

13th June, 2022

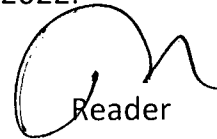
Petitioner in person present. Mr. Kabirullah Khattak, Addl: AG alongwith Mr. Asad Ullah Khan, SO (Litigation) for respondents present and submitted an application, wherein he stated that final seniority list of PPS Officers (BS-18) including the petitioner will be issued within a period of one month and compliance report will be submitted on the next date. Respondents are directed to submit proper implementation report on the next date positively, failing which other coercive measure would be taken against them. To come up implementation report on 08.07.2022 before S.B.



(Kalim Arshad Khan)
Chairman

08.07.2022

Due to Public Holiday on account of Eid-UI-Adha case to come for the same on 13.09.2022.

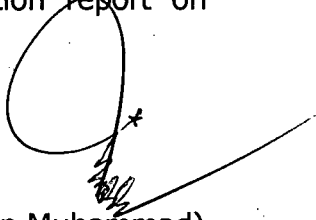


Reader

27.01.2022

Counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Asad Ullah, SO (Lit) for respondents present.

Learned AAG seeks time to submit proper implementation report as the same is under process and will be finalized soon. Adjourned. To come up for proper implementation report on 14.03.2022 before S.B.


(Mian Muhammad)
Member(E)

~~14.02.2022~~

Due to retirement of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14.03.2022. for the same as before.


Reader

14.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 13.06.2022 for the same as before.


Reader.

E.P.No. 249/2021
Shah Fazil vs Govt

06.01.2022

Nemo for the petitioner. Mr. Kabirullah Khattak, Addl. AG alongwith Asadullah Khan, S.O for the respondents present.

Respondents have not furnished proper implementation report. Representative of the respondents is strictly directed to submit proper implementation report on 20.01.2022 before S.B.



(Rozina Rehman)
Member (J)

20.01.2022

Clerk of learned counsel for the petitioner present. Muhammad Adeel Butt, Addl: AG for respondents present.

Due to general strike of the bar, the case is adjourned. To come up for further proceedings on 08.03.2022 before S.B.



(Mian Muhammad)
Member(E)

02.12.2021

Counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Asadullah Khan, SO (Lit) for respondents present.

Progress report on behalf of the respondents submitted which is placed on file. In the light of preceding order sheet dated 11.11.2021, implementation report submitted, indicates that final seniority list of the PPS has not been issued as yet and the case is still under process between the respondent-department No.2 and 3. To come up further proceedings on 23.12.2021 before S.B.


(MIAN MUHAMMAD)
MEMBER (E)

23.12.2021



Counsel for the petitioner and Mr. Muhammad Adeel Butt, Addl. AG alongwith Asadullah Khan, SO (Lit) for the respondents present.

Learned counsel for the petitioner seeks adjournment. Accorded. To come up for further proceedings on 06.01.2022 before S.B.


Chairman

Form- A
FORM OF ORDER SHEET

Court of _____
Execution Petition No. 249 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	26.10.2021	<p>The execution petition of Mr. Shah Fazil submitted today by Mr. Ali Gohar Durrani Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>26/11/21</u>.</p> <p> CHAIRMAN</p>

E.P. No. 249/2021
Shah Fazil vs Govt

11.11.2021

Counsel for the petitioner Present.

Through this petition, the petitioner seeks execution of this Tribunal's judgment dated 14.07.2021, whereby the respondents were directed to decide objection of the appellant (present petitioner) and any other objection, if filed against the tentative seniority lists issued in February, 2021 and October, 2020. It was also observed that the official respondents are expected not to overlook the law on the subject, while deciding the objections about tentative seniority lists. According to submissions made at the bar on behalf of the petitioner, the objections on the tentative seniority lists referred for disposal of the respondent department has not been disposed of till time. Obviously, the matter relates to seniority and ultimate result of the seniority is the promotion of a civil servant in the order of seniority. So, reasonableness of time for disposal of the objections is the essence. In case the respondents have not disposed of the objections in pursuance to judgment of this Tribunal, it may give rise to presumption that they are intentionally delaying the execution of the judgment. Unless they succeed to show cause notice of this petition be given to the respondents and if the objections have not been disposed of before passing of this order, the respondents are restrained to issue final seniority list without disposal of the objections. Case to come up on 02.12.2021 before S.B.


Chairman

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

In Re:

Implementation Petition No. 249 /2021

In Service Appeal No. 3521/2021

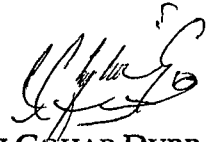
Decided on: 14. 07. 2021

I N D E X

S.NO.	Description	Annex	Page No.
1.	Execution Petition with Affidavit		1-4
2.	Memo of address		5
3.	Annex-A Copy of the Service Appeal No. 3521/2021 is Annex-A	A	6-17
4.	Copy of the Judgment	B	18-24
5.	Wakalatnama		25

Petitioner

Through


(ALI GOHAR DURRANI)
Advocate High Court
0332-9297427
khaneliegohar@yahoo.com
SHAH | DURRANI | KHATTAK

1

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

In Re:

Implementation Petition No. _____/2021

In Service Appeal No. 3521/2021

Decided on: 14. 07. 2021

Mr. Shah Fazil S/o Sardar Hussain, Senior Planning Officer, Higher
Education Department, Khyber Pakhtunkhwa, Peshawar.

..... Appellant

Versus

1. **The Government of Khyber Pakhtunkhwa,**
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. **The Establishment Department, Government of Khyber Pakhtunkhwa.**
Through Secretary Establishment, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
3. **The Planning & Development Department, Government of Khyber
Pakhtunkhwa.**
Through Secretary P & D, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
4. **The Finance Department, Government of Khyber Pakhtunkhwa.**
Through Secretary Finance, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.

..... Respondents

**EXECUTION PETITION TO GIVE EFFECT & IMPLEMENT
THE JUDGMENT OF THIS HONORABLE TRIBUNAL
DATED 14-07-2021.**

Respectfully Sheweth.

That the Appellant earnestly craves the permission of the Honorable
Service Tribunal to submit as under:

1. That the petitioner filed Service Appeal No. 3521/2021 titled Shah Fazil vs. Government of Khyber Pakhtunkhwa and others before this Honorable Tribunal.

Copy of the Service Appeal No. 3521/2021 is Annex-A

2. That this Honorable Service Tribunal was pleased to allow the service appeal in the following terms on 14.07.2021 in the following terms:

"05. We, while deciding this appeal in limine, direct the official respondents to decide the objections of appellant and any other objection if filed against the tentative seniority lists issued in February, 2020 and October, 2020. As the seniority disputes between the appellants and the private respondents seem to be outcome of regularization of said respondents, therefore, official respondents are expected not to overlook the law on the subject, while deciding the objections about tentative seniority lists. It is further directed that official respondents shall not process the case for promotions until a final seniority list is issued.

Copy of the Judgment is Annex-B

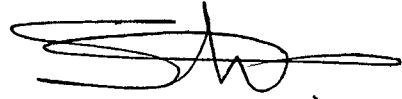
3. That the petitioner has since applied to the respondents to give effect to the judgment, however they have yet to implement the judgment of this Honorable Tribunal.
4. That the petitioner now approaches this Honorable Tribunal for directions to implement the judgment dated 14.07.2021 in the larger interest of justice and fair play.

Prayer:

It is therefore most humbly prayed that on the acceptance of this petition, may it please this honorable tribunal to so kindly direct the

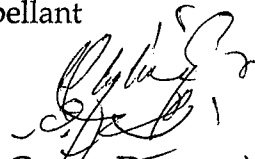
3

implementation of judgment dated 14.07.2021 in Service Appeal No. 3521/2021 Shah Fazil VS. The Government of Khyber Pakhtunkhwa and others, any other relief that this Honorable Tribunal may deem appropriate in the circumstances of the case may also be given.



Appellant

Through



(ALI GOHAR DURRANI)
Advocate High Court
0332-9297427
khaneliegohar@yahoo.com
SHAH | DURRANI | KHATTAK

4

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

In Re:

Implementation Petition No. _____/2021

In Service Appeal No. 3521/2021

Decided on: 14. 07. 2021

Shah Fazil VS. The Government of Khyber Pakhtunkhwa and
others.


AFFIDAVIT

AFFIDAVIT Of Mr. Shah Fazil S/o Sardar Hussain, Senior Planning Officer, Higher Education Department, Khyber Pakhtunkhwa, Peshawar..

I, Mr. Shah Fazil S/o Sardar Hussain, Senior Planning Officer, Higher Education Department, Khyber Pakhtunkhwa, Peshawar do hereby solemnly declare and affirm on oath:-

That the enclosed Contempt petition has been drafted under my instructions.

I am personally conversant with the facts and circumstances of the case as contained therein and the facts and circumstances mentioned in the enclosed writ petition are true and correct to the best of my knowledge and belief.



Deponent

CNIC# 16101-1103384-3

Identified by



ALI GOHAR DURRANI
Advocate High Court

5

BEFORE THE
HONORABLE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL

In Re:

Implementation Petition No. _____/2021
In Service Appeal No. 3521/2021
Decided on: 14. 07. 2021

Shah Fazil VS. The Government of Khyber Pakhtunkhwa and
others.

Memo Of Address

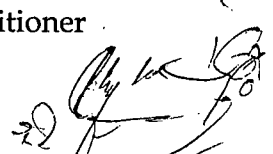
Mr. Shah Fazil S/o Sardar Hussain, Senior Planning Officer, Higher
Education Department, Khyber Pakhtunkhwa, Peshawar.

Versus

1. **The Government of Khyber Pakhtunkhwa,**
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. **The Establishment Department, Government of Khyber Pakhtunkhwa.**
Through Secretary Establishment, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
3. **The Planning & Development Department, Government of Khyber
Pakhtunkhwa.**
Through Secretary P & D, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
4. **The Finance Department, Government of Khyber Pakhtunkhwa.**
Through Secretary Finance, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.

Petitioner

Through


(ALI GOHAR DURRANI)
Advocate High Court
0332-9297427
khaneliegohar@yahoo.com
SHAH | DURRANI | KHATTAK

(ANNEX) 4 6

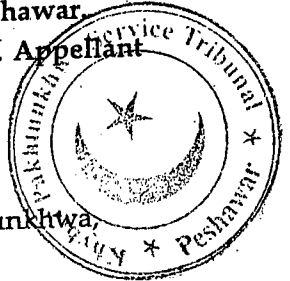
IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Appeal No. 3521/2021

Diary No. 3595
Dated 11/3/2021

Mr. Shah Fazil S/o Sardar Hussain, Senior Planning Officer, Higher
Education Department, Khyber Pakhtunkhwa, Peshawar.



Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. The Establishment Department, Government of Khyber Pakhtunkhwa.
Through Secretary Establishment, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
3. The Planning & Development Department, Government of Khyber
Pakhtunkhwa.
Through Secretary P & D, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
4. The Finance Department, Government of Khyber Pakhtunkhwa.
Through Secretary Finance, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.

..... Respondents

APPEAL UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT, 1974 READ WITH ALL OTHERS LAW
ENABLING JURISDICTION OF THIS HONORABLE TRIBUNAL
UNDER ARTICLE 212 OF THE CONSTITUTION OF THE ISLAMIC
REPUBLIC OF PAKISTAN, 1973, TO STRIKE DOWN THE ILLEGAL
& UNLAWFULLY ISSUED TENTATIVE SENIORITY LISTS,
WHEREBY THE APPELLANT HAS BEEN DENIED HIS SENIORITY.

Filed to-day

Registrar

11/03/2021

RESPECTFULLY SUBMITTED:

The Appellant most earnestly request to submit as under:

That the Appellant is working against the designation mentioned in the heading of the petition in the Planning Cadre. The Appellant is a Civil Servant, and are before this Honorable tribunal for redress of his grievance in respect of seniority of the appellant, which being part and parcel of the terms and conditions of service, gives exclusive jurisdiction to this honorable tribunal for adjudication of the matter under the Constitution of Pakistan, 1973, the Khyber Pakhtunkhwa Civil Servants Act, 1973, the Khyber Pakhtunkhwa Service Tribunal Act, 1974 and the Rules made under the two Acts.

ATTESTED

Registrar
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

7

~~7~~

BRIEF FACTS:

1. That the Appellant was appointed through Khyber Pakhtunkhwa Public Service Commission as Research Officer on 25-02-2008 as regular civil servant. The appellant is part of the planning service cadre. The said appointment of the Appellant were made after proper advertisements, competitive examinations, interview process and subsequent appointment orders in accordance with the law and keeping in view all the codal formalities.

Copy of the Appointment Orders are Annex-A.

2. That the appellant was subsequently promoted to BPS-18 on 22-10-2019, and is currently serving as Senior Planning Officer in the Higher Education Department of the Khyber Pakhtunkhwa Government.

Copy of the promotion orders are Annex-A/1.

3. That the Khyber Pakhtunkhwa Provincial Planning Service Rules 2018 (hereinafter Rules 2018), provides for the law regulating the planning service cadre and their entire service structure for the province of Khyber Pakhtunkhwa. The said rules provide for the induction of Officers through Initial appointment (through Khyber Pakhtunkhwa Public Service Commission) in BPS-17 and onwards through promotion and transfer. It is also stated that except these two modes the Rules doesn't recognizes or mention any other mode. These rules were published through Notification No. SO(E)P&D/6-1/SR/PPD/2018 dated 22-02-2018.

Copy of the KP PPS Rules 2018 are Annex-B.

4. That Rule 4(1) read with Schedule II to the said 2018 Rules provides for the appointment and promotion of the Planning Service Cadre. In accordance with the Rules 2018, no appointment or promotion can be brought save as is provided in the Rules.

5. That the Khyber Pakhtunkhwa Assembly passed the Khyber Pakhtunkhwa Employees (Regularization of Services) Act 2018, which received the assent of the Governor in March 2018. The said Act resulted in the regularization of services of employees working against project posts.

Copy of the KP Employees (Regularization of Services Act) 2018 is Annex-C.

6. That the afore-mentioned Act in section 3 and 4 provided for the regularization of Ad-hoc and project employees and the said regularization was to take effect from the date of the commencement of the Act. The said sections are reproduced as under:

8

8

3. Regularization of services of adhoc employees.--- Notwithstanding anything contained in any law or rules, the employees at sub-clause (i) of clause (e) of subsection (1) of section 2 of this Act, appointed on adhoc basis against civil posts and holding such civil posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis, from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department.

4. Regularization of services of project employees.--- Notwithstanding anything contained in any law or rules, the employees at sub-clause (ii) of clause (e) of sub-section (1) of section 2 of this Act, appointed on contract basis against project posts and holding such project posts till the commencement of this Act, shall be deemed to have been validly appointed on regular basis from the date of commencement of this Act, subject to verification of their qualifications and other credentials by the concerned Government Department: Provided that the terms and conditions of services of employees reflected at S.No.5 of the Schedule shall further be governed under the National Disaster Management Authority Act, 2010 (Act No. XXIV of 2010) and Regulations made thereunder; and the terms and conditions of services of employees reflected at S.No.6 & 7 of the Schedule shall be governed under the Khyber Pakhtunkhwa Emergency Rescue Services Act, 2012 (Khyber Pakhtunkhwa Act No. XV of 2012).

7. That to protect the service structure and seniority of the already in-service Civil Servants, general conditions for regularizations in Section 6 and seniority in Section 7 were provided for. The two sections read as under:

5. General conditions for regularization.---For the purpose of regularization of the employees under this Act, the following general conditions shall be observed: (i) the service promotion quota of all service cadres shall not be affected; (ii) the employees shall possess the same qualification and experience as required for a regular post; (iii) the employees have not resigned from their services or terminated from service on account of misconduct, inefficiency or any other grounds before the commencement of this Act; and (iv) the services of such employees shall be deemed to have been regularized only on the publication of their names in the Official Gazette.

6. Seniority.---(1) Except the employees mentioned in the proviso to section 4 of this Act, whose services are to be regulated by their respective laws and rules, all other employees whose services are regularized under this Act or in the process of attaining service at the commencement of this Act, shall rank junior to all civil servants belonging to the same service or cadre, as the case may be, who are in service on regular basis on the commencement of this Act, and shall also rank junior to such other persons, if any, who, in pursuance of the recommendation of the Commission or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment. (2) The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre: Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one.

9

8. That it was mandatory for the respondents to take into account the said 2018 Rules and follow them in letter and spirit. However, what has resulted following the commencement of the Act of 2018 is sheer chaos. The first step was to issue notification dated 09-01-2020, whereby newly regularized components/units of planning & Development Department and Planning Cells of Administrative Departments were all encadred in the Planning Cadre in BPS-17 and above through addition to the Schedule I of the said 2018 Rules. The regularizations of some people affected in pursuance of the Khyber Pakhtunkhwa Regularization Act 2018, reveal that they had the condition stipulated of "not affecting the promotion quota of all services cadres".

Copy of the Notification dated 09-01-2020 is Annex-D.

Copy of the regularization orders dated 08-06-2018 is Annex-D/1.

Copy of the regularization orders dated 03-07-2018 is Annex-D/2.

9. That it is pertinent to mention herein that to accommodate their blue eyed, the respondents had a committee constituted on 13-10-2018, and assigned with the following TOR's;

1. To look into the grievance of the Employees of Secretariat/ other Departments arising due to the regularization of the project employees in various Cadres and grades under the Project Employees Regularization Act, 2018 leading to the Deprivation of regular Employees from due right of Promotion.

2. The Committee will also look into the demand of the Employees for Executive allowance.

3. Any other issue which committee deem appropriate to be highlighted.

The committee was directed for the submission of report within a week time

Copy of the Notification dated 13-10-2018 is attached as Annex-E.

10. That subsequently the Provincial Government of Khyber Pakhtunkhwa approved certain recommendations of the Ministerial Committee on 09-05-2019. The recommendations are as under:

i. With regard to contingent/fixed pay/daily wages, staff appointed/recruited by the departments prior to promulgation of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 without adopting codal formalities under project policy. It was agreed that those contingent employees 35 in number (31 in P & D and 4 in Home Department) maybe given one time relaxation for regularization of their service subject to certificate to their credentials and suitability by the Concerned Government Departments provided that it should not be quoted as precedent to follow in other cases, rather a special dispensation to the contingent paid employees vide order of Peshawar High Court decision given in writ petition no 6443-P/2018 dated 12-03-2019.

ii. A grievance redressal Committee headed by Establishment Department consisting of representatives from Finance, law and concerned administrative department maybe constituted. The Grievance redressal committee would report to the same ministerial committee.

iii. All the position created by Finance Department for all the regularization projects under the Khyber Pakhtunkhwa Employees (Regularization of Service) Act 2018 shall be created/ placed at the

10

~~10~~

strength of attached formations of respective administrative departments except the position of planning cells.

Copy of the decision of Meeting of Ministerial Committee is Annex-F.
Copy of Minutes of the meeting are Annex-G.
Recommendations of Ministerial Committee are Annex-H.

11. That on 17-05-2019 the Government was pleased to direct for provision of data of Planning related post/officer in BPS 17 and above for placement before a Committee for its assessment/ suitability for inclusion in Schedule of PPS Cadre.

Copy of office Letter dated 17-05-2019 is Annex-I.

12. That on 20-05-2019, the Government of Khyber Pakhtunkhwa establishment and Administration Department (Regulation Wing) notified a Decision of meeting of the Provincial Cabinet dated 09-05-2019 for necessary action, the Provincial Government approved the recommendation of Ministerial Committee constituted by Provincial Cabinet on 26-09-2019 for settlement of anomalies arising out in the wing of promulgation of "The Khyber Pakhtunkhwa Employees (Regulation of Services) Act 2018.

Copy of the notification is Annex-J.

13. That the above-mentioned exercise, i.e., the dispensations given through the letter dated 17-05-2019 and the subsequent letters as well as issuance of seniority list by including the novel principle of "inclusion" are steps which in their totality go in direct conflict with the principles settled by Honorable Supreme Court of Pakistan in judgment reported 2013 SCMR 1752. This is very relevant also based on the fact that not only this judgment is still in field but also the Government of Khyber Pakhtunkhwa Establishment Department (Regulation Wing) endorsed this judgment and sent it to all the administrative Secretaries of the Province on 25-02-2014. This was in continuation of the Office Memorandum of the Cabinet Secretariat, Establishment Division of the Government of Pakistan dated 31-01-2014.

The following are the essential aspects of the judgment:

- 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 without competition or undertaking competitive process with the back dated 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 Civil Servant from non Cadre post to a 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 'absorption' extended since 1994, with or without back dated seniority, is declared ultravires of the Constitution.*
- v. *The re-employment / rehiring of the retired Civil Government*

11

Servants being violative of the constitution are declared nullity

The apex court further held that:

- (a) No non Civil-servant can be transferred and appointed by way of deputation to any 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 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 ESTA CODE requires that a person who is transferred and appointed on deputation must be a govt 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 Govt must have matching qualifications expertise in the field with required experience.
- (d) An employ holding a post under any authority or corporation, body or organization established by or under Provincial Government has controlling share or interest, could not conferred status of a civil servant.
- (e) It is a settle principle of law that if the right of promotion is not blocked by the 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 servant, on account of such rehiring on contract are deprived for their legitimate expectancy of promotion to a higher cadre, which is voilative of the provision of Article 4, 19 and 25 of the constitution of Pakistan.
- (f) The absorption and out of turn promotion will also impinge on the self-respect and dignity of the civil servant, who will be forced to work under their rapidly and unduly promoted fellow officers, those who have been included from other service/ cadre regardless of their (inductees) merits and results in the competitive exams (if they have appeared for all exam at all), hence are voilative of Art 14 of the constitution.
- (g) principle of locus poenitentiae id the power of receding till a decisive step is taken but it is not a principle of law that order once passed become irrevocable and past and closed transaction, it 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, an absorption in the Cadre shall be maintained at the bottom as provided under the rules regulating the seniority.

Copy of letter dated 25-02-2014 is Annex-K.

Copy of Office Memorandum dated 31-01-2014 is Annex-L.

14. That the respondents issued final seniority list dated 31-12-2018, wherein the appellant is rightly reflected at Serial Number at Serial Number 28 in the category of BPS-17. It is pertinent to mention herein that subsequent to the aforementioned tentative list of seniority issuance, the appellant was promoted to BPS-18 on 22-10-2019.

Copy of the final seniority list dated 31-12-2018 is Annex-M.

15. That the respondents then issued a tentative seniority list dated 20-02-2020, wherein the appellant has been shown at Serial No. 23 of the seniority

12

GA

list for employees in BPS-18 of the Provincial Planning Cadre. The appellant filed a representation against the said seniority list vide representation dated 04-03-2020. It is pertinent to mention herein that the appellant has till date not received any response on the said representation. The representation among other grounds had taken the plea of how the novelty of addition through "inclusion" has been affected in the cadre. As the said method of appointment is alien to the Civil Servants Act as well as the rules made thereunder. The representation also enunciated the principles as laid down in 2013 SCMR page 1752 and as to how the said judgment has been flouted through the actions of the respondents.

Copy of the tentative seniority list dated 20-02-2020 is Annex-N

Copy of the representation dated 04-03-2020 is Annex-O.

16. That subsequently the respondents issued another seniority list dated 23-10-2020. The said tentative seniority list has gone on to negate every norm of the Civil Servants Service Structure. The appellant who was initially shown at Serial Number 23 of the tentative seniority list of 20-02-2020 for employees in BPS-18, was suddenly and for no reasons whatsoever was sent to serial number 55 of the seniority list. The travesty of justice that has ensued out of this action cannot be comprehended by any means and is obviously liable to be corrected.

Copy of the tentative seniority list dated 23-10-2020 is Annex-P.

17. That the appellant being aggrieved of the actions of the respondents preferred a representation "through proper channel" before the competent authority dated 17-11-2020. The said representation comprehensively dealt in the issue and highlighted most of the illegalities that had taken place in the promulgation of the seniority list dated 23-10-2020. The said representation hasn't been answered/replied to as of now.

Copy of the representation dated 17-11-2020 is Annex-Q.

18. That the Respondents with ulterior motives also brought about another notification dated 22-03-2019, whereby outsiders were encadred in the garb of decision of this Honorable Court. It is pertinent to mention herein that the Honorable Court had nowhere mentioned the inclusion of any of the said employees in the PPS cadre.

Copy of the notification dated 22-03-2019 is Annex-R.

19. That subsequently rather than trying to mend ways and treat the Appellants at par with other departments, another injustice was brought in through notification dated 09-01-2020. This notification brought in more people and

13

were included in the PPS cadre, all to the detriment of the Appellants and their cadre.

Copy of the notification dated 09-01-2020 is Annex-S.

20. That in respect of the illegality committed by the issuance of the tentative seniority list dated 23-10-2020 and the encadrement of employees notified vide notification dated 09-01-2020 by "including" them in the Provincial Planning Service Cadre, the Appellants now approach this honorable tribunal for indulgence of this tribunal amongst others on the following grounds:

GROUND:

- a. **Because** the Appellant is an aggrieved person within the meaning of Article 212 of the constitution of the Islamic Republic of Pakistan 1973.
- b. **Because** the Fundamental Rights of the Appellant have been violated in relation to Article 4, 8, 9, 18 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973. The said rights flow out of the terms and conditions of service of the appellant and this Honorable tribunal being the custodian of the Rights of Civil Servants as enshrined in the Civil Servants Act, the rules made thereunder as well as the protection afforded by the Constitution of Islamic Republic of Pakistan, 1973, is why the Appellant seeks the redress of their grievances and to bring to an end the ordeal the Appellant is going through due to the illegal, unlawful and unjust acts and inaction of the Respondents.
- c. Because the law doesn't recognize the concept of inclusion. This is a concept alien to the Civil Servants Act 1974, the rules made thereunder as well as the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018.
- d. Because the Appellant has been discriminated against by going in negation of the Khyber Pakhtunkhwa Provincial Planning Service Rules, 2018. The said deviation and negation is unwarranted and not recognized by the law.
- e. **Because** the Rights of the Appellant are secured under Article 8, and the entirety of Part II of the Constitution of the Islamic Republic of Pakistan, and its redress falls solely within the ambit of Article 212 of the Constitution of the Islamic Republic of Pakistan, 1973.
- f. **Because** the Appellants have not been treated in accordance with law, and their right secured and guaranteed under Law and Constitution have been violated.

14

- g. **Because** the Appellant has suffered for no fault of their own and the entire premise of the case is based on the illegality of the respondents to the complete detriment of the Appellants.
- h. **Because** the deviation from settled law and adopting the novel principles of "inclusion" which aren't recognized by the Constitutional law nor the services law of the country is clearly in disregard of the law and the dictums of the Honorable Superior Courts of Pakistan.
- i. **Because** the famous judgment of Supreme Court of Pakistan in Anita Turab case (PLD 2013 SC 195) clearly lays down that merit has to be followed and the merit in the instant case is clearly setting aside the discriminatory attitude towards the Appellant in bringing the decisions in violation of letter dated 25-02-2014 and office Memorandum dated 31-01-2014.
- j. **Because** the Appellant has served the department with utmost honesty and clarity and must not be deprived of their due rights.
- k. **Because** the Respondents cannot be allowed under the law to pass any illegal order, as valuable Rights of the Appellants are involved, which are guaranteed under the Constitution of Islamic Republic of Pakistan 1973.
- l. **Because** the Judgment of the Honorable Supreme Court reported as 2013 SCMR 1752 has been specifically violated. The same warrants action from this Honorable Tribunal.
- m. **Because** the decisions of the provincial government by placing people other than those coming through proper competitive process is illegal, unlawful and without lawful authority.
- n. **Because** the Notification dated 09-01-2020 is vindictive and violative upon the rights of the Appellants and is liable to be strike down.
- o. **Because** the targeting of one specific cadre i.e., the Planning Service Cadre by the Government is illegal, unlawful and violative upon the rights of the Appellants.
- p. **Because** the seniority of the appellant has been literally done away with. The fact that he has been pushed down from Serial Number 23 to 55 is by no means condonable. The deviation is illegal and unlawful.
- q. **Because** the Appellant crave for leave to add further grounds at the time of his oral arguments before this Hon'ble Court highlighting further contraventions of the provisions of the Constitution & Laws.

