

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 249/2018

Date of Institution ... 22.02.2018

Date of Decision ... 09.04.2019

Hairs Iqbal S/o Iqbal Javed, R/o Link Dura Road, Shaifabad, Peshawar.
... (Appellant)

VERSUS

The Secretary Communication & Works Department Civil Secretariat, Peshawar and four
others. ... (Respondents)

MR. TAIMUR ALI KHAN,
Advocate --- For appellant.

MR. USMAN GHANI
District Attorney --- For respondents.

MR. AHMAD HASSAN, --- MEMBER(Executive)
MR. MUHAMMAD AMIN KHAN KUNDI --- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for
the parties heard and record perused.

ARGUMENTS

2. Learned counsel for the appellant argued that after observance of codal formalities, he was appointed as Road Inspector (BPS-6) vide order dated 13.05.2013. That he completed the probation period and his performance was up to the mark. Vide impugned order dated 16.10.2017, order of his appointment referred to above was withdrawn without any justification/explanation. He was relieved of his duty on 23.10.2017. Feeling aggrieved, he filed departmental appeal on 02.11.2017, which remained unanswered, hence, the present service

appeal. He further argued that a fact finding enquiry was also conducted into the matter, wherein it was held that order of withdrawal of his appointment was arbitrary, unlawful and illegal. The appellant being a civil servant was not treated according to the prescribed procedure. Respondents were guilty of violating Article 4 and 10-A of the Constitution. Learned counsel for the appellant also provided seniority list of Road Inspector of the C&W Department notified on 02.10.2017 which indicated that Jamshaid Alam and Inamullah whose names were appearing at serial no. 23 and 24 were appointed on 01.10.2014 and 09.10.2014 respectively and were still in service. It amounts to discrimination, as enshrined in Article-25 of the Constitution.

3. On the other hand learned District Attorney argued that post of Road Inspector was declared as dying cadre by the Finance Department vide letter dated 25.07.1998. After conducting fact finding enquiry, the case was referred to the Establishment Department for advice which was still awaited. Thereafter his appointment order was withdrawn. The appellant was treated according to law and rules.

CONCLUSION

4. We have gone through the available record which revealed that appointment of the appellant as Road Inspector (BPS-06) was made in the prescribed manner and after fulfillment of required formalities vide order dated 13.05.2013. He successfully completed the probation period. All of a sudden his appointment order was withdrawn vide order dated 16.10.2017 without any cogent reason/ justification.

5. It would not be out of place to mention here that fact finding enquiry was ordered by the respondents which term^{ed} the withdrawal of the appointment order of the appellant as illegal and unlawful. For the ends of justice, we would like to reproduce some pertinent questions raised by the enquiry officer in his report:-

- i. List of the employees with their names, designation and place of posting working against the dying cadre posts, under your control.
- ii. List of the inquiries already conducted presently pending against the recruitment/ promotion against the dying cadre posts.
- iii. Disciplinary action initiated against officer/ officials of C&WD responsible for illegal appointment/promotion against the dying cadre posts.
- iv. List of the dying cadre employees, who have been terminated/removed from the service.

6. It is also quite strange that a post of Road Inspector had been declared as dying cadre in 1998 so what was the necessity/compulsion on the respondents to make appointment of the appellant against the said post? Entire comments submitted by the respondents were silent on this account, which gave rise to doubts that something has been concealed from this Tribunal. Being a civil servant, he was required to be dealt with according to the procedure laid down in the invogue rules. In the present circumstances, the appellant was condemned unheard in violation of Article 4 and 10-A of the Constitution. Respondents were required to serve show cause notice on the appellant and provide him full opportunity of defense and personal hearing and thereafter they could pass orders as deemed appropriate.

7. As a sequel to above, the appeal is accepted and impugned order dated 16.10.2017 and 23.10.2017 are set aside. The respondents are advice to serve show cause notice on the appellant and provide him full opportunity of defense

and personal hearing and thereafter they could pass orders as deemed appropriate. However, the reinstatement order of the appellant would be subject to the outcome of proceedings to be conducted by the respondents. Parties are left to bear their own costs. File be consigned to the record room.


Muhammad Amin

(MUHAMMAD AMIN KHAN KUNDI)
MEMBER

(AHMAD HASSAN)
MEMBER

ANNOUNCED
09.04.2019

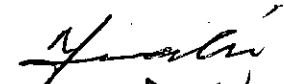
16.08.2018

Clerk to counsel for the appellant present. Mr. Iqbal Shah, XEN alongwith Mr. Kabirullah Khattak, Addl: AG for respondents present. Written reply not submitted. The above named representative sought some time to submit the same. Granted. Case to come up for written reply/comments on 21.09.2018 before S.B.


Chairman


22.9.2018

Due to muharram ul hadram
vacations the case was
not heard on 20.9.2018
Adjourned for 12-11-2018


READER

12.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 28.12.2018. Written reply on behalf of respondents submitted by Mr. Abdur Rasheed Tareen Administrative officer and placed on file.


Reader

28-12-2018

The Bench is incomplete therefore
case is adjourned to 26-2-2019


Reader

26-2-2019

the Bench is incomplete
Therefore case is adjourned
to 9-4-2019

8
Reader

Order

09.04.2019

Appellant with counsel present. Mr. Usman Ghani, District Attorney alongwith Mr. Abdur Rasheed Tareen, Administrative Officer for respondents present. Arguments heard and record perused.

Vide our detailed judgment of today of this Tribunal placed on file, the appeal is accepted and impugned order dated 16.10.2017 and 23.10.2017 are set aside. The respondents are advice to serve show cause notice on the appellant and provide him full opportunity of defense and personal hearing and thereafter they could pass orders as deemed appropriate. However, the reinstatement order of the appellant would be subject to the outcome of proceedings to be conducted by the respondents. Parties are left to bear their own cost. File be consigned to the record room.

Announced:
09.04.2019



(Ahmad Hassan)
Member



(Muhammad Amin Khan Kundi)
Member

12.03.2018

Learned counsel for the appellant present.
Preliminary arguments heard.

The appellant has filed the present service appeal against the order dated 16.10.2017 whereby the appointment order dated 13.05.2013 of the appellant as Road Inspector was set aside and against the order dated 23.10.2017 whereby the appellant was relieved from the post of Sub Engineer (OPS). The departmental appeal of the appellant was not responded.

Points raised need consideration. The appeal is admitted for regular hearing subject to all just/legal objections. The appellant is directed to deposit security and process fee within 10 days, thereafter, notices be issued to respondents for written reply/comments. To come up for written reply/comments on 30.04.2018 before S.B


Member

30.04.2018

Counsel for the appellant and Addl. AG for the respondents present. The Tribunal is non functional due to retirement of the Honorable Chairman. Therefore, the case is adjourned. To come up for the same on ~~27~~ 27.06.2018 before S.B.


Reader

27.06.2018

Junior counsel for the appellant and Addl. AG for respondents present. Security and process fee not deposited. Appellant is directed to deposit security and process fee within seven(7) days, thereafter notices be issued to the respondents for written reply/comments on 16.08.2018 before S.B.



