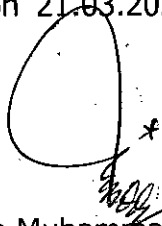


01.02.2022

Junior to counsel for the petitioner present. Mr. Muhammad Adeel Butt, Addl: AG alongwith Mr. Haseeb Ullah, Supdt for respondents present.

Junior to counsel for the petitioner seeks adjournment on the ground that learned senior counsel is not available today. Adjourned. To come up for further proceedings on 21.03.2022 before S.B.


(Mian Muhammad)
Member(E)


21-03-2022

Due to retirement of the Honorable Chairman the case is adjourned to come up for the same as before on 20-06-2022


Reader

20th June, 2022

1. None present for the petitioner. Mr. Kabirullah Khattak, Addl: AG for respondents present.
2. Called several times till last hours of the court but nobody turned up on behalf of the petitioner. In view of the above, the execution petition is dismissed for non-prosecution. Consign.
3. *Pronounced in open court in Peshawar and given under my hand and seal of the Tribunal this 20th day of June, 2022.*


(Kalim Arshad Khan)
Chairman

EP 174/2021

11.01.2022

Nemo for the petitioner. Mr. Muhammad Adeel Butt, Addl. AG alongwith Engr. Zulfiqar Ali, Additional Secretary Technical, C&W Department and Mr. Habibur Rehman, Administrative Officer office of the Chief Engineer (Centre) C&W Department, Peshawar are present. They state that respondent No. 1 i.e. Secretary, C&W Department could not attend due to a genuine reason that he has proceeded abroad early today for official visit in connection with Dubai Expo. However, they have brought the scanned copies of the documents including office order No. 419/4-E, dated 12.01.2022 and of tentative seniority list issued vide No. 52-E/1113/CE/C&WD dated 12.01.2022 alongwith copy of the Diploma of the petitioner. According to office order dated 12.01.2022, Mr. Rehman Ali, the petitioner has been absorbed as Road Inspector in C&W Division No. 1 Swat with effect from the date he acquired DAE (Civil) i.e. 12.03.2012 subject to final decision of august Supreme Court of Pakistan in CPLA No. 237-P/2021. Name of the petitioner has also been reflected in the seniority list. Copies of the said documents brought by the attendees are placed on file. To come up for further proceedings on 01.02.2022 before S.B.


Chairman

EP No. 174/2021

11.01.2022

During random checking of the Execution Petition files for the case and court management, it has been noted that the petitioner in this Execution Petition, having on his credit the judgment dated 10.02.2021 in Service Appeal No. 1176/2016, has brought the same for its implementation in letter and spirit. Notice was given to the respondents for submission of implementation report vide order dated 22.10.2021 with adjournment of the proceedings for 09.12.2021. According to proceedings reflected in order dated 09.12.2021, the department submitted comments which were placed on file and the copy of the same was handed over to the learned counsel for petitioner. The comments as placed on file have been perused. Para-4 of the comments as signed by the Secretary to Government of Khyber Pakhtunkhwa, C&W Department (respondent No.1) among others would reveal that the respondents are not serious to ensure compliance of the judgment of this Tribunal. They were never asked to comment upon the judgment rather they were asked for its implementation but the judgment of this Tribunal has been commented upon unreasonably and unfairly by them with citation of a judgment of the august Supreme Court of Pakistan having no relevancy to the fact in issue decided by this Tribunal in case of the petitioner. If the respondents, particularly respondent No. 1, are not sensitized about their legal obligation toward



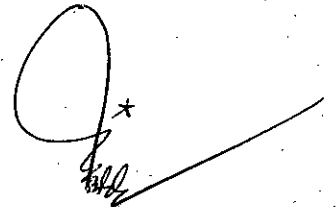
implementation of the judgment at hand, there is likelihood that they shall not only perpetuate in undermining the jurisdiction and lawful authority of this Tribunal but even their abhorrent conduct may embolden them for abuse of the processes of this Tribunal in future. Therefore, it has become expedient to exercise jurisdiction under rule 27 of Khyber Pakhtunkhwa Service Tribunal Rules, 1974 to require personal attendance of respondent No. 1 for showing cause of the failure of respondents in implementation of the judgment at credit of the petitioner, failing which why warrant of arrest for his committal to Civil Prison should not be issued as part of coercive measure in execution. For the time being it is deemed appropriate to direct that necessary Show Cause Notice be issued to the respondent No. 1, directing him to attend this Tribunal *pro se* on 13.01.2022 at 2 pm, positively. Service of notice be made in ordinary manner as well through other modes of communication including the electronic mode. Case to come up on 13.01.2022 at 2 pm before S.B.


Chairman

09.12.2021

Learned counsel for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Habib-ur-Rehman for the respondents present.

Representative of the department submitted comments on behalf of the respondents, which are placed on file and copy of the same is handed over to learned counsel for the petitioner. To come up for further proceedings on 01.02.2022 before S.B.



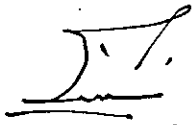
A handwritten signature in black ink, consisting of a large, stylized 'M' followed by a star and a long horizontal line extending to the right.

(MIAN MUHAMMAD)
MEMBER (E)

Form- A

FORM OF ORDER SHEET

Court of 174Execution Petition No. ~~174~~ /2021


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	08.09.2021	<p>The execution petition of Mr. Rehman Ali submitted today by Mr. Yasir Ali Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench at Peshawar on <u>22/10/21</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	22.10.2021	<p>Learned counsel for the petitioner present.</p> <p>Notices be issued to the respondents for submission of implementation report on the next date of hearing. To come up for implementation report before the S.B on 09.12.2021.</p> <p style="text-align: right;"> (SALAH-UD-DIN) MEMBER (J)</p>

The Implementation application of Mr. Rehman Ali Road Inspector W&S Department Swat received today by post on 07.09.2021 is incomplete on the following scores which is returned to the counsel for the applicant for completion and resubmission within 15 days.

- 1- Memorandum of application is misprinted.
- 2- Affidavit may be got attested by the Oath Commissioner.
- 3- Wakalat nama is blank which may be filled up.

No. 1784 /S.T,

Dt. 07/09/2021


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Yasir Salim Adv. Pesh.

R/siv

Resubmitted after the completion.

Yasir
Adv.

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

In the matter of
Appeal No.1176/2016
Decided on 10.02.2021

~~Handwritten signature~~

EP NO 174

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1186

Dated 07/09/2021

Rehman Ali, Road Inspector (OPS) Works and Services department
Swat..... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through **Secretary** Communication & Works Department Peshawar.
2. The Chief Engineer (Centre) Communication & Works **Department** Peshawar.
3. The Executive Engineer (Centre) Communication & **Works** Department Peshawar.....(**Respondents**)

Application for the implementation of the Judgment and Order dated 10.02.2021 of this Honourable Tribunal.

Respectfully Submitted:

1. That the above noted service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated 10.2.2021. (Copy of the judgment and Order is attached as Annexure A)
2. That vide judgment and order dated 10.2.2021, this Honourable Tribunal while accepting the appeal of the applicant, directed the respondents to consider the case of the applicant for the release of his salary at par with other similarly placed employees. The operating Para of the Judgment and order dated 10.20.2021, is reproduced below:

“7. In view of the situation, the instant appeal is accepted and the appellant is permananetly absorbed against the post of inspector with effect from the date, he acquired the prescribed qualification in 2011. Respondents are also directed to assign him proper place in the seniority list of road inspectors after his absorption. The appellant is also held entitled for all consequential benefits, if any, arising out of such absorption.

(copy of order and judgment dated 10.02.2021 is attached as Annexure A)

3. That after judgment and order of this Honourable Tribunal, the applicant continuously approached the respondents for the implementation of the judgment, however they are reluctant to implement the judgment of this Honourable Court.
4. That the respondents are legally bound to implement the judgment of this Honourable Tribunal in its true letter and spirit without any further delay.