15

AD

PRAYER:

In view of the above, it is humbly prayed that this honorable Court may graciously be pleased to:

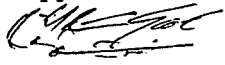
- a. **Declare** that the Khyber Pakhtunkhwa Provincial Planning Service Rules 2018, read with all the enabling provisions of the law is the only law that regulates the cadre of planning service employees in terms of reference to their appointments, seniority and promotion as provided for in Schedule-II read with rule 4(1) of the said Rules of 2018.
- b. **Declare** further that the Constitution of Pakistan, Khyber Pakhtunkhwa Civil Servants Act 1974 and the Rules made thereunder generally and the Khyber Pakhtunkhwa Provincial Planning Service Rules 2018 specifically, doesn't recognize the concept of "by inclusion" as a method of recruitment/appointment in the Province of Khyber Pakhtunkhwa.
- c. **Declare** the Tentative Seniority list dated 23-11-2020 to be arbitrary, illegal, unlawful and without any authority and that the original seniority in the light of legal position be restored on the appellant.
- d. **Declare** the Notification dated 09-01-2020 to be in violation of the spirit of the Constitution of the Islamic Republic of Pakistan, 1973 and the Civil Servants Act, 1973.
- e. **Direct** the respondents that the judgment of the Honorable Supreme Court reported in 2013 SCMR 1752 be implemented in letter and spirit in respect of the Khyber Pakhtunkhwa Provincial Planning Service Cadre and violation of the said judgment be strike down.
- f. **Declare** the notification dated 22-03-2019 whereby outsiders were encadred in the PPS cadre to be illegal and unlawful.
- g. **Direct** that the Appellants be treated in accordance with the law and that all actions in negation of the law are to be strike down.
- h. **Any other relief** deemed appropriate in the circumstance of the case may also be granted.

Interim Relief:

May it please this Honorable Court to direct the Respondents not to take any adverse action against the Appellants pending disposal of the instant appeal and that no final seniority list for the entire PPS Cadre be issued till the final disposal of the instant appeal.


Appellant 10-3-2021

Through


(ALI GOHAR DURRANI)
Advocate High Court
0332-9297427
khaneliegohar@yahoo.com
Shah | Durrani | Khattak
(a registered law firm)
House No. 231-A, New Shami Road, Peshawar.

Certificate:

It is certify that no such like writ petition has earlier been filed by the Appellant in this Honourable Tribunal.

16

(16)

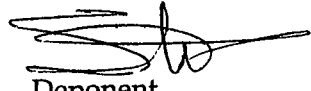
IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL
PESHAWAR

Appeal No. _____/2021

Mr. Shah Fazil Versus. Govt of KP and others.

AFFIDAVIT:

I, Shah Fazil S/o Sardar Hussain, Senior Planning Officer, Higher Education Department, Khyber Pakhtunkhwa, Peshawar (Appellant) do hereby affirm on oath that the contents of the enclosed appeal are true and correct to the best of my knowledge and belief and that nothing has been concealed from this honorable tribunal.

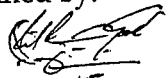


Deponent

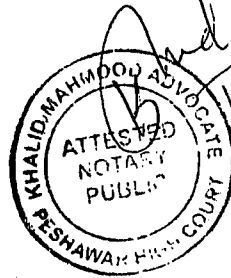
0345-9346664

CNIC# 16101-1103384-3

Identified by:



Ali Gohar Durrani
Advocate High Court.



17

Q

IN THE
HONOURABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL
PESHAWAR

Appeal No. _____/2021

Mr. Shah Fazil Versus. Govt of KP and others.


Memo Of Address:

Mr. Shah Fazil S/o Sardar Hussain, Senior Planning Officer, Higher
Education Department, Khyber Pakhtunkhwa, Peshawar.

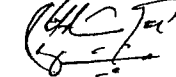
..... Appellant

Versus

1. The Government of Khyber Pakhtunkhwa,
Through Chief Secretary Government of Khyber Pakhtunkhwa,
Civil Secretariat Peshawar.
2. The Establishment Department, Government of Khyber Pakhtunkhwa.
Through Secretary Establishment, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
3. The Planning & Development Department, Government of Khyber
Pakhtunkhwa.
Through Secretary P & D, Government of Khyber Pakhtunkhwa
Civil Secretariat, Peshawar.
4. The Finance Department, Government of Khyber Pakhtunkhwa.
Through Secretary Finance, Government of Khyber Pakhtunkhwa, Civil
Secretariat, Peshawar.

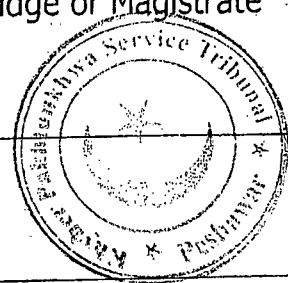

Appellant 10-3-2021

Through


Ali Gohar Durrani
Advocate High Court.