Appellant Deposited
Security & Process Fee


Member

Form-A
FORM OF ORDERSHEET

Court of _____

Case No. 249/2018

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|---|
| 1 | 2 | 3 |
| 1 | 22/02/2018 | <p>The appeal of Mr. Haris Iqbal presented today Mr. Muhammad Asif Yousafzai Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2- | 26/02/18. | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>12/03/18.</u></p> <p style="text-align: right;"> CHAIRMAN</p> |

87/02/18

File of
2018

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 249 /2018

Haris Iqbal

V/S


C&W Deptt: & other


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APPELLANT

THROUGH:


(M.ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,


(S. NOMAN ALI BUKHARI)
ADVOCATE PESHAWAR

Room No. Fr-8, 4th Floor,
Bilour Plaza, Peshawar Cantt:
Contact No. 03339103240

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 249 /2018

Khyber Pakhtukhwa
Service Tribunal

Mr. Haris Iqbal S/o Iqbal Javed,
R/o Link Dura Road, Sharif Abad, Peshawar.

Diary No. 261

Dated 22/2/2018

(Appellant)

VERSUS

1. The Secretary Communication & Works Department Civil Secretariat, Peshawar.
2. The Chief Engineer Communication & Works Department (North), Peshawar.
3. The Chief Engineer Communication & Works Department (Centre), Peshawar.
4. The Superintending Engineer Communication & Works Circle Dir Lower.
5. The XEN, Communication and Works Division, Dir lower.

(Respondents)

Filed to-day

Registrar

22/2/18

APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNALS ACT, 1974 AGAINST THE ORDER DATED 23.10.2017 & 16.10.2017 WHEREBY THE APPELLANT'S APPOINTMENT ORDER WAS SET ASIDE AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT DATED 02.11.2017 WITHIN THE STATUTORY PERIOD OF 90 DAYS.

PRAYER:

THAT ON THE ACCEPTANCE OF THIS APPEAL, THE ORDER DATED 23.10.2017 & 16.10.2017 MAY BE SET ASIDE AND THE APPELLANT MAY BE RE-INSTATED INTO SERVICE WITH ALL BACK AND CONSEQUENTIAL BENEFITS. ANY OTHER REMEDY WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

RESPECTFULLY SHEWETH:

FACTS:

- 1.** That the appellant being qualified Associate Diploma Engineer (Civil) was appointed as Road Inspector (BPS-06), after proper recommendation of the Departmental Selection Committee as evident from the appointment order dated 13.05.2013. It is also worth to mention here that the appellant has completed his probation period successfully as per condition No. 4 of the appointment order. **(Copy of appointment order is attached as Annexure-A).**
- 2.** That the appellant had worked up to the entire satisfaction of his superior officers and there were no complaints against the performance of appellant.
- 3.** That on 16.10.2017, the respondent No. 2 issued a letter to the respondent No. 4 wherein it was written, "*The appointment order of appellant is hereby set-aside as desired by the competent authority.*" The subject of that letter was stated appeal. **(Copy of the letter is attached as Annexure-B).**
- 4.** That in pursuant to the above mentioned letter, the respondent No. 5 relieved the appellant straightaway from the duty vide order dated 23.10.2017. On this order the letter dated 16.10.2017 was mentioned under which the relieving order was passed. **Copy of the order is attached as Annexure-C.**

5. That the appellant filed departmental appeal on 02.11.2017 against the said orders wherein, he clearly stated that he never filed an appeal before as mentioned in the subject of letter dated 16.10.2017 nor he was aware of any appeal of some one. however, the said departmental appeal was not responded within statutory the period of 90 days. **Copy of departmental appeal is attached as Annexure-D.**
6. That now the appellant comes to this august Tribunal, on the following grounds amongst the other.

GROUND:

- A) That the order dated 16.10.2017 & 23.10.2017 and not taking any action on the departmental appeal of appellant within the statutory period of 90 days is against the law, facts, norms of justice and material on record. Therefore not tenable and liable to be set-aside.
- B) That after taking over charge of the post the appellant became Civil Servant, but the respondents have not treated the petitioner under the law meant for Civil Servants.
- C) That the appellant was condemned unheard throughout as neither charge sheet/show cause was issued to him nor any chance of personal hearing was given to him before passing the impugned orders. Thus the impugned orders are liable to be set-aside.
- D) That the impugned order dated 16.10.2017 was passed with the wordings "*as desired*" but such desire can not be exercised under Law unbridled. More-over the subject "*Appeal*" in the said order also is suspicious because in such like situation, the appellant is to be accepted or rejected, whereas without any such specification, especially, when the appellant had not filed any appeal, the impugned orders became not only illegal but also a nullity in the eyes of law.
- E) That he appellant was a permanent regular Civil Servant as he successfully completed the probation period, but despite that, service rights of the appellant have been affected in an arbitrary

and fanciful manner. Therefore, the impugned orders are liable to be set-aside.

- F) That on the appeal of appellant a fact finding inquiry was also conducted through Engineer Shahid Hussain, who clearly concluded the inquiry and opined that the Admin Officer of the Chief Engineer Office (North), issued the relieving order on its own without clear orders from the competent authority, as such his action is invalid and got no legal standing. **(Copy of the inquiry report is attached as Annexure-E).**
- G) That the fundamental right of fair trial was violated by the respondent which is guaranteed under Article-10-A of the Constitution, therefore, the impugned orders are liable to be set-aside on the score alone.
- H) That the appellant was not treated in accordance with the Law & Rules and was deprived from service right in an illegal manner.
- I) That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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


APPELLANT

Haris Iqbal

THROUGH:


(M. ASIF YOUSAFZAI)

ADVOCATE SUPREME COURT,


(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT,


(S. NOMAN ALI BUKHARI)

ADVOCATE PESHAWAR



Anex: I

A

(5)

COMMUNICATION & WORKS DEPARTMENT (NORTH WING)
KHYBER PAKHTUNKHWA PESHAWAR

Block-C 3rd Floor, Attached Department Complex Near Khyber Road Peshawar

091-9210456 FAX 091-9210478 E-mail: cenorthcnw@yahoo.com

No: 1017/25-E

Dated 13/05/2013

OFFER OF APPOINTMENT

As recommended by the Departmental Selection Committee, in its meeting held on 06-05-2013 You Mr. Haris Iqbal S/O Iqbal Javed having Diploma of Associate Engineering (Civil) 2010-Annual Resident of H/No. 2646 Street # 3 Sharif Abad Dora Road Kohat Road Peshawar, are hereby offered a Post of Road Inspector against the existing vacancy in C&W Circle Lower Dir in (BPS-06) Viz 5600-290-14300 plus usual allowances as admissible under the rules, on the following terms and conditions:-

1. You will get pay at the minimum of BPS-06 (Rs. 5600-290-14300) plus usual allowances as admissible under the Rules. You will also be entitled to the annual increment as per existing policy.
2. You shall, be governed by the Khyber Pakhtunkhwa Civil Servants Act 1973 and the Laws applicable to the Civil Servants and Rules made there under.
3. Your Employment in the Communication & Works Department is purely temporary and your services are liable to be terminated without assigning any reasons at fourteen days prior notice or on the payment of 14-days salary in lieu of the notice. In case you desire to resign, 14-days prior notice will be necessary or in lieu thereof 14-days pay will be forfeited.
4. You will, initially be on Probation for a period of ONE YEAR extendable up to 2-years.
5. To produce a Medical Certificate of Fitness from the Medical Superintendent Dir Lower before reporting for duty as required under the rules.
6. You should join duty at your own expenses.
7. You will have to serve any where in Khyber Pakhtunkhwa Province.

