1065/2014

20.09.2016 Counsel for the appellant and Mr. Usman Ghani, Senior Government Pleader for the respondents present.

This appeal is also decided as per our detailed order of today in connected Service Appeal No. 425/2014 tilted "Jamshed-vs-The Provincial Police Officer, Khyber Pakhtunkhwa, Peshawar etc". Parties are, however, left to bear their own costs. File be consigned to the record room.

ANNOUNCED
20.09.2016

(PIR BAKHSH SHAH)
MEMBER

(ABDUL LATIF)
MEMBER

07.12.2015 Counsel for the appellant and Mr. Javed Iqbal, Inspector (Legal) alongwith Mr. Ziaullah, GP for respondents present. Counsel for the appellant requested for adjournment. Therefore, the case is adjourned to 14.4.16 for arguments.

Member Member

14.04.2016 Counsel for the appellant and Mr. Javid Iqbal, Inspector (Legal) alongwith Mr. Ziaullah, GP for respondents present. Arguments could not be heard due to paucity of time. To come up for arguments on 20.05.2016.

Member Member

20.5.2016 Appellant in person and Mr. Muhammad Jan, GP for respondents present. Appellant requested for adjournment. Adjourned for arguments on 20.9.2016.

Member Member

22.05.2015 Appellant in person and Mr. Javed Iqbal, Inspector (legal) alongwith Addl: A.G for respondents present. Written reply submitted, copy whereof supplied to appellant. To come up for rejoinder on 24.8.2014.

Member

24.08.2015 Appellant in person and Mr. Javed Iqbal, Inspector Legal alongwith Addl: A.G for respondents present. Rejoinder submitted. The appeal is assigned to D.B for final hearing for 30.9.2015.

Chairman

30.09.2015 Mr. Sajid Amin, Advocate present and filed Wakalat Nama on behalf of appellant and Mr. Muhammad Jan, GP for respondents present. Arguments could not be heard due to learned Member (Judicial) is on official tour to D.I. Khan, therefore, case is adjourned to 7-12-15 for arguments.

Member

Appeal No. 1065/2014
Mr. Mehboob Khan

23.2.2014

Counsel for the appellant present and submitted that the appellant was issued charge sheet on 28.11.2013. The allegations against the appellant were that he got tainted reputation and allegedly involved in anti-social activities. Enquiry was conducted against him and the enquiry officer exonerated the appellant from the charges leveled against him. That the competent authority did not agree with the recommendation of the enquiry officer and agree with the probe of intelligence and the appellant was compulsory retired from service. The learned counsel for the appellant further submitted that probing through the intelligence is no where mentioned in the law/rules and that the final order is not a speaking order as no reason whatsoever, has been given for rejection of the departmental appeal.

Points raised need consideration. The 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, notices be issued to the respondents for submission of written on 16.04. 2015.

Member

6 16.04.2015 Appellant in person and Mr. Javed Iqbal, Inspector (legal) alongwith Addl: A.G for respondents present. Requested for adjournment. To come up for written reply/comments on 22.5.2015 before S.B.

Chairman

3.

Reader Note:

13.11.2014 Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned to 31.12.2014for the same.

Reader

4.

Reader Note:

31.12.2014 Clerk of counsel for the appellant present. Since the Tribunal is incomplete, therefore, case is adjourned 23.02.2015 for the same.

Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No. 1065/2014

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	21/08/2014	The appeal of Mr. Maqbool Khan resubmitted today by Mr. Ashraf Ali Khattak Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing. REGISTRAR
2	25-8-2014	This case is entrusted to Primary Bench for preliminary hearing to be put up there on 13-11-2014. CHAIRMAN

The appeal of Mr. Maqbool Khan Ex-Head Constable No.4757 Elite Force received today i.e. on 12.08.2014 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- The authority to whom the departmental appeal was made has not been arrayed/made a party.
2- Copy of impugned order dated 30.5.2014 mentioned in the memo of appeal is not attached with the appeal which may be placed on it.
3- Copies of charge sheet and statement of allegations are not attached with the appeal which may be placed on it.
4- Copy of departmental appeal is not attached with the appeal which may be placed on it. Annexure-F is reply to the charge sheet not a departmental appeal.
5- Address of respondent No. 2 is incomplete which may be completed according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.

No. 1207 /S.T,

Dt. 13/8 /2014.

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Ashraf Ali Khattak Adv. Pesh.

Re-submitted the date 30.5.2014 was Mistakenly written instead of 20-6-2014. While Charge sheet and Statement of allegation are not provide to the appellant Pls.

(i) 1st page of the appeal has been changed,
(ii) clerical mistakes has also been clarified.
(iii) Dept Appeal has also been annexed at page No. 20 to 22.

ASHRAF ALI KHATTAK
ADVOCATE

Kindly submitt before the Court/Tribunal

Ashraf Ali

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1065 /2014

Ex-HC Maqbool Khan No.4757 Elite Force Bannu .....Appellant	Versus	The Provincial Police Officer and others .....Respondents

INDEX

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Service Appeal with Affidavit.			1-8
2.	Copy of Charge Sheet and Statement of allegation.		A	9-10
3.	Copy of reply to Charge Sheet		B	11-13
4.	Copy of Inquiry Report		C	14-
5.	Copy of Final Show Cause		D	15-
6.	Copy of Reply to final Show Cause		E	16-
7.	Copy of secret inquiry		F	17-18
8.	Copy of impugned original order		G	19-
9.	Copy of departmental appeal		H	20-22
10.	Copy of impugned rejection Order		I	23-
11.	Wakalat Nama			24

Through

Appellant

Ashraf Ali Khattak

and

Nawaz Khan Khattak
Advocates, Peshawar

Dated: _____/ 08/ 2014

BEFORE THE KHYBERR PAKHTUNKHWA SERVICE TRIBUNAL

PESHAWAR

~~APPEAL~~ No. 1065 /2014

W.P No. 1077
Dated 12/8/2014

Ex HC Maqbool Khan No.4757 Elite Force Bannu R/o Purana Azim Killa Tehsil Domil District, Bannu .....Appellant.

Versus

1. The Provincial Police Officer, Govt: of KPK, Peshawar.

2. The Commandant Elite Force, Khyber Pakhtunkhwa, Peshawar.

3. The Deputy Commandant Elite Force Khyber Pakhtunkhwa, Peshawar.

4. The Additional Inspector General of Police Elite Force Khyber Pakhtunkhwa, Peshawar .....Respondents.

Service Appeal under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with section 19 of the Khyber Pakhtunkhwa (Efficiency & Discipline) Rules, 2011 against the impugned original order of respondent No.3 dated 20-06-2014 (Annexure-G) and order dated 23-07-2014 (Annexure-J) passed on the departmental appeal of the appellant.

Prayer:-

On acceptance of the instant service appeal this Honorable Court may graciously be pleased to declare the impugned orders dated 20-06-2014 and 23-07-2014 is void ab initio, illegal, unlawful and without lawful authority and set aside the same by re-instating the appellant with all back benefits.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

Re-submitted to-day and filed.

Registrar

1. That appellant was serving as Head Constable in the respondent department. He has got about 12 year service at his credit. He has performed his duty to the entire satisfaction of the superior and no complaint has ever been lodge against him.

2. That appellant has longstanding service at his credit with unblemished and clean sheeted conduct record. The appellant has excellent performance beyond the call of his duty and the appellant remain in those Police station and Check Post of the district Bannu where the militant attacks were occurred in routine, the appellant provide his services in those area commonly it were familiar a dangerous one, but the appellant performed his duty with very brave manner and never shows any Cowardice and also fight with militant too.

3. That it is pertinent to mention here appellant was got involved in a flimsy allegation and was charge sheeted vide Charge Sheet and statement of allegation dated 28-11-2013 with the following accusation. (The same are attached as Annexur-A)

   "He has got tainted reputation and allegedly involved in anti-social activates As per report of RPO Bannu vide his office Letter no 2659 -61 /EC Dated 08-11- 2013 .

4. That appellant submitted reply to the charge sheet and statement of allegation (Annexure-B). Comprehensive inquiry was conducted and appellant also produced defense . Enquiry officer submitted his finding with the following

   "Having gone through all available record and examination of HC Amjad Khan NO 4747, the Enquiry officer finding is very much clear on the ground that the appellant reputation was not found tainted and neither any property or bank balance was found in his name .The allegation is totally based upon this fact which has not been proved from the enquiry is attached as (Annexure –C

5. That respondent No. 3 served the appellant with final Show Cause (Annexure-D) Appellant submitted reply to the final show cause (Annexure-E).

6. That the secret enquiry on dated 28-05-2014 by Addl: Inspector General of Police Special Branch Khyber Pkhtunkhwa Peshawar has been conducted against the appellant. The same is attached as (Annexure-F). Neither the alleged accusation made therein has any evidentiary value nor does secret inquiry have any support in the eyes of law.

7. That vide order dated 20-06-2014 respondent No.3 awarded the appellant major penalty of compulsory retirement (Annexure-G) under Rule 5(5) of Police Rule 1975.

8. That being aggrieved from the impugned penal order, appellant submitted departmental appeal (Annexure-H) and the department representation is turned down on dated 23-07-2014 with in single sentence is attached as (Annexure - I) hence file the instant service appeal inter alias on the following grounds

Grounds:-

A. That the respondents have not treated the Appellant in accordance with law, rules and policy on the subject and acted in violation of Article 4 of the Constitution of Pakistan, 1973. That the respondent No 3 based the punishment to the appellant on the sole version of group officer Mujeeb Khan stating therein that the appellant is corrupt. The said group officer has not quoted a single instance vide which the appellant has taken any bribe from any person or entangle myself in any act of tainted reputation. The order of the respondent No3 is not only against the spirit of Law and Lands but also against the injunction of Islam because no one can be blamed without direct evidence and solid proof for any sin.

B. That enquiry is conducted against any officer/official for digging out the real fact and if the authority is not satisfied from the enquiry then he got the option to conduct the denevo enquiry by any other any competent officer but without complying the provision of enquiry, inflection of the punishment ignoring the finding of enquiry officer is the nullity in the eye of Law. However the appellate authority violate KPK civil Servants (Appeal) Rules 1986 Section 5 sub section (b) whether the fact established afford sufficient ground for taking action and (c) whether the penalty is excessive , adequate or inadequate .

C. The Appellant was/is regular employee of the force therefore, was entitled for prescribed disciplinary procedure in case of any miss conduct on his part. The authority in order to prosecute the appellant made a short cut way. In absence of prescribed procedure as explained in the statute and statutory rules the prosecution of the appellant cannot be clothed with validity and action on the part of this Honourable Tribunal is required to nullify the action of the respondents on the sole ground of bad faith.

D. That the allegation in the charge sheet regarding the links with smugglers of NCP vehicle , tainted reputation and involvement in anti social activities are not governed by any cogent/Solid proof and no officer/Official can be entangle with such like allegation without substantive evidence . Furthermore in the service career the appellant has performed duty so devotedly and bravely that no chance has been given to any authority for finger upon his duty.

E. That the appellant is the qualified member of Elite force and Elite force is duped for duty when there is eminent danger at the hands of criminal /Terrorist under the command of superior officer and question of corruption does not arise when the senior officer are present .

F. That the appellant have never been counseled on the subject of allegation by the competent authority and when no such allegation have ever been communicated to the appellant in 12/13 years service in shape of ACR /Advise and has not been proved during the course of enquiry then the same will be consider as leveled against the appellant on some ulterior motive.

G. That the appellant is the only bread earner of the family and such like defamation will certainly discourage the appellant as well as other police official in performance of duty especially in situation facing by the police in now a days. The appellant performance has been praised by the authorities on each and every occasion as evident from the service record however it is astonished that the appellant has blamed without any reason and solid proof.

H. That the impugned order has been passed in sheer violation of the rules and laws governing the subject. As the apex in their dozen Authorities no person should be condemned unheard, and without any solid evidence / Proof no one should be inflected punishment but here the respondent no 3 awarded major punishment ignoring the finding of Enquiry of enquiry officer even though in the case of appellant no complaint what so ever has been made against him nor any kind of tainted allegation has been refereed in the charge sheet or during the finding of enquiry. The general allegations without proof are nothing but amount the harassment of the official /Officer. The enquiry officer has failed to procure an iota of evidence in respect of the charge leveled against the appellant. The verdict of the respondent No.3 is illegal, unlawful and without lawful authority and liable to set back and set aside.

I. Section 16 of the Civil Servant Act, 1973 provides that every civil servant is liable for prescribed disciplinary action and penalty only through prescribed procedure. In

the instant case no prescribed procedure has been adopted by the respondents, hence the action taken by them is illegal, corm non judice and liable to be set aside.

J. That when initial order or act relating to initiation of disciplinary proceedings was contrary to law, than all subsequent proceedings and action taken there on would have no base and would fall. If mandatory condition for exercise of jurisdiction by the judicial or qasi judicial authority was not fulfilled, entire proceedings, which followed, would become illegal and would suffer from inherent defect of jurisdiction. Any order passed in continuation of those proceeding would equally suffer from illegality and would be without jurisdiction. Reliance is placed on 2003 PLC(CS) 748 and 2009 SCMR 339(A). More over the appellant has been prosecuted under wrong law.

K. That major penalty has been imposed without giving reason and with perusing the finding of enquiry report and also disregarding appellant's defense constitutes violation of Section 24A of the General Clauses Act, 1897; therefore, the impugned orders are not sustainable in the eyes of law and liable to be struck down.

L. That the Honourable Supreme Court of Pakistan has in thousands of cases has held that no major punishment could be imposed without regular inquiry, the subject impugned order based on slipshod inquiry has therefore, no base in the light of the decision of the Apex Court, thus liable to be set aside.

M. That the well-known principle of law " Audi altram Partem" has been violated. This principle of law was always deemed to have embedded in every statute even though there was no express specific or express provision in this regard. ....An adverse order passed against a person without affording him an opportunity of personal hearing was to be treated as void order. Reliance is placed on 2006

PLC(CS) 1140. As no proper personal hearing has been afforded to the appellant before the issuing of the impugned order, therefore, on this ground as well the impugned order is liable to be set aside.

N. That appellant is jobless since impugned order, therefore entitled to be re instated with all back benefits.

For the aforesaid reasons, it is therefore, humbly prayed that the appeal may kindly be allowed as prayed for above.

Any other relief not specifically asked for, but deem fit in the circumstance of the case may also be graciously be granted.

Appellant

Through

Ashraf Ali Khattak

and

Nawaz Khan Khattak
Advocate, Peshawar.

Dated: _____/ 08/ 2014

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PSHAWAR.

Service Appeal No. /2014

Ex HC Maqbool Khan 4757 Elite Force Bannu R/o Purana Azim Killa Tehsil Domil & District Bannu .....Appellant.

Versus

The Provincial Police Officer Govt: Khyber Pkhtunkhwa, Peshawar and others .....Respondents.

Affidavit

I, Ex HC Maqbool Khan 4757 Elite Force Bannu R/o Purana Azim Killa Tehsil Domil & District Bannu Elite Force Bannu , do hereby solemnly affirm and declare on oath that the contents of this Service Appeal are true and correct to the best of my knowledge and nothing has been concealed from this Hon'ble Tribunal.

KHALID MAHMOOD ATTESTED NOTARY PUBLIC PESHAWAR HIGH COURT 12-8-14

Maqbool

Deponent

Anx: A

(9)

SUMMARY OF ALLEGATIONS

I, Dilawar Khan Bangash, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, am of the opinion that Head Constable Maqbool No. 4757, Platoon No. 89 has rendered himself liable to be proceeded against as he has committed the following misconduct within the meaning of Police Rules (amended vide NWFP gazette, 27th January 1976).

SUMMARY OF ALLEGATIONS

He has got tainted reputation and allegedly involved in anti-social activates as per report of RPO Bannu vide his office letter No. 2659-61/EC, dated 08.11.2013.

2. For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations Mr. Shabir Ahmad ADSP/ Elite Force Bannu, is appointed as Enquiry Officer.

3. The Enquiry Officer shall provide reasonable opportunity of hearing to the accused, record statements etc and findings within (25 days) after the receipt of this order.

