BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1352/2017

BEFORE: **MRS. ROZINA REHMAN** ... **MEMBER)J)**
MISS FAREEHA PAUL ... **MEMBER(E)**

Engineer Musharaf Shah S/O Yousaf Shah R/O Village Lal Zarin Mian Kali, P.O Mandani, Tehsil Tangi, District Charsadda, presently serving as Assistant Director, Remodeling of Warsak Canals System Project, Peshawar. .... (*Appellant*)

Versus

1. **Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar.**
2. **Secretary to Government of Khyber Pakhtunkhwa Irrigation Department, Peshawar.**
3. **Project Director, Remodeling Warsak Canal System Project, Peshawar.**
4. **Section Officer (Establishment), Government of Khyber Pakhtunkhwa Irrigation Department, Peshawar.**
5. **Secretary to Government of Khyber Pakhtunkhwa, Finance Department Peshawar.**

.... (***Respondents***)

Malik Muhammad Ajmal Khan,
Advocate ... For appellant

Mr. Asif Masood Ali Shah, ... For respondents
Deputy District Attorney

Date of Institution.....22.11.2017
Date of Hearing.....08.11.2022
Date of Decision..... 08.11.2022

JUDGEMENT

FAREEHA PAUL, MEMBER (E): The service appeal in hand has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 with the prayer that on acceptance of the instant service appeal, the respondents might be directed to pay the outstanding allowance of Rs. 360,000/- to the appellant for a period of one year.

2. Brief facts of the case, as given in the memorandum of appeal, are that the appellant was initially appointed as Sub Engineer in the Irrigation Department Khyber Pakhtunkhwa in BPS- 11. He was promoted to the post of Sub Divisional Officer (SDO), Sub Division Mardan and was transferred against the post of Assistant Director, Remodeling of Warsak Canals System Project, Peshawar (RWCS) through notification dated 23.04.2015. He was relieved from the old post and joined the new position by submitting his arrival report on 04.05.2015. The Project Director RWCS (respondent No. 3), objected on his transfer and conveyed his reservation through letter dated 06.05.2015 to the Secretary Irrigation Department, in response to which he was directed to implement the transfer order dated 23.04.2015 vide letter dated 22.05.2015. The respondent No. 3 issued another letter on 08.06.2015, after lapse of three months, and requested for reviewing of posting order of appellant on the ground that his posting was beyond the approved strength of Assistant Directors in the project which was four and through posting of the appellant there, it would increase to five and thus drawl of salary for the fifth Assistant Director would not be possible. Respondent No. 3 was

again directed vide letter dated 24.06.2015 from the office of Secretary Irrigation Department to implement the transfer order and entertain the claim of monthly salary of the appellant. Although the appellant was posted as Assistant Director in the project but no salary was released to him for about three months and it was as a result of letter dated 24.07.2015 that he started to draw his salary against the vacant post of Assistant Engineer (Leave Reserve), office of the Chief Engineer (South) Irrigation. As per project policy of the Provincial Government, the appellant was entitled to draw Project Allowance @ Rs. 30,000/- per month which was not allowed to him. Feeling aggrieved, he preferred a departmental appeal before the Project Director, RWCS on 31.08.2015 which was regretted vide order dated 20.11.2015, after which he filed a Writ Petition No. 119-P/2016 which was dismissed vide judgment dated 20.06.2017 for want of jurisdiction. The appellant filed second departmental appeal/ representation/review through proper channel before the Chief Secretary Khyber Pakhtunkhwa on 18.07.2017 but in vain; hence the instant service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We have heard the learned counsel for the appellant as well as the learned Deputy District Attorney for the respondents and perused the case file with connected documents in detail.

4. Learned counsel for the appellant presented the case in detail and contended that the officer who was working on the post prior to the transfer was paid Project Allowance @Rs. 30,000/- per month but the

appellant was denied the same which was illegal and against the Constitution of Islamic Republic of Pakistan. He further contended that the Honourable Peshawar High Court, through its full court judgment dated 20.06.2017 had already declared the said allowance as part and parcel of the terms and conditions of service, therefore, there was no ambiguity to release the same to the appellant without any delay. He, therefore, prayed that on acceptance of instant service appeal, the respondents might be directed to pay the outstanding allowance for a period of one year which came to Rs. 360,000/-.

5. The learned Deputy District Attorney, on the other hand, contended that the appellant was posted in the project as Assistant Director but when the matter was brought to the notice of the high ups that sanctioned strength of Assistant Directors in the said project was four and there was no post available against which the salary of the appellant could be processed/ released, he was posted against a vacant post of Assistant Engineer (leave reserve) in the office of Chief Engineer (South) and was directed to work in RWCS on detailment basis. He further stated that the appellant was not at par with Mr. Riaz Muhammad, who was serving in RWCS and was thus entitled for Project Allowance. He further stated that the Project Allowance did not come within the definition of pay and did not come within the terms and conditions of service. The learned Deputy District Attorney further informed that when a post of Assistant Engineer fell vacant on promotion of an officer to the post of Executive Engineer, the competent authority was pleased to adjust the appellant from leave

reserve post to the vacant post of project and allowed him pay and allowances including Project Allowance vide Notification dated 21.04.2016. He, therefore, prayed for dismissing the appeal.

6. Record presented before us reveals that the appellant was posted in the Remodeling of Warsak Canals System (RWCS) Project as Assistant Director in place of one Mr. Riaz Muhammad, who was posted as Assistant Director in the Rehabilitation of Irrigation System Project. On his transfer, the Project Director RWCS informed the Secretary Irrigation Department that the project was in the phase of winding up and that the strength of Assistant Director was complete and requested to reconsider the posting orders of the appellant upon which he was directed by the Department to implement the posting orders of the appellant. The Project Director again approached the Department elaborating that there were four posts of Assistant Director in the project and all of them were filled and hence drawing of salary for the fifth Assistant Director (the appellant) would not be possible. To settle the issue of salary, a notification dated 24.07.2015 was issued in which the appellant was authorized to draw his outstanding salaries w.e.f 01.05.2015 against the vacant post of Assistant Engineer (Leave Reserve), office of Chief Engineer (South), Irrigation till further orders.

7. The grievance of the appellant is that Project Allowance was not allowed to him when he was posted as Assistant Engineer in the RWCS Project. Perusal of the record transpires that there was no vacant post of Assistant Engineer available in the Project to pay him the salary, of which

Project Allowance is also a part, and therefore notification was issued to pay him salary from leave reserve post in the office of Chief Engineer (South) which was not a project post and did not carry Project Allowance with it. Record further indicates that as soon as the post of Assistant Engineer in the RWCS project became vacant, the appellant was authorized to draw his salary from there, which included Project Allowance also.

8. In view of above discussion, the appeal in hand is dismissed. Parties are left to bear their own costs. Consign.

9. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 08th day of November, 2022.

(ROZINA REHMAN)
Member (J)

(FAREEHA PAUL)
Member (E)

Malik Muhammad Ajmal Khan, Advocate for appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present. Arguments heard and record perused.

02. Vide our detailed judgement containing 06 pages, perusal of the record transpires that there was no vacant post of Assistant Engineer available in the Project to pay him the salary, of which Project Allowance is also a part, and therefore notification was issued to pay him salary from leave reserve post in the office of Chief Engineer (South) which was not a project post and did not carry Project Allowance with it. Record further indicates that as soon as the post of Assistant Engineer in the RWCS project became vacant, the appellant was authorized to draw his salary from there, which included Project Allowance also. In view of above discussion, the appeal in hand is dismissed. Parties are left to bear their own costs. Consign.

03. Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal this 08th day of November, 2022.

(ROZINA REHMAN)
Member (J)

(FAREEHA PAUL)
Member (E)

10.06.2022 Appellant in person present. Mr. Riaz Ahmed Paindakhel, Assistant Advocate General for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today due to strike of lawyers. Adjourned. To come up for arguments on 01.09.2022 before the D.B.

(Fareeha Paul)
Member (E)

(Salah-ud-Din)
Member (J)

01.09.2022 Bench is incomplete, therefore, case is adjourned to 13.10.2022 for the same as before.

Reader

13.10.2022 Clerk of learned counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat. Adjourned. To come up for arguments before the D.B on 08.11.2022.

(Mian Muhammad)
Member (E)

(Salah-Ud-Din)
Member (J)

18.11.2021 Learned counsel for the appellant present. Mr. Kabirullah Khattak, Addl: AG for respondents present.

Learned AAG requested for adjournment on the ground that he has not made preparation for arguments. Granted. To come up for arguments on 19.01.2022 before the D.B.

(Mian Muhammad)
Member(E)

(Salah-Ud-Din)
Member(J)

19.01.2022 Junior to counsel for the appellant present. Mr. Riaz Khan Paindakheil, Assistant Advocate General for respondents present.

Former made a request for adjournment as senior counsel for the appellant is busy before Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments before the D.B on 18.02.2022.

(Atiq-Ur-Rehman Wazir)
Member (E)

Chairman

18-2-22

Due to Retirement of the Hon'ble Chairman the case is adjourned to come up for the same as before on 10-6-22

Reader

08.07.2021 Akhunzada Asad Iqbal Advocate present and submitted Wakalat Nama in favor of petitioner.

Muhammad Adeel Butt learned Additional Advocate General for respondents present.

Arguments on application heard. Record perused.

Application in hand was filed for restoration of appeal No.1352/2017 which was dismissed in default on 13.06.2019.

Learned counsel stated that former counsel inadvertently noted wrong date for hearing and on the date fixed, the case was called but due to the said reason, no one appeared on behalf of petitioner and accordingly appeal was dismissed in default. Further submitted that absence of petitioner on the date of hearing neither intentional nor was deliberate. Therefore, he requested for acceptance of instant application for restoration of main appeal.

In view of submission made by the learned counsel for petitioner, instant application is accepted and main appeal stands restored on payment of cost of Rs.2000/-. It be properly registered. This application stands consigned to the record room, copy whereof be placed on original file. To come up for arguments in the main appeal on 18.11.2021 before D.B.

(Rozina Rehman)
Member(J)

Chairman

Rs. 2000/- deposited as cost on 10-11-21.
Entry made in the Process Fee Register at Serial No. 54.

20.01.2021 Due to COVID-19, the case is adjourned for the same on 06.04.2021 before D.B.

READER

06.04.2021 Due to demise of Hon'able Chairman, the Tribunal is defunct, therefore, the case is adjourned to 08.07.2021 for the same.

Reader

10.4.2020 Due to COVID19, the case is adjourned to 8/7/2020 for the same as before.

Reader

08.07.2020 Due to COVID19, the case is adjourned to 02.09.2020 for the same as before.

Reader

02.09.2020 Clerk to counsel for the petitioner present. Mr. Muhammad Jan, DDA for respondents present.

Clerk to counsel for the appellant seeks adjournment as learned counsel for the appellant is not available today.

Adjourned to 12.11.2020 before D.B.

(Mian Muhammad)
Member(E)

(Muhammad Jamal)
Member(J)

12.11.2020 Proper D.B is not available, therefore, the case is adjourned for the same on 20.01.2021.

Reader

Form-A

FORM OF ORDER SHEET

Court of _____

Restoration Application No. 385/2019

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	18.10.2019	The application for restoration of C.M No. 255/2019 submitted by Malik Muhammad Ajmal Khan Advocate may be entered in the relevant register and put up to the Court for proper order please. REGISTRAR 18/10/19
2		This restoration application is entrusted to D. Bench to be put up there on 20-11-2019 CHAIRMAN
20.11.2019		Counsel for the applicant present. Notice be issued to the respondents for 20.02.2020 before D.B. Original record be also requisitioned for the date fixed. (Hussain Shah) Member — (M. Amin Khan Kundi) Member
	28-2-20	The learned Members is on tour therefor case is adjurned to 10-4-2020 Reader

(1)

BEFORE THE SERVICE TRIBUNAL, KPK, PESHAWAR

Restoration Application No. 385/2019

C.M No._____ of 2019

IN

C.M No.255 of 2019

IN

Service Appeal No.1352 of 2017

Khyber Pakhtunkhwa Service Tribunal
Diary No. 1072
Dated 18/10/2019

Engineer Musharaf Shah.....Petitioner/ Appellant

VERSUS

Govt of KPK through Chief Secy and others.....Respondents

Petition for restoration of C.M No.255/2019 with titled service appeal at its original number and alongwith all other connected C.Ms.

Respectfully Sheweth:

The petitioner very humbly submits as under:

1. That the titled service appeal was pending adjudication before this Hon'ble Tribunal and was fixed for 13.06.2019 for further proceedings.

2. That on 24.06.2019, a C.M No.255/2019 was submitted before this Hon'ble Tribunal for restoration of the Service Appeal No.1352/2017 and was fixed for 04.10.2019 and the same was dismissed in default. (Copies are attached as Annexure **"A"**).

3. That the petitioner seeks restoration of the aforesaid C.M alongwith Service Appeal, inter alia, on the following grounds:

GROUNDS:

A. That on 04.10.2019, the counsel for petitioner/ appellant was seriously ill and clerk of the counsel appeared before this Hon'ble Tribunal and marked attendance.

B. That the absence of the counsel was neither intentional nor deliberate but due to reason mentioned above.

C. That the valuable rights of petitioner/ applicant are involved in the titled service appeal.

D. That law demands the decisions on merits rather declaring the same on mere technicalities, therefore, the according to law and equity on the subject matter, the title service may be restored to decide it on its own merits.

E. That the applicant may raise additional grounds during arguments.

IT IS, THEREFORE, respectfully prayed that by accepting this application, the service appeal may kindly be restored alongwith C.M, in its original number and be decided on merits.