If you accept the Post on the above terms and conditions, you should report to Superintending Engineer C&W Circle Dir Lower at Timergara within 14-days of the receipt of this offer and produce Original CV in support of your qualifications domicile, CNIC, Health & age certificate etc.

(Engr. Abdul Saboor Usmani)
Chief Engineer. (North)

Copy forwarded to the :-

1. Secretary to Govt of Khyber Pakhtunkhwa C&W Department Peshawar.
2. Accountant General Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (Centre) C&W Department Peshawar.
4. Superintending Engineer C&W Circle Lower Dir.
5. Executive Engineer C&W Division Lower Dir.
6. District Accounts Officer Lower Dir.
7. Mr. Haris Iqbal S/O Iqbal Javed Resident of H/No. 2646 Street # 3 Sharif Abad Dora Road Kohat Road Peshawar.
8. Personal file of the official.

(Signature)
Chief Engineer. (North)

H.C. ———

ATTESTED

(Signature)



Annex III
B
6

OFFICE OF THE CHIEF ENGINEER (NORTH)
Communication & Works Department,
Khyber Pakhtunkhwa Peshawar.

No. 34/25-E dated 16.10.2017

To

The Superintending Engineer,
Communication & Works Circle,
Dir Lower.

Subject: **APPEAL**

I am directed to the subject noted above and to state that the appointment Order No. 1017/25-E dated 13/05/2013 of Mr. Haris Iqbal, (Road Inspector) presently working as Sub-Engineer (OPS) in the office of the Executive Engineer, Communication & Works Division (Dir Lower) is hereby set aside as desired by the Competent Authority.

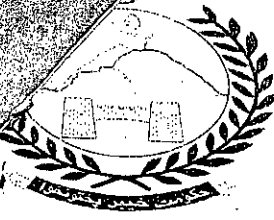
o/c (Zahid Habib)
Administrative Officer

COPY FORWARDED TO THE:

- 1- Section Officer (Establishment) C&W Department Peshawar with reference to his letter No. SOE/C&W/11-270/2017 dated September 29, 2017 for information.
- 2- Executive Engineer, C&W Division Dir Lower with the direction to relieve the official and submit the report to the office of the Secretary to Government of Khyber Pakhtunkhwa, Communication & Works Department Peshawar.
- 3- PA to Chief Engineer (North) C&W Department Peshawar for information.

Administrative Officer

ATTESTED
[Signature]



OFFICE OF THE *Annex: II*
EXECUTIVE ENGINEER
C&W DIVISION DIR LOWER

NO. 866 12E DATED, 23/10/2017
PHONE NO. 0945-9250019 FAX. 0945-9250078, Email. xencnwdlrl@gmail.com

C
7

To,

Mr, Haris Iqbal (Road Inspector)
Working as a Sub Engineer (OPS)
C&W Division Dir Lower.

Subject:- RELIEVE FROM GOVT. SERVICE.

As desired by the Competent Authority, vide Chief Engineer (North) C&W
Department Peshawar No: 34/25E dated: 16-10-2017, that you are hereby relieve from the Post of
Road Inspector Vide Appointment Office Order No: 1017/25-E dated: 13-05-2013 with immediate
effect in the interest of the Public.

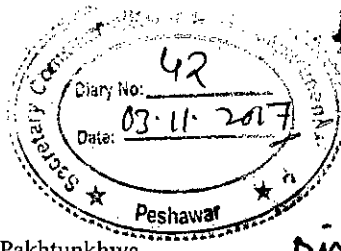

EXECUTIVE ENGINEER

Copy to:

- 1- The Chief Engineer (North) C&W Department Peshawar.
 - 2- The Superentending Engineer C&W Circle Dir Lower.
 - 3- The Section Officer (Establishment) C&W Department Peshawar.
 - 4- Divisional Account Officer Local.
- For information with refrence to above please.


EXECUTIVE ENGINEER

ATTESTED

D
⑧

To,

The Secretary
Government Of Khyber Pakhtunkhwa
Communication and Works Department
Peshawar.

Subject: APPEAL.

Respected sir,

It is submitted that I was appointed as Road inspector vide Chief Engineer (North) Communication and Works Department Memo No: 1017/25E dated: 13/5/2013 in the office of Executive Engineer C&W Division Dir Lower at Timergara (Annexed - I) and reported on 14/5/2013.

Since then I am serving there with great zeal and zest. The Executive Engineer and my other co-leagues will testify my working because I am technically qualified, possess Diploma of Associate Engineer. (CIVIL).

Now the Executive Engineer C&W Division Dir Lower issued a letter No: 886/2E dated:23/10/2017,(Annexed -II) relieving me from the post of Road Inspector with immediate effect in compliance to the Chief Engineer (North) C&W department letter No:34/25-E dated : 16/10/2017 (Annexed -III) and your direction issued vide letter No:SOE / C&WD/11-270/2017 dated 29/09/2017.(Annexed-IV).

Sir, I had since Completed the original period of probation quite years long as per conditions-4 of offer of my Appointment.

At the moment it is not clear that my offer of dated 13/05/2013 how is set a side in 09/2017 after lapse of 4 years 4 months without assigning any reasons or Notice as required under condition - 3 of T.O.R of the appointment.

Further I have not moved any appeal ,so it is not understood that who preferred Appeal, In case any other person filed appeal then the said Appeal should have to be decided or set-a-side, In addition there so many other officials have been appointed or inducted as Road Inspectors to which might the Appellant has given reference but their cases have not been given any touch. At same time I pointed out under the procedural requirement first the enquiry should have been conducted and thereafter final action had to be taken.

In the wake of above submissions, I pray to look into my case and extend your co- operation, in order to safe- guard my service career on the one and on the others, the relieving orders as issued in response to your good office Advice date 29/9/2017 is prayed to be recalled /withdrawn.

Thanks,

sincerely yours,

(HARIS IQBAL)

Road Inspector (Under order of
Relieving) o/o Executive Engineer
C&W Division Dir Lower.
Cell # 03369130159

ATTESTED

Dated: 02-11-2017

Handwritten initials and date: 7/11

Secretary,
C&W Department
Peshawar
3/11



GOVT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/11-270/2017 Haris
Dated Peshawar, the Nov 07, 2017

E
9

To

Engr. Shahid Hussain
Director (Maintenance)
PKHA -- Peshawar

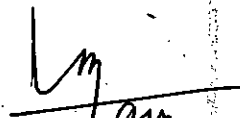
Subject: **APPEAL**


I am directed to refer to the subject noted above and to forward herewith a copy of an appeal dated 02.11.2017 along-with its enclosure in respect of Mr. Haris Iqbal Road Inspector O/O XEN C&W Division Dir Lower with the request to conduct fact finding inquiry and submit report **immediately**, so as to proceed further in the case please.


