whether before or after retirement, his family shall be entitled to receive the said amount, if it has already not been received by such deceased civil servant.

(3) No pension to a civil servant, who is otherwise entitled to it, shall be admissible to him, if he is dismissed or removed from service for reasons of discipline, but Government may sanction compassionate allowance to such civil servants, not exceeding two-third of the pension or gratuity which would have been admissible to him had he been invalided from service on the date of such dismissal or removal:

Provided that a civil servant referred to in sub-section (2), in case of such dismissal or removal, may, in addition to his own contributions to the Contributory Provident Fund, be allowed, on account of such compassionate allowance, a sum not exceeding two-third of Government contributions in his account.

(4) If the determination of the amount of pension or gratuity admissible to a civil servant is delayed beyond one month of the date of his retirement or death, he or his family, as the case may be, shall be paid provisionally such anticipatory pension or gratuity as may be determined by the prescribed authority, according to the length of service of the civil servant which qualified for pension or gratuity and any over payment on such provisional payment shall be adjusted against the amount of pension or gratuity finally determined as payable to such civil servant or his family."

BY ORDER OF MR. SPEKER,
PROVINCIAL ASSEMBLY OF
NORTH-WEST FRONTIER PROVINCE
NAZIR AHMAD
Secretary,
Provincial Assembly of N-W.F.P.



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT

VI

Dated Peshawar, May 26, 2021.

ANNEX 'H'

23

NOTIFICATION:

No. SO(E)P&D/PF/067/996/2020: In continuation of Administration and Coordination Department erstwhile FATA Secretariat Orders No. FS/E/100-19(Officers)Vol-4/14605-17, dated 27.09.2011, and No. FS/E/100-19(Officers)Vol-3/7688-98, dated 27.06.2011 & No. FS/E/100-19(Officers)Vol-3/6439-49, dated 05.04.2012 and in pursuance of advice of Establishment Department vide letter No. SOR.III(E&AD)5-15/2014 dated 11.02.2021 as well as Law Department advice vide letter No. SO(OP-II)/LD/5-2/2012-Vol-IV/4595-97, dated 19.04.2021, the competent authority is pleased to revise/renotify the regularization of services of the following PPS Officers with effect from 23.07.2005

- i. Mr. Sher Afzal (PPS BS-18), Senior Planning Officer, Social Welfare Department.
- ii. Mr. Ahmed Nawaz (PPS BS-18), Assistant Chief (Agri), P&D Department.
- iii. Mr. Faridullah, Planning Officer, Peshawar.
- iv. Muhammad Hamid, Planning Officer, Social Welfare Department.
- v. Muhammad Rehman, Planning Officer, Hangu.
- vi. Mr. Miftahullah, Planning Officer, Tribal District, Bajaur.
- vii. Mr. Faqir Muhammad, Planning Officer, Tribal District Mohmand.
- viii. Mr. Israr Ahmad Khan, Planning Officer, Tank.

SECRETARY
PLANNING & DEVELOPMENT
DEPARTMENT

Endst. of even No. & Date.

Copy forwarded to the:

1. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department.
2. Secretary to Govt of Khyber Pakhtunkhwa, Law, Parliamentary Affairs & Human Rights Department.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. All Districts Accounts Officer concerned.
5. PS to Additional Chief Secretary, P&D Department.
6. PS to Secretary, P&D Department.
7. PS to Special Secretary, P&D Department.
8. PAs to Additional Secretary-II/Chief Economist, P&D Department.
9. Officers concerned.

(SONA KHAN)
Section Officer (Estt)

ATTESTED

PART-VI

SENIORITY

17. **Seniority :-** (1) the seniority inter se of civil servants ⁴⁷(appointed to a service, cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment; in accordance with the order of merit assigned by the Commission ⁴⁸[or as the case may be, the Departmental Selection Committee;] provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

Explanation-I:- If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

Explanation-II:- If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently; provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incomplete record or for any other reason not attributing to his fault or demerit.

Explanation-III:- A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same; the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

⁴⁹(3) In the event of merger/restructuring of the Departments, Attached Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

⁵⁰(4) The inter-se-seniority of civil servants in a certain cadre to which promotion is made from different lower posts, carrying the same pay scale shall be determined from the date of regular appointment/promotion of the civil servants in the lower post.

Provided that if the date of regular appointment of two or more civil servants in the

⁴⁷ Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80, dated 17-05-1989.

⁴⁸ The words inserted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 04-02-1996.

⁴⁹ Sub-rule (3) of Rule 17 added vide Notification No. SOR-I(E&AD)4-1/80/IV, dated 28-5-2002.

⁵⁰ Sub-rule (4) of Rule 17 added vide Notification No. SOR-VI (E&AD) 1-3/2008 dated 19-11-2009.

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lower post is the same, the civil servant older in age, shall be treated senior.

18. **General Rules:** - In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by Government and made applicable to them.

19. **Repeal:-** The ⁵¹[Khyber Pakhtunkhwa] Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

(Authority; No. SORI(S&GAD)4-1/80, dated 13th May, 1989)

⁵¹ Sub.by the Khyber Pakhtunkhwa Act No. IV of 2011.

