

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL PESHAWAR
AT CAMP COURT D.I.KHAN

Service Appeal No. 923/2016

Date of Institution ... 01.08.2016
Date of Decision ... 29.09.2022

Malik Muhammad Irfan S/O Malik Ghulam Qasim, Ex-Sub-Engineer
L.G.R.D.D Khyber Pakhtunkhwa Peshawar now S.D.O Public Health
Engineering Department Tank.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Secretary Local Government
and Rural Development Peshawar and 05 others.

... (Respondents)

MR. ZIA-UR-REHMAN TAJIK,
Advocate

--- For appellant.

MR. MUHAMMAD ADEEL BUTT,
Additional Advocate General

--- For respondents.

MR. KALIM ARSHAD KHAN
MR. SALAH-UD-DIN

--- CHAIRMAN
--- MEMBER (JUDICIAL)

JUDGMENT:

SALAH-UD-DIN, MEMBER:- Through the instant service
appeal, the appellant has invoked jurisdiction of this Tribunal with
the prayer copied as below:-

*“to please take cognizance of the case and while
accepting this service appeal the respondents No. 1
& 2 be directed to promote the appellant as
S.D.O/AE in G-17 with retrospective effect from the
date of creation of posts/falling vacant posts of
S.D.O/AE during his service in L.G & R.D.D and*



Public Health Engineering Department with "all back benefits" and against 10% promotion quota reserved for Engineers graduates as per judgment of Apex Court of Pakistan dated 25.08.2005 and Notification SO(LG-1)2-188/93-Vol:II dated 14.04.1998 respectively.

2. According to averments of the appellant raised in his appeal, he was Degree holder in Civil Engineering and was appointed as Sub-Engineer in Local Government Department on contract basis vide appointment letter dated 22.11.1988. The services of the appellant as well as others were terminated with effect from 04.03.2003 vide letter dated 30.05.2003, therefore, they approached this Tribunal through filing of service appeals, however their appeals were dismissed vide judgment dated 07.02.2004 on the ground that as they were not civil servants, therefore, this Tribunal lacked jurisdiction in the matter. The aforementioned judgment dated 07.02.2004 was challenged before the august Supreme Court of Pakistan and through a single judgment dated 25.08.2005, civil appeals of the appellant as well as his colleagues were allowed and he was reinstated in service with all back benefits. In consequence of the judgment of worthy apex court, Notification dated 10.11.2005 was issued by Secretary Local Government and Rural Development Department, whereby the appellant was reinstated in service with all back benefits and his service was regularized with effect from the date of his initial appointment, however he alongwith his colleagues were placed in surplus pool of Local Government and Rural Development Department till creation of posts by Finance



departmental order. The said order dated 27.11.2015 of this Tribunal was challenged through filing of Civil Petition No. 139 of 2016 before august Supreme Court of Pakistan, which was dismissed as not pressed. The appellant then preferred departmental appeal on 04.04.2016, which was not responded within the statutory period, hence the instant service appeal.

3. Notices were issued to the respondents, who submitted their comments, wherein they denied the assertions made by the appellant in his appeal.

4. Arguments have already been heard and record perused.

5. A perusal of the record would show that he appellant had previously filed Service Appeal No. 773/2007 for the desired relief, which was disposed of vide order dated 30.12.2013, whereby the case of the appellant was referred to Secretary Local Government Elections and Rural Development Department Khyber Pakhtunkhwa Peshawar for sympathetic consideration on humanitarian grounds. The appellant was not granted the desired promotion, therefore, he then filed Execution Petition No. 09/2014, which was disposed of by this Tribunal vide order dated 27.11.2015 with the observations reproduced as below:-

"Since the commitment of the representative of respondents was to the effect that a non-binding office note to be submitted to the Secretary Local Government for sympathetic consideration of long standing case of the petitioner for promotion on humanitarian grounds and the said commitment was complied with but due to non-availability of the post

~~15.05.2006, the appellant was absorbed/adjusted as Sub-Engineer~~

(BPS-11) in Public Health Engineering, Works and Services

ORDER
29.09.2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present. Arguments have already been heard and record perused.