(USMAN JAN)
SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department


SECTION OFFICER (Estb)


7.11.2017

ATTESTED


Confidential

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**GOVERNMENT OF KHYBER PAKHTUNKHWA
PAKHTUNKHWA HIGHWAYS AUTHORITY, PESHAWAR**

Tel: No. 091-9210963, Fax No. 091-9210434, E-mail: info@pkha.gov.pk

Attached Departments Complex near Treasury Office, Khyber Road Peshawar

No. PF/DM/FFI/RI/2017/8

Dated: 18/12/2017.

To,

The Section Officer (Esbt),
Govt. of KP, C&W Department,
Peshawar.

Subject: **FACT FINDING INQUIRY ON THE APPEAL OF MR. HARIS IQBAL
ROAD INSPECTOR O/O XEN C&W DIVISION DIR (LOWER).**

Reference: Your letter No. SOE/C&WD/11-270/2017 (Haris) dated Nov. 7, 2017 on
the subject. *P-36/c*

Please refer to your letter cited in the reference and as desired, the
requisite Fact Finding Inquiry in the subject case has been finalized and Inquiry Report
thereof, is submitted herewith along it enclosure for favour of perusal and further
appropriate action please.

DA/As above.

Shahid Hussain
(ENGR: SHAHID HUSSAIN)

DIRECTOR MAINTENANCE PKHA
(INQUIRY OFFICER)

ATTEST
[Signature]

SA

Am
18/12/17

(11) 28

INQUIRY REPORT

Subject:- FACT FINDING INQUIRY ON THE APPEAL OF MR. HARIS IQBAL ROAD INSPECTOR O/O XEN C&W DIVISION DIR (LOWER).

I- Authority (Appointment of Inquiry Officer).

The undersigned was appointed as Inquiry Officer by the Competent Authority (Secretary to the Govt. of Khyber Pakhtunkhwa C&W Department), vide his letter No. SOE/C&WD/11-270/2017 (Haris) dated Nov. 7, 2017 to conduct Fact Finding inquiry in the Appeal made by one Mr. Haris Iqbal, Road Inspector O/O XEN C&W Division Dir (Lower). Copy of the letter is attached at Annexure-I.

Background of the Case:

The Provided record reveals that, the Appellant, (Mr. Haris Iqbal S/o Iqbal Javed) was appointed as Road Inspector (BPS-6) by the Chief Engineer (North) C&W Department Peshawar vide his Offer of Appointment No.1017/25-E dated 13-5-2013, and as per the said order, the Appellant was to report to the Superintending Engineer C&W Circle Dir (Lower) at Timergara within 14-days of the receipt of the said offer. (Copy of the officer of appointment is attached, at Annexure-II). As evident from photo copies of his Service Book, the official joined his duties in the office of the Executive Engineer C&W Division Dir (Lower) on 14-5-2013.

After completing about four and half year service (from 14-5-2013 to 23-10-2017), the official was relieved from the post of Road Inspector with immediate effect by the Executive Engineer C&W Division Dir (Lower) vide his letter No. 866/2-E dated 23-10-2017. Copy of the letter is attached at Annexure-III. While tracing back the record it was also confirmed that, the relieving orders of the official were issued under the signature of the Administrative Officer O/O Chief Engineer (North) C&WD Peshawar vide letter No.34/25-E dated 16-10-2017, which were addressed to the S.E C&W Circle Dir Lower. A copy of the letter was endorsed to the Executive Engineer C&W Division Dir Lower wherein he was directed to relieve the official and submit the report to the Secretary C&WD. (copy attached at Annexure-IV). Similarly copy was also endorsed to the Section Officer (Estb) C&W Department Peshawar with reference to his letter No. SOE/C&WD/11-270/2017 dated Sept: 29, 2017.

Tracking back the record, it was observed that, the Section Officer (Estbt) had addressed letter to the Chief Engineer (Centre) C&WD Peshawar and not to the Chief Engineer (North) wherein C.E (Centre)


ATTEST

was asked (i) "to set aside the offer of appointment issued by Chief Engineer (North) C&W Peshawar vide No.1017/25-E dated 13-5-2017" and (ii) also conduct inquiry and furnish report to this Department, so as to proceed further in the matter. (Copy of the Secretary C&WD letter addressed to C.E North is attached at **Annexure-V**).

Since the official (Mr. Haris Iqbal) was appointed by the C.E (North), therefore, the Chief Engineer (Centre) vide his letter No.73-E/715/CEC/C&WD dated 4-10-2017 approached S.O (E) C&WD to (i) refer the matter to C.E (North) as they have made appointment of the official and (ii) also he may be directed to conduct the inquiry in order to implement the orders of the Secretary C&W in this regard. (Copy of the CE North letter is attached at **Annexure-VI**). The provided record reveals that, no further correspondence were made by the Section Officer (Estb) C&WD in the case. However, instead of taking final decision of the Secretary C&WD / SO (E) C&WD, the Administrative Officer O/O Chief Engineer (North) directed the Executive Engineer C&W Division Dir Lower to relieve the official and submit the report. Though the official was relieved from his duties yet the fate of the second item regarding conducting inquiry in the case, could not be known.

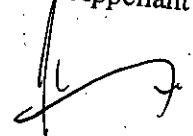
Aggrieved with the orders of his relieving, the official (Mr. Haris Iqbal) preferred an Appeal to the Competent Authority (Secretary C&WD) vide his Appeal dated 02-11-2017. Besides other he has also prayed in his appeal that, that his appointment orders have been set aside after lapse of 4-years 4-month without assigning any reason or notice as required under condition-3 of TOR of the appointment. The Secretary C&WD passed on the following remarks on his appeal:

"Director PKHA Mr. Shahid Hussain for Fact Finding Inquiry".

Apart from the above, through a separate letter No. SOE/C&WD/11-270/2017 (Haris) dated Nov. 7, 2017, the undersigned was appointed as Inquiry Office by the Secretary C&WD on the Appeal of Mr. Haris Iqbal, to conduct Fact Finding Inquiry in the case,

Proceedings of the Inquiry.

In order to start the Inquiry proceedings, the Section Officer (Estb) C&W Department was asked vide this office letter No. PF/DM/FFI/RI/2017/01 dated 6th Nov. 2017, to provide copies of the previous inquiry reports conducted (if any) in the subject case as well as copies of other relevant correspondence on the issue. Copy of the said letter is attached at **Annexure-VII**. In response it was intimated by the Section Officer (Estb) C&WD that, previously no fact finding inquiry in the subject case has been conducted. Copy of the letter is attached at **Annexure-VIII**. Meanwhile, vide the undersigned letter No. PF/DM/FFI/RI/2017/02 dated 7th Nov. 2017, the Appellant (Mr.