Petitioner

Malik Muhammad Ajmal Khan
Advocate, Peshawar

Dated: ___/___/2019

AFFIDAVIT

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

KHALID MAHMOOD ADVOCATE PESHAWAR HIGH COURT ATTESTED NOTARY PUBLIC

18-10-19

DEPONENT

2A 1

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

A
Annexure

Khyber Pakhtunkhwa Service Tribunal
Diary No. 1340
Dated 22-11-2017

Service Appeal No 1352 /2017

Engineer Mushraf Shah S/O Yousaf Shah R/O Village Lal Zarin Mian Kali, P. O. Mandani, Tehsil Tangi District Charsadda presently serving as Assistant Director, Remodeling of Warsak Canals System project, Peshawar.

.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through its Chief Secretary at Civil Secretariat, Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa irrigation department Peshawar.
3. Project Director, Remodeling Warsak Canal System project Peshawar.
4. The Section officer (Establishment) Govt of Khyber Pakhtunkhwa irrigation department Peshawar.
5. Secretary to Govt. of KPK, Finance Department at Civil Secretariat, Peshawar.

.....Respondents

ATTESTED
EXAMINER
Khyber Pakhtunkhwa Service Tribunal, Peshawar

Filed to-day
Registrar 27/11/17

Re-submitted to-day and filed.
Registrar 5/12/17

Appeal U/S 4 of the KPK Service Tribunal Act, 1974 read with all those other provisions of law governing the subject matter for setting aside an

Service Appeal No. 1352/2017

13.06.2019 None present on behalf of the appellant. Mr. Kabirullah Khattak, Additional AG alongwith M/S Ghulam Habib, Deputy Collector and Sajid, Superintendent for the respondents present. Called several times till 4:00 PM but no one appeared on behalf of the appellant nor he was present in person. Therefore, the appeal in hand is dismissed in default. File be consigned to the record room.

ANNOUNCED
13.06.2019

(AHMAD HASSAN)
MEMBER

(M. AMIN KHAN KUNDI)
MEMBER

05.03.2019 Clerk to counsel for the appellant present. Mr. Ghulam Nabi Deputy Collector representative of the respondent No. 1 to 4 and Mr. Muhammad Sohail Assistant representative of respondent No. 5 present. Written reply not submitted. Representative of respondent No 1 to 4 stated that the respondents No. 1&4 rely on the reply already submitted on behalf of respondents No. 2 & 3. Representative of the respondent No. 5 seeks time to furnish written reply/comments. Granted. To come up written reply/comments on 11.04.2019 before S.B

(Muhammad Hamid Mughal)
Member

11.04.2019 Appellant in person and Addl. AG alongwith Ghulam Habib, Deputy Collector for respondents No. 1 to 4 and Muhammad Sohail, Supdt. for respondent No. 5 present.

Representative of the respondent No. 5 has submitted parawise comments on behalf of the said respondent which are placed on record. To come up for arguments on 13.06.2019 before a D.B. The appellant may submit rejoinder within a fortnight, if so advised.

Chairman

Service Appeal No. 1352/2017

10.12.2018 Counsel for the appellant present. Mr. Mr. Ghulam Habib, Deputy Collector alongwith Kabirullah Khattak, Additional AG on behalf of respondents No. 2 & 3 present. Written reply by respondents No. 2 & 3 already submitted. None present on behalf of respondents No. 1, 4 & 5 therefore, fresh notice be issued to respondents No. 1, 4 & 5 with the direction to direct the representative to attend the court and submit written reply on the next date positively. Adjourned. To come up for written reply/comments on behalf of respondents No. 1, 4 & 5 on 17.01.2019 before S.B.

Muhammad Amin Khan Kundi
Member

17.1.2019 Counsel for the appellant and Addl. AG for the respondents present.

The requisite reply has not been submitted by respondents No. 1, 4 and 5. They shall do so on next date of hearing positively, otherwise, the matter would be heard on the strength of available record. Adjourned to 05.03.2019.

Chairman

13.07.2018 **Neither appellant nor his counsel present. Mr. Ghulam Nabi, Deputy Collector on behalf of the respondents alongwith Sardar Shaukat Hayat, Addl. Advocate General present. The later submitted comments on behalf of respondents No. 2&3. To come up for comments/reply on behalf of remaining respondents on 27.08.2018 before S.B.**

Chairman

27.08.2018 Neither appellant nor his counsel present. Mr. Kabirullah Khattak, Additional AG for the respondents present. Written reply by respondents No. 2 & 3 already submitted. Learned Additional AG made a request for adjournment on behalf of respondents No. 1, 4 & 5. Granted. To come up for written reply/comments on behalf of respondents No. 1, 4 & 5 on 24.10.2018 before S.B.

(Ahmad Hassan)
Member

23-10-2018 Due to retirement of Honorable Chairman the Tribunal is non functional therefore the case is adjourned to come up for the same on 10-12-2018

Reader

20.04.2018

Counsel for the appellant present. Preliminary arguments heard and case file perused. Learned counsel for the appellant argued that he was working in Warsak Canals System Project Peshawar as Assistant Director, he was eligible for project allowance to the tune of Rs. 30000/-. As the same was denied to him so he preferred departmental appeal which was rejected vide impugned order dated 20.11.2015, hence, the instant service appeal. As the issue of pay and allowances is involved so limitation would not hit the cause of action.

Appellant Deposited Security & Process Fee

Points urged need consideration. Admit, subject to deposit of security and process fee within 10 days, thereafter, notices be issued to the respondents for written reply/comments on 07.06.2018 before S.B.

(AHMAD HASSAN)
MEMBER

07.06.2018

None present on behalf of appellant. Learned Addl: AG alongwith Mr. Ghulam Nabi, Deputy Collector for official respondents present. Written reply not submitted. Requested for adjournment. Adjourned. To come up for written reply/comments on 13.07.2018 before S.B.

Member

18.01.2018 Counsel for the appellant present and requested for adjournment. Adjourned. To come up for preliminary hearing on 15.02.2018 before S.B.

(Muhammad Amin Khan Kundi)
Member

15.02.2018 Junior counsel for the appellant present and requested for adjournment on the ground that learned senior counsel for the appellant is not available today. He also submitted application for condonation of delay, which is placed on record. To come up for preliminary hearing on 09.03.2018 before S.B.

(Muhammad Amin Khan Kundi)
Member (J)

09.03.2018 Appellant absent. Adjourned. To come up for preliminary hearing on 30.03.2018 before S.B

(Muhammad Hamid Mughal)
Member

30.03.2018 Junior to counsel for the appellant present and seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for preliminary hearing on 20.04.2018 before S.B.

(Ahmad Hassan)
Member

Form-A

FORMOF ORDERSHEET

Court of _____

Case No. 1352/**2017**

S.No.	Date of order proceedings	Order or other proceedings with **signature** of judge
1	2	3
1	05/12/2017	The appeal of Mr. Musharaf Shah resubmitted today by Malik Muhammad Ajmal Khan Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please. REGISTRAR 5/12/17
2-	11/12/17.	This case is entrusted to S. Bench for preliminary hearing to be put up there on 28/12/17.
	28.12.2017	Clerk of the counsel for appellant present and requested for adjournment due to non availability of his senior counsel. Adjourned. To come up for preliminary hearing on 18.01.2018 before S.B. CHAIRMAN (Gul Zeb Khan) Member (E)

The appeal of Engineer mushraf Shah son of Yousaf Shah Assistant Director Remodeling of Warsak Canals System project Peshawar received today i.e. on 22.11.2017 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1- Memorandum of appeal may be got signed by the appellant.
2- Annexures of the appeal may be flagged.
3- Affidavit may be got attested by Oath Commissioner.
4- Copy of letter dated 17.10.2008 mentioned in para-5 of the memo of appeal (Annexure-E) is not attached with the appeal which may be placed on it.
5- Seven more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 2528 /S.T,

Dt. 23/11 /2017

REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Malik Muhammad Ajmal Khan Adv. Pesh.

R/Sir

Resubmitted after Removal of Objection

Ash

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1352 /2017

Engr. Musharaf Shah .....Petitioner

VERSUS

Govt. of KPK through its Chief Secretary & others.....Respondents

INDEX

Petitioner

Through

Malik Muhammad Ajmal Khan
Advocate, High court Peshawar
Office: C-10, Haroon Mansion, Khyber Bazar, Peshawar
Cell No. 0333-9466004

Date: 22/11/2017

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Service Appeal No 1352 /2017

Engineer Mushraf Shah S/O Yousaf Shah R/O Village Lal Zarin Mian Kali, P. O. Mandani, Tehsil Tangi District Charsadda presently serving as Assistant Director, Remodeling of Warsak Canals System project, Peshawar.

.....Appellant

VERSUS

1. Govt. of Khyber Pakhtunkhwa through its Chief Secretary at Civil Secretariat, Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa irrigation department Peshawar.
3. Project Director, Remodeling Warsak Canal System project Peshawar.
4. The Section officer (Establishment) Govt of Khyber Pakhtunkhwa irrigation department Peshawar.
5. Secretary to Govt. of KPK, Finance Department at Civil Secretariat, Peshawar.

.....Respondents

Appeal U/S 4 of the KPK Service Tribunal Act, 1974 read with all those other provisions of law governing the subject matter for setting aside an

impugned order / notification bearing No. SO (E)/irr:/1-52/2011 dated 27.07.2017 and notification No. 2212/2-C/RWCP dated 19.07.2017 being illegal, unlawful, without lawful authority and legal justification and directing the respondents to act in accordance with law and to the project Outstanding allowance to the petitioner against the post of the Assistant Director, Remodeling of Warsak Canals system project Peshawar for the period of about one year i.e 360,000 for the best interest of law fairness and justice.

Respectfully Sheweth:

That the Appellant very humbly submits as under:

1. That the Appellant was initially appointed as Sub – Engineer in Irrigation Deptt Kpk in BPS 11 and with the passage of time promoted to the post of Sub-Divisional Officer (SDO) Sub Division Mardan and was transferred against the post of Assitant Director, Remodeling **of Warsak Canals system project Peshawar** through Notification dated 23/04/2015.

(Copy of the Notification dated 23/04/2015 is attached as Annexure "A").

2. That the Appellant relieved the old post and joined the new one submit by his arrival Report on 04-05-2015 and fulfilled his lawful duties astonishingly the respondent No 3 i.e. Project Director, Remodeling Warsak Canal System project Peshawar, had objected on his transfer and conveyed a reservation letter on 6/05 /2015 moreover directed to implement transfer order dated 23-04-2015 on 22-05-2015. **(Copies of the letters dated 23-04-2015 & 22-05-2015 are attached as Annexure "B").**

3. That Surprisingly again the respondent No 3 issued letter on 8-06-2015 after about three month later and requested for the withdrawal of the posting of the appellant allegedly as posting is beyond the approved strength of project, the officer who replaced the appellant was performing his duties without any objection from him thus vide letter dated 24-06-2015 the respondents strictly warned to entertain the claim of monthly salary of the appellant . **(Copies of the letter on 8-06-2015 & 24-06-2015 attached as Annexure "C").**

4. That although appellant was posted as Assistant Director, Remodeling Warsak Canals System project Peshawar however no single penny in a shape of monthly salary has been released for his about three months since his posting later on the respondent No 2 vide his letter dated 24/07/2015 allow the appellant to drew his salary against the vacant post of Assistant Engineer (Leave Reserve) office of the chief Engineer (South) Irrigation. . **(Copy of the Notification dated 24/07/2015** is **attached as Annexure "D").**

5. That Since then the appellant performing his duties with honesty, dedication and ,enthusiasm as Assistant Director, Remodeling Warsak Canal System project Peshawar as such and as per project policy of the provincial Govt the appellant his entitled to draw a project Outstanding Allowance at the rate of Rs 30,000/P.M moreover Riaz Mohammd was given the project allowance of Rs 30,000/ per month and the appellant evasively denied and passed the buck to each other's . **(Copy of the letter dated 17.10.2008 is attached as Annexure "E").**

6. That feeling aggrieved the appellant preferred his departmental appeal before the worthy project director, Remodeling Warsak Canal System Peshawar on 31-08-2015 which was regretted

through an impugned order dated 20-11-2015 by him and being aggrieved the appellant filed writ petition bearing No 119-p/2016 wherein the comments from the respondents 2 & 3 were requisitioned /asked for who filed the same but the writ petition was disposed of vide order/judgment dated 20-06-2017(**Copies of departmental appeal, regretted order, writ petition and its order/judgment/ decree dated 20-06-2017 there are attached as Annexure "F"**).

7. That the appellant in the light of above order/judgment dated on 20-06-2017 filed a 2nd departmental appeal /representation/ Review through proper channel before respondent No 1 I.e. the worthy chief secretary Kpk at civil secretariat Peshawar on 18 -07-2017 but in vain and dismissed the same on 27-07 -2017. **(Copies of the 2nd departmental appeal /representation/ Review and its order dated 27-07 -2017 are attached as annexure G')**

8. That the appellant again feeling very aggrieved when no reply has been furnished by the respondents within lapsed of statutory period of 90 long good days , hence approaches this Hon, able forum through the instant Service appeal inter alia on the following amongst others:

GROUNDS:

A. That as it is evident from the record of the case, the person/officer who was working on the post prior to the appellant transfer was paid the project allowance of Rs. 30,000/- per month, but the petitioner was denied the same illegally.

B. That when it was paying to the appellant regularly till date and its payment is legal then how he has been denied for the initial period of one year only i.e. Rs. 360,000/- approximately.

C. That it is the Constitutional command that every one should be dealt with in accordance with law and equal protection of law shall be extended to him, then nothing is left except the payment for the period of one year to the appellant.