Vide our detailed judgment of today, separately placed on file, the appeal in hand stands dismissed. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
29.09.2022



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

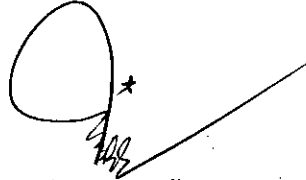


(Salah-Ud-Din)
Member (Judicial)
Camp Court D.I.Khan

30th June 2022

Appellant in person present. Mr. Farhaj Sikandar, District Attorney for respondents present.

Appellant seeks adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments on 26.07.2022 for arguments before D.B at camp court D.I.Khan.



(Mian Muhammad)
Member(E)



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

26/07/2022

Due to Summer vacation
Come in 27/09/2022



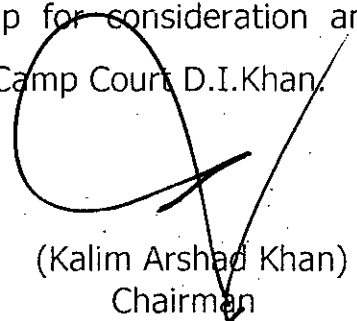
27th September, 2022

Appellant alongwith his counsel present. Mr. Muhammad Adeel Butt, Additional Advocate for respondents present.

Arguments heard. To come up for consideration and order on 29.09.2022 before the D.B at Camp Court D.I.Khan.



(Salah Ud Din)
Member (Judicial)
Camp Court D.I.Khan



(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

27.01.2022


Tour is cancelled, therefore, case is adjourned to 26.05.2022 for the same as before.

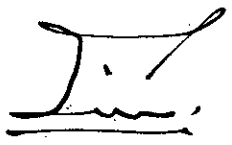

Reader

26.05.2022

Appellant in person present. Mr. Farhaj Sikandar, District Attorney for official respondents present.

Appellant requested for adjournment on the ground that his counsel is busy in the august Peshawar High Court, D.I.Khan Bench. The appeal in hand is pending adjudication since the year 2016, therefore, last chance is given to the appellant to ensure the presence of his counsel on the next positively. Adjourned. To come up arguments on 28.06.2022 before the D.B at Camp Court D.I.Khan.



(Rozina Rehman)
Member (J)
Camp Court D.I.Khan



(Salah-ud-Din)
Member (J)
Camp Court D.I.Khan

28th June 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Learned counsel for the appellant sought adjournment to prepare the case. Adjourned but as a last chance. To come up for arguments on 30.06.2022 before D.B at camp court D.I.Khan.



(Mian Muhammad)
Member(E)


(Kalim Arshad Khan)
Chairman
Camp Court D.I.Khan

15.12.2021

Appellant in person, Mr. Muhammad Adeel Butt,
Additional Advocate General for the official respondents and
counsel for private respondent No. 6 present.

It is noteworthy that this appeal was preferred in 2016 and
is pending since long due to frequent adjournments attributable to
the appellant. Request of the appellant is accorded this time but
with strict warning that seeking further adjournment shall be
deemed as abuse of process of the Tribunal entailing
consequences of an appropriate order within the meaning of Rule
27 of the Khyber Pakhtunkhwa Service Tribunal Rules, 1974. To
come up for arguments positively on 27.01.2022 before the D.B
at camp court, D.I.Khan.



(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan




Chairman
Camp Court, D.I.Khan

28.09.2021

Appellant in person present. Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant requested for adjournment on the ground that his counsel is not available today. Adjourned. To come up for arguments before the D.B on 28.10.2021 at Camp Court D.I.Khan.

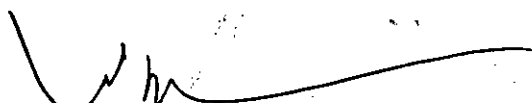

(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN

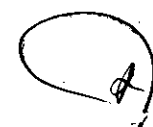

(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

28.10.2021

Mr. Abdul Ghafoor, Advocate, Junior of learned counsel for the appellant present. Mr. Asif Masood Ali Shah, Deputy District Attorney alongwith Mr. Muhammad Pervaiz Junior Clerk for official respondents No.1 to 5 and counsel for private respondent No.6 present.