ATTEST

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4/20

Haris Iqbal) was asked to attend the office of the undersigned on 13-11-2017 which was complied by the official. In this connection, both the Administrative Officers O/O C.E Centre) and C.E. (North) attended the office of the undersigned and some relevant record was provided to the undersigned. Through another letter of the undersigned bearing No. PF/DM/FFI/RI/2017/04 dated 15th Nov. 2017, both the Chief Engineer (Centre) and Chief Engineer (North) were requested to submit the following information:

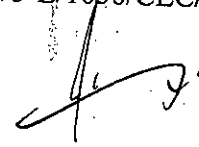
- i) ✓ List of the employees with their names, designation and place of posting working against the dying cadre posts, under your control.
- ii) ✓ List of the inquiries already conducted / presently pending against the recruitment / promotion against the dying cadre posts.
- iii) ✓ Disciplinary action initiated against officers / officials of C&WD responsible for illegal appointment / promotion against the dying cadre posts.
- iv) ✓ List of the dying cadre employees, who have been terminated / removed from the service.

(Copy of the letter is attached at Annexure-IX)

However, appropriate response could not be received from the concerned offices. The Administrative Officer O/O Chief Engineer (North) vide his letter No.128/75-E(DL) dated 20-11-2017 approached all the three Superintending Engineers attached to CEC (North) to provide the desired information. (copy attached at Annexure-X), while the Admin. Officer of the Chief Engineer (Centre) reported the following in response to the undersigned desired information:

- All the filed formation of Centre C&W Wing have been asked for submission of list of employees with their names, designation and place of posting working against the dying cadre posts. As and when the desired information is received, the same will be provided.
- Regarding various inquiries, the C&W Secretariat may kindly be consulted.
- Regarding disciplinary action, the C&W Secretariat will be in best position to comment on it as till yet no any intimidation is received about enquiries hereupon.
- No such information is available with this office. The posts of dying cadre i.e. Road Inspector, Mates and Coolies are District Cadre and appointment or termination are resting with field offices.

Copies of the response received from CE (Centre) vide No. 73-E/1056/CEC/C&WD dated 17-11-2017 is attached at Annexure-XI).



ATTEST

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Yet despite of passing of about one month, the desired information from the Chief Engineer Centre and Chief Engineer North could not be received, therefore, in order to submit the Inquiry Report to the Competent Authority without further loss of time, the undersigned proceeded with the inquiry without further waiting for the response of concerned offices.

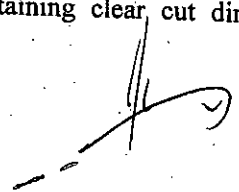
Fact of the Case:

It is a fact that, certain posts in C&W Department i.e. Road Inspector, Mates and Coolies are dying cadre posts, yet the different offices did not observe the government policy in abolishing such posts as soon as these posts becomes vacant, rather in contravention to the rules, they make appointments against these posts. Simultaneously the Finance Department also support the Department in this regard by reflecting these posts in their budget books instead of excluding these posts from the approved strength of the respective offices. Side by side, the Accountant General office and concerned District Accounts Officers also encourage the Department in realizing the pay of those incumbents who are appointed against these posts. Particularly appointment against the posts of Mats and Coolies is so common in C&WD that, there might be any post of these cadres which has been abolished once it is became vacant.

Even in the past, a number of inquiries have been ordered by the Competent Authorities to investigate the matter and identify the persons at fault who had made illegal appointments against the dying cadre posts. But probably in the history of C&WD, no action could be taken against the officers / officials who made such illegal appointments against the Dying Cadre Posts. So far so, the concerned Chief Engineers, in the instant case, failed to provide the required information to the Inquiry Officer even after passing of more than one month's time.

It is also pertinent to mention, that, in the entire process of the case, the Department failed to observe the prescribed procedure and without giving any opportunity of self defence or personal hearing to the appellant, decided the issue one sided which is contrary to the rules and should not be in any way considered as impartial and judicious one.

Furthermore, no documentary proof could be provided to the Inquiry Officer by the Chief Engineer (North) C&W Department Peshawar, regarding relieving orders issued by the Secretary C&W Department. As such the Administrative Officer, O/O CE (North) on his own issued orders to the lower formation to relieve the appellant from his duties. This action on the part of the Administrative Officer O/O the Chief Engineer (North) needs to be probed as it tantamount as mis-use and exaggeration of his powers for issuing the relieving orders of the appellant without obtaining clear cut directives for Competent Authorities.



ATTESTED



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Besides no record could be provided by the S.O (Estb) C&WD, Administrative Officers O/O Chief Engineer (Centre) & North wherein the charges (if any) were proved against the appellant. Similarly no record of any inquiry or proceedings could be provided wherein the appellant was guilty.

It is also not be out of place to mention here that, in a similar case under Civil Petition No. 362-P of 2016, which was preferred in the Supreme Court by the Government of Khyber Pakhtunkhwa against the judgment dated 10-5-2016 of KP-Services Tribunal, Peshawar in Serviced Appeal of No. 1366 of 2016 of Mr. Sanaullah, the High Court Bench consisting of Justice Ejaz Afzal Khan and Justice Mushir Alam, passed the following Judgment on 1st December, 2016:

"It is not disputed on the record that, respondent was eligible to be appointed against the post of Road Inspector. Once it is not disputed that, he was eligible for appointment, failure to comply with the codal formalities cannot be debited in his account or construed to his detriment". (copy of the judgment is attached at Annexure-XII).

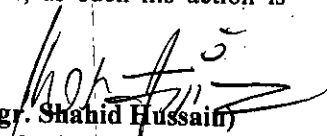
Conclusion:

1- In light of the judgment of the Supreme Court of Pakistan in the similar nature case, the undersigned has come to the conclusion that, the appellant (Mr. Haris Iqbal) by virtue of academic and other qualifications he was fit and eligible for the post of Road Inspector. However, the responsibilities of the non-compliance of the codal formalities by the appointing authority should not be attributed to his fault and he should not be penalized for the fault and slackness of others who were not competent to appoint him and who failed to observe the required codal formalities in his employment. Therefore, in the case under consideration, the Supreme Court aforementioned judgment needs to be applied too.

2- As evident from the offer of appointment, the official was governed under KP-Civil Servants Act-1973 and the law applicable to him was the Civil Servants Act-1973. However, neither the 14-days prior notice of termination as required under condition-3 of his offer of appointment was served upon the Appellant nor he was proceeded under the KP- Civil Servants Efficiency & Discipline (E&D) Rules-2011.

3- The Administrative Officer O/O Chief Engineer (North) issued the relieving orders of the official on his own without obtaining clear orders from Competent Authorities, as such his action is invalid and has got no legal standing.

DA/As above.


(Eng. Shahid Hussain)
Director Maintenance (PKHA)
(Inquiry Officer)

ATTESTED

(16)

VAKALAT NAMA

NO. _____/2018

IN THE COURT OF Service Tribunal, Peshawar.