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certain cadres have been transformed into occupational groups but the composition of the cadres comprising these groups has remained intact. Examples are; the *Income Tax Group, the **Customs and Excise Group, the Military Lands and Cantonments Group etc. However, in the case of certain other groups for example the Accounts Group*** and the Secretariat Group - a number of cadres have been amalgamated to form a new group or cadre. In the case of groups where the cadre has not been amalgamated with any other cadre, the seniority in different grades as determined under the previous rules before the promulgation of the Civil Servants Ordinance, 1973 (15-8-1973) shall not be disturbed. However, seniority of persons promoted to higher grades after 15-8-1973 shall be determined strictly in accordance with the provisions of sub-section (4) of section-8 of the Civil Servants Act, 1973.

3. In regard to occupational groups which have been formed by amalgamating more than one cadre, no such protection of seniority is either permissible or practicable. The old cadres having ceased to exist, the seniorities in the newly formed groups have to be determined afresh and shall be fixed in accordance with the date of regular appointment to posts in the respective grades.

4. The instructions issued in the Establishment Division Office Memorandum No. 1/9/74-ARC, dated 12-9-1974 and the relevant provisions regarding seniority contained in the instructions about constitution of various occupational groups may be deemed to have been modified to the above extent.

[Authority:- Estt. Division's O.M.No. 1/36/75-D.II, dated 1-9-1975].

19.2 Civil Servants (Seniority) Rules, 1993

In exercise of the powers conferred by section 25 of the Civil Servants Act, 1973 (LXXI of 1973), read with section 8 thereof, the President is pleased to make the following rules, namely:-

1. **Short title, application and commencement.**-(1) These rules may be called the Civil Servants (Seniority) Rules, 1993.

(2) They shall apply to all civil servants except those governed under:-

- (i) the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985;
- (ii) the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990; and

* Now renamed as "Inland Revenue Service" vide Estt.Div.'s O.M.5/2/2009-CP-II dated 12-09-2009.

** Renamed as "Pakistan Customs Service" vide ibid.

*** Renamed as Pakistan Audit & Accounts Service w.e.f. 10th December, 2002 vide Estt. Div.'s OM No.1/17/92-CP11, dated 10th December, 2002.

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- (iii) the Establishment Division's O.M. No.1/2/74-ARC, dated 23rd January, 1974, amended vide O.M. No.2/1/75-ARC, dated 3rd March, 1976, and as amended from time to time.

(3) They shall come into force at once.

2. **Seniority on initial appointment.**—(1) Persons initially appointed on the recommendations of the selection authority through an earlier open advertisement shall rank senior to those appointed through a subsequent open advertisement.

(2) If two or more persons are recommended in open advertisement by the selection authority, their *inter-se-seniority* shall be determined in order of merit assigned by the selection authority.

(3) If only one candidate is recommended in open advertisement by the selection authority, he shall count his seniority from:—

- (a) the date of recommendation by the selection authority, if he was already holding the same post on ad-hoc basis.
- (b) the date of his joining the post after being recommended by the selection authority if he was not already holding the same post.

3. **Seniority on promotion.**—Seniority in a service, cadre or post to which a civil servant is promoted shall take effect from the date of regular promotion to that service, cadre or posts:—

Provided that—

- (a) Civil servants selected for promotion to higher posts on an earlier date shall be senior to those selected for such promotion on a later date;
- (b) Civil servants selected for promotion to higher posts in one batch shall on their promotion to the higher post, retain their *inter-se-seniority* as in the lower post; and
- (c) Civil servants eligible for promotion who could not be considered for promotion in the original reference in circumstances beyond their control or whose case was deferred while their juniors were promoted to the higher post, shall, on promotion, without supersession, take their seniority with the original batch.

4. **Seniority on appointment by transfer.**—Seniority in service, cadre or post to which a civil servant is appointed by transfer shall take effect from the date of regular appointment to the service, cadre or post;

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Provided that—

- (a) persons belonging to the same service, cadre or post selected for appointment by transfer to a service, cadre or post in one batch shall, on their appointment, take *inter-se-seniority* in the order of their date of regular appointment in their previous service, cadre or post; and
- (b) persons belonging to different services, cadre or posts selected for appointment by transfer in one batch shall take their *inter-se-seniority* in the order of the date of their regular appointment to the post which they were holding before such appointment and, where such date is the same, the person older in age shall rank senior.

*[4A. In the event of merger of Ministries, Divisions, Attached Departments or Sub-ordinate Offices, the *inter-se-seniority* of civil servants; other than those belonging to regularly constituted Occupational Groups and Services, shall be determined in accordance with the date of regular appointment to a cadre or post].

5. **Seniority of officers of the Armed Forces on induction in civil posts.**—Officers of the Armed Forces of Pakistan who are inducted in a civil service, cadre or post in accordance with the Government orders and instructions shall take seniority in that service, cadre or post from the date of such induction:

Provided that the officers inducted in one batch shall, on induction, retain their inter se seniority as in the Armed Forces of Pakistan.