D. That the Peshawar Hon'ble High Court, Peshawar through its full court judgment vide order dated 20.06.2017 already declared the said allowance as part and parcel of the terms and conditions of Service, therefore there is no ambiguity to release the same or order for its release to the appellant without any delay.

E. That the officer Mr. Riaz vice whom the petitioner was posted has regularly received project allowances albeit the same is illegally denied to the petitioner allegedly that his pay is drawn against other post, though he is performing his duties in the project on full time basis.

F. That the petitioner has not treated been in accordance with law and he remained throughout deprived of project allowances due to in action / slackness of the respondents thus they are bound to follow the law and to act in accordance with law.

G. That the acts and omission of the respondents in not allowing project allowance to the petitioner is illegal, in violation of law, without lawful authority and against the rights of the petitioner.

H. That any other ground which is not specifically been taken may also be allowed to be argued at the time of arguments with the kind permission of this Hon'ble Court.

It is, therefore, most humbly prayed that on acceptance of the instant service appeal the authorities concerned may very graciously be directed to pay the outstanding allowance for about the period of one year i.e. Rs. 360,000/- for the best interest of law, fairness and justice.

Dated: 22.11.2017

Petitioner

Through

Malik Muhammad Ajmal Khan
&
Asad Ullah Yousafzai
&
Ashraf Ullah
Advocates, Peshawar.

AFFIDAVIT/VERIFICATION:-

It is, stated on oath that the contents of the **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Court.

KHALID MAHMOOD ADVOCATE PESHAWAR HIGH COURT ATTESTED NOTARY PUBLIC 12-17

DEPONENT

Annexure A (8) (A)

19 54 56 59 59 60

GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR REMODELING OF WARSAK CANALS
SYSTEM IRRIGATION DEPARTMENT CIVIL COLONY KABABYAN
WARSAK ROAD
PESHAWAR.
Ph No 091- 9222774-5, Fax No 091-5201615

No. 2-84 / 5 - E /RWCP
Dated Peshawar the 06 / 05 /2015

To

The Secretary irrigation
Govt. of Khyber Pakhtunkhwa
Peshawar

56 endsd

Subject: **NOTIFICATION.**
Ref: Notification No. SO(E)/Irr:/4-10/77 dated 23-04-2015

With reference to above, your kind attention is invited to the notification under reference, wherein Mr. Musharaf Shah Sub Divisional Officer Drainage Division Mardan has been posted in place of Mr. Riaz Mohammad Assistant Director of this office.

In this connection, it is elaborated that FDRD is in the process of winding during current financial year and the strength of Assistant Directors in RWCS is complete.

It is therefore, requested to kindly re-consider the posting orders of Musharaf Shah Assistant Director in RWCS. Same may please be withdrawn to avoid subsequent complication in future please.

PROJECT DIRECTOR

ATTESTED

C:\Users\FDRD\Desktop\Notification.doc

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

(9) (4)

ANNEXURE "A"

Dated Peshawar, the 23rd April, 2015

NOTIFICATION

No. SO(E)/IRRI:/4-10/77: The competent authority is pleased to order postings/transfers of the following officers of Irrigation Department with immediate effect in the public interest:-

S.#	Name of Officer	From	To
1	Mr. Musharaf Shah, Sub Divisional Officer.	SDO, Drainage Sub Division, Mardan.	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar. Vice No. 2
2	Mr. Riaz Muhammad, Sub Divisional Officer.	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar	Assistant Director, Rehabilitation of Irrigation System Project, Peshawar. Vice No. 3
3	Mr. Naseer-ud-Din, Sub Divisional Officer.	Assistant Director, Rehabilitation of Irrigation System Project, Peshawar.	SDO, Drainage Sub Division, Mardan. Vice No. 1
4	Mr. Nisar Ahmad, Sub Divisional Officer (OPS)	Assistant Engineer (OPS), L/R office of Chief Engineer (North)/SDO (OPS), Battagram Irrigation Sub Division	SDO, Irrigation Sub Division, Abbotabad. However, he will lookafter the charge of SDO, Battagram Irrigation Sub Division in addition to his own duties till further orders.
5	Mr. Fatehullah, Sub Divisional Officer.	SDO, Civil Canal Irrigation Sub Division, Bannu.	Hydrology Irrigation Sub Division, Bannu against the vacant post.
6	Mr. Faridullah, Sub Divisional Officer.	Under transfer to CRBC, Irrigation Division, D.I. Khan.	SDO, Civil Canal Irrigation Sub Division, Bannu. Vice No. 5

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No. & Date as above

Copy of the above is forwarded to:-

1- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2- The Chief Engineer (South), Irrigation Department.
3- The Chief Engineer (North), Irrigation Department.
4- The Superintending Engineer (H/Q) North Irrigation.
5- The Superintending Engineer (H/Q) South Irrigation.
6- The Project Director, Remodeling of Warsak Canals, System Project, Peshawar.
7- The Superintending Engineers, Irrigation Circles, Bannu, D.I. Khan, Mardan, Peshawar & Swabi.
8- The Project Director, Rehabilitation of Irrigation System Project, Peshawar.
9- The Officers concerned.
10- The Districts Accounts Officers, Abbotabad, Battagram, Bannu, D.I. Khan, Mardan & Swabi.
11- The Section Officer (Dev:) Irrigation Department w/r to his letter No. SO(Dev) IRR/2-140/WTB/2014 dated 15.10.2014.
12- PS to Minister for Irrigation, Khyber Pakhtunkhwa w/r to his Diary No. 172 dated 23.04.2015.
13- PS to Secretary Irrigation Department.
14- Master File.
15- Personal Files of the Officers.

ATTESTED

(MISAL KHAN)
SECTION OFFICER (ESH)

Annexur B

(B) (10)

13

~~30~~ 56 57

To,

The Project Director,
Remodelling of Warsak Canals System
Project Peshawar.

Subject:- ARIVAL REPORT

In compliance of Secretary to Government of Khyber Pakhtunkhwa Irrigation Department Peshawar Notification No.SO (E) / Irri:/4-10/77, dated 23/04/2015, I submit my Arrival report to day on the F/Noon of 04 /05/2015 for joining new assignment please.

Dated 04 /05/2015

Yours obediently

(MUSHARAF SHAH)
Sub Divisional Officer

Submit
Higher ups may be approached for review of posting orders. FDRD is in working stage + HDS strength is complete DDA/SMPU
Pr n a
4/5/15
4/5

Photo copy of the arrival report & the officer was handed over to Accounts branch for n a

ATTESTED

(14) (10A) Annex- E

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

No. SO(E)/Irr/4-10/77/Vol-II
Dated Peshawar, the 22-5-2015

To

The Project Director,
Remodeling of Warsak Canal System,
Peshawar.

SUBJECT: **NOTIFICATION**

I am directed to refer to your letter No. 284/5-E/RWCP dated 6-5-2015 on the subject noted above and to advise that orders notified by the administrative department on 23-4-2015 may be implemented in letter & spirit and allow Mr. Musharaf Shah to continue as Assistant Director in the Remodeling of Warsak Canal System by relieving Mr. Muhammad Riaz, Assistant Director to assume his new assignment in the Rehabilitation of Irrigation System Project immediately in the public interest.

(Misal Khan)
Section Officer (Establishment)

Endst: No. & Date as above.

Copy of the above is forwarded to the PS to Minister for Irrigation, Khyber Pakhtunkhwa for information please.

Section Officer (Establishment)

ATTESTED

14 (11) Annexure e

61

57

56

GOVERNMENT OF KHYBER PAKHTUNKHWA

PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM IN DISTRICT PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774-5 Fax: 091-5201615

No. 391/5-E /RWCP

Dated Peshawar the 8 / 6 /2015

To

The Secretary Irrigation
Govt: of Khyber Pakhtunkhwa
Peshawar.

Subject **NOTIFICATION.**

Ref: i, This office No. 284/5-E/RWCP dated 06-05-2015.

Your kind attention is invited to this office letter referred above wherein it was requested to withdraw the posting orders of Mr. Musharaf Shah, Assistant Director posted to this office, but vide No. SO(E)/Irr/4-10/77/Vol-II dated 22-05-2015 from Section officer (Establishment), it has directed to adjust / post the concerned officer. It is once again submitted that the sectioned strength of Assistant Director of RWCS as per approved PC-I is 4 (four) and through the posting of said officer / Assistant Director, the strength will increase to 5 (five). Thus the Drawing of salary would not possible in respect of the above named officer.

In light of the foregoing, it is again requested to review the posting orders of the concerned officer to this office please.

PROJECT DIRECTOR

ATTESTED

D:\RWCS\NOTIFICATION (Musharaff Shah 2).doc

11-A

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Annex-G
(16)

No. SO(E)/Irr:/4-10/77/Vol-V
Dated Peshawar, the 24th June, 2015

To

The Project Director,
Remodeling of Warsak Canals System Project,
Peshawar.

Subject: **NOTIFICATION**

I am directed to refer to your letter No. 391/5-E/RWCP dated 08.06.2015 on the subject noted above and to ask you to implement the orders of the Govt. otherwise strict disciplinary action would be taken against those who are hesitating to act as per Government's orders. Furthermore, monthly salary of Engr. Musharaf Shah, Assistant Director, Remodeling of Warsak Canals System Project, Peshawar may immediately be entertained.

(Misal Khan)
Section Officer (Estt:)

ATTESTED

(12) Annexure D/1

(5)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 24th July, 2015

NOTIFICATION

No. SO(E)/IRRI/4-10/77/Vol-V: The competent authority is pleased to authorize Engr: Musharaf Shah, Assistant Engineer (BS-17) presently posted as Assistant Director Remodeling of Warsak Canal System, Peshawar to draw his outstanding salaries w.e.from 01.05.2015 against the vacant post of Assistant Engineer (Leave Reserve) office of Chief Engineer (South) Irrigation till further orders.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. The Project Director Remodeling of Warsak Canal System, Peshawar.
5. The Superintending Engineer (H/Q) South Irrigation.
6. The Superintending Engineer (H/Q) North Irrigation.
7. The officer concerned.
8. PS to Secretary Irrigation Department, Peshawar.
9. Master file.

(NAIMATULLAH) 24/7/2015
Section Officer (Estt:)

Annexure "E" (13) 18 18 Annexure (E) P. 31

Audit Note Para #	Description of Para	Department Reply	DAC Remarks
	Subject: Unauthorized payments of Rs. 720000/- on account of Project Allowance Criteria: [illegible] of Project Policy 2008 October 17 on which the Project Allowance [illegible] implementation. During [illegible] the accounts record of the office Project Director FDRD noticed that [illegible] Rs. 720,000 was paid to the following two officer on account of project allowance @ Rs. 30000/- Per Month. during 2012-13. 1. Wasim Malik 30000 X 12 = 360000 2. Ali Khan 30000 X 12 = 360000 Total 720000/- The above named officer drawing their pay from the KRC but Project Allowance from the FDRD Project No specific order for the drawl of the Project Allowance was produced to audit. The project allowances admissible under the policy to the deputation list, while the above officer are the original employee of the Irrigation Department, & the FDRD is the Project of the said department it means that within the department the deputation is not justified. Impact: Loss to the Govt. Recommendation: Required imitate recovery from the date of payments to date under intimation to audit.	It is submitted that FDRD was established the orders of Chief Secretary to Govt: of Khyber Pakhtunkhwa Peshawar, for assessment, survey of 2010 damages, prepare master planning and execute repair and reconstruction work of the damaged infrastructure of Irrigation Department. The technical staff for FDRD was hired from the Irrigation Department and Project Allowance allocation was made for each incumbent in the approved PC-I of FDRD in order to provide ample incentive to the staff working on widely scattered restoration activities showing he prov. The PC-1 has been prepared on the instructions of Chief Secretary and approved by the competent forum in which proper allocation for Project Allowance was made. Hence no unauthorized payment is made and para may be settled please.	

ATTESTED

Annexe E

(13)

Annexure (F) (14) ANNEX-F

To

The Project Director,
Remodeling of Warsak Canals System Project,
Peshawar.

Subject:- **APPLICATION FOR PROVISION OF PROJECT ALLOWANCE**

Dear Sir,

Most respectfully it is submitted that pursuant to the notification No. SO(E)IRRI/4-10/77 dated 23.04.2015, the undersigned assumed the charge of the post of Assistant Director, Remodeling of Warsak Canals System Project, Peshawar on 04.05.2015.

It is pertinent to mention that since my posting as Assistant Director in the project I have been deprived from the project allowance i.e. Rs. 30,000/- per month whereas other public servants posted in the said project have been enjoying the project allowance regularly. In this context your kind attention is invited to Article-25 of the Constitution of the Islamic Republic of Pakistan which says ***"All citizens are equal before law and are entitled to equal protection of law".***

In view of the above facts, it is therefore humbly prayed that project allowance Rs. 30,000/- (Rs. Thirty Thousand) per month may be paid to the undersigned and avoid violation of above article, otherwise I have no option but to knock the door of competent court for my vested right, please.

Yours faithfully,

31/8/15

(Engr. Musharaf Shah),
Assistant Director,
RWCS, Peshawar

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM IN DISTRICT PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774 Fax: 091-5201615

(15)

No. 794/5-E /RWCP
Dated Peshawar the 20 / 11 /2015

To

Mr. Musharaf Shah
Assistant Director
Remodeling of Warsak Canal System
Peshawar.

Subject **APPLICATION FOR PROVISION OF PROJECT ALLOWANCE.**

Reference: Your application No. Nil dated 31-08-2015.

I am directed to refer to the subject noted above and to state that as per notification No.SO(E)Irr/4-10/72/vol-V dated 24-07-2015 issued by the Secretary Irrigation Department Peshawar, your pay is adjusted w.e.f 01-05-2015 against the vacant post of Assistant Engineer (leave reserve) Chief Engineer (South) Irrigation Department Peshawar. Therefore, as per rules all the allowances are debitable to the post from which the salary is being drawn.

PROJECT MANAGER

Copy to:
1. Project Director Remodeling of Warsak Canal System Peshawar
2. Deputy Director Accounts Remodeling of Warsak Canal System Peshawar.

PROJECT MANAGER

ATTESTED

E:\Misc 2\Proj Allow AD.doc

(16) (6)

IN THE PESHAWAR HIGH COURT PESHWAR.

W. P No. 119 /2016

Engineer Musharaf Shah Assistant Director, Remodeling of Warsak Canals System Project, Peshawar.

(Petitioner)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Irrigation Department Peshawar.
3. Project Director, Remodeling Warsak Canal System Project Peshawar.

(Respondents)

Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973

Prayer in Writ Petition:

On acceptance of this Writ Petition an appropriate Writ may please be issued directing the respondents to act in accordance with law and to project allowance to the petitioner against the post of Assistant Director, Remodeling of Warsak Canals System Project Peshawar w.e.f 23.04.2015 i.e date of posting of the petitioner, the letter dated 20.11.2015 whereby the petitioner is declined the payment of Project allowance is illegal, unlawful, without lawful authority, against the law and thus ineffective upon the rights of the petitioner or any other remedy deemed proper may also be allowed

Respectfully Submitted:

1. That the petitioner is serving in the Irrigation Department and was appointed as Sub- Engineer holding the prescribed qualification of diploma in Associate Engineering after qualifying the Public Service Commission on 29.11.2006.

(17) 130 (7)

2. That the petitioner while posted as SDO, Drainage Sub Division, Mardan, he was transferred against the post of Assistant Director, Remodeling of Warsak Canals System Project Peshawar vide notification dated 23.04.2015. (Copy of the notification dated 23.04.2015 is attached as Annexure A)

3. That the petitioner was relieved of his post and joined/ allowed charge of the post in the Remodeling of Warsak Canals System Project Peshawar. (Copies of the LPC & arrival report dated 4.05.2015 are attached as Annexure B &C)

4. That initially the respondent No. 3 objected on the transfer of the petitioner to the Remodeling of Warsak Canals System Project Peshawar, he conveyed his reservation vide letter dated 6.05.2015, however vide letter dated 22.5.2015 he was directed to implement the order dated 23.04.2015. (Copies of the letters dated 5.05.2015 & 22.05.2015 are attached as Annexure D & E)

5. That again vide letter dated 8.06.2015, the respondent No. 3 requested for the withdrawal of the posting of the petitioner allegedly as his posting is beyond the approved strength of the project, though the officer who was replaced by the petitioner was performing his duties without any objection from him, thus vide letter dated 24.06.2015 the respondent No. 3 was strictly directed to entertain the claim of monthly salary of the petitioner. (Copies of the letters dated 8.06.2015 & 24.06.2015 are attached as Annexure F &G)

6. That though the petitioner was posted as Assistant Director Remodeling of Warsak Canals System Project Peshawar, however his pay was not released since his posting, as such the respondent No. 2 vide his letter dated 24.07.2015 allowed the petitioner to draw his salary against the vacant post of Assistant Engineer (leave Reserve) Office of the Chief Engineer (South) Irrigation. (Copy of the notification dated 24.07.2015 is attached as Annexure H)

7. That since the petitioner was performing his duties as Assistant Director in Remodeling of Warsak Canals System Project Peshawar, as such as per project policy of the provincial Govt the petitioner is entitled to draw project

ATTESTED

allowance at the rate of 30000/- P. M. (Copy of the letter dated 17.10.2008 is attached as Annexure I)

8. That the petitioner also submitted his application dated 31.08.2015 for the grant of project allowance however it was regretted vide letter dated 20.11.2015. (Copies of the application dated 31.08.2015 & regret letter dated 20.11.2015 are attached as annexure J &K)

9. That the above acts and omission of the respondents in not allowing project allowance to the petitioner and denying project allowance to his due rights are illegal, unlawful in violation of the rules, the petitioner having no other remedy in law is constrained to invoke the constitutional jurisdiction of this Honourable Court inter alia on the following grounds: -

GROUNDS OF WRIT PETITION:

a. That the acts and omission of the respondents in not allowing project allowance to the petitioner is illegal, in violation of law, without lawful authority and against the rights of the petitioner.

b. That on his posting in the project vested rights have been created in favor of the petitioner and the same can neither be withdrawn nor rescinded illegally.

c. That the petitioner has not treated been in accordance with law and he remained throughout deprived of project allowance due to in action/ slackness of the respondents thus they are bound to follow the law and to act in accordance with law.

d. That the officer (Mr. Riaz) vice whom the petitioner was posted has regularly received project allowance albeit the same is illegally denied to the petitioner allegedly that his pay is drawn against other post, though he is performing his duties in the project on full time basis.

(19)

e. That the petitioner is fit and eligible for the post of Assistant Director BPS-17 in the project similarly he is holding this post and performing duties in the project as such he is entitled to the project allowance therefore failure on the part of the respondents to follow the law and allow project allowance as per the letter dated 17.10.2008 is seriously affecting the rights of the petitioner.

f. That merely because the petitioner is allowed to draw his pay against the vacant post of Assistant Engineer (leave Reserve) Office of the Chief Engineer (South) Irrigation

g. That the petitioner seeks the permission of this Honourable Tribunal to rely on additional grounds at the hearing of this petition.

It is, therefore, humbly prayed that on acceptance of this petition an appropriate writ as prayed for may please be issued in favour of the petitioner and against the respondents.

Petitioner

Through

Ijaz Anwar
Advocate Peshawar
&

Zartaj Anwar Khan
Advocate Peshawar

List of Books:

1. Constitution, 1973
2. Books according to need.

CERTIFICATE

Certified that no writ petition on the same subject and between the same parties has ever been filed previously or concurrently.

Petitioner

7 (20)

IN THE PESHAWAR HIGH COURT PESHWAR.

W. P No. 119-P/2016

Engineer Musharaf Shah Assistant Director, Remodeling of Warsak Canals System Project, Peshawar.

(Petitioner)

VERSUS

1. Govt of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa Peshawar. Civil Secretariate Peshawar.
2. Secretary to Govt of Khyber Pakhtunkhwa Irrigation Department Peshawar.
3. Project Director, Remodeling Warsak Canal System Project Peshawar.

(Respondents)

Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973

Prayer in Writ Petition:

On acceptance of this Writ Petition an appropriate Writ may please be issued directing the respondents to act in accordance with law and to pay project allowance to the petitioner against the post of Assistant Director, Remodeling of Warsak Canals System Project Peshawar w.e.f 23.04.2015 i.e date of posting of the petitioner, the letter dated 20.11.2015 whereby the petitioner is declined the payment of Project allowance is illegal, unlawful, without lawful authority, against the law and thus ineffective upon the rights of the petitioner or any other remedy deemed proper may also be allowed

Respectfully Submitted:

1. That the petitioner is serving in the Irrigation Department and was appointed as Sub- Engineer holding the prescribed qualification of diploma in Associate Engineering after qualifying the Public Service Commission on 29.11.2006.

Civil Swat

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court
01 JUL

PESHAWAR HIGH COURT PESHAWAR

(21) (44)

ORDER SHEET

Serial No. of Order or Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
1	2	3
	20.6.2017	**Writ Petition No. 119-P/2016.** Present: Mr. Muhammad Asif Yousafzai, Advocate, for petitioner. ****** ***ROOH-UL-AMIN KHAN, J:-*** Through the instant constitutional jurisdiction of this Court under Article-199 of the Constitution of Islamic Republic of Pakistan, 1973, Engineer Musharaf Shah, Assistant Director, Remodeling of Warsak Canals System Project, Peshawar, petitioner herein, seeks issuance of an appropriate writ directing the respondents-department to pay him the project allowance w.e.f. 23.4.2015 i.e. date of posting of petitioner therein. 2. According to contents of the writ petition, the petitioner, being a civil servant serving in the Irrigations Department, was posted as Sub-Engineer against the post of Assistant Director, Remodeling of Warsak Canals System Project Peshawar vide order dated 23.4.2015, but was denied the payment of project allowance @

ATTESTED

ATTESTED

(22) (12)

30,000/- per month and was directed to draw the salary of the vacant post of Assistant Engineer (Leave Reserve) Office of the Chief Engineer (South) Irrigation. He is entitled to draw the project allowance as per policy of Provincial Government. To this effect he submitted an application to the concerned authority for payment of the said allowance, but in vain. Hence this petition.

3. Having heard the learned counsel for the petitioner, perusal of record would reveal that admittedly, the petitioner was employed as Sub-Engineer Irrigation Department on 29.11.2006 and was posted as SDO, Drainage Sub-Division, Mardan, when on 23.4.2015 he was transferred against the post of Assistant Director, Remodeling of Warsak Canals System Project, Peshawar as such seeks the payment of project Allowance @ Rs.30,000/- per month as per Policy of Government of Khyber Pakhtunkhwa. Admittedly, the petitioner is a civil servant and the allowance being part and parcel of pay, falls in terms and conditions of service, wherein the jurisdiction of this Court to adjudicate upon such matters is expressly barred

ATTESTED

ATTESTED
EXAMINER
Peshawar High Court
01 JUL 2017

(23) (13)

under article 212 of the Constitution of Islamic Republic of Pakistan, 1973.

4. For what has been discussed hereinabove, this petition being not maintainable stands dismissed. However, the petitioner is at liberty to voice his grievance before the proper forum, if so advised.

Announced on;
20th of June, 2017

Sd/- Rashad Aziz J
Sd/- Qalandar Ali J
Sd/- Syed Athar Shah J

JUDGE

JUDGE

JUDGE

CERTIFIED TO BE TRUE COPY
Examiner
Peshawar High Court, Peshawar
Authorised Under Art. 87 of the Qanun-e-Shahadat Order 1984

39374

"Zeeshad"

ATTESTED

01/7/17
01/7/17
04/7/17

Annexure (G) 124 (24)

To:

The Worthy Chief Secretary,
KPK at Civil Secretariat,
Peshawar.

Through Proper Channel

Subject: DEPARTMENTAL REPRESENTATION / APPEAL / REVIEW.

Respectfully Sheweth:

The appellant / petitioner very humbly submits as under:

1. That initially the appellant / petitioner was appointed as Sub-Engineer in Irrigation Deptt KPK in BPS-11 and was promoted to the post of Sub-Divisional Officer (SDO), but later on, transferred and adjusted as an Assistant Director BPS-17 for the project of Remodeling Warsak Canal System, Nowshera and Peshawar on the post/vacancy of Assistant Director Riaz Muhammad. (Copies of the order / notification are attached as Annexure "A").

2. That the said Riaz Muhammad was given the project allowance of Rs. 30,000/- per month but the appellant / petitioner was denied who preferred his departmental representation before the worthy Project Director RWCS on 31.08.2015 which was regretted through

ATTESTED

an order dated 20.11.2015 by him and being aggrieved the appellant / petitioner filed a Writ Petition bearing No.; 119-P/2016 wherein the comments from the respondent No. 2 and 3 were requisitioned / asked who filed the same, but that Writ Petition was disposed of vide order / judgment dated 20.06.2017. (Copies of the departmental representation regretal order / W. P, para-wise comments and order / judgment dated 20.06.2017 are attached as Annexure "B").

3. That hence the petitioner in the light of the above order / judgment dated 20.06.2017, approaches your good-self through the instant appeal / representation / review inter alia on the following amongst others:

GROUNDS:

A. That as it is evident from the record of the case, the person/officer who was working on the post prior to the appellant transfer was paid the project allowance of Rs. 30,000/- per month, but the petitioner was denied the same illegally.

B. That when it was paying to the appellant regularly till date and its payment is legal then how he has been denied for the initial period of one year only i.e. Rs. 360,000/- approximately.

ATTESTED

(3)
(26)

C. That it is the Constitutional command that every one should be dealt with in accordance with law and equal protection of law shall be extended to him, then nothing is left except the payment for the period of one year to the appellant.

D. That the Peshawar Hon'ble High Court, Peshawar through its full court judgment vide order dated 20.06.2017 already declared the said allowance as part and parcel of the terms and conditions of Service, therefore there is no ambiguity to release the same or order for its release to the appellant without any delay.

It is, therefore, most humbly prayed that on acceptance of the instant Representation / Departmental Appeal / Review the authorities concerned may very graciously be directed to pay the outstanding allowance for about the period of one year i.e. Rs. 360,000/- for the best interest of law, fairness and justice.

Dated: 18.07.2017

Yours obediently,

Musharaf Shah
Assistant Director (BPS-17)
Remodeling of Warsak Canals System Project, Peshawar.

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM IN DISTRICT PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774-5 Fax: 091-5201615

183

(27)

No 22112-C /RWCP

Dated Peshawar the 19/07/2017

To

The Section Officer (Establishment)
Govt. of Khyber Pakhtunkhwa
Irrigation Department
Peshawar

S.O (Estt)
Irrig. Department
Diary No 782
Date 19/7/17

Subject **APPEAL**

Through: Proper Channel

Enclosed, find herewith an application in respect of Eng: Musharaf Shah Assistant Director Remodeling of Warsak Canal System Peshawar, which is in detail and self explanatory, please.

Encl: As Above.