Haris Iqbal

(Appellant)
(Petitioner)
(Plaintiff)

VERSUS

Secy: C & W Dept: etc.

(Respondent)
(Defendant)

I/We, Haris Iqbal (Appellant).

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court 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 costs.

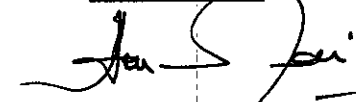
I/We authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated _____/20



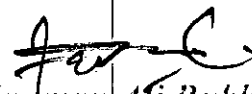
(CLIENT)

ACCEPTED


M. ASIF YOUSAFZAI
Advocate Supreme Court
Peshawar.



Taimur Ali Khan
Advocate High Court


Syed Nauman Ali Bukhari
Advocate

OFFICE:

Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawar
Cell: (0333-9103240)

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No. 249 of 2018

Mrs. Huma's appeal Appellant/Petitioner

Versus

Secretary, C&L Deptt, Civil Sectt Respondent

Respondent No. 1

Notice to: - Secretary, C&L Deptt, Civil Sectt Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 16-8-2018 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

~~Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No.....dated.....~~

Given under my hand and the seal of this Court, at Peshawar this 28th

Day of June, 20 18

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.

No.

Appeal No. 249 of 20 18.

Mrs. Hanis Afzal Appellant/Petitioner
Versus

Secretary, C & W Dept. Peshawar Respondent
Respondent No. 2

Notice to:

Chief Engineer, C & W Dept. (North) Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 8.12.18 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

~~Copy of appeal is attached. Copy of appeal has already been sent to you vide this~~

office Notice No. dated.....

Given under my hand and the seal of this Court, at Peshawar this 28th

Day of June, 20 18

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

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**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No. 249 of 20 18.

Mrs. Honey Gul Appellant/Petitioner
Versus

Secretary (LW Deptt. Civil Servt. etc.) Respondent
Respondent No. 3

Notice to: - Chief Engineer (LW Deptt. (Centre) Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 16-8-2018 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. ~~Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 28th Day of June, 2018.

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No. 249 of 2018.

Mr. Habibullah Appellant/Petitioner

Versus

Secretary, Deptt. Civil Engrs Respondent

Respondent No. 4

Notice to: Superintending Engineer C 10
Circle Dir. Works

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 16-7-2018 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

~~Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated~~

Given under my hand and the seal of this Court, at Peshawar this 28th Day of June, 2018.

[Signature]
Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

"B"

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD,
PESHAWAR.**

No.

Appeal No. 249 of 2018

Mr. Hans Appel Appellant/Petitioner

Secretary, Dept. of Civil Supply Respondent

Respondent No.

Notice to:

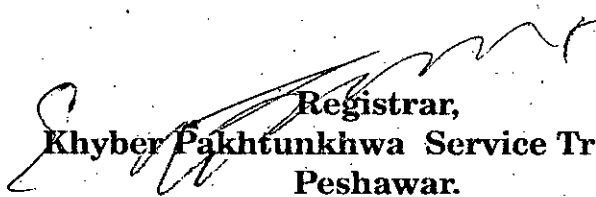
The XFN Communication & Services
Works, Directorate, Peshawar

WHEREAS an appeal/petition under the provision of the North-West Frontier Province Service Tribunal Act, 1974, has been presented/registered for consideration, in the above case by the petitioner in this Court and notice has been ordered to issue. You are hereby informed that the said appeal/petition is fixed for hearing before the Tribunal *on 16-9-2018 at 8.00 A.M. If you wish to urge anything against the appellant/petitioner you are at liberty to do so on the date fixed, or any other day to which the case may be postponed either in person or by authorised representative or by any Advocate, duly supported by your power of Attorney. You are, therefore, required to file in this Court at least seven days before the date of hearing 4 copies of written statement alongwith any other documents upon which you rely. Please also take notice that in default of your appearance on the date fixed and in the manner aforementioned, the appeal/petition will be heard and decided in your absence.

Notice of any alteration in the date fixed for hearing of this appeal/petition will be given to you by registered post. You should inform the Registrar of any change in your address. If you fail to furnish such address your address contained in this notice which the address given in the appeal/petition will be deemed to be your correct address, and further notice posted to this address by registered post will be deemed sufficient for the purpose of this appeal/petition.

Copy of appeal is attached. Copy of appeal has already been sent to you vide this office Notice No. dated.

Given under my hand and the seal of this Court, at Peshawar this 16 June 2018


Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

Note: 1. The hours of attendance in the court are the same that of the High Court except Sunday and Gazetted Holidays.
2. Always quote Case No. While making any correspondence.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.249/2018

Mr. Haris Iqbal S/o Iqbal Javed,
R/o Link Dura Road, Sharif Abad, Peshawar

(Appellant)....

V/S

Secretary Communication & Works Department
Civil Secretariat Peshawar & others

(Respondents)....

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| 1 | Parawise Comments on behalf of Respondent No.1 to 5 | - | 1-2 |
| 2 | Affidavit | - | 3 |
| 3 | Finance Department's letter No.BI/5-898-99/FD dated 25-07-1998 | I | 4 |
| 4 | C&W Department's letter No. SOE/C&WD/11-270/2017 dated 23-01-2018 | II | 5-6 |
| 5 | Departmental Appeal against the order No:81-E/359/LEC/C&WD dated 08-08-2017 | III | 7-9 |

Deponent

Iqbal Shah

Executive Engineer,
C&W Division Dir Lower

(1)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.249/2018

**Mr. Haris Iqbal S/o Iqbal Javed,
R/o Link Dura Road, Sharif Abad, Peshawar**

(appellant)....

V/s

**Secretary Communication & Works Department
Civil Secretariat Peshawar & others**

(Respondents)....

PARAWISE COMMENTS ON BEHALF OF RESPONDENT NO.1 TO 5

Respectfully Sheweth,

Preliminary Objections:-

1. That the appeal is not maintainable in the present form.
2. That the appellant has no cause of action and locus standi.
3. That the appeal is time barred.
4. The appellant has deliberately concealed the important material and rules in this case from this Hon'able Tribunal.
5. That the appellant is estopped by his own conduct to file the instant appeal.

FACTS:-


1. Pertains to record, hence no comments.
2. Pertains to record, hence no comments.
3. Since the post of Road Inspector was declared as dying cadre by the Provincial Government / Finance Department vide letter No.B-(I)/5-898-99/FD dated 25-07-1998 (**Annex-I**), therefore the appointment order of the appellant was withdrawn / set aside.
4. That after withdrawal of appointment of appellant, he was relieved from the charge of the said post.
5. That on receipt of his appeal against his withdrawal, an inquiry was conducted which has been referred to Establishment Deptt: and Law Department vide Communication & Works Department's letter No. SOE/C&WD/11-270/2017 dated 23-01-2018 (**Annex-II**) for advice. However the advice is still awaited. Therefore the departmental appeal could not be disposed off.