Former made a request for adjournment as senior counsel for the appellant is indisposed. Adjourned. To come up for arguments on 15.12.2021 before S.B at Camp Court, D.I. Khan


(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)
CAMP COURT, D.I KHAN


(ROZINA REHMAN)
MEMBER (J)
CAMP COURT, D.I KHAN

23.02.2021

Appellant present in person.

Riaz Khan Paindakheil learned A.A.G for official respondents present. Private respondent No.6 in person present.

Former made a request for adjournment as his counsel is not available today. Adjourned. To come up for arguments on 25.03.2021 before D.B at Camp Court D.I.Khan.



(Atiq ur Rehman Wazir)
Member (E)
Camp Court, D.I.Khan

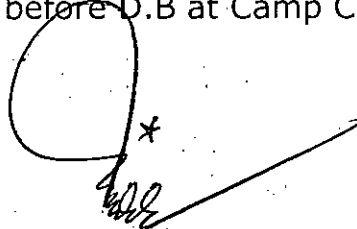


(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan


25.03.2021

Appellant alongwith Mr. Abdul Ghafoor, junior counsel of learned counsel for the appellant present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present.

Junior of learned counsel for the appellant is seeking adjournment on the ground that learned counsel for the appellant is not feeling well. Adjourned. To come up for arguments before D.B at Camp Court D.I.Khan on 25.05.2021.




(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)
CAMP COURT D.I.KHAN



(SALAH-UD-DIN)
MEMBER (JUDICIAL)
CAMP COURT D.I.KHAN

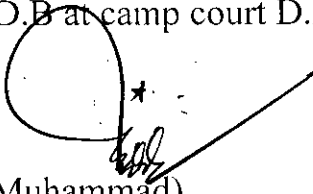
Due to COVID, is therefore
to come up for the same on
28/9/21




28.10.2020

Assistnat to cusnel for the appellat is present. Mi-
Usman Ghani, District Attorney alongwith Mr. Abdul Rahim,
XEN for official respondents and Assistant to counsel for
private respondent No.6 are present.

Since the Members of the High Court as well as of the
District Bar Association D.I.Khan are observing strike today,
therefore, the case is adjourned to 25.11.2020 for arguments
before D.B at camp court D.I.Khan.


(Mian Muhammad)
Member(E)

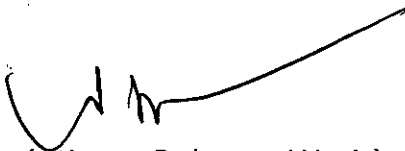

(Muhammad Jamal Khan)
Member(J)
Camp Court D.I Khan


25.11.2020

Appellant in person present.

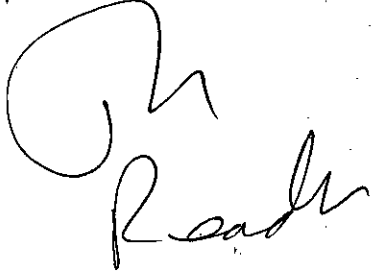
Muhammad Jan learned Deputy Attorney for
respondents present.

Former made a request for adjournment as his counsel
is not available. Adjourned. To come up for arguments on
23.12.2020 before D.B at Camp Court, D.I.Khan.


(Atiq-ur-Rehman Wazir)
Member (E)
Camp Court, D.I Khan


(Rozina Rehman)
Member (J)
Camp Court, D.I Khan

*Due to Covid, 19 case is
ad Joured to 23-02-2021*


On
Reader

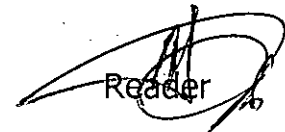
25/3/2020

Due to COVID-19 the case is adjourned. To come up for the same 27/4/2020 at Camp Court, D.I Khan


Reader

21/4/2020

Due to COVID-19 the case is adjourned. To come up for the same 23/9/2020 at Camp Court, D.I Khan



Reader


23.09.2020

Nemo for parties.

Mr. Usman Ghani, learned District Attorney present.

Notice be issued to both the parties for arguments on 28.10.2020 before D.B at Camp Court D.I Khan.



(Atiq-ur-Rehman Wazir)
Member (E)
Camp Court, D.I Khan



(Rozina Rehman)
Member (J)
Camp Court, D.I Khan

Service Appeal No. 923/2016

27.01.2020

Appellant in person present. Mr. Usman Ghani, District Attorney for official respondents and private respondent No. 6 in person present. Appellant requested for adjournment on the ground that his counsel is not available today due to strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 24.02.2020 for further proceedings before D.B at Camp Court D.I.Khan.


(Hussain Shah)
Member
Camp Court D.I.Khan


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

24.02.2020

Counsel for the appellant present. Mr. Usman Ghani, District Attorney for official respondents present. Learned counsel for the appellant seeks adjournment to file rejoinder. Adjourned. To come up for arguments on 25.03.2020 before D.B at camp court D.I.Khan.


Member



Member
Camp Court D.I.Khan

Post Script

24/09/2019

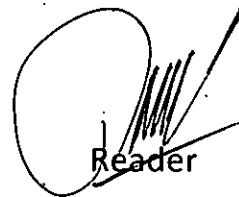
In the meanwhile private respondent No.6 with counsel appeared. Learned counsel for private respondent No.6 stated that private respondent No.6 relies upon the joint comments of official respondents and private respondent No.6 may be allowed to join further proceedings in the present service appeal. Private respondent No.6 is allowed to join further proceedings in the present service appeal under the law. To come up on the date fixed before D.B at Camp Court, D.I.Khan.


Member


Member
Camp Court, D.I.Khan


22/10/2019


Since tour to D.I.Khan has been cancelled .To come for the same on 25/11/2019.


Reader

25/11/2019

Appellant in person present. Mr. Ziaullah, Deputy District Attorney for official respondents No. 1 to 5 and private respondent No. 6 in person present. Appellant seeks adjournment on the ground that his counsel is not available today due to general strike of Khyber Pakhtunkhwa Bar Council. Adjourned to 27.01.2020 for further proceeding before D.B at Camp Court D.I.Khan.


(Hussain Shah)
Member
Camp Court D.I.Khan


(M. Amin Khan Kundi)
Member
Camp Court D.I.Khan

Service Appeal No. 923/2016

25.06.2019

Counsel for the appellant and Mr. Farhaj Sikandar, District Attorney for the respondents present. Learned counsel for the appellant requested for adjournment. Case to come up for rejoinder and arguments on 27.08.2019 before D.B at Camp Court D.I.Khan.


(Hussain Shah)


Member
Camp Court D.I.Khan



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

27.08.2019

Counsel for the appellant and Mr. Farhaj Sikandar, District Attorney for official respondents No. 1 to 5 present. Learned counsel for the appellant requested for adjournment. Adjourned to 24.09.2019 for rejoinder and arguments before D.B at Camp Court D.I.Khan.



(Hussain Shah)
Member
Camp Court D.I.Khan




(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

24.09.2019

Appellant in person present. Mr. Farhaj Sikandar, learned Deputy District Attorney for respondents present. Appellant submitted an application for adjournment as his counsel is not available today. Adjourn. To come up for arguments on 22.10.2019 before D.B at camp court D.I.Khan.




Member



Member

22.04.2019

Appellant in person and Mr. Farhaj Sikandar learned District Attorney alongwith Zeeshan XEN for official respondents present. Written reply on behalf of respondent No.6 not submitted. No one present on behalf of respondent No.6, hence placed ex-parte. Adjourn. To come up for rejoinder, if any, and arguments on 25.06.2019 before D.B.



Member
Camp Court, D.I.Khan.



26.02.2019

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for respondents No. 1, 2, 4 & 5 present. Written reply on behalf of respondents No. 1, 2, 4 & 5 has already been submitted. Respondent No. 6 has attended this Tribunal on 20.07.2017 but thereafter, he disappeared and again notice was issued to respondents No. 3 & 6 but despite notice they are not present therefore, they are proceeded ex-parte. To come up for rejoinder and arguments on 22.04.2019 before D.B at Camp Court D.I.Khan.



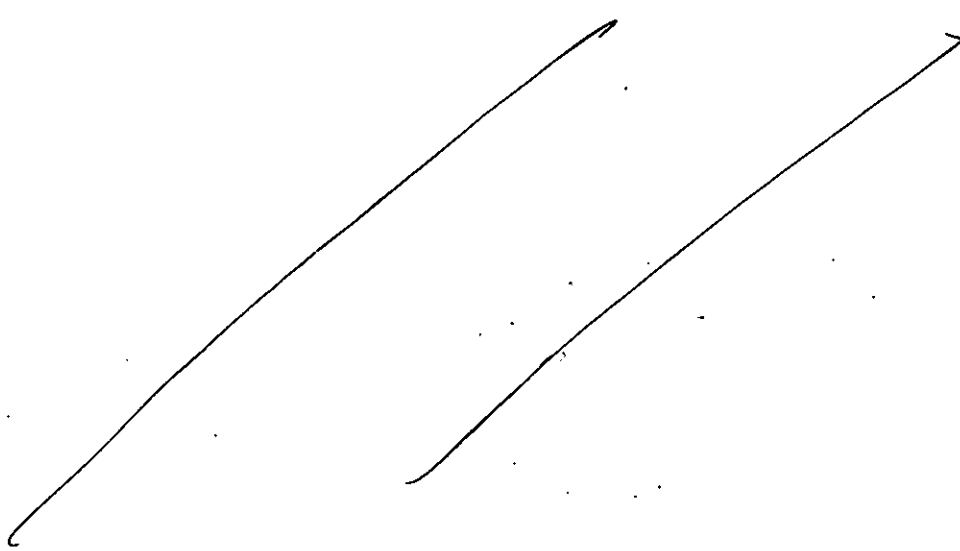
(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan

Post script

Later on learned counsel for private respondent No. 6 appeared Therefore, ex-parte proceedings against respondent No. 6 is set-aside. To come up for written reply of respondent No. 6 on 22.04.2019.



(Muhammad Amin Khan Kundi)
Member
Camp Court D.I.Khan




18.12.2018

As per direction of the worthy Chairman Khyber Pakhtunkhwa Service Tribunal, D.I.Khan tour dated 18.12.2018 has been rescheduled and the case is re-fixed for 27.12.2018.

Reader

27.12.2018

Counsel for the appellant present. Mr. Farhaj Sikandar, District Attorney for official respondents present. Written reply on behalf of official respondents No. 1, 2, 4 & 5 already submitted. Representative of official respondent No. 3 is not in attendance therefore, notice be issued to respondent No. 3 with the direction to direct the representative to attend the court and submit written reply on the next date positively. Private respondent No. 6 is also not present nor his written reply submitted therefore, notice be issued to private respondent No. 6 for attendance and filing of written reply. Adjourned. To come up for written reply/comments on 26.02.2019 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

25.05.2018 Due to retirement of the Worth Chairman, the Tribunal become non-functional. To come up for the same 22.06.2018. Notice be issued to the parties accordingly.


Member

22.06.2018

Neither appellant nor his counsel present. The same is the position of the respondents. To come up for written reply/comments on 30.08.2018 before S.B at camp court, D.I.Khan.


Chairman
Camp Court, D.I.Khan

30.8.18

Counsel for the appellant present. No one present on behalf of respondents. Case is hereby cancelled, therefore the case is adjourned for the same on 22-10-18, at camp court D.I.Khan


22.10.18

Case is hereby cancelled, therefore the case is adjourned for the same 18.12.18 at camp court D.I.Khan

A. No. 923/2016
Malik M. Irfan vs Govt


29.12.2017

Appellant with counsel present. Mr. Farhaj Sikandar, District Attorney alongwith Mr. Mohsin Khan, Assistant Director for official respondents No. 1 to 5 and private respondent No. 6 with counsel also present. Written reply on behalf of official respondents No. 1, 2, 4 & 5 submitted. Representative of the respondent No. 3 is not in attendance therefore, notice be issued to respondent No. 3 with the direction to direct the representative to attend the court and submit written reply on the next date positively. Learned counsel for private respondent No. 6 also requested for time for filing of written reply. Another last chance is given. Adjourned. To come up for written reply/comments on behalf of respondents No. 3 & 6 on 22.02.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

22.02.2018


Appellant with counsel present. Mr. Usman Ghani, District Attorney for official respondents also present. Written reply on behalf of official respondents No. 1, 2, 4 & 5 already submitted. Representative of official respondent No. 3 is not in attendance therefore, notice be issued to respondent No. 3 with the direction to direct the representative of attend the court and submit written reply on the next date positively. Non present on behalf of private respondent No. 6 therefore, notice be also issued to him for attendance and filing of written reply. Again another last opportunity granted to official respondent No. 3 as well as private respondent No. 6 for filing of written reply. Adjourned. To come up for written reply/comments on behalf of official respondents No. 3 as well as private respondent No. 6 on 26.04.2018 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

Service Appeal No. 923/2016

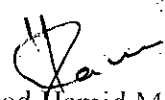
26.07.2017

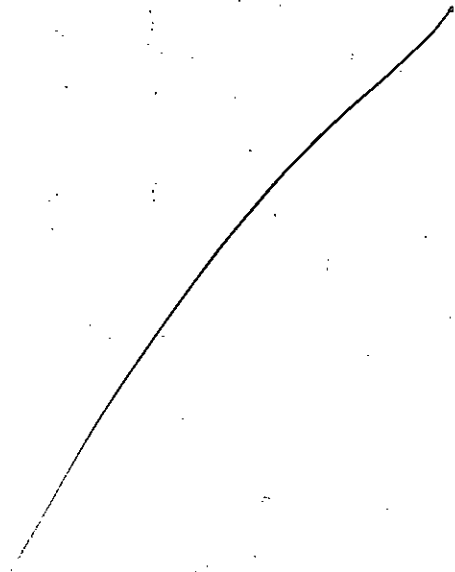
Appellant alongwith his counsel present. Mr. Muhammad Younas Khattak, Superintending Engineer for respondents No. 2 to 4 alongwith Mr. Farhaj Sikandar, District Attorney for official respondents No. 1 & 5 and private respondent No. 6 in person also present. Representatives of respondents No. 1 & 5 are not in attendance, therefore, fresh notice be issued to respondents No. 1 & 5 with the direction to direct the representative to attend the court on the next date positively. Adjourned. To come up for written reply/comments on 25.10.2017 before S.B at Camp Court D.I.Khan.


(Muhammad Amin Khan Kundi)
Member
Camp Court D.I. Khan

26.10.2017

Appellant with counsel present. Farhaj Sikandar District Attorney for the respondents present. Representative of respondent No. 2 present and seeks time to furnish reply. Last chance given.. Adjourned. To come up for reply on 29.12.2017 before S.B at Camp Court D.I.Khan. Notice be issued to respondent No. 1 for the date fixed.


(Muhammad Hamid Mughal)
Member (J)
Camp Court D.I.Khan



26.09.2016

Counsel for the appellant present and requested for adjournment. Request accepted. To come up for preliminary hearing on 24.10.2016 before S.B at Camp Court D.I.Khan.


Member
Camp Court D.I.Khan

24.10.2016

Counsel for the appellant present. Preliminary arguments partly heard. Since the matter required further clarification, therefore, pre-admission notice be issued to learned GP to assist the court on the next date. To come up for further preliminary arguments on 21.02.2017 before S.B at Camp Court D.I.Khan.

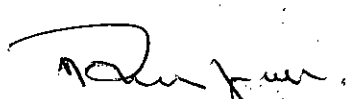

Member
Camp Court D.I.Khan

22.02.2017

Malik Muhammad Iqbal learned counsel for appellant and Mr. Muhammad Yasin, Superintendent alongwith Mr. Farhaj Sikandar, Government Pleader for respondents present. Preliminary arguments heard. Learned counsel for appellant stated that the appellant was ignored at the time of promotion by not adhering to reserve quota fixed for the said promotion and that they had challenged the same. The query of limitation that departmental appeal was filed after delay of three years the learned counsel contended that they had clarified the issue in the departmental appeal and that in early round of litigation before this Hon'ble Tribunal the appellant was allowed to re-agitate the issue and in last they would further clarify the point of limitation at the time of final arguments with relevant precedents of superior courts.

Point raised needs consideration, the appeal is admitted for regular hearing subject to clarification of limitation at the time of final arguments. The appellant is directed to deposit the security and process fee within 10 days there-after notices be issued to the respondents for written reply/comments for 26.07.2017 before S.B at Camp Court D.I.Khan.

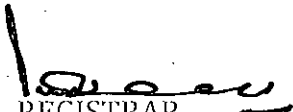

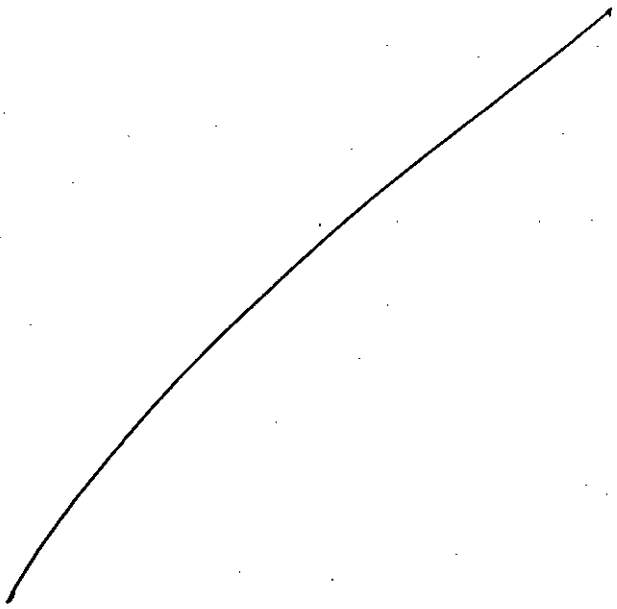
Appellant Deposited
Security Process Fee


(ASHFAQUE TAJ)
MEMBER
Camp Court D.I.Khan

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 923/2016

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	31/08/2016	<p>The appeal of Malik Muhammad Irfan resubmitted today by post through Mr. Muhammad Iqbal Khiara Advocate may be entered in the Institution Register and put up to Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	2.09.2016	<p>This case is entrusted to Touring S. Bench at D.I.Khan for preliminary hearing to be put up there on <u>26-9-2016</u></p> <p style="text-align: right;"> CHAIRMAN</p> 

To,

**The Registrar
Khyber Pakhtunkhwa
Service Tribunal Peshawar.**


SUBJECT: OBJECTION

Dear sir,

Reference your no. 1249/ST Dated: 04-08-2016. The objections raised in your above referred letter have been attended to and Original service appeal date: 30-07-2016 is returned for further action please.

Dated: 26/08/2016

Your Sincerely


MALIK MUHAMMAD JOBALKHIARA
Advocate District Bar Association
D.I. Khan

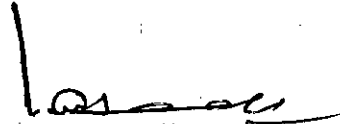
26/8/2016

The appeal of Malik Muhammad Irfan son of Malik Ghulam Qasim Ex-Sub-Engineer LG&RDD received today i.e. on 01.08.2016 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Page nos. 29 to 33, 42 to 44 of the appeal are illegible which may be replaced by legible/better one.
- 2- There are interruption in the facts and grounds of appeal which is against an official language. Therefore continuity be maintained in drafting the memorandum of appeal.