4. The accused shall join the proceedings on the date, time and place fixed by the Enquiry Officer.

(DILAWAR KHAN BANGASH)
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar.

No. 16236-41/EF, dated Peshawar the 28 /11/2013.

Copy of the above is forwarded to the;

1. Regional Police Officer, Bannu w/r to his letter No. 2659-61/EC, dated 08.11.2013
2. A/DSP Elite Force Bannu.
3. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
4. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
5. SRC, Elite Force Khyber Pakhtunkhwa Peshawar.
6. HC Maqbool No. 4757 of Elite Force thorough reader DSP/Elite Bannu.

(DILAWAR KHAN BANGASH)
Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa, Peshawar

D:\RI Elite Force\Charge Sheet\New Charge Sheet\charge sheet extra.docx

(10)

CHARGE SHEET

I, Dilawar Khan Bangash, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority hereby charge you Head Constable Maqbool No. 4757, Platoon No. 89 of Elite Force Bannu, as follows;

You have got tainted reputation and allegedly involved in anti-social activates as per report of RPO Bannu vide his office letter No. 2659-61/EC, dated 08.11.2013.

2. By reason of the above, you appear to be guilty of misconduct under the Police Rules (amended vide NWFP gazette, 27th January 1976) and have rendered yourself liable to all or any of the penalties specified in the said rules.

3. You are, therefore, directed to submit your defense within seven days of the receipt of this Charge Sheet to the Enquiry Officer.

4. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put in and in that case ex-parte action shall be taken against you.

5. You are directed to intimate whether you desire to be heard in person.

6. A statement of allegation is enclosed.

(DILAWAR KHAN BANGASH)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

(F) (11)

Anx: B

To,

The Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

Subject: **REPLY TO THE CHARGE SHEET BASED UPON STATEMENT OF ALLEGATION.**

Respected Sir,

With reference to your good self-number 16236-41/EF dated 28/11/13, the petitioner prayed as under:-

1. The petitioner recruited in police deptt: as constable in the year 2002 and after undergoing basic training in the training institution, reported back in the District for performance of duty. The petitioner was then deputed for the training of elite course which was successfully completed and thereafter the petitioner has been assigned the duty against the Anti-Social elements which has been discharged efficiently.

2. That the petitioner was posted on various establishment in police deptt: and performed the duty with great zeal and zest and this is why that the officers under whom command, I have performed the duty has made no complaint what so ever against the petitioner.

3. That throughout my service since 2002, the petitioner has not done any such thing/action which is against the spirit of police rules as well as disciplinary force. The service record of the petitioner is so much clean that during the entire period of service, no complaint has been received from the public to the officers and this is why that no departmental action has been initiated against the petitioner from any corner.

4. That after qualifying Elite course satisfactory, the petitioner was assigned the duty against the terrorist/militants and other anti-social elements which has been performed devotedly and honestly. During the

Attested
To be true copy
Advocate

course of performance of duty the petitioner has not shown any cowardice whatever situation came forwarded.

5. That the petitioner has performed front line duty in the raid proceeding of police and presently performing the duty in the elite force which is very sensitive duty. The petitioner has also performed the duty on so many sensitive places and the services of the petitioner in the performance of duty in such sensitive places has been recognized by the officers with good name.

6. The allegation leveled in the subject Charge Sheet is not based upon facts because the petitioner has not been counseled by the authority in light of the contents of the above allegations. According to service laws whenever no proof is available against any officer/official on the subject of corruption or any other anti-social activities then the official/officer is directed by the authority for reformation or removing the short coming or the same is communicated to the officer/official in shape of adverse remarks in the ACR but in my case no such adverse remarks has been communicated to me in shape of ACR or advice, which suggest that the allegations mention in the above letter is not substantiated by cogent evidence.

7. Sir, the petitioner has never been indulged in any such activities beneficial to the petitioner except the performance of good duty vide which I am receiving monthly salary from police Deptt:.The allegations in the above charge sheet is quite based upon hearsay evidence which has got no footing in the service laws, furthermore I do not know that under what source, the same has been communicated to your good self by worthy RPO Bannu because till date I have not even warned by the authority.

8. According to the dicta of Supreme court of Pakistan as well as service tribunal and the constitution of Islamic republic of Pakistan 1973 no official/officer should be condamed without solid reasons / proof of any

Attested

To be true copy
Advocate

allegation and in the case of any allegation against the spirit of police rules/service laws, the official/officer will be suspended when there is some clue leading towards the allegations but in the case of petitioner no complaint what so ever has been made against the petitioner nor any kind of tinted allegation has been refereed in the charge sheet. The general allegations without proof is nothing but amounts the harassment of the official.

9. The petitioner is the only bread earner of the family and such like defamation will certainly discourage myself as well as other police officials in performance of duty specially in the situation facing by the police in now a days.

10. The performance of the duty of elite force with regular police is only confined to the situation whenever any danger is apprehending or any terrible situation came forward. Further managing the raid and dealing with the public is by the regular police.

11. That the allegations in the charge sheet are not governed by any cogent/solid proof and no official/officer can be entangle with such like allegations without substantive proof.

In light of the above facts and circumstances, it is requested that the allegations mentioned in the charge sheet is ariel in nature and the charge sheet may kindly be filled without further action.

Yours Obediently

Dated 4-7-2014.

Maqbool

Maqbool
HC No. 4757
Elite Force Bannu.

Attested
To be true copy
Advocate

Anx: C (14)

فائنل رپورٹ

ہیڈ کنسٹیبل محمد مقبول خان نمبر 4757 پلاٹون نمبر 89 ضلع بنوں پر الزام لگایا گیا تھا۔ کہ وہ بدعنوانی میں ملوث ہے۔ اور وہ داغ دار شہرت کا مالک ہے۔ جس پر اُس کو چارج شیٹ کیا گیا۔ اور سابقہ ADSP بنوں شبیر حسین صاحب کو انکوائری افیسر مقرر کیا گیا۔ DSP شبیر حسین صاحب کے معطل ہونے پر تمام انکوائیریاں پینڈنگ مجھے مارک ہوئیں۔ جو تمام گواہان کو دوبارہ طلب کیا جا کر بیانات سُنے گئے جنہوں نے سابقہ بیان کی تائید کی جو بیانات پر میں نے تصدیق کی۔ بدوران انکوائری گواہان ذیل کے بیانات لئے گئے۔

E.O. Reports by SB & IB ??

نمبر 1:۔ انچارج DSB بنوں

نمبر 2:۔ ریڈر ٹو DSP

نمبر 3:۔ کنسٹیبل وسیم 1065/EF

نمبر 4:۔ کنسٹیبل سردار داؤد 1066/EF

نمبر 5:۔ کنسٹیبل یوسف اقبال 1064/EF

نمبر 6:۔ کنسٹیبل عرفان شاہ 867/EF

بیانات سے پایا گیا۔ کہ ہیڈ کنسٹیبل محمد مقبول خان 4757/HC کسی قسم کی بدعنوانی میں ملوث نہیں رہا ہے۔ اور نہ وہ داغ دار شہرت رکھتا ہے۔

مزید معلومات کر کے حلقہ پٹواری سے اسکی جائیداد کی تفصیل لی گئی۔ جسمیں پایا گیا۔ کہ اس کے نام پر کسی قسم کی جائیداد غیر منقولہ موجود نہیں ہے۔ بنوں کے تمام بنکوں سے اسکے متعلق ریکارڈ لیا گیا مگر اس کے نام پر کسی قسم کا بنک بیلنس نہیں پایا گیا۔ اس کا اعمال نامہ بذریعہ فون SRC پشاور سے چیک کیا گیا جس میں کسی قسم کی کوئی سابقہ سزایابی نہیں پائی گئی۔

ہیڈ کنسٹیبل محمد مقبول خان 4757/HC مورخہ 02.04.2012 سے ایلیٹ فورس میں تعینات ہے وہ مختلف تھانہ جات اور پولیس لائن میں تعینات رہا۔ مگر اس کے خلاف کسی قسم کی شکایات پولیس افسران یا ایلیٹ اہلکاران سے موصول نہیں ہوئی۔ OASI سے تعیناتی پیریڈ لیا گیا ہے کسی ایسی پوسٹ پر تعینات نہیں رہا جس پوسٹ پر کرپشن کی جا سکتی ہو۔

سفارشات:۔ ہیڈ کنسٹیبل محمد مقبول خان 4757/HC پلاٹون نمبر 89 بدعنوانی اور داغ دار شہرت کے الزامات لگائے گئے ہیں۔ جس کے خلاف ثابت نہیں ہو سکے۔ انکوائری فائنل رپورٹ مرتب ہو کر گزارش ہے۔ مزید حکم افسران بالا افضل ہوگا۔

18/3/14

(انکوائری افسر)

محمد باران خان

ڈپٹی سپرنٹنڈنٹ

ایلیٹ فورس بنوں

RI 19/3

No-76/EF-Bannu

Date = 18-3-014

Dy: No 120

dt 19/3

Encls= 28 Pages.

Attested

To be true copy

Advocate

Anx: D

15

FINAL SHOW CAUSE NOTICE

I, Sajid Khan Mohmand, Deputy Commandant Elite Force Khyber Pakhtunkhwa Peshawar as competent authority under Police Rules (amended vide NWFP gazette, 27th January 1976), do hereby serve you Head Constable Maqbool No. 4757, Platoon No. 89 of Elite Force as follows;

You have got tainted reputation and allegedly involved in anti social activities as per report of RPO Bannu vide his office letter No. 2659-61/EC, dated 08.11.2013, which was verified through intelligence agencies.

On going through the finding and recommendation of the enquiry officer, the material available on record and intelligence report, I am satisfied that you have committed the omission/commission specified in Police Rules (amended vide NWFP gazette, 27th January 1976) and charges leveled against you have been established beyond any doubt.

2. As a result therefore, I, Sajid Khan Mohmand, Deputy Commandant Elite Force, Khyber Pakhtunkhwa Peshawar as competent authority have tentatively decided to impose major penalty upon you including dismissal from service, under Police Rules (amended vide NWFP gazette, 27th January 1976) of the said ordinance.

3. You are therefore, directed to show cause as to why the aforesaid penalty should not be imposed upon you.

4. If no reply to this show cause notice is received within seven days of its delivery, in the normal course of circumstances, it shall be presumed that you have no defense to put and in that case an ex-parte action shall be taken against you.

5. A copy of the finding of the Enquiry Officer is enclosed.

(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

No. 7443 /EF, dated Peshawar the 30/05/2014.

HC Maqbool No. 4757 of Elite Force through Muharrar Elite Headquarters Peshawar.

Attested
To be true copy
Advocate

Anx: E (16)

جناب عالی!

بحوالہ مشمولہ شوکاز نوٹس نمبر 7443/EF مورخہ 30-05-014 مجاریہ جناب ڈپٹی کمانڈنٹ صاحب ایلیٹ فورس پشاور جو مجھے بذریعہ چٹھی نمبر 2659-61/EC مورخہ 08-11-013 کو R.P.O صاحب بنوں نے میرے خلاف اینٹیلی جنس رپورٹ کی بنیاد پر انکوائری کا حکم دیا تھا کہ پندرہ دن کے اندر انکوائری رپورٹ مکمل کی جائے۔ 15 مہینے طویل انکوائری کے بعد حلقہ پٹواری۔ پٹہ اکاؤنٹنٹ اور گواہان کے بیانات کی روشنی میں انکوائری افسر نے مجھے بیگناہ قرار دیا ہے۔ لیکن مورخہ 30/05/014 کو اُسی اینٹیلی جنس رپورٹ کی روشنی میں مجھے شوکاز نوٹس ہذا جاری کیا گیا ہے جو کہ انصاف کے تقاضوں کے منافی ہے۔ کیونکہ اینٹیلی جنس رپورٹ میں لگائے گئے الزامات بغیر کسی ثبوت کے لگائے گئے ہیں۔ میرے خلاف کوئی بھی F.I.R یا رپورٹ بنوں ڈسٹرکٹ میں درج رجسٹر نہیں۔ مجھ سے کسی قسم کی incriminating Article برآمد نہیں ہوئے ہیں۔ میں محب وطن انسان ہوں۔ اور کبھی بھی کسی غیر قانونی سرگرمیوں میں حصہ نہیں لیا ہے۔

لہٰذا استدعا ہے کہ انکوائری مذکورہ کی روشنی میں شوکاز نوٹس ہذا فائل کرتے انصاف کے تقاضوں کی تکمیل کی جائے۔ تاحیات دعاگو رہونگا۔

مقبول خان
HC/EF/P89
10-06-014

Attested
To be true copy
Advocate

(F) X2

17

Anx: F

From: - The Addl: Inspector General of Police,
Special Branch, Khyber Pakhtunkhwa,
Peshawar.

Phone: 9218173
Fax : 9218073

To: - The Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.

No.393 /PA/SB, dated Peshawar the 28-5 /2014.

Subject: - **SECRET ENQUIRY.**

Memo: -

Please refer to your office letter No. 5587/EF, dated 6.5.2014.

The matter was enquired into through Group Officer Bannu who reported as under:-

Head Constable Maqbool 4757

1. He was recruited in District Police Bannu on 1.2.2002 and remained posted at various places in the district.
2. In 2009 he was selected for Lower Course.
3. In 2011 he was transferred to Elite Force and still serving there. 1 ½ years back he was running business of vehicles bargaining. Head Constable Imran was also his partner who was killed by unknown accused. After the death of HC Imran, he left the business.
4. It has been learnt that he was involved in business of NCP and tempered vehicles. It has also been learnt that he used to snatch cash and mobile from the innocent people. Head Constable Amjid 4747 also remained with HC Maqbool, while committing the crime. He is reportedly a corrupt Police official.

Head Constable Amjid No. 4747

1. Head Constable Amjid No. 4747 was recruited in Special Police Force in 2002.On completion of traisning, he was posted in Police Post Mera Khel where he served for 06 years.

PTO

Attested
To be true copy
Advocate

P- (18)

2. In 2008 he was posted in regular Police force. In 2009 he was selected for Lower Course.
3. He is close associate of H.C Maqbool NO. 4757 and involved in corruption. However, he is not partner of H.C Maqbool No. 4757 in business of NCP and tempered vehicles.

SSP/P,
FOR ADDL; INSPECTOR GENERAL OF POLICE,
SPECIAL BRANCH, KHYBER PAKHTUNKHAWA,
PESHAWAR.

Attested
To be true copy
Advocate

Anx: G (19)

Office of the Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar

No. 9141-50/EF Dated 20/06/2014.

ORDER

– You Head Constable Maqbool Khan No. 4757, Platoon No. 89 of Elite Force Khyber Pakhtunkhwa were found guilty of gross misconduct on the following grounds.

You have got tainted reputation and allegedly involved in anti social activates as per report of RPO Bannu vide his office letter No. 2659-61/EC, dated 08.11.2013. Charge Sheet & Summary of Allegation was issued to you and Acting DSP/Elite Force Bannu was appointed as Enquiry Officer. The Enquiry Officer exonerated you from the charges but the charges were then verified through intelligence agencies. The agencies report suggests that you are corrupt and involved in corrupt practices. Your previous service record was also perused, and found blemished. You were also issued Show Cause Notice vide this office order No. 7908-10/EF, dated 05.06.2014 to appear before the undersigned on 19.06.2014, but you failed to satisfy the undersigned.

Therefore, I, Sajid Khan Mohmand, Deputy Commandant, Elite Force Khyber Pakhtunkhwa Peshawar as competent authority, impose major penalty of compulsory retirement, upon you under Police Rules (NWFP Police Rules 1975, Section 05, subsection 5) with immediate effect.

(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force Khyber Pakhtunkhwa Peshawar.

Copy of the above is forwarded to the:-

1. Additional IGP, Elite Force Khyber Pakhtunkhwa Peshawar.
2. PSO to IGP, Khyber Pakhtunkhwa Peshawar.
3. Acting Deputy Superintendent of Police, Elite Force Headquarters, / Bannu.
4. RI, Elite Force Khyber Pakhtunkhwa Peshawar.
5. Accountant, Elite Force Khyber Pakhtunkhwa Peshawar.
6. Incharge Kot / OASI, Elite Force Khyber Pakhtunkhwa Peshawar
7. SRC/FMC, Elite Force Khyber Pakhtunkhwa Peshawar.

Attested
To be true copy
Advocate

OB 295
23-06-14

(20)

Anx: H

To,

The Addl: Inspector General of Police
Elite Force, Khyber Pakhtunkhwa Peshawar.

Subject: REPRESENTATION AGAINST THE ORDER OF DEPUTY COMMANDANT ELITE FORCE VIDE OB NO. 295 DATED 23/6/2014 VIDE WHICH THE PETITIONER WAS COMPLULSORY RETIRED FROM THE SERVICE.

Respected Sir,

With reference ORDER of Deputy Commandant Elite force No. 9131-40 /EF dated 20/6/2014 , the petitioner prayed as under:-

1. The petitioner recruited in police deptt: as constable in 2002 and after undergoing basic training in the training institution, reported back in the District for performance of duty and discharge the duty efficiently, devotedly and co-heartedly. The petitioner was then deputed for the training of Elite force which was successfully completed and thereafter posied in many police stations /establishments for curbing the criminals and terrorist involved in criminal cases. The petitioner has discharge the function efficiently and devotedly to the utmost satisfaction of my superior.

2. The detail facts and figures on the subject of charge sheet has already been submitted before Deputy Commandant Elite force which was entrusted to EO for threshing out the real facts. (Copy of which is attached for ready reference). While conducting enquiry into the matter, the enquiry officer has threshed out the charges after recoding pro and contra evidence and found my contention correct exonerated me from the charges but the authority has not admitted the finding against the spirit of procedure of enquiry. The EO finding is very much clear on the grounds that the petitioner reputation was not found tainted and neither any property or bank balance was found in his name, the allegation of charge sheet was totally based upon this fact which has not been proved from the enquiry.

Attested
To be true copy
Advocate

3. That the worthy Dy: commandant elite force based the punishment to me on the sole version of group officer Mujeeb Khan stating therein that the petitioner is corrupt. The said group officer has not quoted a single instance vide which I have taken any bribe from any person or entangle myself in any acts of tainted reputation. The finding of the authority regarding my punishment is not only against the spirit of law and lands but also against the injunction of islam because no one can be blamed without direct and solid proof for any sin.

4. The enquiry is conducted against any officer official for digging out the real facts and had the enquiry was not satisfied by the authority then he got the option to conduct denevo enquiry by any other competent officer but without complying the provision of enquiry, inflection of the punishment ignoring the findings of enquiry officer is the nullity in the eyes of law.

5. According to the dicta of Supreme court of Pakistan as well as service tribunal and the constitution of Islamic republic of Pakistan 1973 no official/officer should be condemned without solid reasons / proof of any allegation and in the case of any allegation against the spirit of police rules/service laws, the official/officer will be panelized when there is solid evidence on record regarding the allegation but in the case of petitioner no complaint what so ever has been made against the petitioner nor any kind of specific tainted allegation has been refereed in the charge sheet or during the findings of enquiry. The general allegations without proof are nothing but amounts the harassment of the official/officer.

6. The petitioner is the only bread earner of the family and such like defamation will certainly discourage myself as well as other police officials in performance of duty specially in the situation facing by the police in now a days. The petitioner performance has been praised by the authorities on each and every occasion as evident from the service record but I don't know that why I have been blamed for such allegations without

Attested
To be true copy
Advocate

7. That the allegations in the charge sheet regarding the links with smugglers of NCP vehicle, tainted reputation and involment in anti-social activities are not governed by any cogent/solid proof and no official/officer can be entangle with such like allegations without substantive proof. Furthermore, throughout my service I have performed my duty so devotedly and bravery that no chance has been given to any authority for fingering upon my duty.

8. The petitioner is the qualified member of Elite force and elite force is deputed for duty when there is eminent danger at the hands of criminal/terrorist under the command of superior officer and question of corruption does not arise when the senior officer is present.

9. The petitioner have never been counseled on the subject of allegation by the authority and when no such allegations have ever been communicated to the petitioner in 13/14 years service in shape of ACRs/advise and has not been proved during the course of inquiry then the same will be considered as leveled against the petitioner on some ulterior motive.

10. That the petitioner belong to respectable family of Dust Bannu and has performed the duty efficiently, devotedly and honestly and never indulged in any mal practice throughout my service as evident from my service record.

In light of the above facts and circumstances, it is requested that the Order of Deputy Commandant Elite force may kindly be set-aside and I may be re-instated into service from the date of suspension for the best interest of my lengthy service and poor family.

Dated
4-7-2014.

Yours obediently

Attested
To be true copy
Advocate

Mohammad Maqbool Khan
EX: HC No. 4757 Elite force
P/O Purana Azim Killa Tehsil Domil
District Bannu Mob: 03339746330

Anx: I

23

Office of the Addl: Inspector General of Police
Elite Force Khyber Pakhtunkhwa Peshawar

No. 10820-21 /EF

Dated 23/07/2014.

To : 1. Muhammad Maqbool s/o Kamal Khan,
r/o Domail, District Bannu.

2. Amjad Khan s/o Ghulam Dawood Khan,
r/o Ghoriowala, District Bannu.

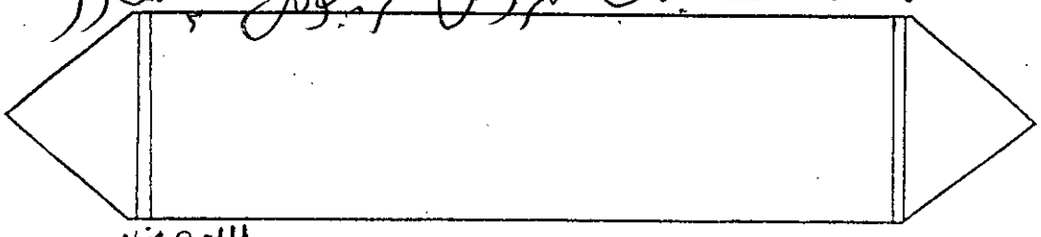
Subject: APPEAL FOR RE-INSTATEMENT IN SERVICE

Your appeal for re-instatement in service has been examined by the competent authority and rejected.

(SAJID KHAN MOHMAND)
Deputy Commandant
Elite Force, Khyber Pakhtunkhwa Peshawar

Attested
To be true copy
Advocate

بعدالت جناب سروس ٹریبونل پشاور



منجانب 2014ء

مورخہ ــــــــــ
مقدمہ ــــــــــ
دعویٰ ــــــــــ
جرم ــــــــــ

محمد مقبول خان بنام P.P.O

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی وکل کاروائی متعلقہ
آن مقام پشاور کیلئے اشرف علی خٹک اینڈ نواز خان خٹک
مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث ہ فیصلہ برحلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک وروپیہ ارعرضی دعویٰ اور درخواست ہر قسم کی تصدیق زرایں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برامدگی اور منسوخی نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا اختیار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور قبول ہوگا۔ دوران مقدمہ میں جو خرچہ وہرجانہ التوائے مقدمہ کے سبب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔ کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھدیا کہ سند رہے۔

المرقوم ــــــــــ ماہ اگست 2014ء

العبد ــــــــــ گواہ العبد ــــــــــ

بمقام ــــــــــ کے لئے منظور ہے۔

Attested & Accepted
Marhoob

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PEASHAWAR.

Service Appeal No. 1065/2014.

Maqbool Khan.....(Appellant)

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa and others.....(Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth!

Preliminary Objections:-

a) The appeal has not been based on facts.
b) The appeal is not maintainable in the present form.
c) The appeal is bad for joinder of un-necessary and non-joinder of necessary parties.
d) The appellant is estopped by his own conduct to file the appeal.
e) The appeal is barred by law and limitation.
f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1) Subject to proof.
2) Incorrect, Regional Police Officer Bannu reported vide his office memo No. 2659-61/EC dated 08.11.2013 that appellant and others have tainted reputation and involved in anti-social activities. Copy of Regional Police Officer letter enclosed as Annexure-A. The Secret Agencies also verified the opinion of Regional Police Officer Bannu with regard to dubious character of appellant.
3) Incorrect, charge sheet based on the report received from Regional Police Officer Bannu was issued to appellant.
4) Incorrect, the reply submitted by appellant in response to charge sheet was found unsatisfactory. Furthermore, responsible officer had reported that appellant bears tainted reputation and involved in anti-social activities. This fact was further confirmed by the secrete agencies enquiry report.

5) Correct, to the extent of final show cause notice and reply of the appellant however the reply of appellant in response to the charge was found unsatisfactory therefore the impugned orders were passed.

6) Incorrect, secrete agencies conduct enquiry by collect information without exposing the source of information.

7) Correct

8) That the departmental appeal of appellant was correctly rejected and his service appeal is not sustainable on the grounds advanced by appellant.

GROUNDS:-

A. Incorrect, the impugn orders are just legal and were passed in accordance with law and rules on the subject.

B. Incorrect, final show cause notice was issued to appellant that though enquiry officer has failed to collect evidence in support of the charges yet there are sufficient materials which support the charges. Appellant failed to explain the charges leveled against him further there is no illegality or irregularity on the inquiry.

C. Incorrect, proper proceedings conducted according to law, fulfilling all the codal formalities the impugned orders are passed.

D. Incorrect, appellant being Police officer was found involved in the above mentioned activities and the same was proved during inquiry.

E. Incorrect, responsible officers reported that appellant was bearing tainted reputation.

F. Incorrect, charges leveled against appellant were conveyed to him in shape of charge sheet and final show cause notice but he failed to rebut the charges.

G. Incorrect, this Para of the ground of the appeal is irrelevant as it does not relate to the charges leveled against appellant.

H. Incorrect, appellant being Police officer was found involved in anti-social activities therefore the impugned orders were correctly passed after fulfilling all codal formalities.

I. Incorrect, proper charge sheet and final show cause notice were issued to appellant and he failed to rebut the charges. The impugned orders were passed after adopting all the prescribed legal and codal requirements.

J. Incorrect, appellant was proceeded against under proper law and competent authorities have passed the impugned orders.

K. Incorrect, impugned orders are just, legal and speaking one.

L. Incorrect, regular enquiry was conducted and responsible officer held the appellant guilty of the charges leveled against him.

M. Incorrect, full opportunity of defense was provided to appellant.

N. Incorrect, appellant was correctly punished on serious charges of involvement in anti-social activities.

It is therefore, prayed that the appeal of appellant may be dismissed with cost.

Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)

Addl: Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 4)

Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)

Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 3)

Tel: 0928-9270076
Fax: 0928 -9270075

From: The Regional Police Officer,
Bannu Region, Bannu.

To: 1) The Commandant Elite Force,
Khyber Pakhtunkhwa, Peshawar.

2) The Assistant Inspector General of Police,
Tele-Communication, Peshawar.

3) The Superintendent of Police, FRP, Bannu.

No: 2659-61 /EC, dated Bannu the 08 /11/2013.

Subject: **POLICE OFFICIALS HAVING TAINTED REPUTATION**

Memo:

The following Police officials posted in Bannu District have failed to fulfill legal obligations coupled with the fact that they have got tainted reputation and allegedly involved in anti-social activities:-

1. HC Amjad No. 4747 Elite Force, Bannu.
2. HC Maqbool No. 4757 Elite Force, Bannu.
3. Constable Nazif No.3 of Tele-Communication posted in Control Room Bannu.
4. Constable Wahid Ullah No.6391/FRP (Now MT Staff Police Lines, Bannu).

It is requested that the above officials may be placed under suspension and proceeded against departmentally for their above reputation.

(SAJID ALI KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

No. /EC, dated Bannu the 9 /2013

Copies to:-

1. The Provincial Police Officer, Khyber Pakhtunkhwa for favour of information please.
2. The Additional Inspector General of Police, Operation Khyber Pakhtunkhwa, Peshawar for favour of information please.
3. The District Police Officer, Bannu for information & necessry action please.

RI
OS
9/XI

Dy No 11683
dt 19/11/13
Commandant
Elite Force KPK
Peshawar

(SAJID ALI KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PEASHAWAR.

Service Appeal No. 1065/2014.

Maqbool Khan.....(Appellant)

VERSUS

Provincial Police Officer Khyber Pakhtunkhwa and others.....(Respondents)

Subject:- COMMENTS ON BEHALF OF RESPONDENTS.

Respectfully Sheweth!

Preliminary Objections:-

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c) The appeal is bad for joinder of un-necessary and non-joinder of necessary parties.
d) The appellant is estopped by his own conduct to file the appeal.
e) The appeal is barred by law and limitation.
f) The appellant has not come to the Honorable Tribunal with clean hands.

FACTS:-

1) Subject to proof.
2) Incorrect, Regional Police Officer Bannu reported vide his office memo No. 2659-61/EC dated 08.11.2013 that appellant and others have tainted reputation and involved in anti-social activities. Copy of Regional Police Officer letter enclosed as Annexure-A. The Secret Agencies also verified the opinion of Regional Police Officer Bannu with regard to dubious character of appellant.
3) Incorrect, charge sheet based on the report received from Regional Police Officer Bannu was issued to appellant.
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5) Correct, to the extent of final show cause notice and reply of the appellant however the reply of appellant in response to the charge was found unsatisfactory therefore the impugned orders were passed.

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8) That the departmental appeal of appellant was correctly rejected and his service appeal is not sustainable on the grounds advanced by appellant.

GROUNDS:-

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B. Incorrect, final show cause notice was issued to appellant that though enquiry officer has failed to collect evidence in support of the charges yet there are sufficient materials which support the charges. Appellant failed to explain the charges leveled against him further there is no illegality or irregularity on the inquiry.

C. Incorrect, proper proceedings conducted according to law, fulfilling all the codal formalities the impugned orders are passed.

D. Incorrect, appellant being Police officer was found involved in the above mentioned activities and the same was proved during inquiry.

E. Incorrect, responsible officers reported that appellant was bearing tainted reputation.

F. Incorrect, charges leveled against appellant were conveyed to him in shape of charge sheet and final show cause notice but he failed to rebut the charges.

G. Incorrect, this Para of the ground of the appeal is irrelevant as it does not relate to the charges leveled against appellant.

H. Incorrect, appellant being Police officer was found involved in anti-social activities therefore the impugned orders were correctly passed after fulfilling all codal formalities.

I. Incorrect, proper charge sheet and final show cause notice were issued to appellant and he failed to rebut the charges. The impugned orders were passed after adopting all the prescribed legal and codal requirements.

J. Incorrect, appellant was proceeded against under proper law and competent authorities have passed the impugned orders.

K. Incorrect, impugned orders are just, legal and speaking one.

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M. Incorrect, full opportunity of defense was provided to appellant.

N. Incorrect, appellant was correctly punished on serious charges of involvement in anti-social activities.

It is therefore, prayed that the appeal of appellant may be dismissed with cost.

Provincial Police Officer,
Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 1)

Addl: Inspector General of Police,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 4)

Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 2)

Deputy Commandant,
Elite Force, Khyber Pakhtunkhwa,
Peshawar.
(Respondent No. 3)

Tel: 0928-9270076
Fax: 0928 -9270075

From: The Regional Police Officer,
Bannu Region, Bannu.

To: 1) The Commandant Elite Force,
Khyber Pakhtunkhwa, Peshawar.

2) The Assistant Inspector General of Police,
Tele-Communication, Peshawar.

3) The Superintendent of Police, FRP, Bannu.

No:2659-61 /EC, dated Bannu the 08 /11/2013.

Subject: **POLICE OFFICIALS HAVING TAINTED REPUTATION**

Memo:

The following Police officials posted in Bannu District have failed to fulfill legal obligations coupled with the fact that they have got tainted reputation and allegedly involved in anti-social activities:-

1. HC Amjad No. 4747 Elite Force, Bannu.
2. HC Maqbool No. 4757 Elite Force, Bannu.
3. Constable Nazif No.3 of Tele-Communication posted in Control Room Bannu.
4. Constable Wahid Ullah No.6391/FRP (Now MT Staff Police Lines, Bannu).

It is requested that the above officials may be placed under suspension and proceeded against departmentally for their above reputation.

(SAJID ALI KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

No. /EC, dated Bannu the /2013

Copies to:-

1. The Provincial Police Officer, Khyber Pakhtunkhwa for favour of information please.
2. The Additional Inspector General of Police, Operation Khyber Pakhtunkhwa, Peshawar for favour of information please.
3. The District Police Officer, Bannu for information & necessry action please.

RI
OS
9/XI

Dy No 11683
dt 19/11/13

(SAJID ALI KHAN) PSP
Regional Police Officer,
Bannu Region, Bannu

BEFORE THEKHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR .

Service Appeal NO.1065/2014

Maqbool Khan.....**Appellant**

V E R S U S

Provincial Police Officers and others.....**Respondents**

REJOINDER ON BEHALF OF THE APPELLANT.

Respectfully Sheweth:

Preliminary Objections:

As to preliminary objections:

1. That the preliminary objections raised by the answering respondents are frivolous and having no factual and legal backing. The respondents have filed to explain as to why the appellant has no cause of action and locus standi? How the appellant has not come to the Court with clean hand? How the appeal is time barred and how he is estopped by his own conduct and what parties have not been arrayed as necessary parties and why the appeal is not maintainable. No material question of law and facts have been raised by the answering respondents therefore appellant is unable to explain.

ON FACTS:

1. That Para No.1has been admitted as correct.
2. That reply to Para No.2 of the appeal is incorrect, hence denied. The letter annexed by the respondents has no evidently value. Neither the same has been brought in to the knowledge of the appellant nor the same has ever been shown to the appellant. Appellant is totally ignorant of the alleged letter. The alleged letter cannot be used as evidence against the appellant. So for the information of secret agencies are concerned it has no evidently value.
3. That Para No.3 of the appeal by the answering the respondents is incorrect and has not been properly repled.

4. That para No.4 of the appeal is incorrect, hence denied. The letter annexed by the respondents has no evidently value. Neither the same has been brought in to the knowledge of the appellant nor the same has ever been shown to the appellant. Appellant is totally ignorant of the alleged letter. The alleged letter cannot be used as evidence against the appellant. So for the information of secret agencies are concerned it has no evidently value.

5. That reply to Para No.5 of the appeal by the answering respondents is incorrect, hence denied. Respondents have not treated the appellant in accordance with the law, rule and policy, hence acted involution of Article 4 of the constitution of Islamic Republic of Pakistan 1973.
6. That reply to Para No.6 of the appeal by the answering respondents is incorrect, hence denied. Appellant has been the regular employ of the respondents department and Civil servant. Disciplinary action against the Civil servant could only be initiated under the commands of the Civil Servant Act, 1973. In absence of conformity

with prescribed procedure; The action of the respondents can not be clothes validity and liable to we set aside.

7. That para No.7 of the appeal has been admitted by the answering the respondents is correct.

8. That reply to Para No.8 of the appeal by the answering respondents is incorrect, hence denied. The departmental appeal of the appellant has been rejected involution of rule 5 of the appeal rules 1986.

GROUNDS:

A to N. That no specific and due reply has been submitted by the answering the respondents to the ground of appeal. Appellant rely on his grounds already submitted in memo of appeal. Appellant would like to seek the permission of this Honourable Tribunal to advance grounds in rebuttal if needed.

It is, therefore, most humbly prayed that the reply of the respondents may kindly be set aside and the appeal of the appellant may kindly be allowed as prayed for.

Appellant

Through

(Saqib Wazir)
Advocate High Court

Date: __/__/2015

AFFIDAVIT

I, Maqbool Khan No.4757 elite Force Bannu R/O ofPurana Azim Killa Tehsil Domil District Bannu, do hereby solemnly affirm and declare on oath that the contents of the **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Deponent

Identified by

(Saqib Wazir)
Advocate, Peshawar

KHALID MAHMOOD ADVOCATE ATTESTED NOTARY PUBLIC PESHAWAR HIGH COURT

POWER OF ATTORNEY

In the Court of Khyber Pakhtunkhwa, Service Tribunal Peshawar.

Muhammad Maqbool Khan Ex-Head Constable. } For / Plaintiff / Appellant / Petitioner / Complainant

VERSUS

P.P.O and others. } Defendant / Respondent / Accused

Appeal/Revision/Suit/Application/Petition/Case No._____of_____

Fixed for_____

I/We, the undersigned, do hereby nominate and appoint

SAJID AMIN ADVOCATE, HIGH COURT

_____my true and lawful attorney, for me in my same and on my behalf to appear at _____to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromises or other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or sub-poena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employee any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at_____

the_____day to_____the year_____

Executant/Executants_____

Accepted subject to the terms regarding fee_____

SAJID AMIN
Advocate High Court

ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3 &4, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Ph.091-5272154 Mobile-0333-4584986

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR AT D.I.KHAN CAMP

Service Appeal No. 1095 of 2014

Muhammad Yousif

Versus

Govt. of KPK and others

Subject: **REPLY OF APPEAL ON BEHALF OF RESPONDENT NO. 6 (IMTIAZ HUSSAIN)**

Respectfully Shewith: Respondent No. 6 humbly submits as under,

PRELIMINARY OBJECTION:-

1. That the Appellant has no cause of action and locus standi against the respondent No. 6.
2. That Appellant has not come to this Honourable Court with clean hands.
3. That the appeal is not maintainable in its present form, hence liable to be dismissed.
4. That the instant appeal of the Appellant is badly time barred, hence liable to be dismissed.
5. That the appellant has not come to the court with clean hands and appeal of the appellant is based on malafide and just to take illegal benefit by misconceiving department as well as this Honourable Tribunal, hence, on the sole score appeal of the appellant is liable to be dismissed with cost.
6. That respondent No. 6 is made party in the instant appeal with malafide intention exercised by the appellant, because respondent No. 6 has no concern with the subject matter of the appeal.
7. That the appellant is stopped to file the instant appeal.
8. That the appeal of appellant is pre-mature, and on this ground the appeal is not maintainable.

OBJECTION ON FACTS:-

1. That para No. 1 of the Appeal is related with the Appellant's appointment which relates to the official respondents / department, hence, no reply.

2. That para No. 2 of the facts of Appeal is incorrect and misconceived and also related with the department's acts and omission which cannot deprived the vested rights of the respondent No. 6, hence, whole para is incorrect.

3. That para No. 3 of facts of Appeal is not related with the respondent No. 6, hence no reply.

4. That para No. 4 of facts of the Appeal is incorrect and misconceived hence not admitted, actually the appellant is not deserving in the seniority list due to his regularization matter on the post and respondent No. 6 was appointed on regular basis on 11-11-2008 in BPS-14 while appellant was appointed against the temporary post and not a regular post, hence, this material aspect of the matter shows disentitlement of the appellant in tentative seniority list as well as final seniority list while preparing by the competent authority.

5. That para No. 5 of facts of the Appeal is incorrect, and misconceived which relates to the departmental proceeding and a clear reply is required by respondent No. 2 while position of respondent No. 6 in the final seniority list is according to law, rule, regulations of the Civil Servants Act, and also respondent No. 6 has a preferential rights over the appellant.

6. That para No. 6 of facts of the Appeal is concerned with the departmental proceedings, hence, no reply but it is a fact that departmental appeal of the appellant as well as main appeal of the appellant is badly time barred and liable to be dismissed on the sole ground of law of limitation.

7. No reply.

REPLY OF GROUNDS:-

a) That ground A is incorrect, hence denied. Appellant has no right of seniority over the respondent No. 6 and no law in this regard is violated by the department.

b) That ground No. B of the Appeal of the Appellant is incorrect and misconcieved, hence not admitted, actually the appellant was regularized against the post on 19-11-2008 while respondent No. 6 was appointed as regular employee on 11-11-2008, hence respondent No. 6 is senior with 08 days from appellant. Remaining para is also based on

malafide and incorrect. Seniority list of the department made after performing all codel formalities and fulfilling requirements of law.

c) That ground C of the Appeal of the Appellant is incorrect, misconceived, the matter agitated in the ground is a factual controversy and required a cogent and reliable proof of law which appellant apparently not provided in the instant appeal, hence all the para of the appellant is incorrect and based on wrong story and final seniority list at this stage cannot be changed/alter on the flimsy grounds of the appellant and rights of the respondent No. 6 is fully accrued and protected under the law.

d) Incorrect and misconceived, hence not admitted.

In wake of submissions made above, it is therefore, humbly requested that on acceptance of reply on behalf of respondent No. 6, appeal of the Appellant may please be dismissed being meritless.

Dated: 22-04-2015

Yours Humble Respondent No. 6

Imtiaz Hussain
Office Assistant
District Agriculture Office Tank.

Through Counsel
Hidayatullah Mehsood
Advocate High Court.

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR AT D.I.KHAN CAMP

Service Appeal No. 1095 of 2014

Muhammad Yousif

Versus

Govt. of KPK and others

AFFIDAVIT

I, **Hidayatullah Mehsood**, counsel for the respondent No. 5 do hereby solemnly affirm and declare on Oath that contents of the written statement are true and correct as per information provided to me by my client and nothing has been deliberately concealed from this Hon'ble Court.

Dated: 22-04-2015

DEPONENT

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR AT D.I.KHAN CAMP

Service Appeal No. 1095 of 2014

Muhammad Yousif

Versus

Govt. of KPK and others

Subject: **REPLICATION OF APPLICATION ON BEHALF OF RESPONDENT NO. 6 (IMTIAZ HUSSAIN)**

Respectfully Sheweth:

Respondent No. 6 humbly submits as under,

1. No reply.
2. Incorrect hence not admitted, final seniority list is finalized prior to institution of the instant appeal by the department, hence, this application of the appellant become infructuous.
3. Incorrect and misconceived and also relates with the department, hence, no reply.
4. Incorrect and misconceived there is no serious apprehension and prima facie case of the appellant is baseless and liable to be dismissed.
5. Incorrect, appellant has no prima facie case as well as balance of convinces is not lying in his favour, hence application of the appellant is frivols and liable to be dismissed with cost.
6. Incorrect, and misconceived, appellant will not face any irreparable loss in the rejection of instant application, hence, para is incorrect.

In wake of submissions made above, this Honourable Court is humbly requested to dismiss the application of the appellant being meritless with cost.

Dated: 22-04-2015

Imtiaz Hussain
Office Assistant
District Agriculture Office Tank.

Through Counsel
Hidayatullah Mehsood
Advocate High Court.

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR AT D.I.KHAN CAMP

Service Appeal No. 1095 of 2014

Muhammad Yousif

Versus

Govt. of KPK and others

AFFIDAVIT

I, **Hidayatullah Mehsood**, counsel for the respondent No. 5 do hereby solemnly affirm and declare on Oath that contents of this replication are true and correct as per information provided to me by my client and nothing has been deliberately concealed from this Hon'ble Court.

Dated: 22-04-2015

DEPONENT

Ref. No

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT DIKHAN

Appeal No.1095/2014

Mr. Muhammad Yousaf s/o,
Abdul Sattar office Assistant
O/o District Director Agriculture DIKHAN

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Agriculture Livestock Cooperation Department Peshawar
2. Director General, Agriculture (Extension) Khyber Pakhtunkhwa, Peshawar.
3. District Director Agriculture DIKHAN
4. DCO, NOW Dy. Commission DIKHAN
5. Muhammad Rafiq officer Assistant o/o Agency Agriculture Officer Muhammad Agency
6. Imtiaz Hussain Office Assistant o/o District Director Agriculture Tank

Respondents

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1, 2 & 3

PRELIMINARY OBJECTIONS

1. That the appellant has got no locus standi to file the instant appeal.
2. That the appeal is not maintainable in its present form and liable to be dismissed.
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has deliberately concealed the material fact from this Hon'ble Service Tribunal.
5. That the appellant has not come to this Hon'ble Service Tribunal with clean hand.
6. That the appeal is time barred.

ON FACT PARA-WISE

Para-1 Correct to the extent that the appellant previously was appointed as Agriculture Inspector (BS-9) vide DCO DIKHAN office order No, 833/DCO dated 17-03-2004. Mr. Gul Sher F/Assistant was filed an appeal against the above appointment order in the Service Tribunal DIKhan Bench. The honorable Service Tribunal accepted his appeal vide judgment dated 06-09-2005 (Annexure-A), In light of the decision of the Service Tribunal

Bench DIKhan, the DCO DIKhan has with drawn the appointment order on 01-11-2005 and on the other hand the appellant was again appointed as office Assistant (BS-11) by the DCO DIKhan on contract basis with the condition that his services will be purely on Temporary basis and can be terminated without assigning any notice and will not claim for seniority or any right for regular service vide office order No, 7260/DCO(A & T) dated 20-12-2005 (Annexure-B).

Para-2 Correct to the extent that appellant was illegally appointed on purely on contract basis without observing coddle facilities i.e Advertisement, Departmental Selection Committee etc. After a laps of 3 years the DCO DIKhan issued corrigendum and para-2 of the appointment order was omitted vide No, 13555-58 dated 19-11-2008 (Annexure-C).

Para-3 Correct to the extent that the Government of Khyber Pakhtunkhwa, Finance Department was up-graded the posts of junior clerk, senior Clerk, Superintendent along with the post of office Assistant.

Para-4 Correct to the extent that after a laps of 3 years the DCO DIKhan omitted para-2 from appointment order of the appellant vide order No, 13555-58 dated 19-11-2008, In light of the above order the respondents No, 2 was prepared Tentative Seniority list of office Assistant and included his name in place of S.No, 12 and given seniority with effect from 19-11-2008 from the date of omission of para-2 from the appointment order of the appellant. While the respondents No, 5 & 6 were appointed as office Assistant on regular basis with effect from 13-04-2007 & 11-11-2008, (copy of seniority list as Annexure-D).

Para-5 In-Correct, The Seniority of the appellant was maintained in light of corrigendum issued by DCO DIKhan with effect from 19-11-2008, before the issue of corrigendum the appellant was appointed as office Assistant Purely on contract/Temporary basis and without Seniority, the appellant was accepted the term condition mentioned in his appointment order and furnish arrival report to the Department for duty.

Para-6 Correct to the extent that the Departmental appeals of the appellant was kept pending on the ground that Mr. Attaullah Khan office Assistant was challenge the appointment/seniority of the appellant in the honorable Khyber Pakhtunkhwa Service Tribunal Bench DIKhan vide appeal No, 989/2013 (Annexure-E).

Para-7 Detailed comments given in para-6 above.

GROUNDS

Para-a In-Correct, That the impugned seniority list maintained according to the Law and Rules framed by the Government of Khyber Pakhtunkhwa.

Para-b In-Correct, the Seniority of the appellant was maintained in light of DCO DIKhan corrigendum No, 13555-58 dated 19-11-2008.

Para-c In-Correct, The DCO DIKhan was issued appointment order of the appellant on purely on temporary basis and clear cut mentioned that the appellant not claim seniority or any right for regular service vide order No, 7260/DCO dated 20-12-2005. Later on after laps of 3 years, the DCO DIKhan omitted the above term and condition vides No, 13555-58/DCO dated 19-11-2008. The department included his name in the Tentative Seniority list of office Assistant as it stood on 01-01-2014 and was given seniority with effect from 19-11-2008.

Para-d In-Correct the impugned seniority list is no violating of service rules and statutory provision as well as the data of Superior Court.

It is hereby humbly prayed that on acceptance on the instants comments, the appeal of the appellant may kindly dismissed.

RESPONDENTS

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK AND COOPERATION
DEPARTMENT PESHAWAR

DIRECTOR GENERAL
AGRICULTURE (EXTENSION)'
KHYBER PAKHTUNKHWA PESHAWAR

DISTRICT DIRECTOR AGRICULTURE
DIKHAN

DISTT: DIRECTOR
Agriculture (Extension)
Dera Ismail Khan

Vetted

Govt: Pleader
Dera Ismail Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT DIKHAN

Appeal No.1095/2014

Mr. Muhammad Yousaf s/o,
Abdul Sattar Office Assistant
O/o District Director Agriculture DIKHAN

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Agriculture Livestock Cooperation Department Peshawar
2. Director General, Agriculture (Extension) Khyber Pakhtunkhwa, Peshawar.
3. District Director Agriculture DIKHAN

Respondents

COUNTER AFFIDAVIT

We the undersigned hereby solemnly declare / affirm that the contents of the Para-wise reply / comments are true and correct to the best of our knowledge and belief and nothing has been kept secret from this Honorable Tribunal.

RESPONDENTS

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK AND COOPERATION
DEPARTMENT PESHAWAR

DIRECTOR GENERAL
AGRICULTURE (EXTENSION)'
KHYBER PAKHTUNKHWA PESHAWAR

DISTRICT DIRECTOR AGRICULTURE,
DIKHAN

DISTT: DIRECTOR
Agriculture (Extension)
Dera Ismail Khan

Annex-A 5
193

BEFORE THE N.W.F.P. SERVICE TRIBUNAL, PESHAWAR
CAMP COURT D.I.KHAN.

SERVICE APPEAL NO. 790/2004

Date of institution ... 30.9.2004

Date of decision ... 06.9.2005

Gul Sher, Field Assistant,
Rakh Zandani Farm, D.I.Khan. .. Appellant

VERSUS

1. D.C.O, D.I.Khan.
2. Director General Agri.(Extension)NWFP, Peshawar.
3. Secretary, Govt. of NWFP, Agriculture Department, Peshawar.
4. Executive District Officer, Agri. D.I.Khan.
5. District Officer Agriculture, D.I.Khan.
6. Mr.Muhammad Yousaf, Inspector Agriculture, C/O District Officer, Agri. D. I.Khan. .. Respondents

APPEAL AGAINST THE ILLEGAL AND MALAFIDE [illegible] FROM PROMOTION AS AGRICULTURE INSPECTOR(BPS-9) AGAINST THE RESERVED SEATS FOR PROMOTION.

Prayer: To please take the cognizance of the case and while setting aside impugned order dated 17.8.04 of respondent No.1, the respondent department may be directed to consider the promotion case of the appellant in accordance with law and rules framed there-under.

Shaikh Muhammad Bashir Gohar, Advocate. .. For appellant

Mr.Noor Zaman Khan, Addl: Govt.Pleader. For respondent department.

Mr.Khawaja Nawaz, Advocate. For respondent No.6.

Mr.Abdul Sattar Khan, Chairman
Mr.Azmat Hanif Orakzai. Member

ATTESTED
EXAMINER
NWFP Service Tribunal
Peshawar

Asstt. Accounts Officer
Directorate General
Agriculture (Extension)
Khyber Pakhtunkhwa.

JUDGMENT

ABDUL SATTAR KHAN, CHAIRMAN: Gul Sher appellant is serving as Field Assistant in the respondent department. The gravamen of his claim is that appointment of private respondent No.6 on contract basis as Agri. Inspector is against the service rules and that the post in-question was to be filled in through promotion process under the relevant rules. After exhausting his departmental remedy, the appellant has approached the Tribunal for the redressal of his grievances.

2. Notices were sent to the respondents. They turned up and filed their separate written replies. The respondent-department in their joint written reply has averred that the post of Agriculture Inspector will be filled in by promotion on the basis of seniority-cum-fitness from amongst the Field Assistant with at least five years service as such and not by initial recruitment and that the appointment of respondent No.6 was in contravention of the recruitment rules of department, whereas Muhammad Yousaf, private respondent No.6 has supported his appointment order by averring that he has been appointed on contract basis through Departmental Selection Committee on the basis of competence experience and high qualification. Replication was also filed in rebuttal by the appellant.

3. Arguments heard and record perused.

4. The prime contention of the learned counsel for the appellant is that the post in-question was a promotion post and was to be filled in on the basis of seniority-cum-fitness and that the appellant being senior most was eligible to have been promoted, therefore, the impugned appointment of

Asstt. Accounts Officer
Directorate of Extension
Agriculture (Extension)
Khyber Pakhtunkhwa

private respondent No.6 being illegal and void ab-initio and is liable to be set aside.

5. In reply it was urged by the respondent department that the appointment of private respondent No.6 is against the laid down procedure/rules and is liable to be quashed, whereas private respondent No.6 has supported his appointment order.

6. The Tribunal holds that the claim of the appellant is bonafide. In para-2 of their written reply, the respondent department has alleged that vide Govt. of NWFP, S&GAD(Regulation Wing)Notification No.SOR-II(S&GAD)2-11/78, dated 1.2.1981 the post of Agriculture Inspector will be filled in by promotion on the basis of seniority-cum-fitness from amongst Field Assistant with at least 5 years service as such and not by initial recruitment. The relevant rules also support the version of the appellant. As such the appellant has made out a case for indulgence of the Tribunal. Accordingly, the instant appeal is accepted, the impugned appointment order of private respondent No.6 dated 17.1.81 is set aside and it is directed that the said post be filled in strictly in accordance with law and rules on the subject.

7. This order shall also dispose of another service appeal bearing No. 725 of 2004 filed by Muhammad Yasir appellant, wherein he has challenged the appointment order of private respondent No.3 as Budder and claims that the post of Budder is also to be filled in by promotion from Field Workers, Malis and Attendants of the department. His claim has not been rebutted by the respondent department in their written reply and the service rules also support

ATTESTED
Examiner
Service Tribunal
Peshawar

Assistant Director
Agriculture (Extension)
Khyber Pakhtunkhwa

his contention. As such the impugned appointment order of private respondent No.3 being not in line is referred with the direction to the respondent department to fill in the same post on the basis of the laid down procedure/rules. The delay in filing of both the appeals is condoned in the interest of justice on the strength of the authority reported as PLJ 2003 SC 435. Both the appeals are accepted in the above terms. No order as to costs. File be consigned to the record.

ANNOUNCED
06.09.2005

(ABDUL SATTAR KHAN)
CHAIRMAN
NWFP SERVICE TRIBUNAL
CAMP COURT D.I.KHAN.

(AZMAT HANIF ORAKZAI)
MEMBER

certified to be true copy.

Examiner,
NWFP Service Tribunal,
Peshawar.

Asstt. Accounts Officer
Directorate General
Agriculture (Extension)
Khyber Pakhtunkhwa.

Annex-A.

Better Copy

JUDGMENT
ABDUL SATTAR KHAN CHAIRMAN,

1. Gul sher appellant is serving as Field Assistant in the respondent department. The gravamen of his claim is that appointment on private respondent No, 6 on contract basis as Agriculture Inspector is against the service rules and that the post in-question was to be failed in through promotion process under the relevant rules. After exhausting his departmental remedy, the appellant has approached the Tribunal for the redressal of his grievances.

2. Notices were sent to the respondents. They turned up and filed their separate written replies. The respondent department in their joint written reply has averred that the post of Agriculture inspector will be filled in by promotion on the basis of seniority-cum-fitness from amongst the Field Assistant with at least five years services as such and not by initial recruitment and that the appointment of respondent No, 6 was in contravention of the recruitment rules of department, where as Muhammad Yousaf, private respondent No, 6 has supported his appointment order by averring that he has been appointed on contract basis through Departmental selection Committee on the basis of competences experiences and high qualification. Replication was also filed in rebuttal by the appellant.

3. Arguments heard and record perused.

4. The prime contention of the learned counsel for the appellant is that the post in question was a promotion post and was to be filled in on the basis of seniority-cum-fitness and that the appellant being senior most was eligible to have been promoted, therefore, the impugned appointment of private respondent No, 6 being illegal and void ab-initio is liable to be set aside.

5. In reply it was urged by the respondent department that the appointment of private respondent No, 6 is against the laid down procedure/rules and is liable to be quashed whereas private respondent No, 6 has supported his appointment order.

6. The Tribunal holds that the claim of the appellant is bonafide. In para-2 of their written reply, the respondents department has alleged that vide Government of NWFP, S & GAD (Regulation wing) Notification No. SOR-ii(S & GAD) 2-11/78 , dated 01-02-1981 the post of Agriculture Inspector will be filed in by promotion on the basis of seniority-cum-fitness from amongst Field Assistant with at least 5 years service as such and not by initial recruitment. The relevant rules also support the version of the appellant. As such the appellant has made out a case for indulgence of the Tribunal. Accordingly, the instant appeal in accepted, the impugned appointment order of private respondent No. 6 dated 17-03-2004 is set aside and it is directed that the said post be filled in strictly in accordance with law and rules on the subject.

7. This order shall also dispose of another service appeal bearing No, 725 of 2004 filed by Mr. Muhammad Bashir appellant, wherein he has challenged the appointment order of private respondent No. 3 as Budder and claims that the post of Budder is also to bè filled in by promotion from Filed workers, Malis and Attendants of the department. His claim has not been rebutted by the respondent department in their written reply and the service rules also support his contention. As such the impugned appointment order of private respondent No, 6 being had in Law is reversed with the direction to the respondent department to fill in the same post on the basis of the laid down procedure/rules. The delay in filing of both the appeals is condoned in the Interest of justice on the strength of the authority reported an PLJ 2003 SC 435. Both the appeals are accepted in the above terms, No order as to costs. File be consigned to the record.

ANNOUNCED
06-09-2005

sd/-
(ABDUL SATTAR KHAN)
CHAIRMAN
NWFP SERVICE TRIBUNAL
CAMP COURT D.I.KHAN

Sd/-
(AZMAT HANIF ORAKZAI)
MEMBER

Annex-B

District Government DIKhan
No. 7260 DCO(A&T)
Dated 20/12/2005.

ORDER

Mr. Muhammad Yousaf S/O Abdus Sattar, R/O Islamia Colony DIKhan is hereby appointed as Assistant (BPS-11) against the vacant post in the office of District Officer Agriculture (E) DIKhan on contract basis.

His services will be purely on temporary basis and can be terminated without assigning any notice and will not claim for seniority or any right for regular service.

District Coordination Officer,
DIKhan.

Endst: no: and dated even

Copy to:

1. Executive District Officer, Agriculture DIKhan for information and furtlier necessary action with reference to his letter No. 3251 (Agri) Estt: dated 01/102005.
2. District Officer Agriculture (E),DIKhan
3. District Accounts Officer, DIKhan
4. Official concerned.

District Coordination Officer,
DIKhan.

No. 6114-15 /EDO Agri:Estt:
Dated D.I.Khan, the 21/12/2005;

Copy of the above forwarded to:-

1. The District Officer Agriculture, DIKhan; for information and compliance.
2. The Director General, Agriculture(Extn:)NWFP Peshawar; for favour of information, please.

Executive Distt: Officer,
Agriculture, D.I.Khan.

Attested

District Officer Agriculture
Dera Ismail Khan

Asstt. Accounts Officer
Directorate General
Agriculture (Extension)
Khyber Pakhtunkhwa.

Annex-C 65 12

District Government DIKhan
No. 13555-58 DCO (A&T)
Dated 19-11-2008

CORRIGENDUM: -

In supersaction of this office No. 7260 DCO (A&T) Dated: 20-12-2005.
Para No.2 of this office even no & date is hereby omitted.

District Coordination Officer
Dera Ismail Khan.

Endst: No. & dated even.

Copy to the:

1- Executive District Officer Agriculture (E) DIKhan.
2- District Officer Agriculture (E) DIKhan.
3- District Accounts Officer DIKhan.
4- Official Concerned.

District Coordination Officer
Dera Ismail Khan.

6039/ EDO Agri: dtd 17.12.2008.

D.O Agri: Extn, W&M Wing, in continuation of this office letter Endst No 4114-18 dt: 21.12.2005, for information pl.

Attested

District Officer Agriculture
Dera Ismail Khan

D/M EDO Agri: DIK

Assistant Accounts Officer
Directorate General
Agriculture (Extension)
Khyber Pakhtunkhwa.

Annex-D
92-5

TENTATIVE SENIORITY LIST OF OFFICE ASSISTANT BS-14 OF AGRICULTURE EXTENSION DEPARTMENT AS STOOD ON 1.1.2014.

S.No	Name of official with Academic qualification.		Designation.	Date of birth and Domicile	Date of 1st appointment	Regular appointment / promotion to the present post			present posting	Remarks
						Date	BPS	Method of recruitment		
1.	Muhammad Alam	Matric	Assistant	5.2.58 Kurram Agy	19.6.76	31.12.2003	14	By promotion	AAO, Kurram Agy	
2.	Anees Ahmad	-do-	-do-	22.6.57 Charsadda	8.8.76	31.12.2003	14	By promotion	DDA, Peshawar	
3.	Aurangzeb	-do-	-do-	22.2.55 Peshawar	19.10.78	31.12.2003	14	By promotion	DA, FATA, Pesh.	
4.	Addur Razaaq	B.A.	-do-	4.4.59 Karak	26.11.78	31.12.2003	14	By promotion	AAO,Orakzai Agy	
5.	Bahri Alam Jan	Matric	-do-	4.2.55 Charsadda	30.11.78	31.12.2003	14	By promotion	DA, FATA, Pesh.	
6.	Jan Pervaz	-do-	-do-	12.3.59 Charsadda	02.12.78	31.12.2003	14	By promotion	PP, ATI, Pesh	
7.	Ihsanullah	-do-	-do-	11.5.59 Peshawar	01.09.80	31.12.2003	14	By promotion	DA,FATA,Pesh.	
8.	Ikramullah	Matric	-do-	15.02.62 Bannu	03.01.81	2.9.1991	14	By promotion	DA, (F) Pesh	
9.	Muhammad Aslam	F.A.	-do-	1.1.62 Lakki	19.1.83	31.12.2003	14	By promotion	DDA, Bannu	
10.	Muhammad Rafiq	M.A.	-do-	10.10.82 Moh. Agy	13.4.2007	13.4.2007	14	Direct	AAO, Moh. Agy.	
11.	Imtiaz Hussain	B.A.	-do-	Tank	11.11.2008	11.11.2008	14	Direct	DDA, Tank	
12.	Muhammad Yousaf	B.A	-do-	01.04.1975 DiKhan	20.12.2005	19.11.2008	14	Direct	Seniority maintained in light of order of DCO DiKhan vide No.13555-58 dt. 19.11.2008	
13	Liaqat Ali	B.A.	-do-	21.04.58 Charsadda	14.9.80	24.01.2009	14	By promotion	DG's Office.	
14	Sabir Khan	Matric	-do-	15.10.54 Mardan	11.3.74	24.1.2009	14	By promotion	DDA, Mardan	
15	Attaullah	Matric	Assistant	1.5.56 DIKhan	16.9.74	24.1.2009	14	By promotion	DDA, DIKhan	
16	Muhd Naseem	B.A	-do-	12.1.60 Mansehra	3.10.78	24.1.2009	14	By promotion	DDA, Torghar	

Accounts Officer
Directorate General
Agriculture (Extension)
Khyber Pakhtunkhwa

	Inayatullah	BA	Assistant	7.1.1982 DIKhan	1.1.2009	1.1.2009	14	Direct	DDA, DIKhan	
	Inamullah	B .A.	-do-	7.3.82 DIKhan	1.1.2009	1.1.2009	14	Direct	DDA, DIKhan	
	Muhd Khurshid	M.Sc	-do-	12.3.82 Abbottabad	23.4.2009	23.4.2009	14	Direct	DDA, A`Abad.	
	Fazal Rehman	B.A.	-do-	3.4.1959 Swat	14.3.1979	25.1.2010	14	By promotion	DDA, Swat	
	Abdul Rahim	D.Com	-do-	05.12.1957 Lakki Marwat	18.10.1978	28.10.2010	14	By promotion	DDA, Lakki	
	Said Rawan	Matric	-do-	15.01.1960 Dir	14.03.1979	28.10.2010	14	By promotion	DDA, Upper Dir	
	Muhammad Shah	B.A.	-do-	01.01.1957 Charsadda	17.06.1979	28.10.2010	14	By promotion	DA (F) Pesh	
	Mursaleen	Matric	-do-	22.09.1959 Bajour Agency	20.11.1980	28.10.2010	14	By promotion	AAO, Bajour Agy	
	Deedar Muhammad	Matric	-do-	14.04.1960 Nowshera	20.12.1980	28.10.2010	14	By promotion	DDA, Nowshera	
	Murad Ali	Matric	-do-	26.3.1961 Mardan	28.12.1980	28.10.2010	14	By promotion	DDA (F) Pesh	
	Asadud Din Asif Jah	B.A.	-do-	31.10.1971 Peshawar	25.1.2010	25.1.2010	14	Direct	Statistician CRS	
	Sher Bad Shah	Matric	-do-	01.03.1956 Charsadda	07.02.1981	21.1.2011	14	By promotion	DDA (I) Pesh	
	Muhammad Ishaq	Matric	-do-	9.6.1961 Mardan	21.2.1981	21.1.2011	14	By promotion	DG`s Office	
	Muhammad Ashiq	Matric	-do-	28.3.1957 Nowshera	22.2.1981	21.1.2011	14	By promotion	DG`s Office	
	Syed Ahmad Shah	F.A.	-do-	12.8.1960 Charsadda	22.2.1981	21.1.2011	14	By promotion	DDA, Charsadda	
	Deedar Muhammad	B.A.	-do-	15.3.1957 Swabi	23.2.1981	21.1.2011	14	By promotion	DG`s Office	
	Muhammad Saeed	B.A.	-do-	15.2.1961 Peshawar	1.3.1981	21.1.2011	14	By promotion	DDA (F) Pesh	
	Asadullah	M.A.	-do-	2.12.1984 Shangla	6.6.2012	6.6.2012	14	Direct	DDA, Shangla	
	Muhammad Haseeb	B.Com	-do-	8.3.1991 Peshawar	6.6.2012	6.6.2012	14	Direct	DDA, Kohat	

Asstt. Accounts Officer
Directorate General
Agriculture (Extension)
Khyber Pakhtunkhwa.

36	Shabbir Ahmad	F.A.	Assistant	1.1.1959 Abbottabad	21.10.1978	29.10.2013	14	By promotion	DDA, Haripur	
37	Syed Hanif Shah	Matric	-do-	20.12.1959 Battagram	15.10.1980	29.10.2013	14	By promotion	DDA, Kohistan	
38	Faqir Hussain	Matric	-do-	1.1.1962 Peshawar	1.3.1981	29.10.2013	14	By promotion	DDA (FATA) Peshawar	
39	Muhammad Hayat	Matric	-do-	4.5.1959 Malakand	14.31981	29.10.2013	14	By promotion	DDA, Malakand	
40	Fazli Habib	B.A.	-do-	15.1.1963 Charsadda	17.3.1981	29.10.2013	14	By promotion	DDA, Peshawar	
41	Khan Zaman	Matric	-do-	12.8.1961 Lakki Marwat	19.3.1981	29.10.2013	14	By promotion	Principal, ATI, Peshawar	
42	Muhammad Sayyar	Matric	-do-	2.2.1959 Charsadda	18.4.1981	29.10.2013	14	By promotion	DDA (FATA) DIKhan	
43	Mohibullah	Matric	-do-	5.3.1954 Swabi	28.6.1981	29.10.2013	14	By promotion	DDA, Swabi	
44	Amir Nawaz	M.A.	-do-	6.2.1962 Peshawar	13.7.1981	29.10.2013	14	By promotion	DDA (Information) Peshawar	

Sd/-DIRECTOR GENERAL
AGRICULTURE (EXTENSION)
KHYBER PAKHTUNKHWA, PESHAWAR

No.15/54-A/Estt/ 1244-69 /DG

Dated Peshawar the 22-01-/2014

Copy forwarded to: -

1. PS to Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock and Cooperation Department, Peshawar for information.
2. The Principal, Agricultural Training Institute, Peshawar.
3. The Director Agriculture, (FATA) Peshawar.
4. The Director Statistics, Crop Reporting Services, Peshawar.
5. The District Directors Agriculture, Bannu, Tank, DIKhan, Mardan, Torghar, Abbottabad, Swat, Lakki Marwat, Dir Upper, Nowshera, Charsadda, Shangla, Kohat, Haripur, Kohistan, Malakand and Swabi.
6. The Deputy Director of Agriculture (Information) Peshawar.
7. The officials at S.No.13, 29,30 and 32.

For information and necessary action. You are advised to furnish deficiency i.e. date of birth, domicile, qualification etc of the officials concerned to this office within 30 days positively.

Asstt. Accounts Officer
Directorate General
Agriculture (Extension)
Khyber Pakhtunkhwa.

22/01/2014
DIRECTOR GENERAL

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT DIKHAN

Appeal No.1095/2014

Mr. Muhammad Yousaf s/o,
Abdul Sattar office Assistant
O/o District Director Agriculture DIKHAN

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Agriculture Livestock Cooperation Department Peshawar
2. Director General, Agriculture (Extension) Khyber Pakhtunkhwa, Peshawar.
3. District Director Agriculture DIKHAN
4. DCO, NOW Dy. Commission DIKHAN
5. Muhammad Rafiq officer Assistant o/o Agency Agriculture Officer Muhammad Agency
6. Imtiaz Hussain Office Assistant o/o District Director Agriculture Tank

Respondents

PARA-WISE COMMENTS ON BEHALF OF RESPONDENTS NO.1, 2 & 3

PRELIMINARY OBJECTIONS

1. That the appellant has got no locus standi to file the instant appeal.
2. That the appeal is not maintainable in its present form and liable to be dismissed.
3. That the appellant has no cause of action to file the instant appeal.
4. That the appellant has deliberately concealed the material fact from this Hon'ble Service Tribunal.
5. That the appellant has not come to this Hon'ble Service Tribunal with clean hand.
6. That the appeal is time barred.

ON FACT PARA-WISE

Para-1 Correct to the extent that the appellant previously was appointed as Agriculture Inspector (BS-9) vide DCO DIKHAN office order No, 833/DCO dated 17-03-2004. Mr. Gul Sher F/Assistant was filed an appeal against the above appointment order in the Service Tribunal DIKhan Bench. The honorable Service Tribunal accepted his appeal vide judgment dated 06-09-2005 (Annexure-A), In light of the decision of the Service Tribunal

Bench DIKhan, the DCO DIKhan has with drawn the appointment order on 01-11-2005 and on the other hand the appellant was again appointed as office Assistant (BS-11) by the DCO DIKhan on contract basis with the condition that his services will be purely on Temporary basis and can be terminated without assigning any notice and will not claim for seniority or any right for regular service vide office order No, 7260/DCO(A & T) dated 20-12-2005 (Annexure-B).

Para-2 Correct to the extent that appellant was illegally appointed on purely on contract basis without observing coddle facilities i.e Advertisement, Departmental Selection Committee etc. After a laps of 3 years the DCO DIKhan issued corrigendum and para-2 of the appointment order was omitted vide No, 13555-58 dated 19-11-2008 (Annexure-C).

Para-3 Correct to the extent that the Government of Khyber Pakhtunkhwa, Finance Department was up-graded the posts of junior clerk, senior Clerk, Superintendent along with the post of office Assistant.

Para-4 Correct to the extent that after a laps of 3 years the DCO DIKhan omitted para-2 from appointment order of the appellant vide order No, 13555-58 dated 19-11-2008, In light of the above order the respondents No, 2 was prepared Tentative Seniority list of office Assistant and included his name in place of S.No, 12 and given seniority with effect from 19-11-2008 from the date of omission of para-2 from the appointment order of the appellant. While the respondents No, 5 & 6 were appointed as office Assistant on regular basis with effect from 13-04-2007 & 11-11-2008, (copy of seniority list as Annexure-D).

Para-5 In-Correct, The Seniority of the appellant was maintained in light of corrigendum issued by DCO DIKhan with effect from 19-11-2008, before the issue of corrigendum the appellant was appointed as office Assistant Purely on contract/Temporary basis and without Seniority, the appellant was accepted the term condition mentioned in his appointment order and furnish arrival report to the Department for duty.

Para-6 Correct to the extent that the Departmental appeals of the appellant was kept pending on the ground that Mr. Attaullah Khan office Assistant was challenge the appointment/seniority of the appellant in the honorable Khyber Pakhtunkhwa Service Tribunal Bench DIKhan vide appeal No, 989/2013 (Annexure-E).

Para-7 Detailed comments given in para-6 above.

GROUNDS

Para-a In-Correct, That the impugned seniority list maintained according to the Law and Rules framed by the Government of Khyber Pakhtunkhwa.

Para-b In-Correct, the Seniority of the appellant was maintained in light of DCO DIKhan corrigendum No, 13555-58 dated 19-11-2008.

Para-c In-Correct, The DCO DIKhan was issued appointment order of the appellant on purely on temporary basis and clear cut mentioned that the appellant not claim seniority or any right for regular service vide order No, 7260/DCO dated 20-12-2005. Later on after laps of 3 years, the DCO DIKhan omitted the above term and condition vides No, 13555-58/DCO dated 19-11-2008. The department included his name in the Tentative Seniority list of office Assistant as it stood on 01-01-2014 and was given seniority with effect from 19-11-2008.

Para-d In-Correct the impugned seniority list is no violating of service rules and statutory provision as well as the data of Superior Court.

It is hereby humbly prayed that on acceptance on the instants comments, the appeal of the appellant may kindly dismissed.

RESPONDENTS

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK AND COOPERATION
DEPARTMENT PESHAWAR

DIRECTOR GENERAL
AGRICULTURE (EXTENSION)'
KHYBER PAKHTUNKHWA PESHAWAR

DISTRICT DIRECTOR AGRICULTURE
DIKHAN

DISTT: DIRECTOR
Agriculture (Extension)
Dera Ismail Khan

Vetted

Addl: Advocate
Dera Ismail Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT DIKHAN

Appeal No.1095/2014

Mr. Muhammad Yousaf s/o,
Abdul Sattar Office Assistant
O/o District Director Agriculture DIKHAN

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Agriculture Livestock Cooperation Department Peshawar
2. Director General, Agriculture (Extension) Khyber Pakhtunkhwa, Peshawar.
3. District Director Agriculture DIKHAN

Respondents

COUNTER AFFIDAVIT

We the undersigned hereby solemnly declare / affirm that the contents of the Para-wise reply / comments are true and correct to the best of our knowledge and belief and nothing has been kept secret from this Honorable Tribunal.

RESPONDENTS

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK AND COOPERATION
DEPARTMENT PESHAWAR

DIRECTOR GENERAL
AGRICULTURE (EXTENSION)'
KHYBER PAKHTUNKHWA PESHAWAR

DISTRICT DIRECTOR AGRICULTURE,
DIKHAN

DISTT. DIRECTOR
Agriculture (Extension)
Dera Ismail Khan

Annex-A

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

SERVICE APPEAL No. 790/2004

Date of institution ... 30.8.2004

Date of decision ... 06.9.2005

Gul Dher, Field Assistant,
Rakh Zandand Farm, D.I.Khan. .. Appellant

VERSUS

1. D.C.O, D.I.Khan.
2. Director General Agri.(Extension)NWFP, Peshawar.
3. Secretary, Govt. of NWFP, Agriculture Department, Peshawar.
4. Executive District Officer, Agri. D.I.Khan.
5. District Officer Agriculture, D.I.Khan.
6. Mr. Muhammad Yousaf, Inspector Agriculture, C/O District Officer, Agri. D. I.Khan. .. Respondents

APPEAL AGAINST THE ACTION AND FAILURE OF THE RESPONDENTS FROM PROMOTION AS AGRICULTURE INSPECTOR, ETC.

Prayer: To please set aside the seniority list [illegible] while setting aside impugned order [illegible] of respondent No.1, the respondents [illegible] be directed to consider the promotion [illegible] appellant in accordance with law [illegible] thereafter.

Sheikh Qaila and Bachir Gohar, Advocate. .. For appellant

Mr. Noor Zaman Khan, Addl: Govt. Pleader. For respondents

Mr. Khawaja Nawaz, Advocate. For [illegible]

Mr. Abdul Sattar Khan, Assistant Advocate General. Chairman
Member

ATTESTED
EXAMINER
Service Tribunal

JUDGMENT

ABDUL SATTAR KHAN, CHAIRMAN: Gul Sher appellant is serving as Field Assistant in the respondent department. The gravamen of his claim is that appointment of private respondent No.6 on contract basis as Agri. Inspector is against the service rules and that the post in-question was to be filled in through promotion process under the relevant rules. After exhausting his departmental remedy, the appellant has approached the Tribunal for the redressal of his grievances.

2. Notices were sent to the respondents. They turned up and filed their separate written replies. The respondent department in their joint written reply has averred that the post of Agriculture Inspector will be filled in by promotion on the basis of seniority-cum-fitness from amongst the Field Assistant with at least five years service in the cadre and not by initial recruitment and that the appointment of respondent No.6 was in contravention of the recruitment rules of department, whereas Muhammad Yousaf, private respondent No.6 has supported his appointment order by asserting that he has been appointed on contract basis through Departmental Selection Committee on the basis of competence experience and high qualification. Replication has also been filed in rebuttal by the appellant.

3. Arguments heard and record perused.

4. The prime contention of the learned counsel for the appellant is that the post in-question was a promotion post and was to be filled in on the basis of seniority-cum-fitness and that the appellant being senior most was eligible to have been promoted, therefore, the impugned appointment of

private respondent No.6 being illegal and [illegible] liable to be set aside.

5. In reply it was urged by the respondent [illegible] that the appointment of private respondent No.6 is [illegible] laid down procedure/rules and is liable to be [illegible] private respondent No.6 has supported his appointment.

6. The Tribunal holds that the claim of the [illegible] bonafide. In para-2 of their written reply, the [illegible] department has alleged that vide Govt. of NWFP, [illegible] tion Wing) Notification No.SOR-II(S&GAD)2-11/72, dated 1.2.1981 the post of Agriculture Inspector will [illegible] by promotion on the basis of seniority-cum-fitness [illegible] amongst Field Assistant with at least 5 years [illegible] such and not by initial recruitment. The said [illegible] support the version of the appellant. As [illegible] has made out a case for indulgence of the [illegible] ly, the instant appeal is accepted, the impugned [illegible] ments order of private respondent No.6 [illegible] aside and it is directed that the said post [illegible] strictly in accordance with law and rules [illegible].

7. This order shall also dispose of another [illegible] appeal bearing No. 725 of 2004 filed by Muhammad [illegible] appellant, wherein he has challenged the [illegible] of private respondent No.3 as Budder and [illegible] that the post of Budder is also to be filled in by promotion from Field Workers, Malis and Attendants of the [illegible]. His claim has not been rebutted by the respondent [illegible] their written reply and the service rules [illegible]

ATTESTED

his contention. As [illegible] the impugned appointment [illegible] private respondent No.3 being [illegible] in Law to [illegible] the direction to the respondent department to [illegible] to the same post on the basis of the law laid down [illegible]. The delay in filing of both the appeals is condoned in the [illegible] of justice on the strength of the authority reported as PLJ 2003 SC 435. Both the appeals are accepted in the above terms. No order as to costs. File be consigned to the record.

ANNOUNCED
06.09.2005

(ABDUL SATTAR KHAN)
CHAIRMAN
NWFP SERVICE TRIBUNAL
CAMP COURT D.I.KHAN.

(ASMAT HAFIF ORAKZAI)
MEMBER

Certified to be true copy.
[illegible]
NWFP Service Tribunal
Peshawar

Annex-A

Better Copy

JUDGMENT

ABDUL SATTAR KHAN CHAIRMAN,

1. Gul sher appellant is serving as Field Assistant in the respondent department. The gravamen of his claim is that appointment on private respondent No, 6 on contract basis as Agriculture Inspector is against the service rules and that the post in-question was to be failed in through promotion process under the relevant rules. After exhausting his departmental remedy, the appellant has approached the Tribunal for the redressal of his grievances.

2. Notices were sent to the respondents. They turned up and filed their separate written replies. The respondent department in their joint written reply has averred that the post of Agriculture inspector will be filled in by promotion on the basis of seniority-cum-fitness from amongst the Field Assistant with at least five years services as such and not by initial recruitment and that the appointment of respondent No, 6 was in contravention of the recruitment rules of department, where as Muhammad Yousaf, private respondent No, 6 has supported his appointment order by averring that he has been appointed on contract basis through Departmental selection Committee on the basis of competences experiences and high qualification. Replication was also filed in rebuttal by the appellant.

3. Arguments heard and record perused.

4. The prime contention of the learned counsel for the appellant is that the post in question was a promotion post and was to be filled in on the basis of seniority-cum-fitness and that the appellant being senior most was eligible to have been promoted, therefore, the impugned appointment of private respondent No, 6 being illegal and void ab-initio is liable to be set aside.