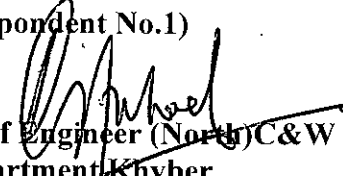
6. The respondents treated the appellant in accordance with law / rules / policy interalia with the following grounds:-


GROUND:-


- A. As explained in Para 5 of the facts, the case was referred to Establishment Department for advice. However the advice is still awaited. Therefore the departmental appeal could not be disposed off.
- B. Incorrect. The respondents treated the appellant in accordance with law / rules / policy
- C. Incorrect. The appointment order of the appellant was withdrawn / set-aside being dying cadre post
- D. The word "as desired by the competent authority" is as per rules. Moreover the subject "appeal has been made by Mr. Rehman Ali Sub Engineer (OPS) vide No. NiL dated 10-08-2017 (Annex-III) and accordingly the appointment order of Mr. Haris Iqbal was set aside being dying cadre post.
- E. Incorrect. The respondents treated the appellant in accordance with law / rules / policy
- F. The said inquiry report has been forwarded to the Establishment Department for opinion which is still awaited.
- G. Incorrect. The respondents treated the appellant in accordance with law / rules / policy
- H. As explained in Para-G above.
- I. The respondents also seek permission to raise additional grounds at the time of arguments.

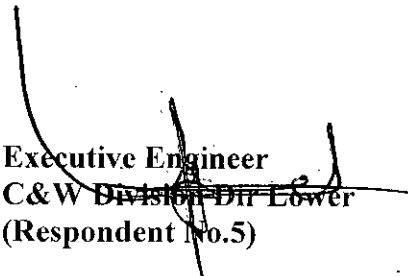
It is, therefore most humbly prayed that Service Appeal being meritless may be dismissed with cost.


Secretary
C&W Department
Khyber Pakhtunkhwa
Peshawar
(Respondent No.1)


Chief Engineer (North) C&W
Department Khyber
Pakhtunkhwa Peshawar
(Respondent No.2)


Superintending Engineer
C&W Circle Dir Lower
(Respondent No.4)


Chief Engineer (Centre)
C&W Department Khyber
Pakhtunkhwa Peshawar
(Respondent No.3)


Executive Engineer
C&W Division Dir Lower
(Respondent No.5)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.249/2018

Mr. Haris Iqbal S/o Iqbal Javed,
R/o Link Dura Road, Sharif Abad, Peshawar

(Appellant)....

V/S

Secretary Communication & Works Department
Civil Secretariat Peshawar & others

(Respondents)....

AFFIDAVIT

I, Mr. Iqbal Shah Executive Engineer C&W Division Dir Lower hereby affirm and declare that all the contents of the reply / comments are correct to the best of my knowledge and belief and nothing has been concealed.

Deponent

Iqbal Shah,
Executive Engineer,
C&W Division Dir Lower

(4)

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

NO. BI/5-8/98-99/FD.
Dated Peshawar, the 25th July, 1998.

To

1. The Secretary to Government of NWFP,
Communication and Works Department.
2. The Secretary to Government of NWFP,
Irrigation Department.
3. The Secretary to Government of NWFP,
Public Health Engineering Department.
4. The Secretary to Government of NWFP,
Planning, Environment and Dev: Department.

SUBJECT:- NEW ECONOMY MEASURES.

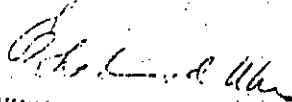
Sir,

I am directed to refer to the subject noted above and to state that the Provincial Cabinet in its meeting held on 6th June, 1998 have, inter alia, decided that:-

- (a) ~~Abolition~~ of staff of all Stores of all Technical Departments.
- (b) All existing posts of Road Gangs in C&W and Irrigation Departments will be personal to the present incumbent and after becoming vacant as a result of retirement etc, no further recruitment will be made. The posts shall stand abolished.
- (c) All stores of works departments should be disposed off within next two months.
- (d) Incurrence of expenditure on donor assisted projects may continue until a policy decision is communicated by the Federal Government. If no decision is taken immediately and foreign aid is stopped, the liability will be adjusted against the Rupee Component of the respective ADP Section or from within the ADP as a whole keeping the overall ADP size intact.

2. It is requested that the above decision should be implemented and compliance report be submitted to the Finance Department.

Yours obediently,


(MUHAMMAD KHAN)
BUDGET OFFICER - (I).

8/5



GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

No. SOE/C&WD/11-270/2017
Dated Peshawar, the Jan 23, 2018

To

1. The Secretary to
Govt of Khyber Pakhtunkhwa
Establishment Department, Peshawar
2. The Secretary to
Govt of Khyber Pakhtunkhwa
Law Department, Peshawar

Subject: APPEAL

Dear Sir,

I am directed to refer to the subject noted above and to state that Chief Engineer (North) C&W Peshawar has forwarded Departmental Appeal of Mr. Ali Rehman Ex-Sub Engineer Building Division Swat for necessary action (copy enclosed). The appellant in his appeal has submitted that he was appointed as Laboratory Assistant (BS-05) in the Road Research & Material Testing (RR&MT) Laboratory Swat in 1995. On winding up the said Laboratory, he was placed in surplus pool in the year 2002 and in November, 2004 the appellant was adjusted as Road Inspector in his own pay & scale by the District Coordination Officer (DCO). Swat. During service he acquired Diploma of Associate Engineer in the year 2011 and was posted as Sub Engineer (OPS) in 2012. The Chief Engineer (Centre) C&W Peshawar withdrew the order issued by DCO and his subsequent posting as Sub Engineer (OPS) with the observations that posts in Road Gang viz Road Inspector, Mate and Coolies were declared dying cadre by Finance Department in 1998 (copy enclosed).

2. Moreover, pursuant to the advice of this Department, the Chief Engineer (Centre) C&W Peshawar set aside the appointment order of Mr. Haris Iqbal as Road Inspector. Meanwhile, Mr. Haris Iqbal vide Departmental Appeal (copy enclosed) requested that the advice issued to Chief Engineer (Centre) C&W Peshawar on 29.09.2017 (copy enclosed) may be recalled/withdrawn. In this regard the Department conducted fact finding inquiry. Conclusion of the inquiry report are reproduced below (copy enclosed):-

- i. In light of the judgment of the Supreme Court of Pakistan in the similar nature case has come to the conclusion that the appellant (Haris Iqbal) by virtue of academic and other qualifications he was fit and eligible for the post of Road Inspector. However, the responsibilities of the non-compliance of the codal formalities by the appointing authority should not be attributed to his fault and he should not be penalized for the fault and slackness of other who were not competent to appoint him and who failed to observe the required codal formalities in his employment. Therefore, in the case under consideration, the Supreme Court judgment (page 54-55) needs to be applied too.