(18) (ANNEX) (B)

Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	2	3
	14.07.2021	<p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,</u> <u>PESHAWAR.</u></p> <p style="text-align: center;">Appeal No. 3521/2021</p> <p style="text-align: center;">Date of Institution : 11.03.2021 Date of Decision : 14.07.2021</p> <p>Mr. Shah Fazil S/O Sardar Hussain, Senior Planning Officer, Higher Education Department, Khyber Pakhtunkhwa, Peshawar.</p> <p style="text-align: right;">(Appellant)</p> <p style="text-align: center;">Versus</p> <p>The Government of Khyber Pakhtunkhwa, through Secretary Establishment Civil Secretariat Peshawar.</p> <p style="text-align: right;">(Respondents)</p> <p style="text-align: center;"><u>JUDGMENT</u></p> <p><u>AHMAD SULTAN TAREEN, CHAIRMAN:</u> The appellant was part of the Planning Service Cadre of the Government of Khyber Pakhtunkhwa who after getting the appointment in BPS-17 in the said cadre on 25.02.2008 was further promoted to BPS-18 on 22.07.2019 as Senior Planning Officer. In the mean time, the Government of Khyber Pakhtunkhwa Planning Service Rules 2018 were promulgated providing to regulate the Planning Service cadre</p>



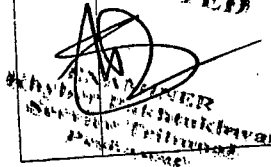
[Handwritten Signature]
ATTESTED

19

and the service structure. The ibid rules were published in through Notification No. SO(E)P&D/6-1/SR/PPD/2018 dated 22.02.2018. subsequently, the Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018 was passed and after receiving assent of the Governor in the March, 2018 was promulgated. The said Act resulted in regularization of services of employees working against project post under the P&D Department of Government of Khyber Pakhtunkhwa. The department issued a tentative seniority list, wherein, the appellant already holding the post in regular service of the Planning cadre and those other officers whose services were regularized on the strength of Khyber Pakhtunkhwa Employees (Regularization of Services) Act, 2018, were dealt with by the department in the common seniority list. In the tentative seniority list, so issued on 20.02.2020, the appellant was shown at Serial No.23 which according to him is not a proper place and he filed representation against the said seniority list on 04.03.2020. Subsequently, the respondents issued another seniority list on 23.10.2020 and the appellant who was initially shown at serial No.23 of the tentative seniority list dated 20.02.2020 for employees in BPS-18, was suddenly sent to Serial No.55 of the subsequent seniority list. The appellant also filed representation against the subsequent seniority list on 17.11.2020 but no response was given from the department. He believes that his seniority was disturbed due to encadrement of the outsiders. (May be he is referring to the project employees subsequently,



ATTESTED




The appellant concluded factual part of his appeal with the submission in respect of the illegality committed by issuance of the tentative seniority list dated 23.10.2020 and encadrement of employees notified vide Notification dated 19.01.2020 by including them in the Provincial Planning Service Cadre. The appellant has approached this Tribunal for the solicited relief described under the prayer part of his memorandum of appeal at its end.

02. As far as the appeal No.5964 of 2021 is concerned, although nature of incumbency of the appellant is different from that of incumbency of the appellant of the above titled appeal; but the underlying issue hinges upon the common question of fact and law relating to the seniority list which was issued after incadrement of the project employees regularized under the law mentioned supra. Therefore, there seems no useful purpose to provide factual account of appeal No.5964/2021 here for the sake of brevity and the same shall stand disposed of in terms of this judgment.

03. As both the above mentioned appeals had not yet passed the stage of preliminary hearing and when they came up before S.B for such hearing, it was deemed appropriate to send the same to D.B for final hearing and disposal in limine having regard to necessity of first and second proviso to Sub Section (1) of Section 5 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. The learned A.A.G present before us, was noticed for hearing as to final disposal of the appeal. He was confronted with the position

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

23

the recommendation of the Commission or Departmental Selection Committee, as the case may be, made before the commencement of this Act, are to be appointed to the respective service or cadre, irrespective of their actual date of appointment.


(2) The seniority inter-se of the employees, whose services are regularized under this Act within the same service or cadre, shall be determined on the basis of their continuous officiation in such service or cadre:

Provided that if the date of continuous officiation in the case of two or more employees is the same, the employee older in age shall rank senior to the younger one."



05. We, while deciding this appeal in limine, direct the official respondents to decide the objections of appellant and any other objection if filed against the tentative seniority lists issued in February, 2021 and October, 2021. As the seniority disputes between the appellants and the private respondents seem to be outcome of regularization of said respondents, therefore, official respondents are expected not to overlook the law on the subject, while deciding the objections about tentative seniority lists. It is further directed that official respondents shall not process the case for promotions until a final seniority list is issued. No order

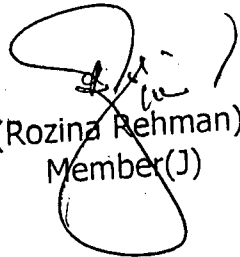
ATTESTED

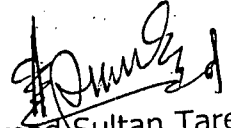

ATTENDING OFFICER
OFFICE OF THE
COMMISSIONER
PUNJAB
DEPARTMENT OF
PUNJAB

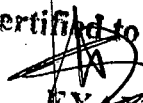
24

as to costs. File be consigned to the record room.

Announced:
14.07.2021


(Rozina Rehman)
Member(J)


(Ahmad Sultan Tareen)
Chairman

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 16/8/21
Number of Words 3200
Copying Fee 34/-
Urgent 4/21
Total 38/-
Name of Copyist _____
Date of Completion of Copy 16/8/21
Date of Delivery of Copy 16/8/21



**KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR**

No. 228891/ST

Dated: 17/11 /2021

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

Ph:- 091-9212281
Fax:- 091-9213262

To

1. The Chief Secretary,
Government of Khyber Pakhtunkhwa,
Peshawar.
2. Secretary Establishment Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
3. Secretary P & D Department,
Government of Khyber Pakhtunkhwa,
Peshawar.
4. Secretary Finance Department,
Government of Khyber Pakhtunkhwa,
Peshawar.

