

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

SERVICE APPEAL NO. 133/2022

SADIA ASGHAR

VS

GOVT. OF KPK & OTHERS

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Sadia
APPELLANT

THROUGH:

N
**NOOR MOHAMMAD KHATTAK,
ADVOCATE SUPREME COURT**

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

SERVICE APPEAL NO. 133/2022

SADIA ASGHAR

VS

GOVT. OF KPK & OTHERS

**REJOINDER ON BEHALF OF APPELLANT IN RESPONSE TO
REPLY SUBMITTED BY THE RESPONDENTS.**

PRELIMINARY OBJECTIONS:

1 TO 8

All the preliminary Objections raised by the respondents are incorrect, baseless and not in accordance with law and rules, rather the respondents are estopped due to their own conduct to raise any objection at this stage of the appeal.

R/SHEWETH:

ON FACTS:

- 1-7** No reply is given by department because their statement relates to the record. Means nothing in rebuttal is expressed as record belongs to the respondents not to appellant. Correct, hence admitted.
- 8.** Incorrect. The services of the appellant was placed at disposal of P&D Department vide notification dated 08.01.2019 already annexed with main appeal as **Annexure "E"**. Later on summary moved by P&D department got approved from Chief Minister without consulting Finance Department as evident from department reply at Para/Fact No.10. Copies of the relevant documents are attached as Annexure**A**
- 9.** Incorrect. The Appellant is seeking regularization in light of judgment of Peshawar High Court and Supreme Court of Pakistan w.e.f 23.7.2005 under section 19(2) of Amendment Act, 2005 not under merger or restructuring of departments of erstwhile FATA. The same is also clarified by law department in case of PPS Officers by regularizing them vide Notification dated 19.04.2021, the same is annexed with main appeal as Annexure "H".

Khyber P. Kh. Serv. Trib. No. 133/2022

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10. Incorrect. Already explained in Para No.9 mentioned above.
11. Inocorrect, hence denied.
12. Incorrect, hence denied.

GROUND:

All the grounds of appeal are correct and in accordance with law and prevailing rules and that of the respondent are incorrect and baseless hence denied. That the appellant has been wrongly placed at bottom of the cadre of Sub Accountant (BPS-16) and the respondents are required to place the appellant at due and proper place of seniority w.e.f date of regularization of services i.e 23.07.2005.

It is therefore, most humbly prayed that on acceptance of this rejoinder the service appeal of the appellant may kindly be accepted as prayed.

APPELLANT

Sadia

SADIA ASGHAR

THROUGH:

**NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

AFFIDAVIT

I, Mst. Sadia Asghar, Sub Accountant (BPS-16), Treasuries & Accounts Establishment, KP Finance Department, Peshawar do hereby solemnly affirm that the contents of this **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



Sadia

DEPONENT



GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Finance Department Civil Secretariat Peshawar

http://www.finance.gkp.pk

facebook.com/GokPFD

twitter.com/GokPFD

No: SO (ESTT-I) FD/1-5/2021

Dated Pesh: the 24-03-2022

To

2.

Mr. Muhammad Masood Afridi,
Mr. Mohib ur Rehman,
Assistant Treasury Officers (BPS-17),
Directorate of Treasury & Accounts KP.

Subject: **APPEAL FOR DUE SENIORITY IN FINANCE DEPARTMENT, KHYBER PAKHTUNKHWA.**

I am directed to refer to your appeal/letter addressed to the Secretary to Government of Khyber Pakhtunkhwa, Finance Department dated 08th July, 2021 and to state that your request/ appeal was examined and sent to Establishment Department for advice/guidance. Establishment Department KP advised to decide the appeal/request in light of Para-4 (h) of the Memorandum of Establishment Division circulated vide Establishment Department letter No. SOR-VI/E&AD/1-13/2009 dated 25th February, 2014 which is condensed below:-

"Any backdated seniority cannot be granted to any absorber and his inter-se-seniority, on absorbing in the cadre shall be maintained at the bottom as provided under the Rules regulating the seniority" (copy enclosed for ready reference).

2. In view of the above, Finance Department regrets its inability to accede to the request being not covered under the rules.

Encl: as above

Section Officer (E-I)

Endst: No & Date Even

Copy forwarded for information to the:

1. PA to Special Secretary (Admn & Reg :), Finance Department.
2. PA to Additional Secretary (Admn), Finance Department.

Section Officer (E-I)

ATTACHED


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Attention: Alamgir Adil

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

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

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

Am directed to forward herewith copy of Government of Pakistan Cabinet Establishment Division Office Memorandum No. 1/59/2013-Lit-IV dated 31-01-14 on the subject noted above for information and compliance.

Yours faithfully,
 ZIRA
 25.02.14

(QURRAT UL-AIN)
 SECTION OFFICER (REG-VI)

Copies forwarded to:-

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

ZIRA
 25.02.14
 SECTION OFFICER (REG-VI)

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GOVERNMENT OF PAKISTAN
CABINET SECRETARIAT
ESTABLISHMENT DIVISION

No. 1/59/2013-Lit-IV

Islamabad, 31 January, 2014

OFFICE MEMORANDUM

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

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

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

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

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

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

The Apex Court has further held that:-

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

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

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

(Muhammad Shakeel Malik)
Joint Secretary

All Ministries/Divisions/Departments.

Copy forwarded for information to

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


(Naseer Ahmad)
Deputy Secretary



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GOVERNMENT OF KHYBER PAKHTUNKHWA
FINANCE DEPARTMENT

Subject: INCLUSION OF AGENCY FINANCE OFFICERS/ASSISTANT AGENCY FINANCE OFFICERS IN THE PROVINCIAL TREASURY CADRE/WING OF FINANCE DEPARTMENT

A meeting on the subject was held on 26-02-2020 at 02.00 p.m. under the chairmanship of Special Secretary Finance Department in his office. List of participants is added at (Annex-I).

2. The Chair welcomed the participants and invited Provincial Coordinator (PIAC), Finance Department to brief the participants on the subject issue. Provincial Coordinator apprised the meeting that Establishment Department has forwarded a copy of approved summary regarding absorption/adjustment of following 07 officers of erstwhile FATA Finance Department along with their posts in the treasury establishment of Finance Department:-

1. Mr. Muhammad Masood Afridi, Agency Finance Officer (BS-17)
2. Mr. Mohib-ur-Rehman, Agency Finance Officer (BS-17)
3. Mr. Najeebullah, Agency Finance Officer (BS-17)
4. Ms. Sadia Asghar, Agency Finance Officer (BS-17)
5. Mr. Hadi Hussain, Assistant Agency Finance Officer (BS-16)
6. Mr. Qaiser Munir, Assistant Agency Finance Officer (BS-16)
7. Mr. Anwar Ali, Assistant Agency Finance Officer (BS-16)

3. As the duties & functions of District Accounts/Treasury Offices are of technical nature and connected with pre-audit and accounting matters and only those employees are recruited/promoted who possess certain qualification as mentioned in the service rules. Therefore, another summary for Chief Minister, with the suggestion that these officers may be placed in the Surplus Pool to be created in the Finance Department Khyber Pakhtunkhwa for their onward posting in the tribal districts against the posts in the Finance and Planning sections with the Deputy Commissioners for their assistance in financial matters. However, the said summary was returned by the Chief Secretary with the remarks that not only the Chief Minister has approved the adjustment of these officers/officials in the Finance Department, the Additional Advocate General has also committed before the court to accommodate the petitioners in Finance Department. Besides, the meeting of the representative of Establishment, Finance and P&D Departments held on 01.01.2020 to find out a solution, also recommended their adjustment in the Finance Department. The Chief Secretary, directed that they can be trained for various positions by attaching them for minimum necessary period with the officers of the Finance Department.

4. Director Treasuries & Accounts informed the meeting that under the Khyber Pakhtunkhwa surplus employees absorption / induction policy, absorption of employees of other organization will be subject to fulfillment of prescribed qualification and other conditions applicable to the post. Moreover, surplus employees who possess prescribed qualification of the post shall be adjusted against

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the said posts under the initial recruitment quota. He further informed that after inclusion of above mentioned 07 posts in the treasury cadre, 04 vacancies under initial recruitment quota against the posts of Assistant Treasury Officer (BS-17) and 03 vacancies under the initial recruitment quota against the posts of Sub-Accountant (BS-16) will be available for adjustment of these employees.

5. The Chair informed the participants that the competent authority has already approved induction of these employees in the Treasury Wing of Finance Department and similarly, Addl: Advocate General has also made commitments in the court regarding adjustment of these employees in Finance Department. Therefore, one time relaxation will be granted to these seven employees in case of any deficiency in qualifications / experience and other conditions.

6. The Special Secretary, Finance Department Merged Areas informed the forum that almost all the employees have acquired the prescribed qualification for the posts therefore, there will be no issue regarding their adjustment / absorption in the treasury cadre.

7. On a query from the Chair regarding creation/conversion of posts, the Additional Secretary (Budget), informed that all the existing posts will be abolished and new posts in the Treasury cadre will be created through summary in the concerned Cost Center / DDO code on need basis.

Decisions:

After threadbare discussion the following decisions were made:-

- i) The employees at S.NO. 01 to 04, mentioned at Para-2 above will be adjusted / absorbed against the posts of Assistant/Sub Treasury Officer (BS-17) in the Treasury wing/cadre of Finance Department.
- ii) The employees at S.NO. 05 to 07 mentioned at Para 2 above will be adjusted/absorbed against the posts of Sub-Accountant (BS-16) in the Treasury wing/cadre of Finance Department.
- iii) One time relaxation will be granted to these seven employees in case of any deficiency in qualifications / experience and other conditions.
- iv) All the above mentioned employees recommended for induction/absorption are required to submit options before induction/absorption against the posts in treasury cadre.
- v) The Section Officer (Establishment) in consultation with Director Treasuries will move a summary for creation of the said 07 posts in the concerned Cost Center/DDO Code.

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

(Said Akbar)
Director, T & A

(Muhammad Aman)
Prov: Coord: (PIAC)/ D.S(Estt)

(Adnan Farid)
Addl: Secretary (Admn)

(Muhammad Siddique)
Addl: Secretary (Budget)

(Shah Mahmood Khan)
Special Secretary Finance,
Merged Areas

(Muhammad Ayaz)
Special Secretary,
Finance Department.

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

ORDER:-

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

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

ADDITIONAL CHIEF SECRETARY (F)

No. FS/E/100-19 (officers) Vol-4/ 44805-17

Dated: 27/9/2011.

Copy to:-

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

(Muhammad Abbas Khan)
Section Officer (Estab)



1/8

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

No. SO(OP-II)/LD/5-2/2012-VOL-IV
DATED: PESH: THE 19TH APRIL, 2021

To

The Secretary,
Government of Khyber Pakhtunkhwa,
Planning & Development, Department.

Attention: Section Officer (Estt)

Subject: REQUEST FOR REVISION OF REINSTATEMENT NOTIFICATION IN LIGHT OF THE JUDGMENT OF PESHAWAR HIGH COURT, PESHAWAR UPHELD BY SUPREME COURT OF PAKISTAN.

Dear Sir,

I am directed to refer to your Department's letter No.SO(E)/P&D /PF/087/996/2020 dated 05.04.2021 and No.SO(E)/P&D/PF/087/996/2020 dated 08-03-2021, on the subject noted above and to state that that Law Department is of the view that the Supreme Court of Pakistan has declared the respondent to be entitled to regularization w.e.f. 23-07-2005 under Section 19 (2) of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2005, therefore, the Administrative Department may look into the matter accordingly.

Yours Faithfully,

Section Officer (Opinion-II)

Endst: of even No. & date.

Copy forwarded to the:-

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

Section Officer (Opinion-II)

ATTESTED



GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT



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Dated Peshawar, May 26, 2021.

NOTIFICATION:

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

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

SECRETARY
PLANNING & DEVELOPMENT
DEPARTMENT

Endst: of even No. & Date.

Copy forwarded to the:

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

(SONA KHAN)
Section Officer (Estt)