(on next page)

- ii. As evident from the offer of appointment, the official was governed under KP Civil Servants Act, 1973 and the law applicable to him was the Civil Servants Act, 1973. However, neither the 14 days prior notice of termination as required under condition-3 of his offer of appointment was served upon the appellant nor he was proceeded under the KP Civil Servants Efficiency & Discipline E&D Rules, 2011.
- iii. The administrative officer O/O CE (North) C&W Peshawar issued the relieving orders of the official on his own without obtaining clear order form competent authorities, as such his action is invalid and has got no legal standing.


3. Since the case is quite complex in nature and can lead to litigation, therefore it is requested to tender your respective advices, enabling this Department to dispose of the appeal of Mr. Haris Iqbal, Ex-Road Inspector.

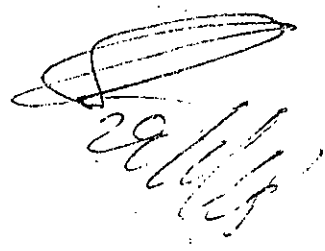
Yours' faithfully


SECTION OFFICER (Estb)

Endst even No. & date

Copy forwarded to PS to Secretary C&W Department, Peshawar


SECTION OFFICER (Estb)



To

The Secretary Communication
Works Department
Govt of Khyber Pakhtunkhwa

Through: Proper Channel.

SUBJECT:- DEPARTMENTAL APPEAL/REPRESENTATION AGAINST THE ORDER
NO: 81-E/359/LEC/C&WD, DATED: 08/08/2017.

Prayers:

ON ACCEPTANCE OF THIS DEPARTMENTAL APPEAL
THE IMPUGNED ORDER DATED 08-08-2017 MAY
KINDLY BE SET ASIDE AND THE APPELLANT MAY
KINDLY BE RETAINED TO THE POST OF SUB-ENGINEER
WITH ALL BACK BENEFIT.

FACTS:-

1. That the appellant was initially appointed as laboratory Assistant BPS-5 in Road & Research Testing Laboratory in the Communication and Works department Swat in the year 1995. (Copy of the order dated 02-01-1995, are attached as Annexure-"A")
2. That in the year 2002, the Road & Research Testing Laboratory Swat was wound up, as a result of which the appellant was placed in the surplus pool. He remained in the surplus pool till November, 2004.
3. That later on the appellant was adjusted as Road Inspector in the office of the Works and Services department on Dated 02-11-004 but in his own pay and scale. (Copy of order dated 02-11-2004, is attached as Annexure-"B")
4. That ever since his appointment, the appellant has been performing his duties as assigned with zeal and devotion and has never given

any chance of complaint whatsoever regarding his performance to department.

5. That it is pertinent to mention here that during the course of his employment, the appellant also improved his qualification and got the diploma of associate engineering in the year 2011 thereby enhanced as technical skills. (Copy of Diploma is attached as Annexure-"C").
6. That in the year 2012 the appellant was also adjusted/posted as sub-engineer against the vacant post in the Communication and Works Department, District Shangla vide order dated 08-05-2012 since then the appellant has been serving as Sub-Engineer and have acquired the sufficient length of experience. (Copy of order dated 08/05/2012 is attached as Annexure-"D").
7. That vide the impugned order without any notice, complaint or any proceeding the appellant have been reverted to the post of Road Inspector which is illegal and the impugned order to be liable to be set aside.
8. That appellant during posting as sub-engineer in District Swat performed his duty with great zeal and enthusiasm It is worth mentioning that the appellant is working on various projects in District Swat which will badly be Affected by the impugned order and resultantly the public exchequer will certainly sustain huge loss.
9. That the appellant was on the same post for a long period hence got sufficient experience so

6 (9)

the appellant is entitled to be retained as a Sub-Engineer for the welfare in the interest of public.

10. That the posting of the appellant as sub-Engineer for a long period created vested rights in favour of appellant and Rule of locus ponatentia is applicable to the case of the appellant.
11. That there are so many other employees of C&W who are working as Sub-Engineer (OPS) however the appellant was subjected to discrimination by issuing the impugned order.
12. That the appellant filed an appeal before the Khyber Pakhtunkhwa Service Tribunal Titled "Rehman Ali V/S the Government" No. 1176/2016 against the respondents which is still pending for upgradation of Basic Pay Scale.

It is therefore, most humbly prayed that on acceptance of the instant Departmental appeal the impugned order may kindly be set aside and the appellant may kindly be retain as Sub-Engineer.

Dated: 10/08/2017

Appellant


Rehman Ali

Sub-Engineer
Building Division Swat.

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

Service Appeal No. 249/2018

Haris Iqbal

VS

C&W Deptt:

.....
REJOINDER ON BEHALF OF APPELLANT
.....

RESPECTFULLY SHEWETH:

Preliminary Objections:

- (1-5) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

FACTS:

- 1 Admitted Correct by the respondent department as service record is already in the custody of the respondent department.
- 2 Admitted Correct by the respondent department as service record is already in the custody of the respondent department.
- 3 The contention of the respondent department is incorrect. While para-3 of the appeal is correct. Moreover, according to supreme court judgment the employee cannot be held responsible if any illegality made by the department.
- 4 Incorrect. While para-4 of the appeal is correct as mentioned in the main appeal of the appellant.

Moreover, the appointment order cannot be set aside in slipshod manner, it is also violation of the superior court judgment and E&D Rules and Civil Servant ACT 1973.

- 5 Admitted By the respondent Deptt: that the appeal of the appellant was not disposed off.
- 6 Incorrect. While para-6 of the appeal is correct.

GROUND:

- A) Incorrect. While para-A of the appeal is correct as mentioned in the main appeal of the appellant. Moreover the letter dated 23.1.2018 it is clearly mentioned that the action of the department totally against the law and rules.
- B) Incorrect and misleading. While para B of the appeal is correct.
- C) Incorrect and misleading. While para-C of the appeal is correct. Moreover the rules is clear on the point.
- D) Incorrect and misleading. While para D of the appeal is correct. Moreover, at least personal hearing must be provided before taking adverse action according to superior court judgment.
- E) Incorrect. While para E of the appeal is correct.
- F) Admitted correct by the respondent deptt, which means that the department admitted that the impugned order was set aside.
- G) Incorrect. While para G of the appeal is correct
- H) Incorrect. While para H of the appeal is correct
- I) Legal.

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

Haris Iqbal
APPELLANT
Haris Iqbal

Through:

M. Asif Yousafzai
(M. ASIF YOUSAFZAI)
ADVOCATE, PESHAWAR.

Syed Noman Ali Bukhari
(SYED NOMAN ALI BUKHARI)
ADVOCATE, PESHAWAR.

AFFIDAVIT

It is affirmed and declared that the contents of rejoinder are true and correct to the best of my knowledge and belief.

[Signature]
DEPONENT



KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 836 /ST

Dated 29-4- /2019


To,

The Chief Engineer (North),
C & W Department,
Govt of Khyber Pakhtunkhwa,
Peshawar.

SUBJECT: - ORDER IN APPEAL NO. 249/2018, HARIS IQBAL VS GOVT.

I am directed to forward herewith a certified copy of Order/Judgment dated 09.04.2019 passed by this Tribunal on the above subject for strict compliance.

Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR