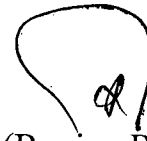


19.10.2022

Appellant present through counsel.

Kabir Ullah Khattak, learned Additional Advocate General alongwith Muhammad Shafique Assistant for respondents present.

Case was fixed for submission of amended service appeal, reply/comments as well as preliminary hearing. Initially, appeal was filed and pre-admission notice was issued to the other side for reply and preliminary arguments. It was on 01.09.2022 when learned Member (Executive) allowed the application seeking permission to file amended service appeal. As the application was allowed, therefore, today amended service appeal was filed. Case was also fixed for reply and comments as well as preliminary hearing, however, it is worth mentioning that comments were submitted in view of the previous appeal and not in the light of amended service appeal, therefore, the respondents are directed to submit reply/comments in the light of amended service appeal and then file to come up for preliminary hearing on 24.11. 2022 before S.B.

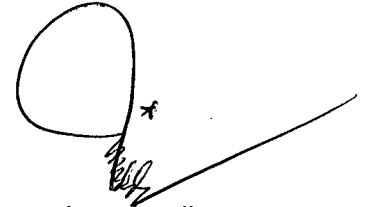


(Rozina Rehman)
Member (J)

01.09.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

On 08th August, 2022 learned counsel for the appellant had submitted an application seeking permission to allow submission of amended service appeal after having rejected of his departmental appeal on 23.06.2022. The application in question could not be processed and not made necessary part of the order sheet by the presiding officer due to the reason that 08th August, 2022 was declared as public holiday and the date was changed on the strength of Reader's Note. Application seeking permission for submission of ^{Amended} service appeal is allowed. Pre-admission notice has already been issued as is evident from order sheet dated 23.06.2022. Adjourned. To come up for reply/comments as well as preliminary hearing on 19.10.2022 before S.B.



(Mian Muhammad)
Member (E)

23rd June, 2022

Learned counsel for the appellant present.

The appellant is aggrieved of the order of his adjustment dated 04.05.2020 against which he filed departmental representation on 08.09.2021 and according to him after waiting of ninety days period he filed this appeal. Since the departmental appeal is barred by time. Let pre-admission notice be issued to the other side for reply and to argue the case in preliminary hearing. To come up for reply/preliminary hearing on 08.08.2022 before S.B

Notice Issued
for the 08/08/22



(Kalim Arshad Khan)
Chairman

8.8.2022

Due to The Public Holidays The Case is
Adjourned to 1-9-2022





Reader

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 159/2022 _____

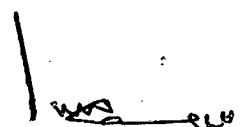
S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	03/02/2022	<p>The appeal of Mr. Muhammad Masood Afridi resubmitted today by Mr. Taimur Ali Khan Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> <p>2-</p> <p>This case is entrusted to S. Bench at Peshawar for preliminary hearing to be put there on <u>01-04-2022</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>01.04.2022</p> <p>Clerk of learned counsel for the appellant present.</p> <p>Former requests for adjournment on the ground that learned counsel is not available today. Adjourned. To come up for preliminary hearing on 23.06.2022 before S.B.</p> <p style="text-align: right;"> (MIAN MUHAMMAD) MEMBER(E)</p>

The appeal of Mr. Muhammad Masood Afridi, AD (General/Trg) Home & Tribal Affairs Department, KP, Peshawar received today i.e. on 29.12.2021 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Checklist is not attached with the appeal.
2. Appeal has not been flagged/marked with annexure marks.
3. Annexures of the appeal may be attested.
4. Certificate be given to the effect that appellant has not been filed any service appeal earlier on the subject matter before this Tribunal.
5. Annexures A, C, D, E and F attached with the appeal are illegible which may be replaced by legible/better one.
6. Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2682 /S.T,

Dt. 29/12 /2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Taimur Ali Khan Adv. Pesh.

Respected Sir -

15 days may kindly be extended for submission of appeal.




13/01/2022

⑮ days time further extended.

Respected Sir,

5 more days may be granted for submission of appeal


13/11/2022


⑮ days time further extended


31/10/2022


31/11/2022

Respected Sir.

Resubmitted after removal of
all objections


3/2/2022.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. 159 /2022

Muhammad Masood Afridi

V/S

Govt. of KP etc

INDEX

S.No.	Documents	Annexure	P. No.
1.	Memo of Appeal	-----	01-06
2.	Affidavit	-----	07
3.	Copies of advertisement, statement and appointment order dated 01.12.2004	A,B&C	08-013
4.	Copies of extension and judgment dated 17.06.2010	D&E	14-25
5.	Copies of order dated 27.09.2011, judgment dated 28.03.2013 and judgment dated 15.09.2014 and summary	F,G,H&I	26-38
6.	Copy of judgment dated 05.12.2019	J	39-40
7.	Copies of order dated 04.05.2020 and departmental appeal	K&L	41-43
8.	Copies of notification dated 22.03.2019 and notification dated 26.05.2021	M&N	44-45
9.	Copy of meeting minutes	O	46-47
10.	Vakalat Nama	-----	48

APPELLANT

THROUGH:


(TAIMUR ALI KHAN)

ADVOCATE HIGH COURT.

Room No. FR 8, 4th Flour,
Bilour plaza, Peshawar cantt:
Cell# 0333-9390916

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

SERVICE APPEAL NO. 159 /2022

Mr. Muhammad Masood Afridi, Assistant Director (General/Trg),
Home & Tribal affairs Department, Khyber Pakhtunkhwa, Peshawar.

APPELLANT

VERSUS

1. The Government of Khyber Pakhtunkhwa through Chief Secretary
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. The Chief Secretary Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary Establishment Khyber Pakhtunkhwa, Civil Secretariat,
Peshawar.
4. The Secretary Finance Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

RESPONDENTS

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNALS ACT 1974 AGAINST
DATED 04.05.2020, WHEREBY THE APPELLANT WAS
WRONGLY ADJUSTED AGAINST THE POST OF ASSISTANT
TREASURY OFFICER (BPS-17) IN ATTACHED DEPARTMENT
OF ACCOUNT AND TREASURY ESTABLISHMENT INSTEAD
OF FINANCE DEPARTMENT AS FINANCE OFFICER (BPS-17)
AND AGAINST NOT TAKING ACTION ON THE
DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN
THE STATUTORY PERIOD OF THE NINETY DAYS.**

PRAYER:

**ON THE ACCEPTANCE OF THIS APPEAL, RESPONDENTS
MAY PLEASE BE DIRECTED TO ADJUST THE APPELLANT
ON THE POST OF FINANCE OFFICER (BPS-17) IN FINANCE**

DEPARTMENT FROM THE DATE OF HIS REGULARIZATION INTO SERVICE I.E 23.07.2005 BY MODIFYING THE ORDER DATED 04.05.2020 TO THAT EXTENT AND FURTHER PROMOTED HIM ACCORDING TO HIS SENIORITY. ANY OTHER REMEDY WITH THIS AUGUST TRIBUNAL DEEMS FIT AND PROPER MAY ALSO BE AWARDED THE FAVOR OF THE APPELLANT.

RESPECTFULLY SHEWETH

FACTS:

1. That the Finance and Planning Department in erstwhile in FATA Agencies advertised various posts in the year 2004 and there was one post for each Agency which is evident from the statement of Finance & Planning Department. The appellant being eligible applied for the post of Agency Finance Officer (BPS-17) and was appointed on the said post vide order dated 01.12.2004 after recommendation by the Selection Committee. **(Copies of advertisement, statement and appointment order dated 01.12.2004 are attached as Annexure-A,B&C)**
2. That the competent authority extended the period of employment of the officers/officials of Agency Finance & Planning Department from time and lastly the appellant along with other officials filed writ petition No.917/2007 in the Honourable Peshawar High Court Peshawar for regularization. The said writ petition was decide on 17.06.2010 along with other connected writ petitions and the Honourable was kind enough to accept the writ petition on the ground that under sub section (2) of section-19 of NWFP Civil Servants (Amendment) Act, 2005, the appellant was regularized and direction was issued to the respondent to the said effect. **(Copies of extension and judgment dated 17.06.2010 are attached as Annexure-D&E)**
3. That on the basis of High Court Judgment, the appellant was regularized vide order dated 27.09.2011 and department also filed CPLA No.437-P to 450-P of 2010 against the judgment dated 17.06.2010, which was dismissed by the Apex Court on 28.03.2013 and mentioned in that judgment that the appellant was declared to be entitled to regularization w.e.f 23.07.2005. The Department filed Review Petition before the Apex Court which was also dismissed by the Apex Court on 15.09.2014. It is pertinent to mention here that when Review Petition of the department was dismissed by the Apex Court, the ACS (FATA) mentioned in para 23 of the summary that Government has no option except to regularize the service of the petitioners as well as allocation of a cadre for them in

the Provincial Services as the judgment passed by the Peshawar High Court has attained finality as a result of orders passed by the Apex Court on which the Secretary Establishment mentioned in para 26 of the summary that in compliance of the Apex Court orders, the officers mentioned in para-10 of the summary can only be adjusted in the FATA Secretariat, while creating a separate service cadre. However, it is pointed out that with the retirement of each member of the service, the post which becomes vacant, will be filled from amongst the PAS/PMS officers, who have share in the schedule because those post are borne on the schedule of post attached with Pakistan Administrative Service (Composition and cadre) Rules, 1954 and Provincial Management Service Rules, 2007. **(Copies of order dated 27.09.2011, judgment dated 28.03.2013 and judgment dated 15.09.2014 and summary are attached as Annexure-F,G,H&I)**

4. That as the appellant has no service structure for prospects of promotion, therefore, he filed writ petition No.3722/2016 and during the hearing of the case the learned AAG assured the court that the appellant along with other officials will be adjusted in Finance department on which the writ petition was disposed of on 05.12.2019 with the direction to learned AAG to undertake to abide by the commitment so made. **(Copy of judgment dated 05.12.2019 is attached as Annexure-J)**
5. That the appellant was adjusted on in attached department Treasuries and Accounts Establishment on the post of Assistant Treasury Officer (BPS-17) in vide order dated 04.05.2020 instead of Finance department as per commitment made by the AAG in the Honourable High Court in writ petition No. 3722/2016 and against his cadre/post as the appellant since his appointment is working on the post of Agency Finance Officer (BPS-17), therefore the appellant filed departmental appeal on 08.09.2021 for adjustment on his post of Finance Officer (BPS-17) with due seniority from the date of his regularization into service i.e 23.07.2005, which was not responded within the statutory period of ninety days. **(Copies of order dated 04.05.2020 and departmental appeal are attached as Annexure-K&L)**
6. That the appellant has no other remedy except to file the instant appeal for redressal of his grievance in this Honourable Tribunal on the following grounds amongst others.