It is, therefore, prayed that on acceptance of this application the judgment and order dated 10.02.2021 of this Honourable Tribunal be implemented in its true letter and spirit, to consider the appellant case for the release of his salary from the date when similarly placed employees allowed salaries.

Through

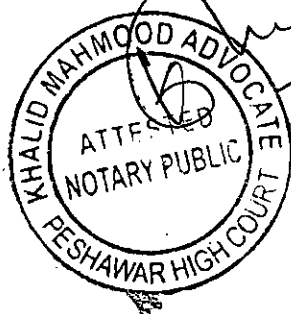
Applicant

YASIR SALEEM
Advocates Peshawar.

AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.

Rehman
Deponent



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**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

Appeal No. 1176/2016

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1722

Dated 28-11-2016

Rehman Ali, Road Inspector (OPS) Works and Services
department Swat.

(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Communication & Works Department Peshawar.
2. The Chief Engineer (Centre) Communication & Works Department Peshawar.
3. The Executive Engineer (Centre) Communication & Works Department Peshawar.

(Respondents)


Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, for Permanent absorption of the appellant against the post of Road Inspector w.e.f 02.04.2004 i.e when the appellant was adjusted as Road Inspector on OPS, for which the departmental appeal dated 12.08.016 has not been responded with in the statutory period.

Prayer in Appeal:

On acceptance of this departmental appeal, the appellant may kindly be permanently absorbed against the post of Road Inspector w.e.f the date 02.04.2004 i.e when the appellant was adjusted as Road Inspector on OPS and he may also be assigned proper place in the seniority list of Road Inspectors with all back/ consequential benefits.

Filed to-day
Registrar
28/11/16

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1176/2016

Date of Institution: 28.11.2016

Date of Decision: 10.02.2021



Rehman Ali, Road Inspector (OPS) Works & Services Department Swat.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Communication & Works Department and two other.

... (Respondents)

Mr. Yasir Saleem
Advocate

... For Appellant

Muhammad Riaz Khan Paindakhel
Assistant Advocate General

... For Respondents

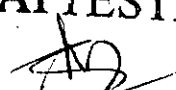
MR. HAMID FAROOQ DURRANI
MR. ATIQ UR REHMAN WAZIR

... CHAIRMAN
... MEMBER (E)

JUDGMENT: -

Mr. ATIQ UR REHMAN WAZIR: - Brief facts of the case are that the appellant was initially appointed as laboratory assistant (BPS-5) in road & research testing laboratory in respondents department in the year 1995. That in the year 2002, such laboratory was wound up and the appellant was placed in surplus pool, where he remained till November 2004, thereafter he was adjusted as road inspector(BPS-6) in the respondents department on 02-11-2004 in his own pay & scale. During the course, the appellant improved his qualification and got the diploma of associate engineer in the year 2011. In 2012, the appellant was adjusted as sub-engineer in respondents department as a stopgap arrangements vide order dated 08-05-2012, where he is still serving as sub-engineer. Earlier the appellant approached this Tribunal for inclusion of his name in the seniority list of sub-engineers, which however was dismissed vide

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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judgment dated 01-02-2016 in Service Appeal No. 1424/2014 on the ground of his order as a stopgap arrangement. The appellant again filed Service Appeal No. 512/2016 for regular promotion against the post of sub-engineer under 5% quota reserved for road inspectors, but during the course of proceedings, it transpired that since his initial adjustment order of road inspector was in own pay & scale, therefore he cannot be considered for promotion unless permanently absorbed against the post of road inspector, hence the appellant requested for withdrawal of his appeal, which was accepted by this Tribunal vide judgment dated 27-07-2016. The appellant filed departmental appeal dated 12-08-2016 for his absorption, but the same has not been responded within the statutory period, hence the instant service appeal as third round of litigation and with prayers that the appellant may be permanently absorbed against the post of road inspector w.e.f 02-04-2004, the date when he was adjusted as road inspector in own pay & scale and he may also be assigned proper place in the seniority list of road inspectors with all back/consequential benefits.

02. Written reply/comments were submitted by respondents.

03. Arguments heard and record perused.

04. Learned counsel for the appellant contended that the appellant served for seven years as Lab Assistant and two years in surplus pool, thereafter he was adjusted as road inspector, where he served until 2012, when he was adjusted against the post of sub engineer and since than he is performing his duty against the said post, but without any chance of promotion or inclusion of his name in the seniority list of road inspectors due to lame excuses put forth by respondents. That the appellant fought a long legal fight for his right with ultimate motive to be permanently absorbed against the said post being qualified in every respect for such absorption, but the respondents every time regretted his request under lame excuses. That contention of the respondents to the effect that cadre of road inspector is a dying cadre is misleading and referred to

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal.
Peshawar

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appointment letter in respect of recruitment of road inspector dated 13-05-2013 issued by respondents department as well as advertisement dated 12-12-2019 published by respondents department inviting applications for recruitment of road inspectors. The learned counsel further argued that as per method laid down by respondents department dated 25-03-2010 for recruitment, qualification and other conditions, in pursuance of provisions contained in sub rule 2 of Rule 3 of Civil Servant (Appointment, Promotion & Transfer) Rules, 1989, the prescribed qualification for road inspector is diploma of associate engineering in civil technology, which the appellant already possess as well as rendered 16 years of service against such post. That declaring him surplus and his subsequent adjustment against the said post was beyond the control of appellant and presumably if the adjustment/appointment order of the appellant against the post of road inspector is deficient in certain clauses is not responsibility of the appellant, rather the appellant has developed a vested right over the subject post after serving for 16 long years against the said post. The learned counsel also referred to Rule 11A of Civil Servant Act, 1973, which very clearly states that any civil servant who is rendered surplus as a result of re-organization or abolition of a department in pursuance of any government decision may be appointed, if he possesses the qualifications and fulfill other conditions applicable to that post. That it was not fault of the appellant, who was holding a BPS-5 post and was adjusted against a BPS-6 position in his own pay & scale and such fault prevented the appellant from his rightful claim of his absorption against such post. That the appellant shall not be deprived of his rightful claim for the fault of respondents. The learned counsel added that the appellant having a total of 25 years service is entitled to be permanently absorbed against the post of road inspector along with a proper place in the seniority list of road inspectors and prayed that the instant appeal may be accepted as prayed for.

05. Learned Assistant Advocate General appeared on behalf of official respondents have referred to Rule 23 of Service Tribunal Act, 1974 where the Tribunal shall not

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal.

entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a court or Tribunal of a competent jurisdiction. That the case of appellant has already been decided by this Tribunal, hence is hit by principle of resjudicata. The learned Assistant Advocate General further added that as is evident from his adjustment order dated 02-11-2004 that he was adjusted against the said post in his own pay & scale, which does not confer any vested right for his absorption. He further referred to Finance Department order dated 25-07-1998 and 12-04-2004, where all existing posts of road gangs in C&W department will be personal to the present incumbent and after becoming vacant as a result of retirement etc, no further recruitment will be made and the post shall stand abolished. That the same would also happen with the case of appellant. The learned Assistant Advocate General further added that the arguments on behalf of appellant regarding discriminatory treatment is found without any force and this Tribunal in a similar case has already dismissed such cases. Reliance was placed on Service Appeal No.536/2016 and Service Appeal No. 1134/2018. The learned Assistant Advocate General prayed that case of the appellant being devoid of merit may be dismissed.

06. We have heard learned counsel for the parties and perused the record. Record reveals that the appellant, while at the strength of surplus pool was holding a BPS-5 position, whereas he was adjusted against a BPS-6 position of road inspector (now BPS-7) in own pay & scale in violation of Rule 11 A of Civil Servant Act, 1973. Since it was obligatory upon the respondents as per provisions contained in Rule 11 A of Civil Servant Act, 1973 to appoint surplus employees against posts synonymous to their status, which the respondents did in case of appellant, but with a deficient adjustment order dated 02-11-2004 and which prevented the appellant from rightful claim of his absorption against such post. Such violation cannot be attributed to the appellant as rendering him surplus and his subsequent adjustment as road inspector was beyond the control of the appellant and the apex court in number of its judgment have held that

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal.

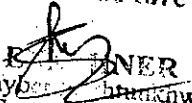
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civil servant shall not be punished for wrong doings committed by respondent department. It was also observed that the appellant also improved his qualifications in 2011 and was fit in every respect for absorption against the post as per laid down method notified on 25-03-2010 by the respondents. Natural justice demands that the appellant after his adjustment against the said post and after serving for 16 long years against the said post have developed a vested right over such post, which cannot be denied for the reason of its adjustment order as faulty. Equity demands that the appellant shall also be treated at par with other road inspectors as he invested precious years of his life serving against the said post with dedication. Arguments of learned attorney to the effect that case of the appellant was already decided by this Tribunal is found without any force, as previous prayers in his appeal were different from the instant prayers. Declaring the cadre of road inspector as dying cadre by respondents is also devoid of force, as the respondents have undertaken recruitment process in respect of road inspectors until 2019.

07. In view of the situation, the instant appeal is accepted and the appellant is permanently absorbed against the post of road inspector with effect from the date, he acquired the prescribed qualification in 2011. Respondents are also directed to assign him proper place in the seniority list of road inspectors after his absorption. The appellant is also held entitled to all consequential benefits, if any, arising out of such absorption. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
10.02.2021

Certified to be true copy


Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


(HAMID FAROOQ DURRANI)
CHAIRMAN


(ATIQ UR REHMAN WAZIR)
MEMBER (E)

WAKALAT NAMA

IN THE COURT OF Khyber Pakhtunkhwa Service Tribunal Peshawar

..... Rehman Adil VERSUS The Govt of KP and others
.....
.....

Accused/
Petitioner/
Appellant/
Plaintiff.

Respondent/
Defendant/
Complainant

Yasir Saleem Advocate High Court, Peshawar (herein after called the advocate) to be the Advocate for the Yasir Saleem in the above mentioned case, to do all the following acts, deeds and things or any of them, that is to say ;

- 1) To act and plead in the above mentioned case in this court or any other Court in which the same may be tried or heard in the first instance or in appeal or review or execution or in any other stage of its progress until its final decision.
- 2) To sign, verify and present pleadings, appeals, cross-objections, petitions for execution, review, revision, withdrawal, compromise or other petition or affidavits or other documents as shall be deemed necessary or advisable for the prosecution of said case in all its stages.
- 3) To withdraw or compromise in the said case or submit to arbitration any difference or dispute that shall arise touching or in any manner relating to the said case.
- 4) To receive money and grant receipts therefore and to do all other acts and things which may be necessary to be done for the progress and the course of the prosecution of the said case.
- 5) To engage any other Legal practitioner authorizing him to exercise the power and authorities hereby conferred on the Advocate whenever he may think fit to do so.

AND I hereby agree to ratify whatever the Advocate or his substitute shall do in the promises.

AND I hereby agree not to hold the Advocate or its substitute responsible for the result of the said case and in consequence of his absence from the court when the said case is called up for hearing

AND I hereby that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid, He shall be entitled to withdraw from the prosecution of the said case until the same is paid.

In witnesses whereof I / we have hereto signed at _____ the _____ day to _____ the year _____

Executant / Executants _____

Accepted subject to the terms regarding fee _____


YASIR SALEEM
Advocate High Court Peshawar

FR-4, 4th Floor, Bilour Plaza, Peshawar Saddar.
Bar Council: 10-6580, Cell No. 0331-8892589
Email: yasirsaleemadvocate@gmail.com

BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR

EP No 174/21

In the matter of
Appeal No.1176/2016
Decided on 10.02.2021

Rehman Ali, Road Inspector (OPS) Works and Services department
Swat..... (Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary
Communication & Works Department Peshawar.
2. The Chief Engineer (Centre) Communication & Works Department
Peshawar.
3. The Executive Engineer (Centre) Communication & Works
Department Peshawar.....(Respondents)

*Application for the implementation of the
Judgment and Order dated 10.02.2021 of
this Honourable Tribunal.*

Respectfully Submitted:

1. That the above noted service appeal was pending adjudication in this Honourable Tribunal and was decided vide judgment and order dated **10.2.2021**. (Copy of the judgment and Order is attached as **Annexure A**)
2. That vide judgment and order dated **10.2.2021**, this Honourable Tribunal while accepting the appeal of the applicant, directed the respondents to consider the case of the applicant for the release of his salary at par with other similarly placed employees. The operative Para of the Judgment and order dated **10.20.2021**, is reproduced below:

“7. In view of the situation, the instant appeal is accepted and the appellant is permanently absorbed against the post of inspector with effect from the date, he acquired the prescribed qualification in 2011. Respondents are also directed to assign him proper place in the seniority list of road inspectors after his absorption. The appellant is also held entitled for all consequential benefits, if any, arising out of such absorption.

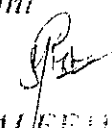
(copy of order and judgment dated 10.02.2021 is attached as Annexure A)

3. That after judgment and order of this Honourable Tribunal, the applicant continuously approached the respondents for the implementation of the judgment, however they are reluctant to implement the judgment of this Honorable Court.
4. That the respondents are legally bound to implement the judgment of this Honourable Tribunal in its true letter and spirit without any further delay.

It is, therefore, prayed that on acceptance of this application the judgment and order dated 10.02.2021 of this Honourable Tribunal be implemented in its true letter and spirit, to consider the appellant case for the release of his salary from the date when similarly placed employees allowed salaries.

Through

Applicant


YASIR SALEEM
Advocates Peshawar.

AFFIDAVIT

I do hereby solemnly affirm and declare on oath that the contents of the above application are true and correct and that nothing has been kept back or concealed from this Honourable Tribunal.

Deponent

**BEFORE THE KHYBER PAKHTUNKWA
SERVICE TRIBUNAL PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1722

Dated 28-11-2016

Appal No. 1176/2016

Rehman Ali, Road Inspector (OPS) Works and Services
department Swat.

(Appellant)

VERSUS

1. The Government of Khyber Pakhtunkhwa through Secretary Communication & Works Department Peshawar.
2. The Chief Engineer (Centre) Communication & Works Department Peshawar.
3. The Executive Engineer (Centre) Communication & Works Department Peshawar.

(Respondents)

Service Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, for Permanent absorption of the appellant against the post of Road Inspector w.e.f 02.04.2004 i.e when the appellant was adjusted as Road Inspector on OPS, for which the departmental appeal dated 12.08.016 has not been responded with in the statutory period.

Prayer in Appeal:


On acceptance of this departmental appeal, the appellant may kindly be permanently absorbed against the post of Road Inspector w.e.f the date 02.04.2004 i.e when the appellant was adjusted as Road Inspector on OPS and he may also be assigned proper place in the seniority list of Road Inspectors with all back/ consequential benefits.

Filed to-day

Registrar

28/11/16

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

9

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.1176/2016

Date of Institution: 28.11.2016

Date of Decision: 10.02.2021



Rehman Ali, Road Inspector (OPS) Works & Services Department Swat.
... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Communication & Works
Department and two other.
... (Respondents)

Mr. Yasir Saleem
Advocate
... For Appellant


Muhammad Riaz Khan Paindakhel
Assistant Advocate General
... For Respondents

MR. HAMID FAROOQ DURRANI
MR. ATIQ UR REHMAN WAZIR
... CHAIRMAN
... MEMBER (E)

JUDGMENT: -

Mr. ATIQ UR REHMAN WAZIR: - Brief facts of the case are that the appellant was initially appointed as laboratory assistant (BPS-5) in road & research testing laboratory in respondents department in the year 1995. That in the year 2002, such laboratory was wound up and the appellant was placed in surplus pool, where he remained till November 2004, thereafter he was adjusted as road inspector(BPS-6) in the respondents department on 02-11-2004 in his own pay & scale. During the course, the appellant improved his qualification and got the diploma of associate engineer in the year 2011. In 2012, the appellant was adjusted as sub-engineer in respondents department as a stopgap arrangements vide order dated 08-05-2012, where he is still serving as sub-engineer. Earlier the appellant approached this Tribunal for inclusion of his name in the seniority list of sub-engineers, which however was dismissed vide

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

5

judgment dated 01-02-2016 in Service Appeal No. 1424/2014 on the ground of his order as a stopgap arrangement. The appellant again filed Service Appeal No. 512/2016 for regular promotion against the post of sub-engineer under 5% quota reserved for road inspectors, but during the course of proceedings, it transpired that since his initial adjustment order of road inspector was in own pay & scale, therefore he cannot be considered for promotion unless permanently absorbed against the post of road inspector, hence the appellant requested for withdrawal of his appeal, which was accepted by this Tribunal vide judgment dated 27-07-2016. The appellant filed departmental appeal dated 12-08-2016 for his absorption, but the same has not been responded within the statutory period, hence the instant service appeal as third round of litigation and with prayers that the appellant may be permanently absorbed against the post of road inspector w.e.f 02-04-2004, the date when he was adjusted as road inspector in own pay & scale and he may also be assigned proper place in the seniority list of road inspectors with all back/consequential benefits.

02. Written reply/comments were submitted by respondents.

03. Arguments heard and record perused.

04. Learned counsel for the appellant contended that the appellant served for seven years as Lab Assistant and two years in surplus pool, thereafter he was adjusted as road inspector, where he served until 2012, when he was adjusted against the post of sub engineer and since than he is performing his duty against the said post, but without any chance of promotion or inclusion of his name in the seniority list of road inspectors due to lame excuses put forth by respondents. That the appellant fought a long legal fight for his right with ultimate motive to be permanently absorbed against the said post being qualified in every respect for such absorption, but the respondents every time regretted his request under lame excuses. That contention of the respondents to the effect that cadre of road inspector is a dying cadre is misleading and referred to

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

appointment letter in respect of recruitment of road inspector dated 13-05-2013 issued by respondents department as well as advertisement dated 12-12-2019 published by respondents department inviting applications for recruitment of road inspectors. The learned counsel further argued that as per method laid down by respondents department dated 25-03-2010 for recruitment, qualification and other conditions, in pursuance of provisions contained in sub rule 2 of Rule 3 of Civil Servant (Appointment, Promotion & Transfer) Rules, 1989, the prescribed qualification for road inspector is diploma of associate engineering in civil technology, which the appellant already possess as well as rendered 16 years of service against such post. That declaring him surplus and his subsequent adjustment against the said post was beyond the control of appellant and presumably if the adjustment/appointment order of the appellant against the post of road inspector is deficient in certain clauses is not responsibility of the appellant, rather the appellant has developed a vested right over the subject post after serving for 16 long years against the said post. The learned counsel also referred to Rule 11A of Civil Servant Act, 1973, which very clearly states that any civil servant who is rendered surplus as a result of re-organization or abolition of a department in pursuance of any government decision may be appointed, if he possesses the qualifications and fulfill other conditions applicable to that post. That it was not fault of the appellant, who was holding a BPS-5 post and was adjusted against a BPS-6 position in his own pay & scale and such fault prevented the appellant from his rightful claim of his absorption against such post. That the appellant shall not be deprived of his rightful claim for the fault of respondents. The learned counsel added that the appellant having a total of 25 years service is entitled to be permanently absorbed against the post of road inspector along with a proper place in the seniority list of road inspectors and prayed that the instant appeal may be accepted as prayed for.

05. Learned Assistant Advocate General appeared on behalf of official respondents have referred to Rule 23 of Service Tribunal Act, 1974 where the Tribunal shall not

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal.

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entertain any appeal in which the matter directly and substantially in issue has already been finally decided by a court or Tribunal of a competent jurisdiction. That the case of appellant has already been decided by this Tribunal, hence is hit by principle of resjudicata. The learned Assistant Advocate General further added that as is evident from his adjustment order dated 02-11-2004 that he was adjusted against the said post in his own pay & scale, which does not confer any vested right for his absorption. He further referred to Finance Department order dated 25-07-1998 and 12-04-2004, where all existing posts of road gangs in C&W department will be personal to the present incumbent and after becoming vacant as a result of retirement etc, no further recruitment will be made and the post shall stand abolished. That the same would also happen with the case of appellant. The learned Assistant Advocate General further added that the arguments on behalf of appellant regarding discriminatory treatment is found without any force and this Tribunal in a similar case has already dismissed such cases. Reliance was placed on Service Appeal No.536/2016 and Service Appeal No. 1134/2018. The learned Assistant Advocate General prayed that case of the appellant being devoid of merit may be dismissed.

06. We have heard learned counsel for the parties and perused the record. Record reveals that the appellant, while at the strength of surplus pool was holding a BPS-5 position, whereas he was adjusted against a BPS-6 position of road inspector (now BPS-7) in own pay & scale in violation of Rule 11 A of Civil Servant Act, 1973. Since it was obligatory upon the respondents as per provisions contained in Rule 11 A of Civil Servant Act, 1973 to appoint surplus employees against posts synonymous to their status, which the respondents did in case of appellant, but with a deficient adjustment order dated 02-11-2004 and which prevented the appellant from rightful claim of his absorption against such post. Such violation cannot be attributed to the appellant as rendering him surplus and his subsequent adjustment as road inspector was beyond the control of the appellant and the apex court in number of its judgment have held that

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,

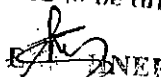
8

civil servant shall not be punished for wrong doings committed by respondent department. It was also observed that the appellant also improved his qualifications in 2011 and was fit in every respect for absorption against the post as per laid down method notified on 25-03-2010 by the respondents. Natural justice demands that the appellant after his adjustment against the said post and after serving for 16 long years against the said post have developed a vested right over such post, which cannot be denied for the reason of its adjustment order as faulty. Equity demands that the appellant shall also be treated at par with other road inspectors as he invested precious years of his life serving against the said post with dedication. arguments of learned attorney to the effect that case of the appellant was already decided by this Tribunal is found without any force, as previous prayers in his appeal were different from the instant prayers. Declaring the cadre of road inspector as dying cadre by respondents is also devoid of force, as the respondents have undertaken recruitment process in respect of road inspectors until 2019.


07. In view of the situation, the instant appeal is accepted and the appellant is permanently absorbed against the post of road inspector with effect from the date, he acquired the prescribed qualification in 2011. Respondents are also directed to assign him proper place in the seniority list of road inspectors after his absorption. The appellant is also held entitled to all consequential benefits, if any, arising out of such absorption. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
10.02.2021

Certified to be true copy


ATIQ UR REHMAN WAZIR
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


(HAMID FAROOQ DURRANI)
CHAIRMAN


(ATIQ UR REHMAN WAZIR)
MEMBER (E)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR
EXECUTION PETITION NO.174/ 2021

Mr. Rehman Ali, Road
Inspector (OPS) C&W
Division No.1 Swat

V/S Govt of Khyber Pakhtunkhwa &
Others
(2) Chief Engineer (Centre) C&W
Deptt Peshawar

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①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION PETITION NO: 174/2021

(In the matter of Service Appeal. 1176/2016 decided on 10.02.2021)

1. Rehman Ali Road Inspector (OPS)
Works & Services Department, Swat. _____ **APPELLANT**

VERSUS

1. The Government of Khyber Pakhtunkhwa through
Secretary C&W Department, Peshawar.
2. The Chief Engineer (Centre)
C&W Department Khyber Pakhtunkhwa, Peshawar.
3. The Executive Engineer, Highway Division Swat,
(Incorrect address shown as Executive Engineer (Centre),
C&W Department Peshawar). _____ **RESPONDENTS**

COMMENTS OF REPLYING RESPONDENTS

RESPECTFULLY SHEWETH!

PRELIMINARY OBJECTION

1. The instant Execution Petition is bad for Mis-joinder and Non-joinder of necessary parties.
2. The instant petition is not liable to be entertained as on passing of this Tribunal Orders dated 10.02.2021 further sent to Executive Engineer (Centre) C&W Peshawar vide Memo No. 487/ST dated 04.03.2021, the case was taken-up with Law Department for its scrutiny as to whether the case is fit for filing C.P.L.A or otherwise. Vide letter No.275-E/609/CEC/C&WD dated 04.03.2021 and SO(Lit)C&W/1-185/2021 dated 09.03.2021 (**Annexed-I/II**).
3. On the decision taken in the Scrutiny Committee meeting held on 17.03.2021 in the Law Department as contained in Agenda Item No. 06 communicated vide Memo No. SO (Lit)/LD/9-26(2)/ C&W/2021/3227 dated 17.03.2021 (**Annexed-III**), it was advised to file Appeal/CPLA in the Supreme Court of Pakistan and the CPLA No. 237-P/2021 has since been filed on 02.04.2021 in the Apex Supreme Court of Pakistan in its Branch Registry at Peshawar.
4. That the Appellant has since been served proper notice about the filing of CPLA with Stay Application through Registered Post by the Advocate-on-Record, Supreme Court of Pakistan (Photo Copy CPLA, Stay application and Notice to Appellant/Respondent (Registered A/D, are **Annexed-IV, V & VI**) and as such further proceeding on the Execution Petition before this honorable Tribunal may be suspended till the final out-come of CPLA and Stay Application, maintaining the Status Quo.

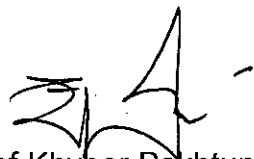
ON FACTS

1. Correct to the extent of this Honourable Tribunal orders dated 10.02.2021.

- 2. Correct.
- 3. Incorrect. As explained in above paras of Preliminary Objections, the replying Respondents took-up the case with Law Department and on the decision of Competent Authority, CPLA alongwith Stay Application No. 237-P of 2021 maintaining Status Quo and Proper Service Notice on the Appellant by the Advocate-on-Record Supreme Court of Pakistan has been filed on 02.04.2021 just after 30-days of the orders received through Service Tribunal letter dated 04.03.2021 and as such mis-stated in this para-3 of the Petition. The Petitioner is well aware of the said Litigation and has hidden kept Secret this point from this Honorable Tribunal just to get sympathies.
- 4. No doubt that any order passed by courts have to be honored but under the circumstances and as per Law, the aggrieved parties have been vested with right to approach higher court i.e. Supreme Court of Pakistan if there is any controversy in the orders of lower courts. **The petitioner still holds post of Road Inspector in (Own Pay Scale).** How he could be considered as Regular Road Inspector that too not processed through DPC/DSC. It is just to take undue benefits taking advantage of the impugned orders. OWN PAY AND SCALES posting/adjustment could not be termed a recognized or regular appointment. If this principle is followed, it will open another Pandora Box for the department and the Government as well. For the instant reference, a copy of the judgment dated 15.01.2014 (**Annexed-VII**) passed by the Apex Supreme Court of Pakistan in the CPs No. 2026 and 2029 of 2013) on account of illegal appointments, it has been expressly held that, **as one wrong or any number of wrongs, cannot be made basis for justification an illegal action under the garb of Article-25 of the constitution.**

So, in the wake of above said submissions, it is humbly prayed that the present Petition as before this Hon'able Tribunal may please be dismissed! **OR**

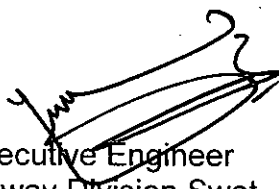
Orders may be passed to keep the Petition Sena-die till the final out-come of the CPLA/Stay Application, maintaining Status Quo as explained in the opening and replies to the paras of this Petition.



Secretary to Govt of Khyber Pakhtunkhwa
Communication & Works Department
Khyber Pakhtunkhwa Peshawar.
(Respondent-1)



Chief Engineer (Centre)
Communication & Works Department
Khyber Pakhtunkhwa Peshawar.
(Respondent-2)



Executive Engineer
Highway Division Swat
(Respondent-3)

**BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL PESHAWAR
EXECUTION PETITION NO.174/ 2021**

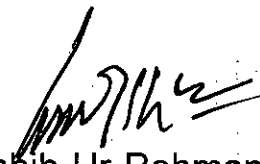
Mr. Rehman Ali, Road
Inspector (OPS) O/O XEN
C&W Division No.1 Swat

V/S Govt of Khyber Pakhtunkhwa &
Others
(2) Chief Engineer (Centre) C&W
Deptt Peshawar

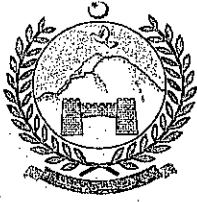
AFFIDAVIT

I, Habib-Ur-Rehman, Administrative Officer (BS-17) O/O Chief Engineer (Centre) C&W Department Peshawar, do hereby solemnly state that the accompanying comments in the instant Execution Petition, drawn are correct to the best of my knowledge, belief and nothing has been kept secret/ concealed from this Honorable Service Tribunal.

Deponent



(Habib-Ur-Rehman)
Administrative Officer
O/O Chief Engineer (Centre)
C&W Department Peshawar



OFFICE OF THE CHIEF ENGINEER (CENTRE)
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 275-E / 609 / CEC / C&WD

Dated Peshawar the 04 / 03 / 2021

To

The Section Officer (Litigation)
C&W Department, Peshawar.

[Handwritten signature]
04/3/21

Subject: SERVICE APPEAL 1176/2016- REHMAN ALI V/S GOVT OF KHYBER PAKHTUNKHWA

Enclosed please find herewith a brief history alongwith its connected documents of the subject cited Civil Appeal with the request to approach Law Department/Scrutiny committee to allow the C&W Department for filing the CPLA in the Supreme Court of Pakistan to safeguard the Government interest.

DA/As Above

[Handwritten signature]
CHIEF ENGINEER (CENTRE)
[Handwritten initials]

Most ImmediateCourt Matter

GOVERNMENT OF KHYBER PAKHTUNKHWA
COMMUNICATION & WORKS DEPARTMENT

NO.SO (Lit.)C&W/1-185/2021

Dated Peshawar the March 9, 2021

To

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

Subject:-

FILLING OF APPEAL IN THE SUPREME COURT OF
PAKISTAN IN SERVICE APPEAL 1176/2016 REHMAN ALI VS
GOVT. OF KHYBER PAKHTUNKHWA

Dear Sir,


I am directed to refer the Chief Engineer (Centre), C&W Department, Peshawar letter No. 275-E/609/CEC/C&WD dated 04-03-2021 on the subject noted above which is self explanatory for information and further necessary action.

I am further directed to request to include the case in the next meeting of Scrutiny Committee for discussion as to whether the case in hand is fit for filing of Appeal before the August Supreme Court of Pakistan, against the impugned judgment dated 10-02-2021 or otherwise?

Three Sets of brief/ working paper are also attached herewith.

Encl. as above.

Yours faithfully,


9-3-21


(MALIK MUHAMMAD ALI)
SECTION OFFICER (LITIGATION)

Endst: of even No. & Date

Copy forwarded to:-

1. The Chief Engineer (Centre), C&W Department, Peshawar w/r to his letter quoted for follow up.
2. The PS to Secretary C&W Department, Peshawar


SECTION OFFICER (LITIGATION)



GOVERNMENT OF KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS &
HUMAN RIGHTS DEPARTMENT

ANNEX III

6

(Agenda Item No.06)

No.SO (Lit)/LD/9-26(2)/C&W/2021/3227

Dated Peshawar the 17-03-2021

To

1. The Advocate General,
Khyber Pakhtunkhwa, Peshawar.
2. The Secretary to Govt. of Khyber Pakhtunkhwa, Communication & Works
Department, Peshawar.

SUBJECT SERVICE APPEAL NO. 1176/2016 REHMAN ALI VERSUS GOVERNMENT
OF KHYBER PAKHTUNKHWA THROUGH SECRETARY C&W AND
OTHERS.

I am directed to refer to your letter No.SO(Lit.)C&W/1-185/2021 dated 09.03.2021, on the subject noted above and to state that a meeting of the Scrutiny Committee has been held on 17-03-2021 under the Chairmanship of Secretary Law Department in order to determine the fitness of the subject case for filing of appeal / CPLA in the upper forum.