Subject: ORDER IN EXECUTION PETITION NO. 249/2021 MR. SHAH FAZIL.

I am directed to forward herewith a certified copy of order dated 11.11.2021 passed by this Tribunal on the above subject for strict compliance.

Encl: As above

07/11
REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

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

Shah Fazil

VERSUS

Govt of KPK & others

*Put up to the worthy chair — on
with relevant appeal of PE. Petition.*

Fixed for 08-03-2022

**APPLICATION FOR ACCELERATION OF
DATE IN THE ABOVE TITLED CASE**

Resolv
24/1/22
Respectfully Sheweth:

It is humbly submitted before this Honorable Tribunal;

1. That the instant implementation petition is instituted before this honorable tribunal on 26-10-2021.
2. That the instant implementation petition is pending before this Honorable Tribunal.
3. That the office has set 08-03-2022 as the next date of hearing.
4. That the fundamental rights of the Petitioner are at stake as the respondents are bent upon to flout/violate the orders of the Honorable Tribunal in sheer disregard of the law.
5. That it is in the best interest of justice and proprietary demands that the case may please be heard early.

It is, therefore, most humbly prayed that on acceptance of this application, the Honorable Tribunal may please so, accelerate the date from 08-03-2022 to an earliest possible date for this Implementation Petition.

Through

Petitioner/Applicant

[Signature]
ALI GOHAR DURRANI
Advocate High Court(s)
0332-9297427
khaneliegohar@yahoo.com
SHAH | DURRANI | KHATTAK
(A REGISTERED LAW FIRM)
HOUSE NO. 231-A, STREET NO. 13,
NEW SHAMI ROAD, PESHAWAR.

AFFIDAVIT

It is solemnly affirm and declare on oath that the contents are true and correct to the best of my knowledge and belief.

[Signature]
DEPONENT
24/1/22

PROFORMA FOR EARLY HEARING.

Form 'A'

Judicial Branch

To be filled by the Counsel.

Case Number	EPNo: 249/2021				
Case Title	SHAH FAZIL vs Govt				
Date of Institution	26/10/2021				
Bench	SB	<input checked="" type="checkbox"/>	DB	<input checked="" type="checkbox"/>	
Case Status	Fresh		Pending	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Stage	Notice		Motion	<input checked="" type="checkbox"/>	PAN
Urgency to be clearly stated.	Implementation Report of Respondents are going to issue Seniority List.				
Nature of the relief Sought.	Seniority Seniority				
Next date of hearing.	13/6/22				
Alleged Target Date					
Counsel for	Petitioner	<input checked="" type="checkbox"/>	Respondent		In Person

Amjad Qureshi

Signature of counsel/party

PESHAWAR HIGH COURT, PESHAWAR

PROFORMA FOR EARLY HEARING.

Form 'B'

Judicial Branch

Inst#.

Early Hearing. 651 -P/2022

In case No. 249 -p/2021

Shah Fazil vs Govt

Presented by Zeeshan Nary Clerk on behalf of appellant/plaintiff.
Entered in the relevant registrar.

Put up alongwith main case

Last date fixed	<u>14/3/22</u>
Reason(S) for last adjournment, if any by the Branch Incharge.	<u>Tribunal Defunct.</u>
Date(s) fixed in the similar matter by the Branch Incharge.	
Available dates HVC branch.	<u>NFA</u>

A ^{mm}
01/06/22

ASST: REGISTRAR (FIXATION).

Dated _____

Registrar

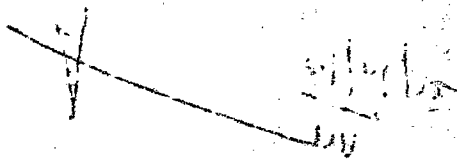
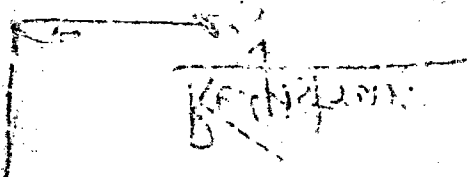
Registrar.
DEPUTY REGISTRAR (J).

Dated _____

ADDITIONAL REGISTRAR (J).

Dated _____

g-10-9



MLV

10/2/91
10/2/91

1
Lester M. G. G.

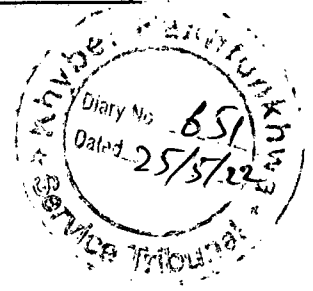
10/2/91
10/2/91

10/2/91

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

In Re:

S.A No. 249 /2022



Shah Fazil

Vs.

Govt. of Khyber Pakhtunkhwa
& others

APPLICATION FOR EARLY HEARING

Respectfully Sheweth:

1. That the titled appeal is pending adjudication before this Hon'ble Tribunal, which is now fixed for hearing on 13.06.2022.
2. That respondents are going to issue final seniority list and if the titled appeal is not fixed earlier, the appellant would suffer an irreparable loss, hence the instant application.
3. That further delay in disposal of the titled appeal will maximize agonies of appellant, hence proprietary demands acceleration of the date fixed to an early date.

It is, therefore, most humbly prayed that on acceptance of instant application, the date fixed i.e. 13.06.2022 may be accelerated to an early date, convenient to this Hon'ble Tribunal, in the best interest of justice & equity.

Applicant/Appellant
Through

Ali Gohar Durrani

Ali Gohar Durrani

Advocate

High Court Peshawar

Dated: 25.05.2022

AFFIDAVIT

It is stated on oath that the contents of the instant **Application** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



DEPONENT