5. In reply it was urged by the respondent department that the appointment of private respondent No, 6 is against the laid down procedure/rules and is liable to be quashed whereas private respondent No, 6 has supported his appointment order.

6. The Tribunal holds that the claim of the appellant is bonafide. In para-2 of their written reply, the respondents department has alleged that vide Government of NWFP, S & GAD (Regulation wing) Notification No. SOR-ii(S & GAD) 2-11/78 , dated 01-02-1981 the post of Agriculture Inspector will be filed in by promotion on the basis of seniority-cum-fitness from amongst Field Assistant with at least 5 years service as such and not by initial recruitment. The relevant rules also support the version of the appellant. As such the appellant has made out a case for indulgence of the Tribunal. Accordingly, the instant appeal in accepted, the impugned appointment order of private respondent No. 6 dated 17-03-2004 is set aside and it is directed that the said post be filled in strictly in accordance with law and rules on the subject.

7. This order shall also dispose of another service appeal bearing No, 725 of 2004 filed by Mr. Muhammad Bashir appellant, wherein he has challenged the appointment order of private respondent No. 3 as Budder and claims that the post of Budder is also to be filled in by promotion from Filed workers, Malis and Attendants of the department. His claim has not been rebutted by the respondent department in their written reply and the service rules also support his contention. As such the impugned appointment order of private respondent No, 6 being had in Law is reversed with the direction to the respondent department to fill in the same post on the basis of the laid down procedure/rules. The delay in filing of both the appeals is condoned in the Interest of justice on the strength of the authority reported an PLJ 2003 SC 435. Both the appeals are accepted in the above terms, No order as to costs. File be consigned to the record.

ANNOUNCED
06-09-2005

sd/-
(ABDUL SATTAR KHAN)
CHAIRMAN
NWFP SERVICE TRIBUNAL
CAMP COURT D.I.KHAN

Sd/-
(AZMAT HANIF ORAKZAI)
MEMBER

Annex-B

District Government DIKhan
No. 7260 DCO(A&T)
Dated 20/12 /2005.

ORDER

Mr. Muhammad Yousaf S/O Abdus Sattar, R/O Islamia Colony DIKhan is hereby appointed as Assistant (BPS-11) against the vacant post in the office of District Officer Agriculture DIKhan on contract basis.

His services will be purely on temporary basis and can be terminated without assigning any notice and will not claim for seniority or any right for regular service.

District Coordination Officer,
DIKhan.

Endst: no: and dated even

Copy to:

1. Executive District Officer, Agriculture DIKhan for information and further necessary action with reference to his letter No. 3251 (Agri) Estt: dated 01/102005.
2. District Officer Agriculture (E),DIKhan
3. District Accounts Officer, DIKhan
4. Official concerned.

District Coordination Officer,
DIKhan.

No. 4114-15 /EDO Agri: Estt:
Dated D.I.Khan, the 21/12 /2005;

Copy of the above forwarded to:-

1. The District Officer Agriculture, DIKhan; for information and compliance.
2. The Director General, Agriculture(Extn:)NWFP Peshawar; for favour of information, please.

Executive Distt: Officer,
Agriculture, D.I.Khan.

Attested

District Officer Agriculture
Dera Ismail Khan

Annex-C ... 65

District Government DIKhan
No. 13555-58 DCO (A&T)
Dated 19-11 /2008

CORRIGENDUM: -

In supersaction of this office No. 7260 DCO (A&T) Dated: 20-12-2005.
Para No.2 of this office even no & date is hereby omitted.

District Coordination Officer
Dera Ismail Khan.

Endst: No. & dated even.

Copy to the:

1- Executive District Officer Agriculture (E) DIKhan.
2- District Officer Agriculture (E) DIKhan.
3- District Accounts Officer DIKhan.
4- Official Concerned.

District Coordination Officer
Dera Ismail Khan.

6039 / EDO Agri: dtd 17.12.2008.

Attested

District Officer Agriculture
Dera Ismail Khan

EDO Agri:
DIK

Annex-D

ENTATIVE SENIORITY LIST OF OFFICE ASSISTANT BS-14 OF AGRICULTURE EXTENSION DEPARTMENT AS STOOD ON 1.1.2014.

No	Name of official with Academic qualification.		Designation.	Date of birth and Domicile	Date of 1st appointment	Regular appointment / promotion to the present post			present posting	Remarks
						Date	BPS	Method of recruitment		
1	Muhammad Alam	Matric	Assistant	5.2.58 Kurram Agy	19.6.76	31.12.2003	14	By promotion	AAO, Kurram Agy	
2	Anees Ahmad	-do-	-do-	22.6.57 Charsadda	8.8.76	31.12.2003	14	By promotion	DDA, Peshawar	
3	Aurangzeb	-do-	-do-	22.2.55 Peshawar	19.10.78	31.12.2003	14	By promotion	DA, FATA, Pesh	
4	Addur Razaaq	B.A.	-do-	4.4.59 Karak	26.11.78	31.12.2003	14	By promotion	AAO,Orakzai Agy	
5	Bahri Alam Jan	Matric	-do-	4.2.55 Charsadda	30.11.78	31.12.2003	14	By promotion	DA, FATA, Pesh.	
6	Jan Pervaz	-do-	-do-	12.3.59 Charsadda	02.12.78	31.12.2003	14	By promotion	P, ATI, Pesh	
7	Ihsanullah	-do-	-do-	11.5.59 Peshawar	01.09.80	31.12.2003	14	By promotion	DA,FATA.Pesh	
8	Ikramullah	Matric	-do-	15.02.62 Bannu	03.01.81	2.9.1991	14	By promotion	DA, (F) Pesh	
9	Muhammad Aslam	F.A.	-do-	1.1.62 Lakki	19.1.83	31.12.2003	14	By promotion	DDA, Bannu	
10	Muhammad Rafiq	M.A.	-do-	10.10.82 Moh. Agy	13.4.2007	13.4.2007	14	Direct	AAO, Moh. Agy.	
11	Imtiaz Hussain	B.A.	-do-	Tank	11.11.2008	11.11.2008	14	Direct	DDA, Tank	
12	Muhammad Yousaf	B.A	-do-	01.04.1975 DiKhan	20.12.2005	19.11.2008	14	Direct	Seniority maintained in light of order of DCO DIKhan vide No.13555-58 dt 19.11.2008	
13	Liaqat Ali	B.A.	-do-	21.04.58 Charsadda	14.9.80	24.01.2009	14	By promotion	DG's Office.	
14	Sabir Khan	Matric	-do-	15.10.54 Mardan	11.3.74	24.1.2009	14	By promotion	DDA, Mardan	
15	Attaullah	Matric	Assistant	1.5.56 DIKhan	16.9.74	24.1.2009	14	By promotion	DDA, DIKhan	
16	Muhd Naseem	B.A.	-do-	12.1.60 Mansehra	3.10.78	24.1.2009	14	By promotion	DDA, Torghar	

	Inayatullah	BA	Assistant	7.1.1982 DIKhan	1.1.2009	1.1.2009	14	Direct	DDA, DIKhan
	Inamullah	B.A.	-do-	7.3.82 DIKhan	1.1.2009	1.1.2009	14	Direct	DDA, DIKhan
	Muhd Khurshid	M.Sc	-do-	12.3.82 Abbottabad	23.4.2009	23.4.2009	14	Direct	DDA, A`Abad.
	Fazal Rehman	B.A.	-do-	3.4.1959 Swat	14.3.1979	25.1.2010	14	By promotion	DDA, Swat
	Abdul Rahim	D.Com	-do-	05.12.1957 Lakki Marwat	18.10.1978	28.10.2010	14	By promotion	DDA, Lakki
	Said Rawan	Matric	-do-	15.01.1960 Dir	14.03.1979	28.10.2010	14	By promotion	DDA, Upper Dir
	Muhammad Shah	B.A.	-do-	01.01.1957 Charsadda	17.06.1979	28.10.2010	14	By promotion	DA (F) Pesh
	Mursaleen	Matric	-do-	22.09.1959 Bajour Agency	20.11.1980	28.10.2010	14	By promotion	AAO, Bajour Agy
	Deedar Muhammad	Matric	-do-	14.04.1960 Nowshera	20.12.1980	28.10.2010	14	By promotion	DDA, Nowshera
	Murad Ali	Matric	-do-	26.3.1961 Mardan	28.12.1980	28.10.2010	14	By promotion	DDA (F) Pesh
	Asadud Din Asif Jah	B.A.	-do-	31.10.1971 Peshawar	25.1.2010	25.1.2010	14	Direct	Statistician CRS
	Sher Bad Shah	Matric	-do-	01.03.1956 Charsadda	07.02.1981	21.1.2011	14	By promotion	DDA (I) Pesh
	Muhammad Ishaq	Matric	-do-	9.6.1961 Mardan	21.2.1981	21.1.2011	14	By promotion	DG`s Office
	Muhammad Ashiq	Matric	-do-	28.3.1957 Nowshera	22.2.1981	21.1.2011	14	By promotion	DG`s Office
	Syed Ahmad Shah	F.A.	-do-	12.8.1960 Charsadda	22.2.1981	21.1.2011	14	By promotion	DDA, Charsadda
	Deedar Muhammad	B.A.	-do-	15.3.1957 Swabi	23.2.1981	21.1.2011	14	By promotion	DG`s Office
	Muhammad Saeed	B.A.	-do-	15.2.1961 Peshawar	1.3.1981	21.1.2011	14	By promotion	DDA (F) Pesh
	Asadullah	M.A.	-do-	2.12.1984 Shangla	6.6.2012	6.6.2012	14	Direct	DDA, Shangla
	Muhammad Haseeb	B.Com	-do-	8.3.1991 Peshawar	6.6.2012	6.6.2012	14	Direct	DDA, Kohat

	Shabbir Ahmad	F.A	Assistant	1.1 1959 Abbottabad	21.10 1978	29.10.2013	14	By promotion	DDA, Haripur	
37	Syed Hanif Shah	Matric	-do-	20.12.1959 Battagram	15.10.1980	29.10.2013	14	By promotion	DDA, Kohistan	
38	Faqir Hussain	Matric	-do-	1.1.1962 Peshawar	1.3.1981	29.10.2013	14	By promotion	DDA (FATA) -Peshawar	
39	Muhammad Hayat	Matric	-do-	4.5.1959 Malakand	14.31981	29.10.2013	14	By promotion	DDA, Malakand	
40	Fazli Habib	B.A.	-do-	15.1.1963 Charsadda	17.3.1981	29.10.2013	14	By promotion	DDA, Peshawar	
41	Khan Zaman	Matric	-do-	12.8.1961 Lakki Marwat	19.3.1981	29.10.2013	14	By promotion	Principal, ATI, Peshawar	
42	Muhammad Sayyar	Matric	-do-	2.2.1959 Charsadda	18.4.1981	29.10.2013	14	By promotion	DDA (FATA) DIKhan	
43	Mohibullah	Matric	-do-	5.3.1954 Swabi	28.6.1981	29.10.2013	14	By promotion	DDA, Swabi	
44	Amir Nawaz	M.A.	-do-	6.2.1962 Peshawar	13.7.1981	29.10.2013	14	By promotion	DDA (Information) Peshawar	

Sd/-DIRECTOR GENERAL
AGRICULTURE (EXTENSION)
KHYBER PAKHTUNKHWA, PESHAWAR

No.15/54-A/Estt/ 1214-69 /DG

Dated Peshawar the 22-01-/2014

Copy forwarded to: -

1. PS to Secretary to Government of Khyber Pakhtunkhwa, Agriculture, Livestock and Cooperation Department, Peshawar for information.
2. The Principal, Agricultural Training Institute, Peshawar.
3. The Director Agriculture, (FATA) Peshawar.
4. The Director Statistics, Crop Reporting Services, Peshawar.
5. The District Directors Agriculture, Bannu, Tank, DIKhan, Mardan, Torghar, Abbottabad, Swat, Lakki Marwat, Dir Upper, Nowshera, Charsadda, Shangla, Kohat, Haripur, Kohistan, Malakand and Swabi.
6. The Deputy Director of Agriculture (Information) Peshawar.
7. The officials at S.No.13, 29,30 and 32.

For information and necessary action. You are advised to furnish deficiency i.e. date of birth, domicile, qualification etc of the officials concerned to this office within 30 days positively.

22/01/2014

DIRECTOR GENERAL

GROUNDS

Para-a In-Correct, That the impugned seniority list maintained according to the Law and Rules framed by the Government of Khyber Pakhtunkhwa.

Para-b In-Correct, the Seniority of the appellant was maintained in light of DCO DIKhan corrigendum No, 13555-58 dated 19-11-2008.

Para-c In-Correct, The DCO DIKhan was issued appointment order of the appellant on purely on temporary basis and clear cut mentioned that the appellant not claim seniority or any right for regular service vide order No, 7260/DCO dated 20-12-2005. Later on after laps of 3 years, the DCO DIKhan omitted the above term and condition vides No, 13555-58/DCO dated 19-11-2008. The department included his name in the Tentative Seniority list of office Assistant as it stood on 01-01-2014 and was given seniority with effect from 19-11-2008.

Para-d In-Correct the impugned seniority list is no violating of service rules and statutory provision as well as the data of Superior Court.

It is hereby humbly prayed that on acceptance on the instants comments, the appeal of the appellant may kindly dismissed.

RESPONDENTS

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK AND COOPERATION
DEPARTMENT PESHAWAR

DIRECTOR GENERAL
AGRICULTURE (EXTENSION)'
KHYBER PAKHTUNKHWA PESHAWAR

DISTRICT DIRECTOR AGRICULTURE
DIKHAN

DISTT. DIRECTOR
Agriculture (Extension)
Dera Ismail Khan

Vetted

Legal Advisor
Dera Ismail Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, CAMP COURT DIKHAN

Appeal No.1095/2014

Mr. Muhammad Yousaf s/o,
Abdul Sattar Office Assistant
O/o District Director Agriculture DIKHAN

Appellant

VERSUS

1. Government of Khyber Pakhtunkhwa, through Secretary Agriculture Livestock Cooperation Department Peshawar
2. Director General, Agriculture (Extension) Khyber Pakhtunkhwa, Peshawar.
3. District Director Agriculture DIKHAN

Respondents

COUNTER AFFIDAVIT

We the undersigned hereby solemnly declare / affirm that the contents of the Para-wise reply / comments are true and correct to the best of our knowledge and belief and nothing has been kept secret from this Honorable Tribunal.

RESPONDENTS

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
AGRICULTURE, LIVESTOCK AND COOPERATION
DEPARTMENT PESHAWAR

DIRECTOR GENERAL
AGRICULTURE (EXTENSION)'
KHYBER PAKHTUNKHWA PESHAWAR

DISTRICT DIRECTOR AGRICULTURE,
DIKHAN

DISTT. DIRECTOR
Agriculture (Extension)
Dera Ismail Khan

Annex-A

5

[illegible] THE N.W.F.P. SERVICE TRIBUNAL, [illegible]
[illegible] D.I.KHAN.

SERVICE APPEAL No. 790/2004

Date of institution ... 30.9.2004

Date of decision ... 06.9.2006

Gul Sher, Field Assistant,
Rakh Zandani Farm, D.I.Khan. .. [illegible]

VERSUS

1. D.C.O, D.I.Khan.
2. Director General Agri.(Extension) NWFP, Peshawar.
3. Secretary, Govt. of NWFP, Agriculture Department, Peshawar.
4. Executive District Officer, Agri. D.I.Khan.
5. District Officer Agriculture, D.I.Khan.
6. Mr. Muhammad Yousaf, Inspector Agriculture, C/O District Officer, Agri. D. I. Khan. .. [illegible]

APPEAL AGAINST [illegible] AND [illegible] AGRICULTURE INSPECTOR [illegible] FROM [illegible] AS [illegible] AGAINST THE RESERVED SEAT FOR [illegible].

Prayer: To please [illegible] while setting aside impugned order [illegible] of respondent No.[illegible] the respondent [illegible] be directed to consider the promotion [illegible] appellant in accordance with law [illegible] than [illegible].

Sheikh Muhammad Bashir [illegible], Advocate. .. [illegible]

Mr. Noor Zaman Khan, Addl: Govt. Pleader. [illegible] respondent [illegible].