After threadbare discussion on the subject case particularly hearing the stance of Administrative Department, it was decided with consensus by the Scrutiny Committee that the subject case is a fit case for filing of Appeal / CPLA before the Supreme Court of Pakistan.

Therefore, the Administrative Department is advised to approach the office of Advocate General Khyber Pakhtunkhwa through well conversant representative alongwith complete record of the case for doing the needful forthwith, please (Power of Attorney for signature of petitioners attached).

Yours faithfully,


TAHIR IQBAL KHATTAK
SOLICITOR
LAW DEPARTMENT

Endst: No & Date Even.

Copy forwarded to the.

1. PS to Secretary Law Department.
2. PA to Law Officer, Law Department.


SOLICITOR

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 237-P /2021

1. Government of Khyber Pakhtunkhwa through Secretary Communication & Works Department, Peshawar
2. Chief Engineer (Centre) Communication & works Department, Peshawar
3. Executive Engineer Communication & Works Highway Division, Peshawar (Wrongly mention in appeal as Executive Engineer (Centre) which does not exist).

PETITIONERS

VERSUS

Rehman Ali, Road Inspector (OPS) Works and Services Department, Swat

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLES 212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT/ ORDER OF LEARNED KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR DATED 10/02/2021 IN SERVICE APPEAL NO:1176/2016.

RESPECTFULLY SHEWETH

The substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment / order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar does suffer from material illegality, factually incorrect and requires interference by this august Court?
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?
3. Whether the respondent is not entitled to be absorbed as regular employee on the post of Road Inspector being a dying cadre and illegally adjusted by the DCO who was not competent to do so as the respondent was not qualified for the post being lack of prescribed qualification?

4. Whether the respondent was not permanently adjusted on regular basis rather adjusted as surplus pool employee in his own pay and scale?
5. Whether after abolishment of impugned post being a dying cadre the respondent could be adjusted on the post permanently despite the fact that the same post was personal for the existence incumbents?
6. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has not legally resolved the question of absorption of respondent according to law?
7. Whether the respondent without obtaining NOC from the department for getting the qualification of DAE prescribed for the post of road Inspector which could not be considered for the post being illegally obtained?
8. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has legally erred by giving effect to the absorption of respondent from 2011 after the date of alleged qualification of (DAE) Diploma of Associate Engineer?
9. Whether previously the respondent claim for the said post was refused by the Service Tribunal being not qualified?
10. Whether the instant appeal before the Service Tribunal is hit by the principle of resjudicata which was not taken into consideration by the Service Tribunal?
11. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective?
12. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly followed applied and interpreted the law in the subject case?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

1. That the respondent was initially appointed as Lab Assistant in the office of C&W Department who was later on adjusted as Road Inspector by DCO irregularly as the respondent lacked the prescribed qualification of Road Inspector as the required qualification of Road Inspector is Diploma of Associate Engineer.
2. That the post of Road Inspector , Mate and coolies were declared personal to present incumbents as the Cabinet decision held on 6th June 1998 which was circulated by the finance No.B-1/5-8/98-99/FD dated 25/7/1998, and further

recruitment was discontinued therefore the transfer of respondent on the impugned post on permanent basis was irregular.

3. That the respondent previously agitated his permanent absorption on the impugned post before different forum including the service Tribunal but the same relief was refused vide WP NO.403-P/2013, Service Appeal No.1424/2014 and service appeal No.512/2016 dated 27/7/2016.
4. That the respondent again filed service appeal No.1176/2016 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar wherein Para-wise reply was asked which was filed and the stance of respondent was denied.
5. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted and allowed the service appeal of respondent by absorbing permanently on the post of Road Inspector from 2011 with all consequential benefits vide judgment and order dated 10/02/2021.
6. That the petitioners being aggrieved from the impugned judgment/order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 10/02/2021 in service appeal No.1176/2016 prefers this CPLA before this august Court.
7. That the petitioners seek leave to appeal against the impugned judgment and order dated 10/02/2021 in service appeal No.1176/2016.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order dated 10/02/2021 in service appeal No.1176/2016 may graciously be granted.

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CMA NO. 237-P /2021

IN

CPLA NO. _____ /2021

Government of Khyber Pakhtunkhwa through Secretary
Communication & Works Department Peshawar & Others
PETITIONERS

VERSUS

Rehman Ali
RESPONDENT

**APPLICATION UNDER ORDER XX RULE 1 OF THE
SUPREME COURT ORDERS & RULES 1980 FOR
SUSPENSION OF OPERATION OF THE IMPUGNED
JUDGMENT OF THE LEARNED SERVICE TRIBUNAL,
PESHAWAR DATED 10/02/2021 IN SERVICE APPEAL NO.
NO.1176/2016 AND MAINTAIN THE STATUS-QUO TILL
THE FINAL DECISION OF THE CASE.**

RESPECTFULLY SHEWETH:-

1. That the respondent was initially appointed as Lab Assistant in the office of C&W Department who was later on adjusted as Road Inspector by DCO irregularly as the respondent lacked the prescribed qualification of Road Inspector as the required qualification of Road Inspector is Diploma of Associate Engineer.
2. That the post of Road Inspector, Mate and coolies were declared personal to present incumbents as the Cabinet decision held on 6th June 1998 which was circulated by the finance No.B-1/5-8/98-99/FD dated 25/7/1998, and further recruitment was discontinued therefore the transfer of respondent on the impugned post on permanent basis was irregular.
3. That the respondent previously agitated his permanent absorption on the impugned post before different forum including the service Tribunal but the same relief was refused vide WP NO:403-P/2013, Service Appeal No.1424/2014 and service appeal No.512/2016 dated 27/7/2016.

- (11)
4. That the respondent again filed service appeal No.1176/2016 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar wherein Para-wise reply was asked which was filed and the stance of respondent was denied.
 5. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted and allowed the service appeal of respondent by absorbing permanently on the post of Road Inspector from 2011 with all consequential benefits vide judgment and order dated 10/02/2021.
 6. That the petitioner has a good prima facie case and balance of convenience also lies in maintaining status-quo.
 7. That if the impugned judgment and order is not suspended and status-quo is not granted the very purpose of this petition would be lost.

It is, therefore, humbly prayed that the operation of the impugned judgment/order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar in service appeal No.1176/2016 Dated 10/02/2021 may graciously be suspended and to maintain status quo till the final decision of the case.

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 237-f/2021

Government of Khyber Pakhtunkhwa through Secretary
Communication & Works Department, Peshawar & Others
-----PETITIONERS

VERSUS

Rehman Ali
-----RESPONDENT

AFFIDAVIT OF FACTS

I, Mian Saadullah Jandoli, Advocate-On-Record for the
Government/petitioners do hereby solemnly affirm and declare as under:-

- 1- That the contents of the accompany CPLA along with stay application of the Petition are true and correct to the best of my knowledge and belief.
- 2- That the facts have been obtained by perusal of the case and information furnished by the petitioners.

SWORN
Dated this the day

AT

PESHAWAR

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 2374 /2021

Government of Khyber Pakhtunkhwa through Secretary
Communication & Works Department, Peshawar & Others
-----PETITIONERS

VERSUS

Rehman Ali
-----RESPONDENT

AFFIDAVIT OF SERVICE

I, Mian Saadullah Jandoli, Advocate-On-Record for the
Government/petitioners do hereby solemnly affirm and declare as under:-

That I did serve the respondent with Notice Registered A/D
post to the effect that I am filing CPLA, stay application in the
above noted case against the judgment of Hon'ble Khyber
Pakhtunkhwa Service Tribunal, Peshawar in service appeal
No.1176/2016 in the Supreme Court of Pakistan in its Branch
Registry at Peshawar.

SWORN AT PESHAWAR
Dated this the day.