PROJECT MANAGER

19/7

SA

D:\RWCS\APPEAL.doc

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

(28)

No. SO(E)/Irr:/1-52/2011
Dated Peshawar the 27th July, 2017

To

The Project Director,
Remodeling of Warsak Canals System Project,
Peshawar.

Subject: **APPEAL**

I am directed to refer to your letter No. 2212/2-C/RWCP dated 19.07.2017 on the subject noted above with the request to examine the appeal under the rules and forward clear recommendations to proceed further in the matter.

(FAZAL ELAHI) 27/7
Section Officer (Estt:)

27/7/17

ATTESTED

قیمت 50 روپے

15255

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

ایڈوکیٹ: [signature]

بار کونسل/ایسوسی ایشن نمبر: bc-15-6045

رابطہ نمبر: 0333-9466004

بعدالت جناب: KPK سروس ٹریبونل پشاور

منجانب: [illegible] اپیلنٹ

دعویٰ: سروس اپیل

علت نمبر:

مورخہ: 1352/2017 اپیل

جرم:

تھانہ:

بنام گورنمنٹ آف KPK وغیرہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے [illegible] وکیل مقرر

کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث و فیصلہ بر حلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تاکہ سند رہے

المرقوم: 22-11-017

العبد گواہ شد العبد

مقام Peshawar

Attested & Accepted by Counsel

Asad

Ash

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1352/2017 ENGR: MUSHARAF SHAH

VS

SECRETARY IRRIGATION AND OTHERS.

PARA WISE COMMENTS FOR AND ON BEHALF OF RESPONDENTS NO. 02 & 03

Respectfully Sheweth!

Preliminary Objections

1. That with due respect, the Honorable Court has got no jurisdiction to entertain this appeal.
2. That the appellant has not come to the Honorable tribunal with clean hands and has suppressed material facts from the Honorable Court.
3. That this appeal is not competent in its present form.
4. That project allowance does not come within the definition of terms and conditions
5. That the appellant has got no locus standi or cause of action to file the instant writ petition.
6. That the appellant is estopped by his own conduct to bring the appeal.

Para wise replies are as under:

1. Para 1 is partially true.

The appellant was initially appointed as Sub Engineer in BPS-11 and later on promoted to the post of SDO. However, the transfer order was objected by respondent No. 3 giving the following observations.

"Higher-ups may be approached for review of posting orders. "FDRD" is in the winding stage and Assistant Director's strength is complete for RWCS".

2. Para 2 is misleading.

The Project Director vide his letter No. 284/5-E/RWCP, dated 06-05-2015 requested the Secretary to reconsider the transfer case of the appellant and withdraw the same to avoid subsequent complication (Copy enclosed as Annex-A).

3. The Para is misleading.

In letter No: SO(E)/IRR/4-10/77/Vol-II, dated 22-05-2015, (Annex-B), addressed to respondent No. 3. The Secretary (Respondent 2) asked to implement the order notified on 23-4-2015 (Annex-C). The Project Director (Respondent No. 3) again requested vide letter No. 391/5-E/RWCP, dated 8-6-2015 (Annex-D) to review the posting orders. In case of his transfer to the project, his salary would not be possible, as the sanctioned strength of Assistant Directors will increase to 5 instead of 4 posts.

4. Vide notification No. SO(E)/IRR/4-10/77/Vol-V, dated 24-07-2015 (Annex-E), he was posted against the vacant post of Assistant Engineer (leave reserve) in office of the Chief Engineer (South) Peshawar and was directed to work in RWCS on detailment basis.

5. The Para is misleading.

The applicant was posted as Assistant Engineer (leave reserve) in the office of the Chief Engineer (South). He was not at par with Mr. Riaz, who was serving in RWCS. Therefore Mr. Musharaf Shah was not entitled to the project allowance as per notification quoted above in Para 4. Further project allowance does not come within the definition of pay so does not come within Terms & Condition. Hence this honorable tribunal has no jurisdiction to adjudicate the matter.

6. Admittedly, an application dated 31-08-2015 was forwarded by the applicant and due response was given to him by letter No. 794/5-E/RWCP, dated 20-11-2015 (Annex-F), stating that "your pay is adjusted w.e.f 01-05-2015 against the vacant post of Assistant Engineer (leave reserve) referring to the notification mentioned in Para 4 above.

7. There is no second departmental appeal under service law. Hence instant appeal is badly time barred.

8. No comments.

Grounds: Para A, B and C are irrelevant and the assertion are incorrect.

A. Incorrect the applicant is not entitled for the same.

B. Incorrect no legal right of the applicant has been violated.

C. The applicant has been dealt with in accordance with law & rules.

D. Pertains to record however as per reported judgment of supreme court in "1997 SCMP 1026" project allowance does not come within the Terms & Condition of service.

E. The status of Mr. Riaz was not at par with the status of the appellant, vide notification refer in Para 4 above.

F. Incorrect.
The respondent have taken all the measure in accordance with the law.

G. Incorrect
The laws have not been violated.

H. Para H needs no reply

It is pertinent to mention that when the post was fallen vacant on promotion of an Assistant Director to the post of Executive Engineer, the competent authority was pleased to adjust Mr. Musharaf Shah from leave reserve post to the vacant post of the project and allowed him pay and allowances including project allowance vide letter No. SO (E)/Irr/4-10/77/Vol-V, dated 21-04-2016 copy enclosed as (Annex-G). It is therefore prayed that on acceptance of the reply / comments, the appeal may very graciously be dismissed.

Secretary to
Govt. of Khyber Pakhtunkhwa
Irrigation Department.
6/7/18.
Respondent 2

Project Director
RWCS Irrigation Deptt:
Peshawar
Respondent 3

Annex = (A) 43

57
56
59
60

GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR REMODELING OF WARSAK CANALS
SYSTEM IRRIGATION DEPARTMENT CIVIL COLONY KABABYAN
WARSAK ROAD
PESHAWAR.
Ph No 091- 9222774-5, Fax No 091-5201615

No. 284 / 5 - E /RWCP
Dated Peshawar the 06 / 05 /2015

To

The Secretary irrigation
Govt. of Khyber Pakhtunkhwa
Peshawar

56 endsd

Subject: **NOTIFICATION.**
Ref: Notification No. SO(E)/Irr:/4-10/77 dated 23-04-2015

With reference to above, your kind attention is invited to the notification under reference, wherein Mr. Musharaf Shah Sub Divisional Officer Drainage Division Mardan has been posted in place of Mr. Riaz Mohammad Assistant Director of this office.

In this connection, it is elaborated that FDRD is in the process of winding during current financial year and the strength of Assistant Directors in RWCS is complete.

It is therefore, requested to kindly re-consider the posting orders of Musharaf Shah Assistant Director in RWCS. Same may please be withdrawn to avoid subsequent complication in future please.

PROJECT DIRECTOR

C:\Users\FDRD\Desktop\Notification.doc

21

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

No. SO(E)/Irr/4-10/77/Vol-II
Dated Peshawar, the 22-5-2015

To

The Project Director,
Remodeling of Warsak Canal System,
Peshawar.

SUBJECT: NOTIFICATION

I am directed to refer to your letter No. 284/5-E/RWCP dated 6-5-2015 on the subject noted above and to advise that orders notified by the administrative department on 23-4-2015 may be implemented in letter & spirit and allow Mr. Musharaf Shah to continue as Assistant Director in the Remodeling of Warsak Canal System by relieving Mr. Muhammad Riaz, Assistant Director to assume his new assignment in the Rehabilitation of Irrigation System Project immediately in the public interest.

(Misal Khan)
Section Officer (Establishment)

Endst: No. & Date as above.

Copy of the above is forwarded to the PS to Minister for Irrigation, Khyber Pakhtunkhwa for information please.

Section Officer (Establishment)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar, the 23rd April, 2015

NOTIFICATION

No. SO(E)/IRRI:/4-10/77: The competent authority is pleased to order postings/transfers of the following officers of Irrigation Department with immediate effect in the public interest:-

S.#	Name of Officer	From	To
1	Mr. Musharaf Shah; Sub Divisional Officer.	SDO, Drainage Sub Division, Mardan.	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar. Vice No. 2
2	Mr. Riaz Muhammad, Sub Divisional Officer.	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar	Assistant Director, Rehabilitation of Irrigation System Project, Peshawar. Vice No. 3
3	Mr. Naseer-ud-Din, Sub Divisional Officer.	Assistant Director, Rehabilitation of Irrigation System Project, Peshawar.	SDO, Drainage Sub Division, Mardan. Vice No. 1
4	Mr. Nisar Ahmad, Sub Divisional Officer (OPS)	Assistant Engineer (OPS), L/R office of Chief Engineer (North)/SDO (OPS), Battagram Irrigation Sub Division	SDO, Irrigation Sub Division, Abbotabad. However, he will look after the charge of SDO, Battagram Irrigation Sub Division in addition to his own duties till further orders.
5	Mr. Fatehullah, Sub Divisional Officer.	SDO, Civil Canal Irrigation Sub Division, Bannu.	Hydrology Irrigation Sub Division, Bannu against the vacant post.
6	Mr. Faridullah, Sub Divisional Officer.	Under transfer to CRBC, Irrigation Division, D.I. Khan.	SDO, Civil Canal Irrigation Sub Division, Bannu. Vice No. 5

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No. & Date as above

Copy of the above is forwarded to:-

1- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2- The Chief Engineer (South), Irrigation Department.
3- The Chief Engineer (North), Irrigation Department.
4- The Superintending Engineer (H/Q) North Irrigation.
5- The Superintending Engineer (H/Q) South Irrigation.
6- The Project Director, Remodeling of Warsak Canals, System Project, Peshawar.
7- The Superintending Engineers, Irrigation Circles, Bannu, D.I. Khan, Mardan, Peshawar & Swabi.
8- The Project Director, Rehabilitation of Irrigation System Project, Peshawar.
9- The Officers concerned.
10- The Districts Accounts Officers, Abbotabad, Battagram, Bannu, D.I. Khan, Mardan & Swabi.
11- The Section Officer (Dev;) Irrigation Department w/r to his letter No. SO(Dev) IRR/2-140/WEB/2014 dated 15.10.2014.
12- PS to Minister for Irrigation, Khyber Pakhtunkhwa w/r to his Diary No. 172 dated 23.04.2015.
13- PS to Secretary Irrigation Department

GOVERNMENT OF KHYBER PAKHTUNKHWA

PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM IN DISTRICT
PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774-5 Fax: 091-5201615

No. 391/5-E /RWCP
Dated Peshawar the 8 / 6 /2015

To

The Secretary Irrigation
Govt: of Khyber Pakhtunkhwa
Peshawar.

Subject **NOTIFICATION.**

Ref: i, This office No. 284/5-E/RWCP dated 06-05-2015.

Your kind attention is invited to this office letter referred above wherein it was requested to withdraw the posting orders of Mr. Musharaf Shah, Assistant Director posted to this office, but vide No. SO(E)/Irr/4-10/77/Vol-II dated 22-05-2015 from Section officer (Establishment), it has directed to adjust / post the concerned officer. It is once again submitted that the sectioned strength of Assistant Director of RWCS as per approved PC-I is 4 (four) and through the posting of said officer / Assistant Director, the strength will increase to 5 (five). Thus the Drawing of salary would not possible in respect of the above named officer.

In light of the foregoing it is again requested to review the posting orders of the concerned officer to this office please

PROJECT DIRECTOR

D:\RWCS\NOTIFICATION (Musharaff Shah 2).doc

16 66 72

Annex-6 (23)

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 24th July, 2015

NOTIFICATION

No. SO(E)/IRRI/4-10/77/Vol-V: The competent authority is pleased to authorize Engr: Musharaf Shah, Assistant Engineer (BS-17) presently posted as Assistant Director Remodeling of Warsak Canal System, Peshawar to draw his outstanding salaries w.e.from 01.05.2015 against the vacant post of Assistant Engineer (Leave Reserve) office of Chief Engineer (South) Irrigation till further orders.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. The Project Director Remodeling of Warsak Canal System, Peshawar.
5. The Superintending Engineer (H/Q) South Irrigation.
6. The Superintending Engineer (H/Q) North Irrigation.
7. The officer concerned.
8. PS to Secretary Irrigation Department, Peshawar.
9. Master file.

DDA / Supdt

29/7

(NAIMATULLAH) 24/7/2015
Section Officer (Estt:)

GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM IN DISTRICT PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774 Fax: 091-5201615

No. 794 /5-E /RW
Dated Peshawar the 20 / 11

To

Mr. Musharaf Shah
Assistant Director
Remodeling of Warsak Canal System
Peshawar.

Subject **APPLICATION FOR PROVISION OF PROJECT ALLOWANCE.**

Reference: Your application No. Nil dated 31-08-2015.

I am directed to refer to the subject noted above and to state that as notification No.SO(E)Irr/4-10/72/vol-V dated 24-07-2015 issued by the Secre Irrigation Department Peshawar, your pay is adjusted w.e.f 01-05-2015 against vacant post of Assistant Engineer (leave reserve) Chief Engineer (South) Irriga Department Peshawar. Therefore, as per rules all the allowances are debitable to post from which the salary is being drawn.

PROJECT MANAG

Copy to:
1. Project Director Remodeling of Warsak Canal System Peshawar
2. Deputy Director Accounts Remodeling of Warsak Canal System Peshawar.