GROUND:

- A. That not taking action on the departmental appeal of the appellant and not adjusting the appellant in Finance department on his post of Finance Officer (BPS-17) and also not including his name in the seniority list of

Finance Officer from due date are against the law, rules, norms of justice and fair play.

- B. That the officials/officers working on the post of Agency planning officers erstwhile in Agency planning cell P&D Department, merged Areas (Tribal Districts) were included in the schedule of PPS cadre along with incumbents in their respective grade with immediate effect vide notification dated 22.03.2019 and revise their regularization of services w.e.f 23.07.2005 vide notification dated 26.05.2021, but the appellant was not adjusted in his cadre of Finance Officer (BPS017), which means that the appellant was discriminated which is clear violation of Article-25 of the Constitution of Pakistan. **(Copies of notification dated 22.03.2019 and notification dated 26.05.2021 are attached as Annexure-M&N)**
- C. That the AAG assured the court during the proceeding of writ petition No.3722/2016 that the appellant along with other officials will be adjusted in Finance department on which the writ petition was disposed of on 05.12.2019 with the direction to learned AAG to undertake to abide by the commitment so made, but despite that the appellant was adjusted in attached department of Treasury and Accounts Establishment although the appellant was working on the post of Agency Finance Officer (BPS-17) before merging of FATA in KP Province and the post of Finance Officer (BPS-17) was already exist in Tribal District which is evident from the meeting minutes of the meeting hold for the creation of posts of district officer (F&P) and others in Tribal Districts, which shows the arbitrary attitude of the respondents of not adjusting on the post of Finance Officer (BPS-17) on which he was already working before merging. **(Copy of meeting minutes is attached as Annexure-O)**
- D. That the appellant was appointed on contract basis in the year 2004 and was regularized w.e.from 23.07.2005, but till date he has not granted his due seniority in his cadre and also not actualize his further promotion on the basis of that seniority as the appellant has been working in same of BPS-17 for more than 16 years.
- E. That according to Section-8 of the Civil Servant Act 1973 and Section-17 of APT Rules 1989, it is the legal right of every civil servant to properly place in seniority list according to his seniority position, but the same benefits was not extended to the appellant which is the violation of law and rules.

- F. That not placing the name of the appellant in the seniority list of his cadre from due date will cause irreparable loss in the case of promotion and monetary benefits in shape of pension etc.
- G. That the appellant was not treated according to the law and rules and has been deprived from his legal right of seniority in his cadre from due date and further promotion on the basis of that seniority in arbitrary manner without fault on his part.
- H. That the appellant seeks permission of this Honourable Tribunal to advance other ground proof at the time of hearing.

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


APPELLANT

Muhammad Masood Afridi

THROUGH:


M. ASIF YOUSAFZAI
ADVOCATE SUPREME COURT,


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,

&

SHAKAR KHAN YOUSAFZAI
ADVOCATE

CERTIFICATE:

It is certified that no other similar service appeal between the parties has been filed earlier.


DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL No. _____ /2021

Muhammad Masood Afridi

VS

Govt: OF KP

AFFIDAVIT

I, Muhammad Masood Afridi, Assistant Director (General/Trg) Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar (appellant) do hereby affirm and declare that the contents of this service appeal are true and correct and nothing has been concealed from this Honourable Tribunal.


DEPONENT



پروکسیرومنٹ فیڈریشن کے ذریعہ مندرجہ ذیل نوکریوں کے لیے درخواستیں قبول کی جا رہی ہیں۔

1. **PROFESSOR** - 935/2004 سے متعلقہ 10 نومبر 2004 کو دی گئی ہے۔

2. **PROFESSOR** - 13 نومبر 2004 سے متعلقہ 10 نومبر 2004 کو دی گئی ہے۔

3. **PROFESSOR** - 13 نومبر 2004 سے متعلقہ 10 نومبر 2004 کو دی گئی ہے۔

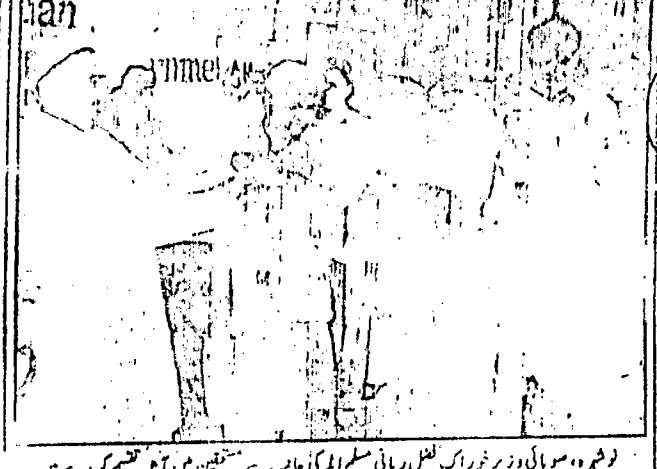
نوٹ: درخواستیں مندرجہ ذیل نوکریوں کے لیے قبول کی جائیں گی۔

پروکسیرومنٹ فیڈریشن کے ذریعہ مندرجہ ذیل نوکریوں کے لیے درخواستیں قبول کی جا رہی ہیں۔

1. **PROFESSOR** - 935/2004 سے متعلقہ 10 نومبر 2004 کو دی گئی ہے۔

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3. **PROFESSOR** - 13 نومبر 2004 سے متعلقہ 10 نومبر 2004 کو دی گئی ہے۔



8
A

ملازمت کے مواقع

1. **ایگزیکٹو آفیسر (نائل ایڈوائزنگ)** (بی. بی ایس 18) (35-45 سال)

امیدوار کے لئے ضروری ہے کہ وہ ایچ ای سی کی تسلیم شدہ یونیورسٹی سے ایس ایف میں گریجویشن کیا ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو۔

2. **ایگزیکٹو آفیسر** (بی. بی ایس 17) (25-40 سال)

امیدوار کے لئے ضروری ہے کہ وہ ایچ ای سی کی تسلیم شدہ یونیورسٹی سے ایس ایف میں گریجویشن کیا ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو۔

3. **اسسٹنٹ ایگزیکٹو آفیسر** (بی. بی ایس 16) (26-35 سال)

امیدوار کے لئے ضروری ہے کہ وہ ایچ ای سی کی تسلیم شدہ یونیورسٹی سے ایس ایف میں گریجویشن کیا ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو۔

4. **ایگزیکٹو آفیسر** (بی. بی ایس 15) (20-30 سال)

امیدوار کے لئے ضروری ہے کہ وہ ایچ ای سی کی تسلیم شدہ یونیورسٹی سے ایس ایف میں گریجویشن کیا ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو۔

5. **ایگزیکٹو آفیسر** (بی. بی ایس 14) (15-25 سال)

امیدوار کے لئے ضروری ہے کہ وہ ایچ ای سی کی تسلیم شدہ یونیورسٹی سے ایس ایف میں گریجویشن کیا ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو۔

6. **ایگزیکٹو آفیسر** (بی. بی ایس 13) (10-20 سال)

امیدوار کے لئے ضروری ہے کہ وہ ایچ ای سی کی تسلیم شدہ یونیورسٹی سے ایس ایف میں گریجویشن کیا ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو۔

7. **ایگزیکٹو آفیسر** (بی. بی ایس 12) (5-15 سال)

امیدوار کے لئے ضروری ہے کہ وہ ایچ ای سی کی تسلیم شدہ یونیورسٹی سے ایس ایف میں گریجویشن کیا ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو۔

8. **ایگزیکٹو آفیسر** (بی. بی ایس 11) (0-10 سال)

امیدوار کے لئے ضروری ہے کہ وہ ایچ ای سی کی تسلیم شدہ یونیورسٹی سے ایس ایف میں گریجویشن کیا ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو اور وہ پندرہ سال سے کم عمر ہو۔

چاند رات پر ہوائی فائرنگ سے گریز کیا جائے

چاند رات پر ہوائی فائرنگ سے گریز کیا جائے۔ مولانا عبد اللہ صاحب نے فریڈم فائٹنگ فورسز کے خلاف ہوائی فائرنگ سے گریز کیا ہے۔

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~~10~~ 13 (9)

STATEMENT OF STAFF OF FINANCE & PLANNING DEPARTMENTS

(A) FINANCE DEPARTMENT

Name of Post	BPS	No of Posts Per Agency	Total
Executive Officer (Finance & Planning)	18/19	1	7
Agency Finance Officer	17	1	7
Assistant Agency Finance Officer	16	1	7
Assistant/Budget Examiner	11	3	21
Junior Scale Stenographer	12	1	7
Computer Operator	11	2	14
Senior Clerk	7	1	7
Junior Clerk	5	2	14
Driver	4	1	7
Naib Qasid	1	4	28
Chowkidar	1	1	7
Sweeper	1	1	7
Total		19	133

STATEMENT OF STAFF OF FINANCE & PLANNING DEPARTMENTS

PLANNING DEPARTMENT

No	Name of Post	BPS	No of Posts Per Agency	Total
1	Planning Officer	17	1	7
2	Tech Officer	17	1	7
3	Sub Engineer	11	2	14
4	Computer Operator	11	1	7
5	Draftsman	11	1	7
6	Surveyor	9	2	14
7	Junior Clerk	5	2	14
8	Survey Helper	1	1	7
9	Naib Qasid	1	3	21
10	Chowkidar	1	1	7
TOTAL			15	105

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GOVERNOR'S SECRETARIAT (FATA)
ADMN WING PESHAWAR

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

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

TERM AND CONDITIONS OF EMPLOYMENT ON CONTRACT BASIS.