6. **“Inter-se-seniority of civil servants appointed in the same calendar year.**—Civil servants appointed by promotion, transfer; or initial appointment to a service, cadre, or post shall take seniority from the date of their regular appointment to that service, cadre or post:

Provided that the provisions of this rule shall not in any manner affect or impair the right of existing incumbents.

7. **Repeal and savings.**—The General Principles of seniority circulated vide Establishment Division's O.M.No.1/16/ 69-D.II, dated the 31st December, 1970***, and all other existing rules, orders and instructions relating to seniority except—

- (i) the Police Service of Pakistan (Composition, Cadre and Seniority) Rules, 1985;
- (ii) the Occupational Groups and Services (Probation, Training and Seniority) Rules, 1990; and

* Added vide Estt. Div.'s Notification SRO No. 01(I)/2002, dated 1-1-2002.

** Subs. vide Estt. Div.'s SRO No. 572(I)/2009 dated 16-06-2009.

*** Sl. No. 158, pp 224-229, Eslacode, 1989.

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Dated: 04.08.2021

To,

15072
e
418171

The Secretary Finance,
Government of Khyber Pakhtunkhwa.

Subject; APPEAL FOR DUE SENIORITY IN FINANCE DEPARTMENT
KHYBER PAKHTUNKHWA

Respected Sir,

It is stated that I had been appointed as Agency Finance Officer (BPS-17), vide Governor's Secretariat Office Order No. GS/E/100-19/3358-71 dated 01.12.2004 (Annexure-I), and attained the status of regular civil servant as declared by the Honorable Peshawar High Court, Peshawar in its decision to Writ Petition No. 1003/2007 in view of Amendment introduced in North West Frontier Province Civil Servants Act, 2005 (Annexure-II).

The said judgement was also upheld by the Supreme Court of Pakistan vide its judgement dated 23.07.2013 with the clarification that the service will be considered regularized with effect from 23.07.2005, in BPS-17 with back benefits, in accordance with section 19 (2) of Civil Servants Act, 2005 (Annexure-III). Review petition was also dismissed by Supreme Court of Pakistan vide Order dated 15.09.2014 (Annexure-IV).

After merger of FATA with Khyber Pakhtunkhwa, the Administrative control of all the functions the Departments and Directorates of defunct FATA were handed over to Khyber Pakhtunkhwa Government. As such the function of P&D Department FATA along with Finance and Planning Cells were also shifted under the Administrative control of P&D Department Khyber Pakhtunkhwa (Annexure-V).

Consequently, the services of Executive Officers and Planning Officers of Finance and Planning Cell have been adjusted in Provincial Planning Services (PPS Cadre) where their seniority has been accepted with effect from 23.07.2005 vide P&D Department Notification No SO(E) P&D/ PF/ 087/ 996/ 2020 26.05.2021 (Annexure-VI), however, the Finance Officers and Assistant

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Finance Officers were adjusted in Treasury and Accounts Establishment of Finance Department at the bottom of their seniority as per Finance Department order No. SO(ESTT)FD/2-12/2020/T&A dated 04.05.2020 (Annexure-VII) without seeking consent of the concerned officers.

According to S.No 17(3) of APT Rules 1989 ESTA CODE, SENIORITY envisaged that in the event of merger / restructuring of the Departments, the attached departments or subordinate offices, the inter se seniority of civil servant affected by the merger / restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post. (Annexure-VIII).

Also it has been held by the Supreme Court of Pakistan in a reported judgement Titled Tikka Khan & Others vs Syed Muzaffar Hussain Shah and Others (2018 SCMR 332) that the case is fully covered by S.No 33(6) of ESTA Code Vol-1 edition 2007 in this context the case is more akin to Rule 4A rather Rule 4 of the Rules mentioned above. Non canon of interpretation would scratch or strike of their past service when they on abolition of ministry were compulsory transferred to ministry of religious affairs and inter faith harmony. Their past service has to be respected and recognized for determining their seniority. It would thus be unfair and unjust to treat the respondent junior most in the ministry for none of their fault. The view taken by their service tribunal therefore not amendable to change or modified. (Annexure- IX),

Therefore, it is humbly requested that my seniority in Finance Department Khyber Pakhtunkhwa may kindly be secured and given effect from the date of my regularization in service i.e 23.07.2005 in light of the above-mentioned Rules and Court Orders, please.

Sadia Asghar

Sadia Asghar 4/3/21
Assistant Treasury Officer
Contact No. 0300-5936923

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VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO: _____ OF 2022

Mst Sadia Asghar (APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Establishment Deptt. (RESPONDENT)
(DEFENDANT)

I/We Mst Sadia Asghar
Do hereby appoint and constitute **NOOR MUHAMMAD KHATTAK Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2022

Sadia Asghar
CLIENTS

ACCEPTED

NOOR MUHAMMAD KHATTAK

KAMRAN KHAN

SAID KHAN

HAIDER ALI

&
KHANZAD GUL
ADVOCATES