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government

(14)
Annex-VI

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 2378/2021

Government of Khyber Pakhtunkhwa through Secretary
Communication & Works Department, Peshawar & Others

-----PETITIONERS

VERSUS

Rehman Ali

-----RESPONDENT

NOTICE

To

Rehman Ali, Road Inspector (OPS) Works and Services Department,
Swat

Please take notice Registered A/D post to the effect that I am filing
CPLA with stay application in the above titled case against the judgment of
the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated
10/02/2021 in service appeal No.1176/2016 before the Supreme Court of
Pakistan in its Branch Registry at Peshawar.

Dated this

(Mian Saadullah Jandoli),
Advocate-on-Record
Supreme Court of Pakistan
For Govt. /Petitioners

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI.
MR. JUSTICE EJAZ AFZAL KHAN.

C. Ps. No. 2026 and 2029 of 2013.

(On appeal against the judgment dt. 2.10.2013 passed by the Peshawar High Court, Peshawar in W. Ps. No. 271-P and 663-P of 2013).

Mushtaq Ahmed and another.
Muhammad Nasir Ali and others.

(in CP. 2026/13)
(in CP. 2029/13)
...Petitioners

Versus

Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)
...Respondents

For the petitioners: Mr. Ghulam-Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents: Sikandar Khan, Chief Engineer, PHEK, KPK.
(on court notice)

Date of hearing: 15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments of the learned ASC for the petitioners and careful perusal of the case record particularly the reasons assigned in the impugned judgment, we are satisfied that no case for grant of leave to appeal is made out, including the plea of discrimination raised by the petitioners, as one wrong or any number of wrongs, cannot be made basis to justify an illegal action under the garb of Article 25 of the Constitution. Both these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments brought to our notice is concerned, in response to our earlier order dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health Engineering, Department, KPK is present in Court, he states that

ATTESTED



although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/- Anwar Zaheer Jamali
Sd/- Ejaz Afzal Khan

Certified to be True Copy

[Signature] 16-1-14

Superintendent
Supreme Court of Pakistan
Islamabad

[Signature]





KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

All communications should be
addressed to the Registrar KPK
Service Tribunal and not any
official by name.
Ph:- 091-9212281
Fax:- 091-9213262

Execution Petition No. 174/2021
Rehman Ali Vs. Government of Khyber Pakhtunkhwa

SHOW CAUSE NOTICE.

To:

The Secretary to Government of Khyber Pakhtunkhwa,
C & W Department, Civil Secretariat, Peshawar.


284
D/O No. 284
Date: 17-01-22
Secretary C&W Deptt

Whereas, Mr. Rehman Ali Road Inspector (OPS) C&W Division No. 1, Swat has made application to this Tribunal for execution of the judgment in Service Appeal No. 1176/2016 and it has been observed by the Worthy Chairman vide order dated 11.01.2022 that the respondents are not serious in execution of the judgment, as evident from their comments submitted before the Tribunal. Therefore, it has been directed vide afore-mentioned order dated 11.01.2022 to issue you notice to show cause why warrant of arrest should not be issued for your committal to civil prison in execution of the judgment.

You are hereby required to appear before Single Bench of Service Tribunal on the 13th day of January 2022 at 2.00 PM, to show cause why you should not be committed to the civil prison in execution of the said judgment.

Issued by order of the Chairman and seal of the Tribunal on this 11th day of January, 2022.




REGISTRAR
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

No. 53 /ST,

Dated 11.01.2022



KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR

All communications should be
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Ph:- 091-9212281
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REGISTRAR
KHYBER PAKHTUNKHWA SERVICE
TRIBUNAL, PESHAWAR.

No. 53 /ST,

Dated 11.01.2022


OFFICE OF THE EXECUTIVE ENGINEER
C&W DIVISION NO.1 SWAT

No. 419 / 14-E

Dated Swat the 12 / 01/2022

OFFICE ORDER

In compliance with the Judgment of Khyber Pakhtunkhwa Service Tribunal Peshawar dated 10/02/2021 in the Service Appeal No.1176/ 2016, Mr. Rehman Ali S/O Mian Hazrat Room is hereby absorbed as Road Inspector in C&W Division No.1 Swat with effect from the date he acquired DAE (Civil) i.e 12-03-2012, subject to final decision of the Apex Supreme Court of Pakistan in CPLA No.237-P/ 2021.


EXECUTIVE ENGINEER
C&W DIVISION NO.1 SWAT

Copy to the:-

1. Secretary to Govt of Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (Centre)-C&W Department, Peshawar.
3. Chief Engineer (North) C&W Department Swat at Saidu Sharif.
4. Superintending Engineer C&W Circle Swat.
5. Registrar, Khyber Pakhtunkhwa Service Tribunal Peshawar.
6. Mr. Rehman Ali, Road Inspector (Local).


EXECUTIVE ENGINEER
C&W DIVISION NO.1 SWAT

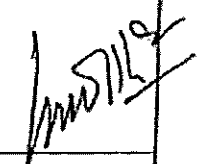


TENTATIVE SENIORITY LIST

OFFICE OF THE CHIEF ENGINEER, CENTRE
COMMUNICATION & WORKS DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR
No. 52-EJ/1113/CE/C&W
Dated 12/10/2022

The Tentative Seniority List of Road Inspectors, (in pursuance to Rule-5(c) (Engineering Services)) in the C&W Department having 3-Years Diploma of Associate Engineering in Civil Technology as stood on 31/12/2021 is hereby Circulated as under :-

S.No.	Name of Official	Father's Name	Domicile	Qualification	DOB	Date of Appointment to PWD	Date of Appointment to Class	Remarks
1	Shams-ul-Tabraiz	Bahr-ul-Mulk	Dir Lower	i. MA ii. DAE (C)	10/04/1966	17-07-1985	17-07-1985 (R/Insp)	Appointed as S/Engr. on Acting Charge
2	Sarfraz Khan	Mir Aslam Khan	Karak	i. B.A ii. DAE (C)	11/02/1967	04-10-1990 (R/Insp)	04-10-1990 (R/Insp)	-do-
3	Mubarak Zaib	Abdul Ghafoor	Dir Lower	i. B.A ii. DAE (C)	18/04/1969	03-09-1991	03-09-1991 (R/Insp)	-do-
4	Hazrat Iqbal	Faramosh	Malakand	i. Matric ii. DAE (C)	03/02/1966	26-05-1988	(R/Inspector)	-do-
5	Azmat Khan	Mir Aslam	Karak	i. Matric ii. DAE (C)	02/04/1964	02-02-1995 (Work Tracer)	01-07-2001 (R/Insp)	-do-
6	Gohar Zaman	Gul Zaman	Tank	i. Matric ii. DAE (C) 1999	25/04/1982	25/02/2005	25-02-2005 (R/Insp)	
7	Javaid Ahmad Shah	Pir Alam Shah	Tank	i. Matric ii. DAE (C) 1991 iii. B.A	01/05/1971	13-06-2005	13-06-2005 (R/Insp)	
8	Muhammad Saleem Khan	Abdul Halim	Tank	i. Matric ii. DAE (C) 1995	03/04/1974	13-06-2005	13-06-2005 (R/Insp)	Appointed as S/Engr. on Acting Charge
9	Shams-ur-Rehman	Arsala Khan	S.Waziristan	i. Matric ii. DAE (C) 1991	06/07/1959	20-03-1997 (Mate)	06-07-2005 (R/Insp)	-do-
10	Abid Ali Shah	Saeed Ahmad Shah	S.Waziristan	i. DAE (C) 2005	22/03/1983	07-07-2005	07-07-2005 (R/Insp)	-do-
11	Yousaf Shehzad	Fayaz-ud-Din	S.Waziristan	i. Matric ii. DAE (C) 1999	15/01/1980	14-02-2006	14-02-2006 (R/Insp)	-do-
12	Muhammad Nazakat	Muhammad Rafiq	Abbottabad	i. Matric ii. DAE (C)	01/01/1982	01-08-2000	29-06-2006 (R/Insp)	01-08-2000 (Khidmatgar) 06-11-2003 (Mechanic Grade-II)
13	Aman Khan	Babar Abdul Wahid	Abbottabad	i. F.Sc ii. DAE (C)	13/01/1988	15-08-2006 (Work Munshi)	25-09-2006 (R/Insp)	
14	Imran Ali	Asad Ali	Kurram	i. F.A ii. DAE (C)	22/03/1977	06-11-2006	06-11-2006 (R/Insp)	Appointed as S/Engr. on Acting Charge