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

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

Sd/-
Deputy Secretary (Admn)

3358-71
01/12/2004

12

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

Section Officer (Estab)

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GOVERNOR'S SECRETARIAT (FATA)
ADMN WING PESHAWAR

OFFICE ORDER

Consequent upon their appointment vide Admn Wing Governor's Secretariat (FATA) Per order No:GS/E/100-19/3358-71 dated 1-12- 2004, the competent authority has been pleased to order the posting of following Agency Finance Officers (BPS-17) to the offices noted against each in the public interest:-

Sl. NO.	NAME	PLACE OF POSTING
1	M.Masood Afridi	Agency Finance Officer Finance & Planning Department Mohra post of Asstt Agency Finance Officer in Finance Cell
2	Najeeb Ullah	Agency Finance Officer Finance & Planning Department SW Agency. He will draw salary against the sanctioned post of Asstt Agency Finance Officer in Finance Cell
3	Sadia Asghar	Agency Finance Officer Finance & Planning Department Khyber Agency. She will draw salary against the sanctioned post of Asstt Agency Finance Officer in Finance Cell
4	Mohib-ur-Rehman	Agency Finance Officer Finance & Planning Department Kurram Agency. He will draw salary against the sanctioned post of Asstt Agency Finance Officer in Finance Cell
5	Shah Nawaz Khan	Agency Finance Officer Finance & Planning Department Bajaur Agency. He will draw salary against the sanctioned post of Asstt Agency Finance Officer in Finance Cell

Sd/-
Deputy Secretary (Admn)

No.GS/E/100-19/3358-71
Dated 12/12/2004
Copy to

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

Section Officer (Estab)

GOVERNOR'S SECRETARIAT
ADMINWING PESHAWAR

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NOTIFICATION

No GS/E/100-19(Officers)/356-66 The Competent Authority is pleased to extend the period of employment of the following Officers/officials of Agency Finance & Planning Department's Governor's Secretariat for a further period of three months with effect from 01-12-2005 and upto 28-2-2006 in the public interest:

S.No	Post & Name of incumbent	Present Place of Posting
A. EXECUTIVE OFFICER (BPS-18)		
1.	Sher Afzal Khan	Khyber Agency
2.	Ahmad Nawaz	Bajaur
B. AGENCY FINANCE OFFICER (BPS-17)		
1.	Shah Nawaz Khan	Bajaur (Now in Minerals Directorate)
✓ 2.	M. Masood Afridi	Mohmand
3.	Ms. Sadia Asghar	Khyber
4.	Mohib-ur-Rehman	Kurram
5.	Najeebullah	SWA
C. PLANNING OFFICER (BPS-17)		
1.	Fardoolah	Bajaur
2.	Muhammad Irfan	Mohmand
3.	Muhammad Hamid	Khyber
4.	Muhammad Rehman	Orakzai
5.	Miftahullah	Kurram
6.	Faqir Muhammad	NWA
7.	Israr Ahmad Khan	SWA
D. ASSISTANT AGENCY FINANCE OFFICER (BPS-16)		
1.	Aftab Habib	Orakzai
2.	Anwar Ali	Kurram
3.	Hadi Hussain	NWA
4.	Oaisar Munir	Khyber
E. COMPUTER OPERATOR (BPS-11)		
1.	Roohullah	Bajaur
2.	Peroz Shah	Bajaur
3.	Shahi Room	Mohmand
4.	Masood ur Rehman	Mohmand
5.	Muhammad Naeem	Mohmand
6.	Khan Muhammad	Khyber
7.	Samar Hayat	Khyber
8.	Tehseenullah	Khyber
9.	Zahir Khan	Orakzai
10.	Malik Taj	Orakzai
11.	Kamal Hussain	Kurram
12.	Muhammad Javed Iqbal	Kurram
13.	Hikmatullah	NWA
14.	Nauroz Khan	NWA
15.	Hidayatullah	NWA
16.	Zubair Ahmad	SWA
17.	Kashif Aslam	SWA
18.	Mian Yasir Hayat	SWA

Sd/-
Deputy Secretary (Admn)

365 (15)

Dated 19/11/2006

Copy to:-

- 1. Additional Accountant General (PR) Sub Office Peshawar
- 2. Additional Secretary (F&P) Governor's Secretariat
- 3. All Political Agents
- 4. Executive Officers Agency Finance & Planning Departments
- 5. All Agency Finance Officer, Finance & Planning Departments
- 6. Section Officer (Budget & Accounts) Governor's Secretariat
- 7. Section Officer (Audit) Governor's Secretariat
- 8. All Agency Accounts Officers
- 9. PS to Chief Secretary NWFP
- 10. Officers/Officials concerned.
- 11. PS to Secretary (FATA)

Section Officer (Estab)

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19.11.2006

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GOVERNOR'S SECRETARIAT
ADMINISTRATION WING
WARSAK ROAD PESHAWAR

NOTIFICATION

No. SS/E/100-19(Officers)/1666-76. The Competent Authority is pleased to extend the period of employment of the following Officers/officials of Agency Finance & Planning Department for further period of six months with effect from 01-03-2006 upto 31-08-2006 on the same Terms & Conditions in the interest public service:-

S.No	Post & Name of incumbent	Present Place of Posting
A. EXECUTIVE OFFICER (BPS-18)		
	Sher Afzal Khan	Khyber Agency
	Ahmad Nawaz	Bajaur
B. AGENCY FINANCE OFFICER (BPS-17)		
	Shah Nawaz Khan	Bajaur (Now in Mineral Directorate)
	M. Masood Afridi	Mohmand
	Ms. Sadia Asghar	Khyber
	Mohib-ur-Rehman	Kurram
	Najcebullah	SWA
C. PLANNING OFFICER (BPS-17)		
	Faridullah	Bajaur
	Muhammad Irfan	Mohmand
	Muhammad Hamid	Khyber
	Muhammad Rehman	Orakzai
	Miftahullah	Kurram
	Faqir Muhammad	NWA
	Israr Ahmad Khan	SWA
D. ASSISTANT AGENCY FINANCE OFFICER (BPS-16)		
1.	Aftab Habib	Orakzai
2.	Anwar Ali	Kurram
3.	Hadi Hussain	NWA
4.	Qaisar Munir	Khyber
E. COMPUTER OPERATOR (BPS-11)		
1.	Roohullah	Bajaur
2.	Feroz Shah	Bajaur
3.	Shahi Room	Mohmand
4.	Masood ur Rehman	Mohmand
5.	Muhammad Naeem	Mohmand
6.	Khan Muhammad	Khyber
7.	Samar Hayat	Khyber
8.	Tehseenullah	Khyber
9.	Muhammad Zahir Khan	Orakzai
10.	Malik Taj	Orakzai
11.	Kamal Hussain	Kurram
12.	Muhammad Javed Iqbal	Kurram
13.	Hikmatullah	NWA
14.	Nauroz Khan	NWA
15.	Hidayatullah	NWA
16.	Zubair Ahmad	SWA
17.	Kashif Aslam	SWA

Sc/-
Deputy Secretary (Admn)

Dated 16/12/2006.

Copy to:

1. Additional Accountant General (PR) Sub Office Peshawar
2. Additional Secretary (F&P) Governor's Secretariat
3. All Political Agents
4. All Executive Officers, Agency Finance & Planning Departments
5. All Agency Finance Officer, Finance & Planning Departments
6. Section Officer (Budget & Accounts) Governor's Secretariat
7. Section Officer (Audit) Governor's Secretariat
8. All Agency Accounts Officers
9. PS to Chief Secretary NWFP
10. Officers/Officials concerned.
11. PS to Secretary (FATA)

(WAQAR HUSSAIN)
Section Officer (Estab)



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CIVIL SECRETARIAT (FATA)
(ADMINISTRATION DEPARTMENT)
WARSAK ROAD PESHAWAR

NOTIFICATION :-

No. CS/E/100-19(Officers)/ 5169-79 The Competent Authority is pleased to extend contract period of the following employees of Agency Finance & Planning Department on their previous Terms & Conditions for the period upto 30-06-2007 where after the contract shall cease:-

S.No	Post & Name	Place of Posting	Extension Period
A. EXECUTIVE OFFICER (BPS-18)			
1.	Sher Aezal Khan	Khyber Agency	01-09-2006 to 30-06-2007
2.	Ahmad Nawaz	Bajaur	01-09-2006 to 30-06-2007
B. AGENCY FINANCE OFFICER (BPS-17)			
1.	M. Masood Afridi	Hydrogeology Division Peshawar	01-09-2006 to 30-06-2007
2.	Ms. Sadia Asghar	Khyber	01-09-2006 to 30-06-2007
3.	Mohib-ur-Rehman	Orakzai	01-09-2006 to 30-06-2007
4.	Najeebullah	SWA	01-09-2006 to 30-06-2007
C. PLANNING OFFICER (BPS-17)			
1.	Faridullah	Bajaur	01-09-2006 to 30-06-2007
2.	Muhammad Irfan	Mohmand	01-09-2006 to 30-06-2007
3.	Muhammad Hamid	Khyber	01-09-2006 to 30-06-2007
4.	Muhammad Rehman	Orakzai	01-09-2006 to 30-06-2007
5.	Miftahullah	Kurram	01-09-2006 to 30-06-2007
6.	Faqir Muhammad	NWA	01-09-2006 to 30-06-2007
7.	Israr Ahmad Khan	SWA	01-09-2006 to 30-06-2007
D. ASSISTANT AGENCY FINANCE OFFICER (BPS-16)			
1.	Anwar Ali	Kurram	01-09-2006 to 30-06-2007
2.	Hadi Hussain	NWA	01-09-2006 to 30-06-2007
3.	Qaisar Munir	Khyber	01-09-2006 to 30-06-2007
E. COMPUTER OPERATOR (BPS-11)			
1.	Shahi Room	Mohmand	01-09-2006 to 30-06-2007
2.	Muhammad Naeem	Mohmand	01-09-2006 to 30-06-2007
3.	Khan Muhammad	Khyber	01-09-2006 to 30-06-2007
4.	Samar Hayat	Khyber	01-09-2006 to 30-06-2007
5.	Tehsecnullah	Khyber	01-09-2006 to 30-06-2007
6.	Kamal Hussain	Kurram	01-09-2006 to 30-06-2007
7.	Muhammad Javed Iqbal	Kurram	01-09-2006 to 30-06-2007
8.	Hikmatullah	NWA	01-09-2006 to 30-06-2007
9.	Nauroz Khan	NWA	01-09-2006 to 30-06-2007
10.	Hidayatullah	NWA	01-09-2006 to 30-06-2007
11.	Zubair Ahmad	SWA	01-09-2006 to 30-06-2007
12.	Kashif Aslam	SWA	01-09-2006 to 30-06-2007
F. SWEEPER (BPS-1)			
1.	Muzammil Shah	Mohmand Agency	01-12-2006 to 30-06-2007
2.	Muhammad Sahib	Orakzai Agency	01-12-2006 to 30-06-2007
3.	Arsalan Masih	North Waziristan Agency	01-12-2006 to 30-06-2007
4.	Amjid	South Waziristan Agency	01-12-2006 to 30-06-2007

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S.No.	Post & Name	Place of Posting	Extension Period
5.	Haroon-ur-Rashid	Khyber Agency	01-12-2006 to 30-06-2007
6.	Yousaf Khan	Bajaur Agency	01-12-2006 to 30-06-2007

SECRETARY (ADMN & COORD)

Dated 14/6/2007

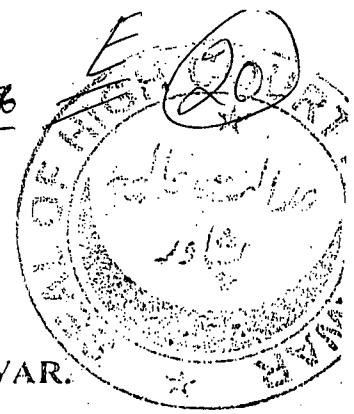
Copy to:-

1. Secretary Finance Department Civil Secretariat (FATA)
2. Secretary P&D Department Civil Secretariat (FATA)
3. Additional Accountant General (PR) Sub Office Peshawar
4. All Political Agents
5. All Executive Officers, Agency Finance & Planning Departments
6. All Agency Finance Officer, Finance & Planning Departments
7. Section Officer (Budget & Accounts) Civil Secretariat (FATA)
8. Section Officer (Audit) Civil Secretariat (FATA)
9. All Agency Accounts Officers
10. PS to Chief Secretary NWFP
11. Officers/Officials concerned

(IHSANULLAH KHAN)

Section Officer (Estab)

14.6.2007



Judgment Sheet

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

W.P. No. 917 of 2007

JUDGMENT

Date of hearing 17-06-2010

Appellant/Petitioner (s) M. Muhammad Masood Hashmi by Q. Az-
Anwar Advocate.

Respondent (s) Advt. Chief Secretary by Sardar Ali Raza ANQ
& Muzamil Khan DAG & Jehanzeb M. Muhammad Zai

EJAZ AFZAL KHAN, C. J. By this single & Shemal
judgment, we propose to decide Writ Petitions Advt. Chief
Secretary.

Nos. 917, 970, 971, 972, 1002, 1003, 1004, 1005, 1006,
112, 1013, 1072, 1335 of 2007 and 2899 of 2009,
wherein the petitioners have asked for the issuance
of an appropriate writ directing the respondents to
regularize them in accordance with the requirements
of NWFP Civil Servants (Amendment) Act, 2005
(IX of 2005) adding subsection (2) to section 19 of
the Civil Servants Act, 1973.

2. Learned counsel appearing on behalf
of the petitioners contended that where the
petitioners were appointed on contract against the
sanctioned posts and were selected in a prescribed
manner, their case clearly and squarely fell within
the purview of section 19(2) of the Act, therefore,
they are to be regularized at par with those who are

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PESHAWAR HIGH COURT

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

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

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

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

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

“19(1).....

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

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EXAMINER
Peshawar High Court

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

Provided

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

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

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EXAMINER
Peshawar High Court

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

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

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

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EXAMINER
Personnel Department

regularized. Quite apart from this, when many other similarly placed and positioned have been regularized under the judgments of this Court rendered in the cases of Dr. Rizwanullah and 42 others-Vs-Government of NWFP through Chief Secretary, NWFP, Peshawar and 4 others (2009 PLC (C.S) 389), Miss Shagufta Syed-Vs- Govt. of NWFP through Secretary Zakat, Ushr, Welfare and Women Development Department Peshawar in Writ Petition No.1731/2006 and Anayatul Haq etc.-Vs-E.D.O. etc. in Writ Petition 1662/2007 (Supra), it would be rather unjust and unfair to deny the same right to the petitioners. We thus allow these writ petitions and direct the respondents to regularize the petitioners.

Dated: 17.6.2010

sd/ Ejaz Afzal Khair
C.J.
sd/ sardar shaukat Hussain

A. Issue

CERTIFIED TO BE TRUE COPY
Examined
30/6/2010
Peshawar High Court Peshawar
Authorized Under Section 75 Acts Order

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of Presentation of application 3/6/10
Pages 19-P
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of Preparation of copy 30/6/10
of delivery of copy 30/6/10
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Regularization

FATA SECRETARIAT,
(Admn & Coord Department)
WARSAK ROAD PESHAWAR

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ORDER:-

In continuation of office order No. FS/E/100-19 (officers) Vol-3/7688-98 dated:27/6/2011 and in compliance with the order of Peshawar High Court Peshawar dated 08-9-2011 in C.O.C. No. 38/2011 filed in writ Petition NO.917/2007 (D) , the services of the following officers are hereby regularized which shall be subject to the final decision in the C.P.L.A. All benefits received under the impugned judgment in C.P.L.A. including the order of regularization shall be recoverable from the person and assets of the petitioners, if the department succeeded in undoing the judgment of the Peshawar High Court in the C.P.L.A. :-

S.No	Name	Designation	BS
1.	Sher Afzal	Executive Officer F&P	18
2.	M. Masood Afridi	Agency Finance Officer	17
3.	Mohib-ur-Rehman	Agency Finance Officer	17
4.	Najeebullah	Agency Finance Officer	17
5.	Faridullah	Agency Planning Officer	17
6.	Muhammad Hamid	Agency Planning Officer	17
7.	Muhammad Rehman	Agency Planning Officer	17
8.	Miftahullah	Agency Planning Officer	17
9.	Faqir Muhammad	Agency Planning Officer	17
10.	Israr Ahmad Khan	Agency Planning Officer	17
11.	Ms. Sadia Asghar	Agency Finance Officer	17
12.	Hadi Hussain	Asstt: Agency Finance Officer	16
13.	Qaisar Munir	Asstt: Agency Finance Officer	16
14.	Anwar Ali	Asstt: Agency Finance Officer	16

No. FS/E/100-19 (officers) Vol-4/ 14805-17 **ADDITIONAL CHIEF SECRETARY (FATA)**
Dated: 27/9/2011.
Copy to:-

1. Secretary Finance Department, FATA Secretariat.
2. Secretary P&D Department, FATA Secretariat.
3. Additional Accountant General (PR) Sub Office Peshawar.
4. The Director, Irr: & Hydle Power, FATA Secretariat.
5. The Deputy Director (G.W.), FATA Secretariat.
- 6.. All Political Agents.
- 7.. All Executive Officers, Agency Finance & Planning Department.
- 8.. All Agency Finance Officers, Finance & Planning Department.
- 9.. Section Officer (B&A), FATA Secretariat.
10. Section Officer (Audit), FATA Secretariat.
- 11.. All Agency Accounts Officers.
12. P.S. to Chief Secretary Khyber Pakhtunkhwa.
13. Officers concerned

(Muhammad Abbas Khar
Section Officer (Estab/

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

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

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

(Against the judgment dated 17.6.2010 of the Peshawar High Court, Peshawar passed in Writ Petitions Nos.917, 918, 921, 922, 1002, 1003, 1004, 1005, 1006, 1012, 1013, 1072, 1575 of 2007 and Writ Petition No.2899 of 2009)

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

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

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

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

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

Date of Hearing: 28.03.2013

ORDER

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

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

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Supreme Court of Pakistan
Dhaka

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

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

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

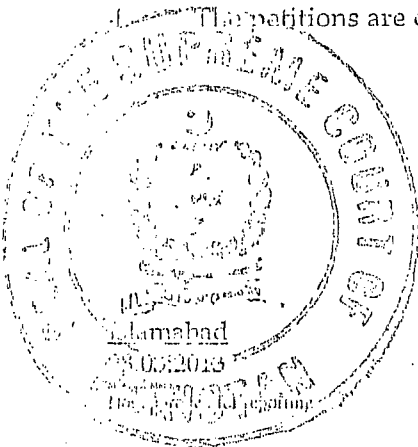
3. Learned counsel for the petitioners states that the respondents have already received benefits for the said period. He, therefore, requests that in this order it may be clarified that respondents will not be entitled to receive emoluments in respect of

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Superintendent
Court, Islamabad
ISLAMABAD

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

The petitions are disposed of accordingly in the above terms.



1-4-2013

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

Confirmed to be True Copy

Supplement
Supreme Court of Pakistan
ISLAMABAD

GR No: 12691/13 Civil/Criminal
 Date of Presentation: 5-10-13
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IN THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

Handwritten initials and a circled number '30'.

Present:

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

CPAs-153, 135, 137, 139, 141, 143, 145, 147, 149, 151, 153, 155, 157 & 159 of 2014
(For permission to file CRPs against the judgment of this Court dated 28.3.2014 passed in CP-457-P/2010 etc.)

IN

CP Nos. Nil in Civil Petition Nos. 437-P to 450-P of 2010

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

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

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

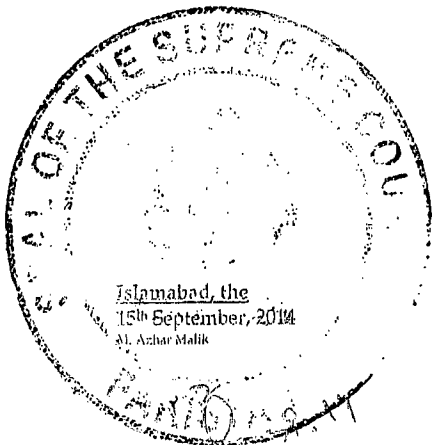
For Govt. of KPK: Ms. Ambreen Abbasi, Addl. AG

Date of Hearing: 15.09.2014

ORDER

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

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



Certified to be True Copy

Superintendent
Supreme Court of Pakistan
Islamabad

SUMMARY FOR GOVERNOR KHYBER PAKHTUNKHWA

SUBJECT : REGULARIZATION OF FINANCE & PLANNING CELL EMPLOYEES (FATA).

The Federal Government created various categories of posts for establishment of Finance & Planning Cells in September 2003 with the following break-up:-

S.No	Name of Cell	No of posts
(i)	Finance Cell	= 70
(ii)	Planning Cell	= 238

2- The Cells were made functional in all Agencies with effect from 01-12-2004 by adjustment of defunct FATA DC's staff from surplus pool as well as making fresh appointments after fulfillment of codal formalities such as press advertisement and selection of eligible candidates through Departmental Selection Committee. Names of persons appointed on contract basis are as under:-

S.No	Name	Designation
1.	Sher Afzal Khan	Executive Officer (BS-18)
2.	Ahmad Nawaz	Executive Officer (BS-18)
3.	M. Masood Afridi	Agency Finance Officer (BS-17)
4.	Ms. Sadia Asghar	Agency Finance Officer (BS-17)
5.	Mohib-ur-Rehman	Agency Finance Officer (BS-17)
6.	Najeebullah	Agency Finance Officer (BS-17)
7.	Faridullah	Agency Planning Officer (BS-17)
8.	Muhammad Hamid	Agency Planning Officer (BS-17)
9.	Muhammad Rehman	Agency Planning Officer (BS-17)
10.	Miftahullah	Agency Planning Officer (BS-17)
11.	Faqir Muhammad	Agency Planning Officer (BS-17)
12.	Israr Ahmad Khan	Agency Planning Officer (BS-17)
13.	Anwar Ali	Asstt: Agency Finance Officer (BS-16)
14.	Hadi Hussain	Asstt: Agency Finance Officer (BS-16)
15.	Qaisar Munir	Asstt: Agency Finance Officer (BS-16)

3- The above employees performed duties till 30-06-2007 on their respective posts, with periodical extension in contract. However their services were ceased on expiry of contracts on 30-06-2007. Aggrieved with the above action, they lodged petition in Peshawar High Court Peshawar seeking the remedy of reinstatement as well as regularization of service. The Court decided their re-instatement in service and through another decision in Writ Petition No.917/2007 (D) and C.O.C No.38/2011, subsequently regularized their services as per Judgment dated 08-09-2011 (Annexure-I) and in implementation thereof, this department regularization Order dated 27-09-2011 (Annexure-II) and dated 05-04-2012 (Annexure-III).

4- Their regularization in service was subject to final decision of the Supreme Court of Pakistan where FATA Secretariat had filed CPLA against the Judgment of Peshawar High Court Peshawar. The case came up for hearing in the apex Court on 28-03-2013 as per Judgment (Annexure-IV) which contains the following salient decision:-

- (i) As per Para-2 of the Judgment, the petitioners are entitled to regularization with effect from 23-07-2005 under NWFP Civil Servants (Amendment) Act 2005 (Annexure-V).
- (ii) Their terms and conditions of regularization will be in line with Section-19 (2) of NWFP Civil Servants Act 1973 (NWFP Act No.XVIII of 1973), according to which the officers shall, in lieu of pension and gratuity, be entitled to receive such amount contributed by them towards the Contributory Provident Fund, alongwith the contribution made by the Government to their account in the said Fund (Annexure-VI).

5- In view of decision of Apex Court, the Governor Khyber Pakhtunkhwa is requested to accord approval for regularization of services of the above 15 Officers with effect from 23-07-2005 in the light of decision as highlighted in Para-4 (i) & (ii) above.

6- Proposal at para-5 above is submitted for approval of the Governor Khyber Pakhtunkhwa, please.

Munir Azam
 06/06/13
 (Munir Azam)
 Secretary AI&C (FATA)

ADDITIONAL CHIEF SECRETARY (FATA)

Para 5/N may be approved by the Governor KP.

CHIEF SECRETARY KHYBER PAKHTUNKHWA

[Signature]
 6/6/13
 Additional Chief Secretary
 FATA Secretariat
 Peshawar

8. Please examine.


[Signature]
 CHIEF SECRETARY
 07.06.2013

9. FATA Secretariat has submitted case for regularization of 15 contract employees in BS-16 to BS-18, in pursuance of judgment of the Peshawar High Court upheld by the Supreme Court of Pakistan, extending the petitioners the benefit of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005. FATA Secretariat has not made it clear whether the petitioners include surplus employees of defunct FATA DC, whose case stands decided in the judgment of Apex Court in Civil Appeal No.116-P/2010 (Annex-VII), or otherwise.

10. Section 19 of the Khyber Pakhtunkhwa Civil Servants Act, 1973, provides that persons appointed in the prescribed manner on or after 1st July, 2011 till 23rd July, 2005 on contract basis be deemed to have been appointed on regular basis (Annex-V). As given in section 7(1)(a)(i) of the Khyber Pakhtunkhwa Public Service Commission Ordinance, 1978, recruitment of person to the civil services of the Province and civil posts in connection with the affairs of the Province in basic pay scale 16 and above or equivalent is the function of the Commission (Annex-VIII). However, as mentioned in para-2, the petitioners were appointed through Departmental Selection Committee and not in the manner prescribed by law.

11. In view the of above, FATA Secretariat is required to file review petition in the Apex Court. Similarly, Law Department may also require the Advocate General, Khyber Pakhtunkhwa, to defend the interest of the Provincial Government in the matter.

12. Law Department may add views, en-route.


(Shahrukh Arbab)
Secretary Establishment
June 14, 2013

Chief Secretary, Khyber Pakhtunkhwa.

13. Please add views.


CHIEF SECRETARY
14.06.2013

SECRETARY LAW

Reference para-13 of the Summary:

- 14. The Presidential Order No. 13 of 1972 (Annex: 'VIII') duly protected under Article 269 of the Constitution is still in force, therefore, the employees working in the FATA Secretariat are to be governed under the provisions of the said Order. All the employees recruited there, are the employees of the Provincial Government and are on deputation, and as such their services would be governed under the Khyber Pakhtunkhwa Civil Servants Act, 1973, unless otherwise, it is decided that these employees should not come under the purview of the Presidential Order and separate regulation to this effect is made by the President under Article 247 of the Constitution.
- 15. In pursuance of above clarification, the persons, whose services are regularized by the Apex Court are, if, appointed by Provincial Government on contract basis and are working in FATA on deputation, then their services needs to be regularized under the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, and if, the persons whose services are regularized by the Apex Court are appointed otherwise and working in FATA, then a separate regulation to this effect is required to be made by the President under Article 247 of the Constitution.
- 16. Moreover, "the prescribed manner" as mentioned in section 19 (2) of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, has now been clarified by the Peshawar High Court in Doctor Rizwanullah and 24 other's cases reported in 2009 PLC (C.S) page-389, that the criteria for both the regular appointments and appointments on contract basis, are prescribed manner.
- 17. FATA Secretariat, if intends to file review petition, then immediately take action for this purpose, being time bound case.

19.6.13

(MUHAMMAD ARIFEEN)
Secretary to Govt. of Khyber Pakhtunkhwa
Law, Parliamentary Affairs and
Human Rights Department

CHIEF SECRETARY

35

18. When the Peshawar High Court has clarified the question of 'prescribed manner,' is there any ground left for filing review petition?

~~SECRETARY LAW~~

M. S. Khan
~~CHIEF SECRETARY~~
20.6.2013

Reference para-18 of the Summary.

- 19. The ground for review may be that the persons whose services are regularized by the Apex Court are if, not appointed by the Provincial Government, then the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, is not applicable to them. If it is the case, then immediate action is required to be taken as this is time bound case.
- 20. The FATA Secretariat may, therefore, re-consider the case in light of paras 14 to 17 of the Summary.

[Signature] 26/6/13
 (MUHAMMAD ARIFEEN)

Secretary to Govt. of Khyber Pakhtunkhwa,
 Law Parliamentary Affairs & Human Rights
 Department

CHIEF SECRETARY

- 21. Necessary action in the light of para 20.

ACS (FATA)

[Signature]
 CHIEF SECRETARY
[Signature]

22.

The case was examined by the Law Department Khyber Pakhtunkhwa vide Paras.19-20 and in pursuance of Chief Secretary Khyber Pakhtunkhwa directives vide Para-21, Review Petition was filed in the Apex Court which was dismissed vide Judgement dated 15-09-2014 (Annexure-X).

23.

In view of above, no option is left with the Government except to regularize the services of petitioners as well as allocation of a cadre for them in the Provincial Services as the Judgement passed by the Peshawar High Court has attained finality as a result of orders passed by the Apex Court (Supreme Court).

24.

In this connection, Summary is re-submitted for consideration of regularization of their services and allocation of a cadre in the Provincial Services.

Muhammad
5-5-2015
(MUHAMMAD ASLAM)
Additional Chief Secretary (FATA)

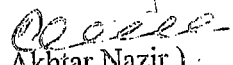
Chief Secretary Khyber Pakhtunkhwa
25
~~Secy Est/Law~~ Views P1

Ali
8/5/2015
Chief Secretary
Govt of Khyber Pakhtunkhwa

Next Page

38

26. Summary examined. Establishment Department agrees with the views/ comments of the Law Department at paras 14, 15 and 16 of the summary. In compliance with the Apex Court orders, the officers mentioned in para-10 of the summary can only be adjusted in the FATA Secretariat, while creating a separate service cadre. However, it is pointed out that with the retirement of each member of the service, the post which becomes vacant, will be filled from amongst the PAS/PMS officers, who have share in the schedule because these post are borne on the schedule of posts attached with the Pakistan Administrative Service (Composition and Cadre) Rules, 1954 and Provincial Management Service Rules, 2007.


(Dr. Akhtar Nazir)
Secretary Establishment
July, 28, 2015

Chief Secretary, Khyber Pakhtunkhwa.

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
JUDICIAL DEPARTMENT

Annex - VII

Writ Petition No. 3723-P of 2016

Muhammad Mansoor Afridi and others
Versus
Government of Khyber Pakhtunkhwa and others



Date of hearing 05.12.2019

Petitioner (by) Mrs. Farhat Hussain Khan Advocate

Respondents (by) Mrs. Azeem Ullah Rehman Yasafzai Advocate

JUDGMENT

MUHAMMAD NASIR MAHFOOZ, J.- At the very outset, counsel for the petitioners stated at the Bar that the instant petition may be disposed of in the light of order dated 13.06.2019 passed by this Court. The same is reproduced below:-

PA

"The learned counsel for the petitioner states that of 24 petitioners have been regularized in P&D Department while fate of the remaining seven is still undecided. The learned A.A.G. on his turn states that they would be accommodated in the Finance Department to which the learned counsel for the petitioners raises his objection with the plea that all the petitioners have all along served in the P&D Department but somehow the remaining seven have been singled out for such discriminatory treatment. The learned A.A.G. is thus directed to take up the matter with the concerned

ATTESTED

EXAMINER
Peshawar High Court

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authorities and to ensure that a similar treatment is meted out to all the petitioners. Adjourned to a date in office. Meanwhile, the learned A.A.G. may file better statement, if he so desires."

2. As per order mentioned above, the learned A.A.G. had stated that the petitioners would be accommodated in the Finance Department though at that time, the learned counsel for the petitioners had objected to this suggestion but today in Court, he expressed his willingness to the statement of learned A.A.G. made before the Court, the latter undertakes to abide by the commitment so made.

3. In view of the above, the instant petition has served its purpose and thus, is disposed of accordingly.

[Signature]

JUDGE

[Signature]
JUDGE

Announced
05.12.2019

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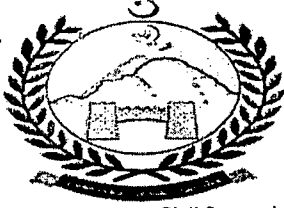
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CERTIFIED TO BE TRUE COPY

Examined
Madhya Pradesh High Court, Bhopal
Authorised Under Article 22 of
The Government of Madhya Pradesh Act, 1956

09 DEC 2019

No. 12003
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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Dated Pesh: the 04-05-2020.

Finance Department Civil Secretariat Peshawar

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

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

twitter.com/GoKPPD

OFFICE ORDER

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

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

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

SECRETARY FINANCE

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

Dated: 04-05-2020.

Copy forwarded to:

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


(Dr. Yaqoob Ahmad)
Section Officer (Estt:I)

1
42
Dated: 08-09-2021

To

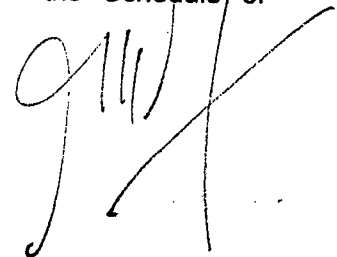
Honorable Chief Secretary
Khyber Pakhtunkhwa.

Through: *Proper Channel*

Subject: **REPRESENTATION.**

R/Sir,

1. That, I have been appointed as Agency Finance Officer BS-17 vide Governor's Secretariat office order No.GS/E/100-19/3358-71 dated 01.12.2004 (Annexure-I).
2. That, section 19(2) of the of the North West Frontier Province Civil Servants Act 1973 envisaged that '*A person selected for appointment in the prescribed manner to a service or post on or after the 1st July 2001 till commencement of the said Act, but appointed on contract basis, shall, with effect from the commencement of the said Act, be deemed to have been appointed on regular basis, (Annexure-II).*
3. That, attained the status of a regular civil servant declared by the Hon'ble Peshawar High Court, Peshawar in Writ Petition No.917/2007 in view of amendment in **North West Frontier Province Civil Servants (Amendment) Act 2005**. The said judgment was also upheld by the Supreme Court of Pakistan vide judgment dated 28.03.2013 with some clarification that the **respondent services be regularized with effect from 23.07.2005 in accordance with section 19 (2) of the NWFP, Civil Servants Act 2005 in grade-17 and back benefits be accorded to them**. Review petition was also dismissed by Supreme Court of Pakistan vide Order dated 15.09.2014 (Annexure-III).
4. That, consequent to the 25th Constitutional Amendment and in pursuance of minutes of the meeting held under chairmanship of Hon'ble Chief Secretary Khyber Pakhtunkhwa dated 15.11.2018, units of P&D FATA including Agency Finance Cell and Agency Planning Cell had been adjusted and placed under the administrative control of P&D Department Khyber Pakhtunkhwa vide order dated 08.01.2019 **justly, (Annexure-IV).**
5. That, a summary initiated by P&D Department, without getting views of the Law and Finance departments, contained proposal for adjustment of posts of Agency Planning Officers in the Schedule of Provincial Planning Services (PPS) Cadre with justification that only those positions of Administrative Departments (Planning Cells) have been included in the Schedule of PPS Cadre which purely relate to planning only.
6. Posts of Agency Planning Officers are included in the relevant Cadre i.e Schedule of PPS at Secretariat level, likewise the posts of Agency Finance Officer of (Finance & Planning) erstwhile FATA, were included in the Schedule of



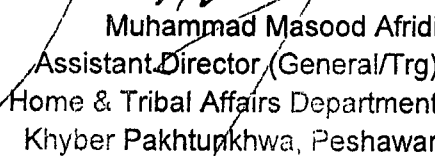
43

Establishment Department as evident from Establishment Department letter No.SO(E-I)E&AD/9-128/2019 dated 08.10.2019 (Annexure-V) and letter No.SOE-II(ED)1-1/2019 dated 11.10.2019 (Annexure-VI), in light of which the applicant must have been adjusted/absorbed against the post of Finance Officer at Secretariat level. It is pertinent to mention here that posts of Agency Finance Officers (F&P erstwhile FATA) were shifted to Schedule of Establishment Department but the incumbents of these posts were left in limbo.

7. Post of Executive Officer (Finance & Planning) stands on the strength of Agency Finance Cells while they have been adjusted in the PPS Cadre too.
8. Placement of Agency Finance Officers of (Finance & Planning Cells) erstwhile FATA in Treasury and Accounts (Attached Directorate of Finance Department) is discrimination with the applicant, as posts of Finance Officers are on the Schedule at Secretariate level.
9. Contrary to the decision of the Hon'ble Peshawar High Court orders dated 05.12.2019 (Annexure-VII), the applicant has been deprived of due adjustment in Finance Department at Secretariat level.
10. That, SNo17(3) of APT Rules 1989 ESTA CODE, SENIORITY envisaged that in the event of merger/restructuring of the departments, attached departments or subordinate offices, the inter se seniority of civil servant affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post, (Annexure-VIII).
11. That, it has been held by the Supreme Court of Pakistan in a reported judgment Title Tikka Khan & others VS Syed Muzaffar Hussain Shah and others ((2018 SCMR 332) that the case is fully covered by Serial No33(6) of Estacode vol-I edition 2007 in this context the case is more akin to rule 4A rather Rule 4 of the rules mentioned above. Non canon of interpretation would scratch or strike of their past service when they on abolition of ministry were compulsory transferred to the ministry of religious affairs and inter faith harmony. Their past service has to be respected and recognized for determining their seniority. It would thus be unfair and unjust to treat the respondent junior most civil servant in the ministry for none of their fault. The view taken by their service tribunal therefore not amenable to change or modified, (Annexure-IX).

Prayers:

It is most humbly prayed that I may please be adjusted against schedule posts of Finance Officer with due seniority from the date of regularization into service i.e 23.07.2005, at par with Agency Planning Officers of F&P erstwhile FATA, please.


Muhammad Masood Afridi
Assistant Director (General/Trg)
Home & Tribal Affairs Department
Khyber Pakhtunkhwa, Peshawar

PLANNING & DEVELOPMENT DEPARTMENT

Dated Peshawar the March 22, 2019

NOTIFICATION:

NO. SO(E)P&D/19-37/PPS/2018:

In pursuance of Order of Peshawar High Court, Peshawar dated 07-11-2018 in writ petition No. 3722-P/2016 titled Munammad Masood Afridi & Others Versus Government of Khyber Pakhtunkhwa through Chief Secretary & Others and in light of decision of the meeting held on 15.11. 2018 under the Chairmanship of Chief Secretary, Khyber Pakhtunkhwa, the Competent Authority is pleased to include the following posts in BS-17 and above of erstwhile Agency Planning Cells, P&D Department, Merged Areas (Tribal Districts) in the schedule of Provincial Planning Service (PPS) Cadre and the incumbents as Provincial Planning Service Officers in their respective grades, with immediate effect, in the best public interest:-

Sr. No.	Name	Designation	BS
1.	Mr. Sher Afzal.	Executive Officer, F&P.	BS-18.
2.	Mr. Anmed Nawaz.	Executive Officer, F&P.	BS-18.
3.	Mr. Faridullah.	Agency Planning Officer	BS-17.
4.	Muhammad Hamid.	-do-	BS-17.
5.	Muhammad Rehman..	-do-	BS-17.
6.	Mr. Miftahullah.	-do-	BS-17.
7.	Mr. Faqir Muhammad	-do-	BS-17.
8.	Mr. Israr Ahmad Khan.	-do-	BS-17.

ADDITIONAL CHIEF SECRETARY
P&D DEPARTMENT

Encl: NO. & Date Even.

Copy forwarded to the:-

1. Additional Chief Secretary, Merged Areas Secretariat, Peshawar.
2. Registrar, Peshawar High Court, Peshawar.
3. Secretary to Govt of Khyber Pakhtunkhwa, Establishment Department.
4. Secretary, P&D Department, Merged Areas Secretariat, Peshawar.
5. Secretary to Govt of Khyber Pakhtunkhwa, Finance Department.
6. Accountant General, Khyber Pakhtunkhwa, Peshawar.
7. All Deputy Commissioners concerned of Tribal Districts.
8. All District Account Officers concerned of Tribal Districts.
9. PSO to Chief Secretary, Khyber Pakhtunkhwa.
10. Assistant Chief (B&A), P&D Department.
11. Section Officer (General), P&D Department.
12. PS to Additional Chief Secretary, P&D Department.
13. PS to Secretary, P&D Department.
14. PAs to Additional Secretary/ Chief Economist, P&D Department.
15. PA to Deputy Secretary (Admn:), P&D Department.
16. Officers concerned.



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT

Dated Peshawar, May 26, 2021.

Handwritten marks: a checkmark, the number '45', and a signature.

NOTIFICATION:

No. SO(E)P&D/PF/087/996/2020: In continuation of Administration and Coordination Department, erstwhile FATA Secretariat Orders No. FS/E/100-19(Officers)Vol-4/14805-17, dated 27.09.2011; and No. FS/E/100-19(Officers)Vol-3/7688-98, dated 27.06.2011 & No. FS/E/100-19(Officers)Vol-3/6439-49, dated 05.04.2012 and in pursuance of advice of Establishment Department vide letter No. SOR.III(E&AD)5-15/2014 dated 11.02.2021 as well as Law Department advice vide letter No. SO(OP-II)/LD/5-2/2012-Vol-IV/4595-97, dated 19.04.2021, the competent authority is pleased to revise/renotify the regularization of services of the following PPS Officers with effect from 23.07.2005:

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

SECRETARY
PLANNING & DEVELOPMENT
DEPARTMENT

Endst. of even No. & Date.

Copy forwarded to the:

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

(SONA KHAN) 26/5/21
Section Officer (Estt.)

(45)

MINUTES OF THE MEETING

Subject:- CREATION OF POSTS OF DISTRICT OFFICER (F&P) AND OTHERS IN TRIBAL DISTRICTS

Consequent upon merger of FATA with the Province of Khyber Pakhtunkhwa by virtue of 25th Amendment in the Constitution of Islamic Republic of Pakistan, Establishment Department approached Finance Department to create following posts in Tribal Districts on the analogy of Settled Areas, for smooth function of official business:-

- i) Additional Deputy Commissioner (BS-18) (7-Nos.)
- ii) District Officer (Finance & Planning) (BS-18) (7-Nos.)
- iii) Finance Officers (BS-17) (7-Nos.)
- iv) Secretary District Public Safety Commission (BS-17) (7-Nos.)
- v) Assistant Commissioners and Additional Assistant Commissioners for all Tribal Districts as per requirements of District concerned.

2. In response Finance Department Merged Areas responded that instead of creation of new posts, the posts mentioned below will be re-designated as noted against each:-

SR. NO.	EXISTING DESIGNATION	BPS	PROPOSED DESIGNATION	BPS
1	Agency Planning Officer	18	Additional Deputy Commissioner	18
2	Assistant Agency Planning Officer	17	Secretary, Distt. Public Safety Commission	17
3	Agency Finance Officer	18	District Officer (F&P)	18
4	Assistant Agency Finance Officer	17	Finance Officer	17

3. The case was sent to Additional Chief Secretary, P&D Department for his comments. In response P&D Department informed that in pursuance of a decision of a meeting held on 15.11.2018, a summary was moved for inclusion of the following posts alongwith incumbents in the schedule of PPS cadre and Treasury Wing of Finance Department and later on accordingly notified, therefore, P&D did not agree with the proposal of Merged Areas Sectⁿ and further proposed that new posts may be created (SNE):-

POSTS INCLUDED IN PPS CADRE

- i) Executive Officer F&P BS-18 2-Posts.
- ii) Agency Planning Officer BS-17 6-Posts

POSTS INCLUDED IN TREASURY WING FINANCE DEPTT.

- iii) Agency Finance Officer BS-17 4-Posts.
- iv) Assistant Agency Finance Officer BS-16 3-Posts.

4. On the direction of Chief Secretary, a meeting on the issue was called on 21.5.2019 under the chairmanship of Secretary Establishment. The following attended:-

1.	Syed Jamal-ud-Din Siroh, Secretary Establishment	Chairman
2.	Mr. Humayun, Secretary, Finance Merged Areas	
3.	Mr. Khalil-ur-Rahman Section Officer (Reg. I) Estt.	

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3

4.	Mr. Waheed Ali, B&A Officer, BOR	
5.	Mr. Muzaffar Ahmad, BO (PAC) Finance Deptt.	
6.	Mr. Ishaq Khan, Section Officer, P&D Department.	
7.	Mr. Ishaq Khan, Section Officer (L.I) E&A Deptt.	

5. Secretary Finance Merged Areas informed the participants that Merged Areas Sectt: has already worked on subject issue and held meetings with concerned stake holders. After detailed discussion, the following decisions in consultation with Finance Department, Merged Areas were taken unanimously:-

1.	Deputy Commissioner BS-19	The post of Political Agent is in BS-18 in Tribal Districts and Merged Areas Sectt: will upgrade and re-designate the same in BS-19 as Deputy Commissioners in all Tribal Districts.
2.	Addl. DC BS-18	Merged Areas Secretariat will create 7-posts as Additional Deputy Commission in BS-18.
3.	DO (F&P)/ADC (F&P) BS-18	Merged Areas Secretariat will create 7-posts as Additional Deputy Commission (F&P) in BS-18.
4.	Finance Officer BS-17	The posts of Finance Officers (BS-17) already exists in Tribal Districts, therefore there is no need for creation of new posts.
5.	Secretary, District Public Safety Commission (BS-17)	Since these posts are non-functional after promulgation of Police Act 2016 therefore Merged Areas Secretariat did not agree with creation of posts of Secretary, District Public Safety Commission (BS-17).
6.	Addl. ACs BS-17	The Board of Revenue will take up the case with Finance Deptt. for creation of posts of AACs as per their requirements.

6. Secretary Finance Merged Area requested Establishment Department to refer its proposal to Finance Department for creation of posts as mentioned in Para-5 above enabling MA Sectt: to proceed further into the case.

7. The meeting ended with vote of thanks from and to the Chair.

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VAKALAT NAMA

NO. _____/2021

IN THE COURT OF KP Service Tribunal, Peshawar

Muhammad Masood Afidi (Appellant)
(Petitioner)
(Plaintiff)

VERSUS

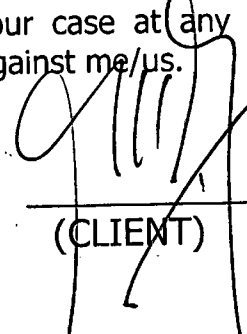
Govt. of KP etc (Respondent)
(Defendant)

I/We, Muhammad Masood Afidi

Do hereby appoint and constitute **M. Asif Yousafzai, Advocate Supreme Court of Pakistan**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.


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

Dated _____/2021



(CLIENT)
ACCEPTED

**(M. ASIF YOUSAFZAI)
ADVOCATE SUPREME COURT,
OF PAKISTAN.**


**(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT,**

**(SYED NOMAN ALI BUKHARI)
ADVOCATE HIGH COURT,**

**(ASAD MEHMOOD)
ADVOCATE HIGH COURT,**

**(SHAHKAR KHAN YOUSAFZAI)
ADVOCATE PESHAWAR.**

OFFICE:
Room # FR-8, 4th Floor,
Bilour Plaza, Peshawar,
Cantt: Peshawa

"A"

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

No.

APPEAL No. *159* of 20 *22*

M. Masood Afridi

Appellant/Petitioner

Versus

Through Chief Secy Pesh.

RESPONDENT(S)

Respondent No. *1*
Notice to Appellant/Petitioner

*The Govt. of KP through
Chief Secretary Peshawar.*

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *8/8/22* at *9 am*.

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

*Pro- Admission Notice
for Reply*

*copy of Appeal
is attached*

[Signature]
27-7-22

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

"A"

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

No.

APPEAL No. *159* of 20 *22*

M. Masood Afridi

Appellant/Petitioner

Versus

The Govt. of KPK through chief Secy.

RESPONDENT(S)

Respondent No. 2
Notice to Appellant/Petitioner

The chief Secretary KPK Peshawar

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on *8/8/22* at *9:am*

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Pre-Admission Notice for Reply

copy of Appeal is Attached

[Signature]
27-7-22

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

"A"

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.
JUDICIAL COMPLEX (OLD), KHYBER ROAD, 813
PESHAWAR.

No.

APPEAL No. 159 of 20 22

M. Masood Afridi

Appellant/Petitioner

Versus

the Govt. of KPK through chief Secy.

RESPONDENT(S)

Respondent no. 3

the Secretary Establishment
KPK Peshawar

Notice to Appellant/Petitioner

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 8/3/22 at 9:30

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

Pre-Admission Notice
for Reply

copy of Appeal is
Attached

Registrar,
Khyber Pakhtunkhwa Service Tribunal,
Peshawar.

89-2-2022
Diary No. _____
FTS No. _____

"A"

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

No.

APPEAL No.....159..... of 20 22

M Masood Afridi.....
Appellant/Petitioner

Versus

The Govt. of KPK through Chief Secy......
RESPONDENT(S)

Respondent No. 4
Notice to Appellant/Petitioner..... The Secretary Finance KPK
Peshawar.

Take notice that your appeal has been fixed for Preliminary hearing, replication, affidavit/counter affidavit/record/arguments/order before this Tribunal on 8/8/22 at 9 am

You may, therefore, appear before the Tribunal on the said date and at the said place either personally or through an advocate for presentation of your case, failing which your appeal shall be liable to be dismissed in default.

*pre-Admission Notice
for Reply*

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

*copy of Appeal is
Attached*

[Signature]
27-7

08/08/22

2

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

SERVICE APPEAL NO. _____/2022



Muhammad Masood Afridi

VS

Govt. of KP etc

SUBJECT: APPLICATION FOR PERMISSION TO ALLOW THE APPELLANT TO AMEND THE SERVICE BY CHALLENGING THE REJECTION ORDER/MEMO DATED 23.06.2022, WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED.

RESPECTFULLY SHEWETH:

1. That the appellant has filed the service appeal in this Honorable Tribunal against the order dated 04.05.2020, whereby the appellant was wrongly adjusted against the post of Assistant Treasury Officer (BPS-17) in attached department of Account and Treasury Establishment instead of Finance Department as Finance Officer (BPS-17) and against not taking action on the departmental appeal the appellant within the statutory period of ninety days.
2. That during the pendency of the service appeal of the appellant the departmental appeal of the appellant was rejected on 23.06.2022, which needs to be challenged before this Honorable Tribunal. (Copy of order/memo dated 23.06.2022 is attached as Annexure-R-1)
3. That as the departmental appeal of the appellant was rejected on 23.06.2022 during the pendency of the service appeal, therefore, the appellant wants to impugn the order/memo dated 23.06.2022 before this Honorable Tribunal by amending the service appeal.
4. That it will be in interest of justice to allow the appellant to impugn the rejection order /memo dated 23.06.2022 before this Honorable Tribunal by amending the service appeal.

It is therefore most humbly prayed that on the acceptance of this application, the appellant may kindly be allowed to amend service appeal by impugning the rejection order/memo dated 23.06.2022 before this Honorable Tribunal.


APPELLANT

Muhammad Masood Afridi

THROUGH:


(TAIMUR ALI KHAN)
ADVOCATE HIGH COURT
PESHAWAR

AFFIDAVIT:

It is affirmed and declared that the contents of the application are true and correct to the best of my knowledge and belief and nothing has been concealed from this august Service Tribunal.


DEPONENT



(R-1)



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

No. SOR-III (E&AD)/4-2/2021
Dated Peshawar the June 23rd, 2022

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Home & T.As Department.

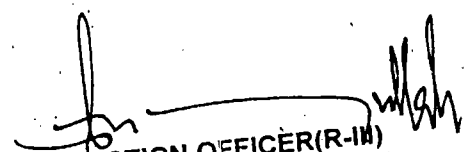
Subject: -

REPRESENTATION

Dear Sir,

I am directed to refer to your letters No. E&A(HD)7-75/2021 dated 27.09.2021 & 04.01.2022 on the subject noted above and to state that the request for induction against schedule post of BS-17 PMS is not covered under Khyber Pakhtunkhwa, Provincial Management Service Rules, 2007.

Yours faithfully,


SECTION OFFICER(R-III)
Phone No. 9211793

1/6

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA
PESHAWAR.

Service Appeal No. 159/2022
Mr. Muhammad Masood Afridi,
Assistant Treasury Officer.

Appellant

Versus

Secretary to Govt. of Khyber Pakhtunkhwa Finance Department and
others.

Respondents

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04	Establishment Division Islamabad views / comments	"A"	05

17

Before the Khyber Pakhtunkhwa, Service Tribunal,
Peshawar

Service Appeal No.159/2022

Mr. Muhammad Masood Afridi, Assistant Treasury Officer presently working as Assistant Director (General/Trg), Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

(Appellant)

VERSUS

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

RESPONDANTS

PARAWISE COMMENTS ON BEHALF OF RESPONDENTS NO. 1-4

Respectfully Sheweth;

Preliminary Objections.

1. That the appellant has got no cause of action and locus standi to file the instant appeal.
2. That the appellant has not come to this honorable tribunal with clean hands therefore, the appeal is liable to be dismissed.
3. That the appeal is badly time barred.
4. That the appeal is bad in its present form, hence incompetent and is liable to be dismissed.
5. That the instant appeal is not maintainable in the eyes of law.
6. That the appellant concealed the material facts and kept this honorable tribunal in dark.
7. That the appeal is bad for misjoinder and non-joinder of necessary parties.
8. That the appellant has not complied with mandatory provisions of relevant rules.

FACTS.

1. Pertains to record. Hence need no comments.
2. Pertain to record. Hence need no comments.
3. Pertain to record. Hence need no comments.
4. Incorrect. Finance Department has no separate cadre except some attached Departments, like Directorate of Treasuries & Accounts, Local Fund Audit, KP Revenue Authority, Public Procurement Regulatory Authority etc. and their functions/responsibilities are different to that of Finance Department.
5. Incorrect. The employees of planning related functions of Finance & Planning Cell, Erstwhile FATA were absorbed in the Planning Cell of P&D Department while the employees of Finance related functions were adjusted in the Treasuries & Accounts Establishment against the posts created for their adjustment. The appellant cannot claim backdated seniority being adjusted in a different cadre

having its own method / rules of recruitment and different job description than Finance & Planning Cell of Erstwhile FATA. So far the question of processing of his appeal is concerned, the same was processed and disposed of in light of Establishment Department's advice as reproduced below: -

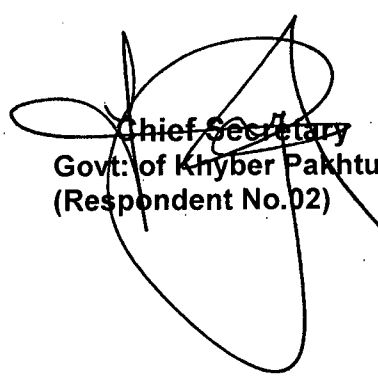
"Any backdated seniority cannot be granted to any absorbee and his inter-se-seniority, on absorbing in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority" (Annex-A).


6. The appellant has got no cause of action to file instant appeal.

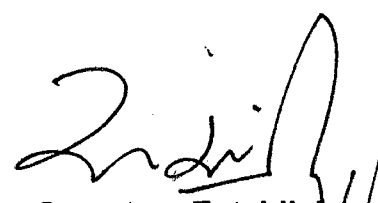
Grounds.

- A. Incorrect. The appeal was processed and disposed of in accordance with law and in light of advice of Establishment Department, an authority on service matters under the Rules of Business, 1985.
- B. As explained vide Para 05 of the facts, Finance Department has no cadre of its own. If the appellant is not satisfied with his adjustment, he should have refused his adjustment at the early stage.
- C. The appellant has got better career progression opportunities than in the erstwhile FATA where no further chance of promotion was available to him. Furthermore, Finance Department has no District Finance cadre, hence the request of the appellant cannot be entertained.
- D. Incorrect. In erstwhile FATA, there was no chance of promotion for the appellant as no post in higher scale was available there nor any service rules framed during his 13/14 years' service on contract/regular basis in FATA.
- E. Incorrect. Explanation-III of Sub Rule-17 of (APT) Rules, 1989 is applicable in case of merger/restructuring of a Department / Attached Department or a subordinate office while the appellant was adjusted in Treasuries & Accounts Establishment, being a different cadre.
- F. Incorrect. The Treasuries & Accounts cadre has its own service structure and the appellant will get sufficient chance of promotion than available to him in the erstwhile FATA.
- G. Incorrect. In case the appellant is given backdated seniority, it will affect the fundamental rights of the serving employees already working in the cadre before the adjustment of the appellant.
- H. The respondents seek permission to raise additional grounds at the time of arguments.

In view above, it is therefore most humbly prayed that the appeal being devoid of merit may kindly be dismissed.


Chief Secretary
 Govt: of Khyber Pakhtunkhwa
 (Respondent No.02)


Secretary Finance
 Govt: of Khyber Pakhtunkhwa
 (Respondent No.04)


Secretary Establishment
 Govt: of Khyber Pakhtunkhwa
 (Respondent No.03)

BEFORE THE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No.159/2022
Mr. Masood Afridi

Versus

Secretary to Govt. of Khyber Pakhtunkhwa Finance Department and others.

Reply /Parawise Comments on Behalf of Secretary Finance Govt. of Khyber
Pakhtunkhwa Respondent No.04.

AFFIDAVIT


I Mukaram Khan, Section Officer Govt.of Khyber Pakhtunkhwa Finance Department do hereby solemnly affirm and declare on oath that the contents of Para-wise Comments in Service Appeal No.159/2022 on behalf of Secretary to Govt. of Khyber Pakhtunkhwa Finance Department is true and correct to the best of my knowledge and belief and that nothing has been concealed from the Honourable Tribunal.



Deponent

9212237

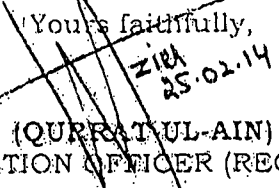
Attention: Alamgir Adil

	<p align="center">GOVERNMENT OF KHYBER PAKHTUNKHWA ESTABLISHMENT DEPARTMENT (REGULATION WING)</p> <p align="center">No. SOR-VI/E&AD/1-13/ 2009 Dated. 25th Feb, 2014</p>
---	--

1. Addl. Chief Secretary, Govt. of Khyber Pakhtunkhwa, Planning & Development Department.
2. Addl. Chief Secretary (FATA), FATA Secretariat Peshawar.
3. The Senior Member Board of Revenue, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
5. The Secretary to Governor, Khyber Pakhtunkhwa.
6. The Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.


CRL ORIGINAL PETITION NO. 89/2011, CMA.309-K/2012, CMA.310-K/2012, CrI.M.As42-K/2012, 80-K/201287-K/2012, 13-K/2013, CMA.2453/13, CrI.MA.29-K/2013, CMA.131-K/2013, CrI.M.As.185-K/2012, 225-2013, 226/2013, 227/2013, CMAs, 244-K TO 247-K/2013, 257-K & 258-K/2013, CrI.M.A. 263/2013, CrI. MA. 282 IN CRL ORIGINAL PETITION NO. 89/2011 (2013/SCMR/1752).

I am directed to forward herewith copy of Government of Pakistan Cabinet Establishment Division Office Memorandum No. 1/59/2013-Lit-IV dated 31-01-2014 on the subject noted above for information and compliance.

Yours faithfully,

 (QURRA TUL-AIN)
 SECTION OFFICER (REG-VI)

Copies forwarded to:-

1. All Divisional commissioners in Khyber Pakhtunkhwa.
2. All Heads of Attached Departments in Khyber Pakhtunkhwa.
3. All Autonomous/Semi Autonomous Bodies in Khyber Pakhtunkhwa.
4. All Deputy Commissioners Khyber Pakhtunkhwa and Political Agents in FATA.
5. The Registrar Peshawar High Court, Peshawar.
6. The Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar.
7. The Secretary, Khyber Pakhtunkhwa Public Service Commission, Peshawar.
8. All Additional Secretaries, Deputy Secretaries and Section Officers in Establishment & Administration Department.


 SECTION OFFICER (REG-VI)

67
BATTER COPY

GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

No.1/59/2013-Lit-IV

Islamabad, 31 January, 2014

OFFICE MEMORANDUM

CRL ORIGINAL PETITION NO.89/2011, CMA 309-K/2012, CMA 310-K/2012, Cr.M.As. 42-K/2012, 80-K/2012, 87-K/2012, 13-K/2013, CMA 2453/13, Cr. MA 29-K/2013, CMA 131-K/2013, Cr.M.As. 185-K/2012, 225/2013, 226/2013, 227/2013, CMAs 244-K TO 247-K/2013, 257-K & 258-K/2013, Cr.M.A. 263/2013, Cr.MA 282 IN CRL ORIGINAL PETITION NO.89/2011.

The undersigned is directed to say that the Honorable Supreme Court of Pakistan passed judgment on 12.6.2013 on the subject petitions clubbed with a number of other cases and had ordered that a copy of this judgment be sent to all the Chief Secretaries of the provincial as well as the Establishment Secretary with the direction to streamline the service of civil servants in line with principles laid down in this judgment.

It was expected that afore-mentioned judgment was downloaded by all Ministries/ Divisions for compliance. However, for the sake of convenience, the following guidelines /principles are highlighted:-

The Honorable Court has declared the following practices as illegal:-

- i. A civil servant, who after passing the competitive exam in terms of the recruitment rules, is appointed on merits, loses his right to be considered for promotion, when an employee from any other organization is absorbed under the impugned legislative instruments, without competing or undertaking competitive process with the backdated seniority and is conferred the status of a civil servant in complete disregard of recruitment rules.
- ii. Absorption of a non Civil Servant conferring on him status of a Civil Servant and likewise absorption of a Civil Servant from non-cadre post to cadre post without undertaking the competitive process under the recruitment rules.
- iii. Introduction of any validation law in the nature of multiple or parallel legislation on the subject of service law.
- iv. Benefit of 'absorptions' extended since 1994, with or without backdated seniority, are declared ultra vires of the Constitution.

- v. The re-employment/rehiring of the retired Civil/Government Servants under the impugned instruments being violative of the constitution are declared nullity.

The Apex Court has further held that:-

- a) No non-civil servant can be transferred and appointed by way of deputation, in any government department to any cadre and or non-cadre. The procedure provided under Esta Code has been approved by this Court in the case of Muhammad Arshad Sultan.
- b) No civil servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process.
- c) The procedure provided under the Esta Code requires that a person who is transferred and appointed on deputation must be a government servant and such transfer should be made through the process of selection. The borrowing Government has to establish the exigency in the first place and then the person who is being transferred/placed on deputation in Government must have matching qualifications, expertise in the field with required experience.
- d) An employee holding a post under any authority or corporation, body or organization established by or under any Provincial or Federal law or which is owned or controlled by Federal or Provincial Government or in which Federal Government or Provincial Government has controlling share or interest could not be conferred status of a civil servant.
- e) It is settled principle of law that if the right of promotion is not blocked by re-employment then such powers can be exercised, then too in exceptional cases for a definite period. Besides it violates the fundamental rights of the serving civil servants, who on account of such rehiring on contract are deprived of their legitimate expectancy of promotion to a higher cadre, which is violative of the provisions of Articles 4, 9 and 25 of the Constitution.
- f) The absorption and out of turn promotion under the impugned legislative instruments will also impinge on the self respect and dignity of the civil servants, who will be forced to work under their rapidly and unduly promoted fellow officers, and under those who have been inducted from other services/cadres regardless of their (inductees) merit and results in the competitive exams (if they have appeared for exam at all) and as a result the genuine/bonafide civil servants will have prospects of their smooth progression and attainment of climax of careers hampered, hence the impugned instruments are violative of Article 14 of the constitution.
- g) Locus poenitentiae is the power of receding till a decisive step is taken but it is not a principle of law that order once passed becomes irrevocable and past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of an illegal order.

- h) Any backdated seniority cannot be granted to any absorbee and his inter-se seniority, on absorption in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority.

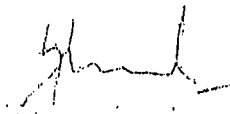
All Ministries/ Divisions and Departments/Organizations/under them are requested to comply with the judgment of the Apex Court in letter and spirit.]

(Muhammad Shakeel Malik)
Joint Secretary

All Ministries/Divisions/Departments.

Copy forwarded for information to

1. Chief Secretary, Government of the Punjab, Lahore.
2. Chief Secretary, Government of the Sindh, Karachi.
3. Chief Secretary, Government of the kpK, Peshawar.
4. Chief Secretary, Government of the Balochistan, Quetta.
5. Chief Secretary, Gilgit Baltistan.
6. Chief Secretary, Government of A.J&K, Muzaffarabad.


(Naseer Ahmad)
Deputy Secretary