PROJECT MANAGE

E:\Misc 2\Proj Allow AD.doc

21

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

74

NOTIFICATION **Dated Peshawar 21st April, 2016**

No. SO(E)/IRRI/4-10/77/Vol-V: The competent authority is pleased to order postings/transfers of the following officers of Irrigation Department with immediate effect in the public interest:-

S. No	Name of the Officer	From	To
1	Engr: Alamzeb Khan, Assistant Engineer (BS-17)	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar.	Assistant Engineer, Rehabilitation of Irrigation System Project, Peshawar. Vice No. 2
2	Engr: Muhammad Arif Khan, Assistant Engineer (BS-17)	Assistant Engineer, Rehabilitation of Irrigation System Project, Peshawar.	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar. Vice No. 1

The competent authority is further pleased to authorize Engr: Musharaf Shah, Assistant Engineer (BS-17) to draw monthly salary against his current position i.e. Assistant Director, Remodeling of Warsak Canals System Project, Peshawar.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No. & Date as above

Copy of the above is forwarded to:-

1- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2- The Chief Engineer (North), Irrigation Department.
3- The Chief Engineer (South), Irrigation Department.
4- The The Project Director, Remodeling of Warsak Canals System Project, Peshawar.
5- The Project Director, Rehabilitation of Irrigation System Project, Peshawar.
6- The Superintending Engineer (H/Q) North Irrigation.
7- The Superintending Engineer (H/Q) South Irrigation.
8- PS to Senior Minister for Irrigation, Khyber Pakhtunkhwa.
9- Officers concerned.
10-PS to Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Department.
11-Master File.
12-Personal Files of the Officers.

(MISAL KHAN)
SECTION OFFICER (ESTT)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1352/2017 ENGR: MUSHARAF SHAH

VS

SECRETARY IRRIGATION AND OTHERS.

PARA WISE COMMENTS FOR AND ON BEHALF OF RESPONDENTS NO. 02, 03 & 05

Respectfully Sheweth!

Preliminary Objections

1. That with due respect, the Honorable Court has got no jurisdiction to entertain this appeal.
2. That the appellant has not come to the Honorable Tribunal with clean hands and has suppressed material facts from the Honorable Court.
3. That this appeal is not competent in its present form.
4. That project allowance does not come within the definition of terms and conditions.
5. That the appellant has got no locus standi or cause of action to file the instant writ petition.
6. That the appellant is estopped by his own conduct to bring the appeal.

Para wise replies are as under:

1. Para 1 is partially true.

The applicant was initially appointed as Sub Engineer in BPS-11 and later on promoted to the post of SDO. However, the transfer order was objected by respondent No. 3 giving the following observations.

"Higher-ups may be approached for review of posting orders. "FDRD" is in the winding stage and Assistant Director's strength is complete for RWCS".

2. The Para 2 is misleading.

The Project Director vide his letter No. 284/5-E/RWCP, dated 06-05-2015, requested the Secretary to reconsider the transfer case of the applicant and withdraw the same to avoid subsequent complication. (Copy enclosed as Annex-A)

3. The Para is misleading.

In letter No. SO(E)/IRR/4-10/77/Vol-II, dated 22-05-2015, (Annex-B) addressed to Respondent No. 3. The Secretary (Respondent 2) asked to implement the order notified on 23-04-2015 (Annex-C). The Project Director (Respondent 3), again requested vide letter No. 391/5-E/RWCP, dated 08-06-2015 (Annex-D) to review the posting orders. In case of his transfer to the project, his salary would not be possible, as the sanctioned strength of Assistant Directors will increase to 5 instead of 4 posts.

4. Vide notification No. SO(E)/IRR/4-10/77/Vol-V, dated 24-07-2015 (Annex-E), he was posted against the vacant post of Assistant Engineer (leave reserve) in office of the Chief Engineer (South) Peshawar, to draw his outstanding salaries.

5. The Para is misleading.

The applicant was posted as Assistant Engineer (leave reserve) in the office of the Chief Engineer (South). He was not at par with Mr. Riaz, who was serving in RWCS. Therefore, Mr. Musharaf Shah was not entitled to the project allowance as per notification quoted above in Para 4. Further project allowance does not come within the definition of pay so does not come within Terms & Condition. Hence this honorable tribunal has no jurisdiction to adjudicate the matter.

6. Admittedly, an application dated 31-08-2015 was forwarded by the applicant and due response was given to him by letter No. 794/5-E/RWCP, dated 20-11-2015,(Annex-F), stating that "your pay is adjusted w.e.f 01-05-2015 against the vacant post of Assistant Engineer (leave reserve) referring to the notification mentioned in Para 4 above.

7. There is no second departmental appeal under service law. Hence instant appeal is badly time barred.

8. No comments.

Grounds: Para A, B and C are irrelevant and the assertion are incorrect.

A. Incorrect the appellant is not entitled for the same.

B. Incorrect no legal right of the appellant has been violated.

C. The appellant has been dealt with in accordance with law & rules.

D. Pertains to record however as per reported judgment of Supreme Court reported in "1997 SCMP 1026" project allowance does not come within the Terms & Conditions of service.

E. The status of Mr. Riaz was not at par with the status of the appellant, vide notification refer in Para 4 above.

F. Incorrect.

The respondent has taken all the measure in accordance with the law.

G. Incorrect.

The laws have not been violated.

H. Para H needs no reply.

It is pertinent to mention that when the post was fallen vacant on promotion of an Assistant Director to the post of Executive Engineer, the competent authority was pleased to adjust Mr. Musharaf Shah from leave reserve post to the vacant post of the project and allowed him pay and allowances including project allowance vide letter No. SO(E)/Irr/4-10/77/Vol-V, dated 21-04-2016 (copy enclosed as Annex-G). It is therefore prayed that on acceptance of the reply / comments, the appeal may very graciously be dismissed.

Project Director	**Secretary Irrigation**	**Secretary Finance**
(Respondent No. 02)	**(Respondent No. 03)**	**(Respondent No. 05)**

D- 465/
3/7/

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1352/2017 ENGR: MUSHARAF SHAH

VS

SECRETARY IRRIGATION AND OTHERS.

PARA WISE COMMENTS FOR AND ON BEHALF OF RESPONDENTS NO. 02 & 03.

Respectfully Sheweth!

Preliminary Objections

1. That with due respect, the Honorable Court has got no jurisdiction to entertain th ~~petition~~ Appeal.

2. That the ~~petitioner~~ Appellant has not come to the Honorable ~~Court~~ Tribunal with clean hands and ha suppressed material facts from the Honorable Court.

3. That this ~~petition~~ Appeal is not competent in its present form.

4. That the petitioner is not entitled for the alleged allowances as per Rule 3~~1~~(2) of th Account Code Volume-I copy of the extract of the code is enclosed as ~~Annex 1. Th~~ relevant portion of the code is reproduced here under; That project allowance does not come within the defi

"When a Government servant whose main duties and post fall under on head of charge is entrusted with additional or subsidiary duties coming under anothe head, no portion of his pay and allowances shall be debited to the latter head".

5. That the ~~petitioner~~ appellant has got no locus standi or cause of action to file the instant wr petition~~, because, as per Project policy a Government~~ servant working on projec sanctioned post for full time is entitled ~~for project~~ allowance. Whereas, staff working o ~~detailment~~ are not entitled, if otherwise special directions issued by Government ~~Annex~~ as 2.

6. That the ~~petitioner~~ appellant is stopped by his own conduct to bring the ~~writ petition~~ Appeal.

7. ~~That Audit Department~~ has also observed the drawing of ~~Project Allowance~~ posting or ~~detailment~~ basis vide Advance Para Mp. 246 for the ~~Financial Year~~ 2012-13. Annex 3.

Para wise replies are as under

1. Para 1 is partially true.

The applicant was initially appointed as Sub Engineer in BPS-11 and later on promoted to the post of SDO. However, the transfer order was objected by respondent ~~No. 3 (Annex 4)~~ giving the following observations.

"Higher-ups may be approached for review of posting orders. "FDRD" is in the winding stage and Assistant Director's strength is complete for RWCS".

2. Para 2 is misleading.

The Project Director vide his letter No. 284/5-E/RWCP, dated 06-05-2015 ~~Annex~~ 5, requested the Secretary to reconsider the transfer case of the applicant and withdraw the same to avoid subsequent complication. (copy is "A"

3. The Para is misleading.

In letter No: SO(E)/IRR/4-10/77/Vol-II, dated 22-05-2015, (Annex-B), addressed to respondent No. 3. The Secretary (Respondent I) asked to implement the order notified on 23-4-2015. (Annex C). The Project Director (Respondent No. 3) again requested vide letter No. 391/5-E/RWCP, dated 8-6-2015 (Annex D) to review the posting orders. In case of his transfer to the project, his salary would not be possible, as the sanctioned strength of Assistant Directors will increase to 5 instead of 4 posts.

4. Vide notification No. SO(E)/IRR/4-10/77/Vol-V, dated 24-07-2015 (Annex E), he was posted against the vacant post of Assistant Engineer (leave reserve) in office of the Chief Engineer (South) Peshawar and was directed to work in RWCS on detailment basis

5. The Para is misleading.

The applicant was posted as Assistant Engineer (leave reserve) in the office of the Chief Engineer (South). He was not at par with Mr. Riaz, who was serving in RWCS. Therefore Mr. Musharaf Shah was not entitled to the project allowance as per notification quoted above in Para 4. further project allowance does not come within the definition of pay so does not come within Terms & condition Hence this Hon'ble Tribunal has no Jurisdiction to adjudicate the matter.

ıltiedly, an application dated 31-08-2015 was forwarded by the applicant and due response was given to him by letter No. 794/5-E/RWCP, dated 20-11-2015 (Annex-10), stating that "your pay is adjusted w.e.f 01-05-2015 against the vacant post of Assistant Engineer (leave reserve) referring to the notification mentioned in Para 4 above.

7. ~~Para 7 and 8 needs no reply.~~ There is no second departmental Appeal under Law Hence the instant Appeal is badly time barred. 8 – No comment

Grounds: Para A, B and C are irrelevant and the assertion are incorrect.

D. The Honorable High Court Peshawar has not ordered for the payment of the project allowance. The court, even remarked, that "this petition being not maintainable stands dismissed. However, the petitioner is at liberty to voice his grievances before the proper forum, if so advised" copy of the court's decision attached (Annex 11).

E. The status of Mr. Riaz was not at par with the status of the ~~applicant~~ Appellant, vide notification refer in Para 4 above.

F. Incorrect.
The respondent have taken all the measure in accordance with the law.

G. Incorrect.
The laws have not been violated.

H. Para H needs no reply.

It is pertinent to mention that when the post was fallen vacant on promotion of an Assistant Director to the post of Executive Engineer, the competent authority was pleased to adjust Mr. Musharaf Shah from leave reserve post to the vacant post of the project and allowed him pay and allowances including project allowance vide letter No. SO (E)/Irr/4-10/77/Vol-V, dated 21-04-2016 (copy enclosed) (Annex 12). It is therefore prayed that on acceptance of the reply / comments, the ~~petition~~ Appeal may very graciously be dismissed.

Dear Sir
Submitted for vetting please

vetted subject to connection Annexure Affidavit and AAG Approval

Please vet
DAH
02/07/2018

Additional Advocate General
Khyber Pakhtunkhwa
Service Tribunal Peshawar

2/7/18 AAG

2/7/18

Additional Advocate General
Khyber Pakhtunkhwa

A

Annexure A (8) (A)

Annexure B 195 56 10 59 59 60

GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR REMODELING OF WARSAK CANALS
SYSTEM IRRIGATION DEPARTMENT CIVIL COLONY KABABYAN
WARSAK ROAD
PESHAWAR.
Ph No 091- 9222774-5, Fax No 091-5201615

No. 2-84 / 5 - E /RWCP
Dated Peshawar the 06 / 05 /2015

To

The Secretary irrigation
Govt. of Khyber Pakhtunkhwa
Peshawar

56 endsd

Subject: **NOTIFICATION.**
Ref: Notification No. SO(E)/Irr:/4-10/77 dated 23-04-2015

With reference to above, your kind attention is invited to the notification under reference, wherein Mr. Musharaf Shah Sub Divisional Officer Drainage Division Mardan has been posted in place of Mr. Riaz Mohammad Assistant Director of this office.

In this connection, it is elaborated that FDRD is in the process of winding during current financial year and the strength of Assistant Directors in RWCS is complete.

It is therefore, requested to kindly re-consider the posting orders of Musharaf Shah Assistant Director in RWCS. Same may please be withdrawn to avoid subsequent complication in future please.

PROJECT DIRECTOR

C:\Users\FDRD\Desktop\Notification.doc

(14) (10A) B Annex-E

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

No. SO(E)/Irr/4-10/77/Vol-II
Dated Peshawar, the 22-5-2015

To

The Project Director,
Remodeling of Warsak Canal System,
Peshawar.

SUBJECT: NOTIFICATION

I am directed to refer to your letter No. 284/5-E/RWCP dated 6-5-2015 on the subject noted above and to advise that orders notified by the administrative department on 23-4-2015 may be implemented in letter & spirit and allow Mr. Musharaf Shah to continue as Assistant Director in the Remodeling of Warsak Canal System by relieving Mr. Muhammad Riaz, Assistant Director to assume his new assignment in the Rehabilitation of Irrigation System Project immediately in the public interest.

(Misal Khan)
Section Officer (Establishment)

Endst: No. & Date as above.

Copy of the above is forwarded to the PS to Minister for Irrigation, Khyber Pakhtunkhwa for information please.