Mr. Khawaja Nawaz, Advocate. [illegible] respondent No.[illegible].

Mr. Abdul Sattar Khan, [illegible]
Mr. [illegible] Hanif Orakzai. [illegible]

ATTESTED
EXAMINER
[illegible] Tribunal

JUDGMENT

ABDUL SATTAR KHAN, CHAIRMAN: Gul Sher appellant is serving as Field Assistant in the respondent department. The gravamen of his claim is that appointment of private respondent No.6 on contract basis as Agri. Inspector is against the settled rules and that the post in-question was to be filled in through promotion process under the relevant rules. After exhausting his departmental remedy, the appellant has approached the Tribunal for the redressal of his grievances.

2. Notices were sent to the respondents. They turned up and filed their separate written replies. The respondent department in their joint written reply has averred that the post of Agriculture Inspector will be filled in by promotion on the basis of seniority-cum-fitness from amongst the Field Assistant with atleast five years service in such and not by initial recruitment and that the appointment of respondent No.6 was in contravention of the recruitment rules of department, whereas Muhammad Yousaf, private respondent No.6 has supported his appointment order by averring that he has been appointed on contract basis through Departmental Selection Committee on the basis of competence experience and high qualification. Replication was also filed in rebuttal by the appellant.

3. Arguments heard and record perused.

4. The prime contention of the learned counsel for appellant is that the post in-question was a promotion post and was to be filled in on the basis of seniority-cum-fitness and that the appellant being senior most was eligible to have been promoted, therefore, the impugned appointment of

private respondent No.6 being illegal and [illegible] liable to be set aside.

5. In reply it was urged by the respondent department that the appointment of private respondent No.6 is [illegible] laid down procedure/rules and is liable to be [illegible] private respondent No.6 has supported the appeal of the order.

6. The Tribunal holds that the claim of the appellant is bonafide. In para-2 of their written reply, the respondent department has alleged that vide Govt. of NWFP, [illegible] tion Wing) Notification No.SOR-II(S&GAD)2-11/72, [illegible] 1.2.1981 the post of Agriculture Inspector will be filled in by promotion on the basis of seniority-cum-fitness from amongst Field Assistant with at least 5 years service as such and not by initial recruitment. The said notification does support the version of the appellant. As such the appellant has made out a case for interference in the matter and accordingly, the instant appeal is accepted, the impugned promotion order of private respondent No.6 dated [illegible] is set aside and it is directed that the said post be filled in strictly in accordance with law and rules on the subject.

7. This order shall also dispose of another connected appeal bearing No. 725 of 2004 filed by Rahmanullah [illegible] appellant, wherein he has challenged the appointment [illegible] of private respondent No.3 as Budder and stated that the post of Budder is also to be filled in by promotion from Field Workers, Mallis and Attendants of the department. The claim has not been rebutted by the respondent department in their written reply and the service rules [illegible]

ATTESTED

his contention. As such the impugned [illegible] private respondent No.3 being [illegible] in law to [illegible] the direction to the respondent department to [illegible] the same post on the basis of the laid down procedure/rules. The delay in filing of both the appeals is condoned in the interest of justice on the strength of the authority reported as PLJ 2003 SC 435. Both the appeals are accepted as prayed terms. No order as to costs. File be consigned to the record.

ANNOUNCED
06.09.2005

(ABDUL SATTAR KHAN)
CHAIRMAN
KHYBER SERVICE TRIBUNAL
CAMP COURT D.I.KHAN.

(AZMAT HANIF ORAKZAI)
MEMBER

Certified to be true copy

Khyber Service Tribunal
Peshawar

Annex-A

Better Copy

JUDGMENT

ABDUL SATTAR KHAN CHAIRMAN.

1. Gul sher appellant is serving as Field Assistant in the respondent department. The gravamen of his claim is that appointment on private respondent No, 6 on contract basis as Agriculture Inspector is against the service rules and that the post in-question was to be failed in through promotion process under the relevant rules. After exhausting his departmental remedy, the appellant has approached the Tribunal for the redressal of his grievances.

2. Notices were sent to the respondents. They turned up and filed their separate written replies. The respondent department in their joint written reply has averred that the post of Agriculture inspector will be filled in by promotion on the basis of seniority-cum-fitness from amongst the Field Assistant with at least five years services as such and not by initial recruitment and that the appointment of respondent No, 6 was in contravention of the recruitment rules of department, where as Muhammad Yousaf, private respondent No, 6 has supported his appointment order by averring that he has been appointed on contract basis through Departmental selection Committee on the basis of competences experiences and high qualification. Replication was also filed in rebuttal by the appellant.

3. Arguments heard and record perused.

4. The prime contention of the learned counsel for the appellant is that the post in question was a promotion post and was to be filled in on the basis of seniority-cum-fitness and that the appellant being senior most was eligible to have been promoted, therefore, the impugned appointment of private respondent No, 6 being illegal and void ab-initio is liable to be set aside.

5. In reply it was urged by the respondent department that the appointment of private respondent No, 6 is against the laid down procedure/rules and is liable to be quashed whereas private respondent No, 6 has supported his appointment order.

6. The Tribunal holds that the claim of the appellant is bonafide. In para-2 of their written reply, the respondents department has alleged that vide Government of NWFP, S & GAD (Regulation wing) Notification No. SOR-ii(S & GAD) 2-11/78 , dated 01-02-1981 the post of Agriculture Inspector will be filed in by promotion on the basis of seniority-cum-fitness from amongst Field Assistant with at least 5 years service as such and not by initial recruitment. The relevant rules also support the version of the appellant. As such the appellant has made out a case for indulgence of the Tribunal. Accordingly, the instant appeal in accepted, the impugned appointment order of private respondent No. 6 dated 17-03-2004 is set aside and it is directed that the said post be filled in strictly in accordance with law and rules on the subject.

7. This order shall also dispose of another service appeal bearing No, 725 of 2004 filed by Mr. Muhammad Bashir appellant, wherein he has challenged the appointment order of private respondent No. 3 as Budder and claims that the post of Budder is also to be filled in by promotion from Filed workers, Malis and Attendants of the department. His claim has not been rebutted by the respondent department in their written reply and the service rules also support his contention. As such the impugned appointment order of private respondent No, 6 being had in Law is reversed with the direction to the respondent department to fill in the same post on the basis of the laid down procedure/rules. The delay in filing of both the appeals is condoned in the Interest of justice on the strength of the authority reported an PLJ 2003 SC 435. Both the appeals are accepted in the above terms, No order as to costs. File be consigned to the record.

ANNOUNCED
06-09-2005

sd/-
(ABDUL SATTAR KHAN)
CHAIRMAN
NWFP SERVICE TRIBUNAL
CAMP COURT D.I.KHAN

Sd/-
(AZMAT HANIF ORAKZAI)
MEMBER

Annex-B

11

District Government DIKhan
No. 7260 DCO(A&T)
Dated 20/12 /2005.

ORDER

Mr. Muhammad Yousaf S/O Abdus Sattar, R/O Islamia Colony DIKhan is hereby appointed as Assistant (BPS-11) against the vacant post in the office of District Officer Agriculture DIKhan on contract basis.

His services will be purely on temporary basis and can be terminated without assigning any notice and will not claim for seniority or any right for regular service.

District Coordination Officer,
DIKhan.

Endst: no: and dated even

Copy to:

1. Executive District Officer, Agriculture DIKhan for information and further necessary action with reference to his letter No. 3251 (Agri) Estt: dated 01/102005.
2. District Officer Agriculture (E),DIKhan
3. District Accounts Officer, DIKhan
4. Official concerned.

District Coordination Officer,
DIKhan.

No. 6114-15 /EDO Agri: Estt:
Dated D.I.Khan, the 21/12 /2005;

Copy of the above forwarded to:-

1. The District Officer Agriculture, DIKhan; for information and compliance.
2. The Director General, Agriculture(Extn:)NWFP Peshawar; for favour of information, please.

Executive Distt: Officer,
Agriculture, D.I.Khan.

Attested

District Officer Agriculture
Dera Ismail Khan

W/1

Annex-CC 65

District Government DIKhan
No. 13555-58 DCO (A&T)
Dated 19-11 /2008

CORRIGENDUM: -

In supersaction of this office No. 7260 DCO (A&T) Dated: 20-12-2005.
Para No.2 of this office even no & date is hereby omitted.

District Coordination Officer
Dera Ismail Khan.

Endst: No. & dated even.

Copy to the:

1- Executive District Officer Agriculture (E) DIKhan.
2- District Officer Agriculture (E) DIKhan.
3- District Accounts Officer DIKhan.
4- Official Concerned.

District Coordination Officer
Dera Ismail Khan.

6039 / EDO Agri: dtd 17.12.2008.
CC

D.G Agri: Extn, Khyber Pakhtunkhwa, in continuation of this office letter Endst No 4164-15 dtd: 21.12.2005, for information pl.

Attested

District Officer Agriculture
Dera Ismail Khan

DO Agri: Dtd

ENTATIVE SENIORITY LIST OF OFFIC

No	Name of official with Academic qualification.		Designati
1	Muhammad Alam	Matric	Assista
2	Anees Ahmad	-do-	-do-
3	Aurangzeb	-do-	-do-
4	Addur Razaaq	B.A.	-do-
5	Bahri Alam Jan	Matric	-do-
6	Jan Pervaz	-do-	-do-
7	Ihsanullah	-do-	-do-
8	Ikramullah	Matric	-do-
9	Muhammad Aslam	F.A.	-do-
10	Muhammad Rafiq	M.A.	-do-
11	Imtiaz Hussain	B.A.	-do-
12	Muhammad Yousaf	B.A	-do-
13	Liaqat Ali	B.A.	-do-
14	Sabir Khan	Matric	-do-
15	Attaullah	Matric	Assis
16	Muhd Naseem	B.A.	-do-

Annex-E

GS&PD.KP-1629/2-RST-30,... Forms-12.07.2012/P4(Z)/F=PHC Jobs/Form A&B Ser. Tribunal

"B"

Pre admission Notice

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

JUDICIAL COMPLEX (OLD), KHYBER ROAD, PESHAWAR.

1B

Appeal No. 981 *of 2013*

Atta ullah *Appellant/Petitioner*

Versus

Provincial Secretary Agri. Peshawar *Respondent*

Respondent No. 2

Director General Agriculture KPK Peshawar

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

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

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

ice No..... dated.....

en under my hand and the seal of this Court, at Peshawar this 6

3 20 14

Khyber Court Dikhan

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

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

BEFORE THE HON'BLE SERVICE TRIBUNAL KPK. PESHAWAR.

S.T.A No. _____ 2013

Atta Ullah V/S Govt of K.P.K etc.

Index.

S.No.	Particulars of documents.	Annexure	Pages.
1.	Memo and grounds of Service Appeal.	-	1-4
1.	Appointment order of Respondent Yousaf Khan	A	-5-
2.	Seniority List of 1.2.2010	B	7-
3.	Department appeal to Director General Agri:D.I.Khan in regard wrong seniority list dated. 1.2.2010 and Revised list 1-3-2010	C	9-
4.	Seniority list of 1.2.2011	D	15-
5.	Seniority Listdated.23.1.2013	E	18-
6.	Departmental appeal dated.25.2.2012	F	21-
7.	Wakalatnama.	-	-23

Yours Humble Appellant

Attaullah

Atta Ullah Khan

through Counsel.

(Shaikh Iftikharul Haq)
Advocate High Court.

Dated.17.6.2013.

BEFORE THE HON'BLE SERVICE TRIBUNAL K.P.K. PESHAWAR.

S.T.A' No. _____ 2013

Atta Ullah Khan , Office Assistant,
District Director ,Agriculture,
D.I.Khan.

Appellant.

V/S

1. Govt of K.P.K through Secretary , Agriculture Peshawar.
2. Director General K.P.K Agriculture Deptt: Peshawar.
3. D.C.O (Presently D.C) Tank.
4. D.C.O (Presently D.C) D.I.Khan.
5. Muhammad Yousaf ,Office Assistant District Director Agriculture D.I.Khan.
6. Imtiaz Hussain District Director Office Tank.(Office Assistant)
7. Muhammad Rafiq Office Assistant ,AAO Mamand Agency

(Respondents)

Service Appeal under section 4 of Khyber Pakhtunkhowa Service Tribunal Act 1974 .

Prayer.

On acceptance of instant appeal the Seniority list may kindly be revised/corrected and the Appellant be placed/brought at Serial No.14 and the Private Respondent No.5 to 7 which has been placed/mentioned at Sr.No.10,11,12 be deleted/ousted in the Seniority list being illegal , unlawfull and without lawfull authority.

Respectfully Sheweth,

(21)

1. That the Appellant was appointed as Junior Clerk on 16.9.1974 and was promoted as Office Assistant on 24.1.2009 .The detail of which is available in the Seniority list

2. That the Private Respondent No.5 M.Yousaf was appointed on Temporary basis vide Office Order No.1414-15/ ABC/Agr/ dated.21.12.2005 by D.C.O (Now D.C) D.I.Khan where wherein it is already mentioned that the Respondent No.5 has not claimed any seniority or right for regular service . Appointment order of Respondent No.5 M.Yousaf is enclosed as Annexure . A

3. That in the light of above order the Private Respondent Muhammad Yousaf was not mentioned/included in the seniority list earlier but his name was put in the Seniority List of 1.2.2010 without any justification and reason .Copy of Seniority list is enclosed as Annexure B

4 That the case of Respondnent No.6 and 7 Private Respondent are also same . They are not existing in the seniority list but their names were included illegally and unlawfully in the Seniority list.

5. That the Appellant feeling aggrieved at that time submitted Departmental Appeal through Proper Channel against the Seniority list of 2010 which was accepted by the Department authorities and fresh seniority list on 1.3.2010 was prepared /issued wherein the name of Private Respondents were not included /deleted from the seniority list. Copy of the Deptt:Appeal is enclosed as Annexure . C

6. That the Respondent authorities issued a Seniority list on 1..2.11 wherein the Private Respondent was not

Seniority list is enclosed as Annexure . D

7. Thereafter the Respondent authorities prepared alleged Seniority list on 2012 which was not received in the D.I.Khan and is not available in the office record.

8. That the Respondent authorities issued a Seniority list on 25.1.2013 wherein the Private Respondent Muhammad Yousa Imtiaz Hussain and Muhammad Rafique names were placed/mentioned at Sr.No.10, 11 & 12 and the name of Appellant have been mentioned at Serial No. 17 .which is wrong , illegal and without lawfull authority. It is also pertinent to mention that Respondent 7 Muhammad Rafiq has been appointed on 14.4.2007 and date of appointment in the list he was shown promoted on the same day and direct promotion . The action and omission of the Respondent authorities are illegal and unlawfull .

9. That the Appellant feeling aggrieved from the impugned Seniority list preferred a Departmental Appeal on 25.2.2013 through proper Channel .Copy of Departmental appeal is enclosed as Annexure . E

10. That as no response of the Departmental appeal so far received (in the stipulated period) now the Appellant humbly approach this Hon'ble Court through instant appeal inter alia on the following grounds.

GROUNDS.

A. That the act and omission of the Respondent authorities are illegal unlawfull and without lawfull authority and the Seniority list prepared on 1.1.2013 is wrong , ineffective upon the right of the Appellant.

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2. That the impugned Seniority list is against law and Service policy.

3. That the impugned Seniority list in not in a commence of esta code and is liable to be reversed/corrected.

4. That the Appellant is senior most whereas the Respondent No.5 to 7 are Junior, which is evident from the seniority list they have been appointed by D.C.O and having no provincial Seniority /

5. That the Appellant Counsel may also be allowed to raise additional grounds during course of hearing.

In wake of submissions made above it is humbly prayed that the Appellant may kindly be brought on Serial No.14 after deleting/casting the name of Respondent No.5 to 7 from the seniority list.

Yours Humble Appellant.

Attaullah

Atta Ullah Khan

through Counsel.

(Shaikh Iftikharul Haq)
Advocate High Court.

Dated.17.5.2013.

19-6-13

Affidavit.

I, Atta Ullah Khan S/O Abdullah Khan R/O Loni D.I.Khan do hereby solemnly affirm and declare on oath that the contents of the appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'ble Court.

Attaullah

Deponent.

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