S.No.	Name of Official	Father's Name	Domicile	Qualification	DOB	Date of Appointment to PWD	Date of Appointment to Class	Remarks
15	Sher Marjan	Noor Ali	Kurram	i. M.A ii. DAE (C)	01/02/1977	07-11-2006	07-11-2006 (R/Insp)	-do-
16	Syed Akmal Hussain	Syed Ahmad	Kurram	i. B.A ii. DAE (C)	07/04/1974	16-11-2006	16-11-2006 (R/Insp)	-do-
17	Badshah Hussain	Aman Hussain	Kurram	i. B.A ii. DAE (C)	15/04/1975	01-12-2006	01-12-2006 (R/Insp)	-do-
18	Basharal Hussain	Hussain Khan	Kurram	i. M.A ii. DAE (C)	31/05/1970	08-12-2006	08-12-2006 (R/Insp)	-do-
19	Sana Ullah	Ghulam Muhammad	Tank	i. Matric ii. DAE (C)	15/03/1981	03/04/2008	03/04/2008 (R/Insp)	
20	Jamshed Khan	Alaf Shah	Tank	i. F.Sc ii. DAE (C)	15/10/1978	10/05/2008	10/05/2008	w.r.t CE(M.A) Letter No.8798/2/34-E dated 29/11/2019
21	Muhammad Sajid	Fazal Shah	Kurram	i. Matric ii. DAE (C)	13/04/1988	24/02/2010	24/02/2010	w.r.t XEN H/Way Kurram letter No.589/8-E dated 31/01/2019
22	Adnan Alam	Alam Sher Khan	Tank	i. Matric ii. DAE (C)	25/10/1983	25-11-2010	25-11-2010 (R/Insp)	
23	Gul Nawaz	Muhammad Ullah	Khyber	i. Matric ii. DAE (C)	03/04/1974	06/12/2006 To 31/07/2011 Work Munshi ii. 01/08/2011 (R/Insp)	01/08/2011	XEN H/Way TD Khyber 
24	Asif Mehmood	Loi Khan	S.Waziristan	i. Matric 2005 DAE (C) 2010	15/10/1988	19/12/2011 (R/Insp)	19/12/2011	XEN H/Way Div S.Waziristan at Tank
25	Muhammad Haroon	Adam Khan	S.Waziristan	i. Matric ii. DAE (C)	18/04/1991	12-01-2012	12-01-2012	
26	Rehman Ali	Mian Hazrat Room	Swat	i. DAE (C) (12/03/2012)	02/03/1975	Lab Asst (03/01/1995)	12/03/2012 (Absorbed as R/Insp)	Included in the Seniority List in compliance with the judgment of Khyber Pakhtunkhwa Service Tribunal dated 10/02/2021 in Service Appeal No.1176/2016, subject to final decision of the Apex Supreme Court Pakistan in CPLA No.237/P / 2021
27	Ahsan Kaleem	Muhammad Kaleem	Abbottabad	i. Matric ii. DAE (C)	01/03/1991	15/01/2011 To 27/09/2012 (Painter BS-05) ii. 28/09/2012 (R/Insp)	28/09/2012	XEN C&W Division Abbottabad
28	Fazlur Rahman	Sami Ullah Khan	Dir Lower	i. M.A ii. DAE (C)	08/03/1968	05-09-1992 (Work Munshi)	20-12-2012 (R/Insp)	
29	Jamad Ali Khan	Farid Khan	Mardan	i. Matric ii. DAE (C)	03/03/1991	09/08/2012 (R/Clk) 28/12/2012 Mate	01/04/2013 (R/Insp)	XEN C&W Divn: Charsadda No.633/2-A dated 14/02/2018
30	Haris Iqbal	Iqbal Javeed	Peshawar	i. Matric ii. DAE (C)	16/12/1991	14/05/2013	14/05/2013 (R/Insp)	Reinstated by Chief Engineer (North) vide O/O No.61/10-E dated 13/10/2020.
31	Salman Khan	Gul Amir Khan	S.Waziristan	i. Matric ii. DAE (C) iii. B.Tech (C)	03/07/1993	16/09/2013 (R/Insp)	16/09/2013	XEN H/Wayn S.Waziristan at Tank

S.No	Name of Official	Father's Name	Domicile	Qualification	DOB	Date of Appointment to PWD	Date of Appointment to Class	Remarks
32	Inamullah	Muhammad Ali Bhillani	FR Tank	i. Marris ii. DAE (C)	18/11/1990	09-01-2014	09-01-2014	
33	Jamshid Alam	Sardar Khan	S.Waziristan	i. Marris ii. DAE (C)	15/06/1984	10-01-2002 (Work Munshi)	01-10-2014 (R/Insp)	Previous Service as Work Munshi with effect from 10-01-2002 to 30-09-2014
34	Muhammad Amin	Fida Hussain	Kurram	i. Marris ii. DAE (C)	12/05/1987	11/03/2006 To 11/03/2015 (Work Munshi) ii. 12/03/2015 (R/Insp)	12/03/2015 (R/Insp)	XEN H/Way Kurram
35	Adil Mehmood	Haji Raees Khan Afridi		i. Marris ii. DAE (C)	01/04/1993	22/03/2016	22/03/2016 (R/Insp)	XEN C&W Divn: Tribal District Dara Adam Khel at Kohat.
36	Amjad Khan	Muhabit Ali Khan	FR Kohat	DAE (C)	01/06/1995	23/03/2016 (R/Insp)	22/03/2016 (R/Insp)	


CHIEF ENGINEER (CENTRE)

Copy of the above forwarded to:-

1. All Chief Engineers in C&W Department, Khyber Pukhtunkhwar i/c Merged Areas (Ex-FATA).
2. All Superintending Engineers, in C&W Department Khyber Pukhtunkhwa (i/c Merged Areas).
3. All the Executive Engineers in C&W Department Khyber Pakhtunkhwa (i/c Merged Areas)
4. Deputy Director IT C&W Secretariat Peshawar. He is requested to upload the same on C&W official website. (www.cwd.gkp.pk)

Note:- Please got it noted from the officials & if any objections regarding name, Father name, Qualification etc: are received thereupon may be sent to this office with documentary proofs within 15-Days for further course of action.

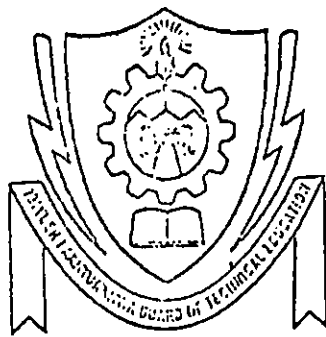

ADMINISTRATIVE OFFICER

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Khyber Pakhtunkhwa Board of Technical Education
PESHAWAR (PAKISTAN)



DIPLOMA OF ASSOCIATE ENGINEER

Civil Technology

Session Supply 2011

Certified that Mr./Miss RAHMAN ALI

Son/Daughter of MIAN HAZRAT ROOM

Registration No. SPI/SWT/CT/08-17949

of SAIDU POLYTECHNIC INSTITUTE SAIDU SHARIF SWAT

has passed the Diploma of Associate Engineer CIVIL TECHNOLOGY

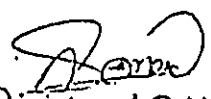
Examination held by the Khyber Pakhtunkhwa Board of Technical Education, Peshawar in the month
of November 2011


He/She secured 2070 Marks out of 3350 and has been placed in
Grade B

In recognition thereof, this
Diploma of Associate Engineer

is awarded to him/her at Peshawar on the 18th day of March 2012


ASSISTANT SECRETARY


Sub Divisional Officer,
Sub Division
Peshawar


SECRETARY

This Diploma is issued without any alteration or eraser