Section Officer (Establishment)

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

ANNEXURE "A"

Dated Peshawar, the 23rd April, 2015

NOTIFICATION

No. SO(E)/IRRI:/4-10/77: The competent authority is pleased to order postings/transfers of the following officers of Irrigation Department with immediate effect in the public interest:-

S.#	Name of Officer	From	To
1	Mr. Musharaf Shah, Sub Divisional Officer.	SDO, Drainage Sub Division, Mardan.	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar. Vice No. 2
2	Mr. Riaz Muhammad, Sub Divisional Officer.	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar	Assistant Director, Rehabilitation of Irrigation System Project, Peshawar. Vice No. 3
3	Mr. Naseer-ud-Din, Sub Divisional Officer.	Assistant Director, Rehabilitation of Irrigation System Project, Peshawar.	SDO, Drainage Sub Division, Mardan. Vice No. 1
4	Mr. Nisar Ahmad, Sub Divisional Officer (OPS)	Assistant Engineer (OPS), L/R office of Chief Engineer (North)/SDO (OPS), Battagram Irrigation Sub Division	SDO, Irrigation Sub Division, Abbotabad. However, he will lookafter the charge of SDO, Battagram Irrigation Sub Division in addition to his own duties till further orders.
5	Mr. Fatehullah, Sub Divisional Officer.	SDO, Civil Canal Irrigation Sub Division, Bannu.	Hydrology Irrigation Sub Division, Bannu against the vacant post.
6	Mr. Faridullah, Sub Divisional Officer.	Under transfer to CRBC, Irrigation Division, D.I. Khan.	SDO, Civil Canal Irrigation Sub Division, Bannu. Vice No. 5

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No. & Date as above

Copy of the above is forwarded to:-

1- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2- The Chief Engineer (South), Irrigation Department.
3- The Chief Engineer (North), Irrigation Department.
4- The Superintending Engineer (H/Q) North Irrigation.
5- The Superintending Engineer (H/Q) South Irrigation.
6- The Project Director, Remodeling of Warsak Canals, System Project, Peshawar.
7- The Superintending Engineers, Irrigation Circles, Bannu, D.I. Khan, Mardan, Peshawar & Swabi.
8- The Project Director, Rehabilitation of Irrigation System Project, Peshawar.
9- The Officers concerned.
10- The Districts Accounts Officers, Abbotabad, Battagram, Bannu, D.I. Khan, Mardan & Swabi.
11- The Section Officer (Dev:) Irrigation Department w/r to his letter No. SO(Dev) IRR/2-140/WB/2014 dated 15.10.2014.
12- PS to Minister for Irrigation, Khyber Pakhtunkhwa w/r to his Diary No. 172 dated 23.04.2015.
13- PS to Secretary Irrigation Department.
14- Master File.
15- Personal Files of the Officers.

(MISAL KHAN)

GOVERNMENT OF KHYBER PAKHTUNKHWA

PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM IN DISTRICT
PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774-5 Fax: 091-5201615

No. 391/5-E /RWCP
Dated Peshawar the 8 / 6 /2015

To

The Secretary Irrigation
Govt: of Khyber Pakhtunkhwa
Peshawar.

Subject **NOTIFICATION.**

Ref: i, This office No. 284/5-E/RWCP dated 06-05-2015.

Your kind attention is invited to this office letter referred above wherein it was requested to withdraw the posting orders of Mr. Musharaf Shah, Assistant Director posted to this office, but vide No. SO(E)/Irr/4-10/77/Vol-II dated 22-05-2015 from Section officer (Establishment), it has directed to adjust / post the concerned officer. It is once again submitted that the sectioned strength of Assistant Director of RWCS as per approved PC-I is 4 (four) and through the posting of said officer / Assistant Director, the strength will increase to 5 (five). Thus the Drawing of salary would not possible in respect of the above named officer.

In light of the foregoing, it is again requested to review the posting orders of the concerned officer to this office please.

PROJECT DIRECTOR

D:\RWCS\NOTIFICATION (Musharaff Shah 2).doc

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 24th July, 2015

NOTIFICATION

No. SO(E)/IRRI/4-10/77/Vol-V: The competent authority is pleased to authorize Engr: Musharaf Shah, Assistant Engineer (BS-17) presently posted as Assistant Director Remodeling of Warsak Canal System, Peshawar to draw his outstanding salaries w.e.from 01.05.2015 against the vacant post of Assistant Engineer (Leave Reserve) office of Chief Engineer (South) Irrigation till further orders.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. The Project Director Remodeling of Warsak Canal System, Peshawar.
5. The Superintending Engineer (H/Q) South Irrigation.
6. The Superintending Engineer (H/Q) North Irrigation.
7. The officer concerned.
8. PS to Secretary Irrigation Department, Peshawar.
9. Master file.

(NAIMATULLAH) 24/7/2015
Section Officer (Estt:)

29/7/15

F

GOVERNMENT OF KHYBER PAKHTUNKHWA

PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM IN DISTRICT PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774 Fax: 091-5201615

(15)

No. 794/5-E /RWCP
Dated Peshawar the 20 / 11 /2015

To

Mr. Musharaf Shah
Assistant Director
Remodeling of Warsak Canal System
Peshawar.

Subject **APPLICATION FOR PROVISION OF PROJECT ALLOWANCE.**

Reference: Your application No. Nil dated 31-08-2015.

I am directed to refer to the subject noted above and to state that as per notification No.SO(E)Irr/4-10/72/vol-V dated 24-07-2015 issued by the Secretary Irrigation Department Peshawar, your pay is adjusted w.e.f 01-05-2015 against the vacant post of Assistant Engineer (leave reserve) Chief Engineer (South) Irrigation Department Peshawar. Therefore, as per rules all the allowances are debitable to the post from which the salary is being drawn.

PROJECT MANAGER

Copy to:

1. Project Director Remodeling of Warsak Canal System Peshawar
2. Deputy Director Accounts Remodeling of Warsak Canal System Peshawar.

PROJECT MANAGER

ATTESTED

E:\Misc 2\Proj Allow AD.doc

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

NOTIFICATION

Dated Peshawar 21st April, 2016

No. SO(E) IRR/4-10/77/Vol-V [illegible]

S. No	Name of the Officer	From	To
[illegible]	Engr. Aurangzeb Khan Assistant Engineer (BS-17)	Assistant Engineer Remodelling of Warsak Irrigation System Project Peshawar	Assistant Engineer Rehabilitation of Irrigation System Project Peshawar Vice No. 2
[illegible]	Engr. Muhammad Arif Khan Assistant Engineer (BS-17)	Assistant Engineer Rehabilitation of Irrigation System Project Peshawar	Assistant Engineer Remodelling of Warsak Canals System Project Peshawar Vice No. 1

[illegible] Competent authority is further pleased to authorize [illegible] Mushtaq [illegible] Assistant Engineer (BS-17) to draw monthly salary against the [illegible] post of Assistant Director Remodelling of Warsak Canals System Project Peshawar.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & Date as above

Copy of the above is forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar
2. The Chief Engineer (North), Irrigation Department
3. The Chief Engineer (South), Irrigation Department
4. The The Project Director, Remodelling of Warsak Canals System Project Peshawar
5. The Project Director, Rehabilitation of Irrigation System Project Peshawar
6. The Superintending Engineer (H/Q) North Irrigation.
7. The Superintending Engineer (H/Q) South Irrigation
8. PS to Senior Minister for Irrigation, Khyber Pakhtunkhwa
9. Officers concerned
10. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Irrigation Department
11. Personal file of the Officer.

[signature]

(2)

(4) IRR

(3)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1352/2017 ENGR: MUSHARAF SHAH

VS

SECRETARY IRRIGATION AND OTHERS.

PARA WISE COMMENTS FOR AND ON BEHALF OF RESPONDENTS NO. 02, 03 & 05

Respectfully Sheweth!

Preliminary Objections

1. That with due respect, the Honorable Court has got no jurisdiction to entertain this appeal.
2. That the appellant has not come to the Honorable Tribunal with clean hands and has suppressed material facts from the Honorable Court.
3. That this appeal is not competent in its present form.
4. That project allowance does not come within the definition of terms and conditions.
5. That the appellant has got no locus standi or cause of action to file the instant writ petition.
6. That the appellant is estopped by his own conduct to bring the appeal.

Para wise replies are as under:

1. Para 1 is partially true.

The applicant was initially appointed as Sub Engineer in BPS-11 and later on promoted to the post of SDO. However, the transfer order was objected by respondent No. 3 giving the following observations.

"Higher-ups may be approached for review of posting orders. "FDRD" is in the winding stage and Assistant Director's strength is complete for RWCS".

2. The Para 2 is misleading.

The Project Director vide his letter No. 284/5-E/RWCP, dated 06-05-2015, requested the Secretary to reconsider the transfer case of the applicant and withdraw the same to avoid subsequent complication. (Copy enclosed as Annex-A)

3. The Para is misleading.

In letter No. SO(E)/IRR/4-10/77/Vol-II, dated 22-05-2015, (Annex-B) addressed to Respondent No. 3. The Secretary (Respondent 2) asked to implement the order notified on 23-04-2015 (Annex-C). The Project Director (Respondent 3), again requested vide letter No. 391/5-E/RWCP, dated 08-06-2015 (Annex-D) to review the posting orders. In case of his transfer to the project, his salary would not be possible, as the sanctioned strength of Assistant Directors will increase to 5 instead of 4 posts.

4. Vide notification No. SO(E)/IRR/4-10/77/Vol-V, dated 24-07-2015 (Annex-E), he was posted against the vacant post of Assistant Engineer (leave reserve) in office of the Chief Engineer (South) Peshawar, to draw his outstanding salaries.

5. The Para is misleading.

The applicant was posted as Assistant Engineer (leave reserve) in the office of the Chief Engineer (South). He was not at par with Mr. Riaz, who was serving in RWCS. Therefore, Mr. Musharaf Shah was not entitled to the project allowance as per notification quoted above in Para 4. Further project allowance does not come within the definition of pay so does not come within Terms & Condition. Hence this honorable tribunal has no jurisdiction to adjudicate the matter.

6. Admittedly, an application dated 31-08-2015 was forwarded by the applicant and due response was given to him by letter No. 794/5-E/RWCP, dated 20-11-2015,(Annex-F), stating that "your pay is adjusted w.e.f 01-05-2015 against the vacant post of Assistant Engineer (leave reserve) referring to the notification mentioned in Para 4 above.

7. There is no second departmental appeal under service law. Hence instant appeal is badly time barred.

8. No comments.

Grounds: Para A, B and C are irrelevant and the assertion are incorrect.

A. Incorrect the appellant is not entitled for the same.

B. Incorrect no legal right of the appellant has been violated.

C. The appellant has been dealt with in accordance with law & rules.

D. Pertains to record however as per reported judgment of Supreme Court reported in "1997 SCMP 1026" project allowance does not come within the Terms & Conditions of service.

E. The status of Mr. Riaz was not at par with the status of the appellant, vide notification refer in Para 4 above.

F. Incorrect.

The respondent has taken all the measure in accordance with the law.

G. Incorrect.

The laws have not been violated.

H. Para H needs no reply.

It is pertinent to mention that when the post was fallen vacant on promotion of an Assistant Director to the post of Executive Engineer, the competent authority was pleased to adjust Mr. Musharaf Shah from leave reserve post to the vacant post of the project and allowed him pay and allowances including project allowance vide letter No. SO(E)/Irr/4-10/77/Vol-V, dated 21-04-2016 (copy enclosed as Annex-G). It is therefore prayed that on acceptance of the reply / comments, the appeal may very graciously be dismissed.

Project Director **(Respondent No. 02)**	**Secretary Irrigation** **(Respondent No. 03)**	**Secretary Finance** **(Respondent No. 05)**

D- 465/ 3/7/

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 1352/2017 ENGR: MUSHARAF SHAH

VS

SECRETARY IRRIGATION AND OTHERS.

PARA WISE COMMENTS FOR AND ON BEHALF OF RESPONDENTS NO. 02 & 0

Respectfully Sheweth!

Preliminary Objections

1. That with due respect, the Honorable Court has got no jurisdiction to entertain th ~~petition~~ Appeal.

2. That the ~~petitioner~~ Appellant has not come to the Honorable ~~Court~~ Tribunal with clean hands and ha suppressed material facts from the Honorable Court.

3. That this ~~petition~~ Appeal is not competent in its present form.

4. That project allowance does not come within the defi That the petitioner is not entitled for the alleged allowances as per Rule 3 ~~(2) of th~~ Account Code Volume-I copy of the extract of the code is enclosed as ~~Annex 1. Th~~ relevant portion of the code is reproduced here under;

"When a Government servant whose main duties and post fall under on head of charge is entrusted with additional or subsidiary duties coming under anothe head, no portion of his pay and allowances shall be debited to the latter head".

5. That the ~~petitioner~~ appellant has got no locus standi or cause of action to file the instant wr petition, ~~because, as per Project policy a Government~~ servant working on projec sanctioned post for full time is entitled for project allowance. Whereas, staff working o ~~detailment~~ are not entitled, if otherwise special directions issued by Government ~~Annex~~ as 2.

6. That the ~~petitioner~~ appellant is stopped by his own conduct to bring the ~~writ petition~~ Appeal.

7. ~~That Audit Department has also observed the drawing of Project Allowance~~ posting or ~~detailment~~ basis vide Advance Para Mp. 246 ~~for the Financial Year~~ 2012-13. Annex 3.

Para wise replies are as under:

1. Para 1 is partially true.

The applicant was initially appointed as Sub Engineer in BPS-11 and later on promoted to the post of SDO. However, the transfer order was objected by respondent ~~No. 3 (Annex 4)~~ giving the following observations.

"Higher-ups may be approached for review of posting orders. "FDRD" is in the winding stage and Assistant Director's strength is complete for RWCS".

2. Para 2 is misleading.

The Project Director vide his letter No. 284/5-E/RWCP, dated 06-05-2015 ~~Annex~~ 5, requested the Secretary to reconsider the transfer case of the applicant and withdraw the same to avoid subsequent complication. (copy is "A"

3 The Para is misleading.

In letter No: SO(E)/IRR/4-10/77/Vol-II, dated 22-05-2015, (Annex-B), addressed to respondent No. 3. The Secretary (Respondent I) asked to implement the order notified on 23-4-2015. (Annex C). The Project Director (Respondent No. 3) again requested vide letter No. 391/5-E/RWCP, dated 8-6-2015 (Annex D) to review the posting orders. In case of his transfer to the project, his salary would not be possible, as the sanctioned strength of Assistant Directors will increase to 5 instead of 4 posts.

4. Vide notification No. SO(E)/IRR/4-10/77/Vol-V, dated 24-07-2015 (Annex E), he was posted against the vacant post of Assistant Engineer (leave reserve) in office of the Chief Engineer (South) Peshawar and was directed to work in RWCS on detailment basis.

5. The Para is misleading.

The applicant was posted as Assistant Engineer (leave reserve) in the office of the Chief Engineer (South). He was not at par with Mr. Riaz, who was serving in RWCS. Therefore Mr. Musharaf Shah was not entitled to the project allowance as per notification quoted above in Para 4. further project allowance does not come within the definition of pay so does not come within terms & condition Hence this Honorable Tribunal has no Jurisdiction to adjudicate the matter.

ıttedly, an application dated 31-08-2015 was forwarded by the applicant and due response was given to him by letter No. 794/5-E/RWCP, dated 20-11-2015 (Annex-~~F~~O), stating that "your pay is adjusted w.e.f 01-05-2015 against the vacant post of Assistant Engineer (leave reserve) referring to the notification mentioned in Para 4 above.

7. ~~Para 7 and 8 needs no reply.~~ There is no second departmental Appeal under Law. Hence the instant Appeal is badly time barred. 8 – No comment

Grounds: Para A, B and C are irrelevant and the assertion are incorrect.

D. The Honorable High Court Peshawar has not ordered for the payment of the project allowance. The court, even remarked, that "this petition being not maintainable stands dismissed. However, the petitioner is at liberty to voice his grievances before the proper forum, if so advised" copy of the court's decision attached (Annex 11).

E. The status of Mr. Riaz was not at par with the status of the ~~applicant~~ Appellant, vide notification refer in Para 4 above.

F. Incorrect.
The respondent have taken all the measure in accordance with the law.

G. Incorrect.
The laws have not been violated.

H. Para H needs no reply.

It is pertinent to mention that when the post was fallen vacant on promotion of an Assistant Director to the post of Executive Engineer, the competent authority was pleased to adjust Mr. Musharaf Shah from leave reserve post to the vacant post of the project and allowed him pay and allowances including project allowance vide letter No. SO (E)/Irr/4-10/77/Vol-V, dated 21-04-2016 (copy enclosed) (Annex ~~O~~ 12). It is therefore prayed that on acceptance of the reply / comments, the ~~petition~~ Appeal may very graciously be dismissed.

Dear Sir
submitted for vetting please

vetted subject to connection Annexure Affidavit and AAG Approval

Please vet
DA-II

09/07/2018

Additional Advocate General
Khyber Pakhtunkhwa
Service Tribunal Peshawar

2/7/18 AAG

2/7/18

Additional Advocate General

Appeal as above

Annexure A (8)

Annexure B

GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR REMODELING OF WARSAK CANALS
SYSTEM IRRIGATION DEPARTMENT CIVIL COLONY KABABYAN
WARSAK ROAD
PESHAWAR.
Ph No 091- 9222774-5, Fax No 091-5201615

No.284 / 5 - E /RWCP
Dated Peshawar the 06 / 05 /2015

To

The Secretary irrigation
Govt. of Khyber Pakhtunkhwa
Peshawar

Subject: NOTIFICATION.
Ref: Notification No. SO(E)/Irr:/4-10/77 dated 23-04-2015

With reference to above, your kind attention is invited to the notification under reference, wherein Mr. Musharaf Shah Sub Divisional Officer Drainage Division Mardan has been posted in place of Mr. Riaz Mohammad Assistant Director of this office.

In this connection, it is elaborated that FDRD is in the process of winding during current financial year and the strength of Assistant Directors in RWCS is complete.

It is therefore, requested to kindly re-consider the posting orders of Musharaf Shah Assistant Director in RWCS. Same may please be withdrawn to avoid subsequent complication in future please.

PROJECT DIRECTOR

C:\Users\FDRD\Desktop\Notification.doc

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

No. SO(E)/Irr/4-10/77/Vol-II
Dated Peshawar, the 22-5-2015

To

The Project Director,
Remodeling of Warsak Canal System,
Peshawar.

SUBJECT: NOTIFICATION

I am directed to refer to your letter No. 284/5-E/RWCP dated 6-5-2015 on the subject noted above and to advise that orders notified by the administrative department on 23-4-2015 may be implemented in letter & spirit and allow Mr. Musharaf Shah to continue as Assistant Director in the Remodeling of Warsak Canal System by relieving Mr. Muhammad Riaz, Assistant Director to assume his new assignment in the Rehabilitation of Irrigation System Project immediately in the public interest.

(Misal Khan)
Section Officer (Establishment)

Endst: No. & Date as above.

Copy of the above is forwarded to the PS to Minister for Irrigation, Khyber Pakhtunkhwa for information please.

Section Officer (Establishment)

ATTESTED

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

ANNEXURE "A"

Dated Peshawar, the 23rd April, 2015

NOTIFICATION

No. SO(E)/IRRI:/4-10/77: The competent authority is pleased to order postings/transfers of the following officers of Irrigation Department with immediate effect in the public interest:-

S.#	Name of Officer	From	To
1	Mr. Musharaf Shah, Sub Divisional Officer.	SDO, Drainage Sub Division, Mardan.	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar. Vice No. 2
2	Mr. Riaz Muhammad, Sub Divisional Officer.	Assistant Director, Remodeling of Warsak Canals System Project, Peshawar	Assistant Director, Rehabilitation of Irrigation System Project, Peshawar. Vice No. 3
3	Mr. Naseer-ud-Din, Sub Divisional Officer.	Assistant Director, Rehabilitation of Irrigation System Project, Peshawar.	SDO, Drainage Sub Division, Mardan. Vice No. 1
4	Mr. Nisar Ahmad, Sub Divisional Officer (OPS)	Assistant Engineer (OPS), L/R office of Chief Engineer (North)/SDO (OPS), Battagram Irrigation Sub Division	SDO, Irrigation Sub Division, Abbotabad. However, he will lookafter the charge of SDO, Battagram Irrigation Sub Division in addition to his own duties till further orders.
5	Mr. Fatehullah, Sub Divisional Officer.	SDO, Civil Canal Irrigation Sub Division, Bannu.	Hydrology Irrigation Sub Division, Bannu against the vacant post.
6	Mr. Faridullah, Sub Divisional Officer.	Under transfer to CRBC, Irrigation Division, D.I. Khan.	SDO, Civil Canal Irrigation Sub Division, Bannu. Vice No. 5

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst: No. & Date as above

Copy of the above is forwarded to:-

1- The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2- The Chief Engineer (South), Irrigation Department.
3- The Chief Engineer (North), Irrigation Department.
4- The Superintending Engineer (H/Q) North Irrigation.
5- The Superintending Engineer (H/Q) South Irrigation.
6- The Project Director, Remodeling of Warsak Canals, System Project, Peshawar.
7- The Superintending Engineers, Irrigation Circles, Bannu, D.I. Khan, Mardan, Peshawar & Swabi.
8- The Project Director, Rehabilitation of Irrigation System Project, Peshawar.
9- The Officers concerned.
10- The Districts Accounts Officers, Abbotabad, Battagram, Bannu, D.I. Khan, Mardan & Swabi.
11- The Section Officer (Dev:) Irrigation Department w/r to his letter No. SO(Dev) IRR/2-140/WB/2014 dated 15.10.2014.
12- PS to Minister for Irrigation, Khyber Pakhtunkhwa w/r to his Diary No. 172 dated 23.04.2015.
13- PS to Secretary Irrigation Department.
14- Master File.
15- Personal Files of the Officers.

(MISAL KHAN)

GOVERNMENT OF KHYBER PAKHTUNKHWA

PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM IN DISTRICT
PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774-5 Fax: 091-5201615

No. 391/5-E /RWCP
Dated Peshawar the 8 / 6 /2015

To

The Secretary Irrigation
Govt: of Khyber Pakhtunkhwa
Peshawar.

Subject **NOTIFICATION.**

Ref: i, This office No. 284/5-E/RWCP dated 06-05-2015.

Your kind attention is invited to this office letter referred above wherein it was requested to withdraw the posting orders of Mr. Musharaf Shah, Assistant Director posted to this office, but vide No. SO(E)/Irr/4-10/77/Vol-II dated 22-05-2015 from Section officer (Establishment), it has directed to adjust / post the concerned officer. It is once again submitted that the sectioned strength of Assistant Director of RWCS as per approved PC-I is 4 (four) and through the posting of said officer / Assistant Director, the strength will increase to 5 (five). Thus the Drawing of salary would not possible in respect of the above named officer.

In light of the foregoing, it is again requested to review the posting orders of the concerned officer to this office please.

PROJECT DIRECTOR

D:\RWCS\NOTIFICATION (Musharaff Shah 2).doc

GOVERNMENT OF KHYBER PAKHTUNKHWA
IRRIGATION DEPARTMENT

Dated Peshawar the 24th July, 2015

NOTIFICATION

No. SO(E)/IRRI/4-10/77/Vol-V: The competent authority is pleased to authorize Engr: Musharaf Shah, Assistant Engineer (BS-17) presently posted as Assistant Director Remodeling of Warsak Canal System, Peshawar to draw his outstanding salaries w.e.from 01.05.2015 against the vacant post of Assistant Engineer (Leave Reserve) office of Chief Engineer (South) Irrigation till further orders.

Secretary to Govt. of Khyber Pakhtunkhwa
Irrigation Department

Endst. No. & date even.

Copy forwarded to:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Chief Engineer (South) Irrigation Department, Peshawar.
3. The Chief Engineer (North) Irrigation Department, Peshawar.
4. The Project Director Remodeling of Warsak Canal System, Peshawar.
5. The Superintending Engineer (H/Q) South Irrigation.
6. The Superintending Engineer (H/Q) North Irrigation.
7. The officer concerned.
8. PS to Secretary Irrigation Department, Peshawar.
9. Master file.

(NAIMATULLAH) 24/7/2015
Section Officer (Estt:)

29/7/15

GOVERNMENT OF KHYBER PAKHTUNKHWA
PROJECT DIRECTOR, REMODELING OF WARSAK CANAL SYSTEM IN DISTRICT PESHAWAR & NOWSHERA, IRRIGATION DEPARTMENT,
Civil Colony, Warsak Road, Kababyan, Peshawar, Ph: 091-9222774 Fax: 091-5201615

No. 794/5-E /RWCP
Dated Peshawar the 20 / 11 /2015

To

Mr. Musharaf Shah
Assistant Director
Remodeling of Warsak Canal System
Peshawar.

Subject **APPLICATION FOR PROVISION OF PROJECT ALLOWANCE.**

Reference: Your application No. Nil dated 31-08-2015.

I am directed to refer to the subject noted above and to state that as per notification No.SO(E)Irr/4-10/72/vol-V dated 24-07-2015 issued by the Secretary Irrigation Department Peshawar, your pay is adjusted w.e.f 01-05-2015 against the vacant post of Assistant Engineer (leave reserve) Chief Engineer (South) Irrigation Department Peshawar. Therefore, as per rules all the allowances are debitable to the post from which the salary is being drawn.

PROJECT MANAGER

Copy to:
1. Project Director Remodeling of Warsak Canal System Peshawar
2. Deputy Director Accounts Remodeling of Warsak Canal System Peshawar.

PROJECT MANAGER

ATTESTED

E:\Misc 2\Proj Allow AD.doc

قیمت 50 روپے

90379

ایڈوکیٹ: اخونزادہ اسد اقبال

بارکونسل/ایسوسی ایشن نمبر: BC-09-1802

رابطہ نمبر: 0345-9499720

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: سروس ٹریبونل پشاور

منجانب: الیسٹر مشرف شاہ/سائل

الیسٹر مشرف شاہ

بنام

حکومت

دعویٰ: اپیل 1352/2017

علت نمبر: 385/2019 - RSA

مورخہ

جرم:

تھانہ

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی وجواب دہی کاروائی متعلقہ

آن مقام صاحبزادہ کیلئے اخونزادہ اسد اقبال کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا، نیز وکیل صاحب کو راضی نامہ کرنے وتقرر ثالث وفیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی، نیز دائر کرنے اپیل نگرانی ونظر ثانی وپیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب مقرر شدہ کو وہی جملہ مذکورہ بااختیارات حاصل ہوں گے اور اس کا ساختہ پرداختہ منظور وقبول ہوگا دوران مقدمہ میں جو خرچہ ہرجانہ التوائے مقدمہ کے سبب سے ہوگا۔ کوئی تاریخ پیشی مقام دورہ یا حد سے باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہٰذا وکالت نامہ لکھ دیا تا کہ سند رہے

المرقوم: 8/7/2021

PESHAWAR BAR ASSOCIATION PESHAWAR

العبد

الیسٹر مشرف شاہ

مقام پشاور کے لیے منظور ہے۔

Attested & Accepted

اخونزادہ اسد اقبال

نوٹ: اس وکالت نامہ کی فوٹو کاپی ناقابل قبول ہوگی۔

الیسٹر مشرف شاہ ولد یوسف شاہ

17102-1139666-1