No. 1249 /S.T,

DL 4/8 /2016


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Malik Muhammad Iqbal Khiara Adv.
Distt. Bar Association D.I.Khan.

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No:- 923 of Year 2016

Hearing at D.I.Khan

Malik Muhammad IRfan S/O Malik Ghulam Qasim S.DO P.H.E.D Tank and Ex Sub Engineer
L.G&R.D.D Peshawar

Khyber Pakhtukhwa
Service Tribunal

Appellant

V/S

Diary No. 779

Dated 01-8-2016

1. Govt of KHYBER PAKHTUNKHWA through Secretary L.G&R.D.D and five others.

Respondents.

Index

<u>S.NO</u>	<u>Name of Documents</u>	<u>Page Nos</u>	<u>Annexure</u>
1	Service appeal along with affidavit	1-5 -10	
2	Appointment order dated:22/11/88	11	(A)
3	Termination Order	12-13	(B)
4	Apex Court Judgment dated:25/08/2005	14-24	(C)
5	Notification SO(LG – 1)3-323/03 dated:10/11/2005	25-26	(D)
6	Engineering Degree	27	(E)
7	Seniority list dated:31/05/2006	28-33	(F)
8	Notification 10% quota dated:14/04/1998	34-37	(G)
9	S.O (Estt) Reply	38-39	(H)
10	Departmental Appeal dated:22/11/2006	40-41	(I)
11	Service Appeal 773 dated:16/07/2007	42-44	(J)
12	Judgment dated:30/12/2013	45-46	(K)
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14	Appointment order Naheed Khan dated:13/11/2013	49	(M)
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16	Promotion notification dated:13/02/2015	52-53	(O)
17	Apex Court order dated:20/02/2016	54-58	(P)
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19	Waqalat Nama in favour of Malik Muhammad Iqbal	62	(R)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No:- 923 of Year 2016

Hearing at D.I.Khan

Malik Muhammad Irfan S/O Malik Ghulam Qasim Ex Sub Engineer L.G.R.D.D Khyber Pakhtunkhwa Peshawar now S.D.O Public Health Engineering Department Tank.

Appellant

V/S

1. Government of Khyber PakhtunKhwa through Secretary Local Government and Rural Development Peshawar.
2. Government of Khyber PakhtunKhwa through Secretary Public Health Engg: Deptt Peshawar.
3. Government of Khyber PakhtunKhwa through Chief Secretary Khyber PakhtunKhwa Peshawar .
4. Chief Engineer Public Health Engg: Deptt Peshawar.
5. Director General L.G & R.D.D Peshawar.
6. Naheed Khan Asstt: Engineer Office of the Asstt: Director L.G & R.D.D Bajore Agency Bajore.

Re-submitted to -day
and filed.

Registrar 31/12/16

Respondents.

Service Appeal under Sec.4 of the Khyber PakhtunKhwa Service Tribunal Act 1974.

PRAYER:- To please take cognizance of the case and while accepting this service Appeal the Respondents No 1 & 2 be directed to promote the Appellant as S.D.O/AE in G-17 with retrospective effect from the date of creation of posts / falling vacant posts of S.D.O/AE during his service in L.G & R.D.D and Public Health Engineering Department with "all back benefits" and against 10% promotion quota reserved for Engineers graduates as per judgment of Apex Court of Pakistan dated 25.8.2005 and notification NO: SO (LG-1) 2-188/93-Vol:II dated 14.4.1998 respectively.

Respectfully Sheweth:-

1. That the addresses of the parties as given above are correct for the purpose of service.
2. That the appellant holding Civil Engineering degree was inducted in service as Sub Engineer Local Govt on contract basis w.e.f 26.11.1988 i.e from the date of joining of said post vide appointment letter No DSL/LCB/1-8/88 dated 22.11.1988 photo copy attached as annexure A.
3. That after serving as Sub Engineer from 26.11.1988 to 4.3.2003, appellant along with appellant's other colleagues were terminated from service w.e.f 4/3/2003 vide letter No S.O(LG-1)3-113/96 dated 30.5.2003. Photo copy of letter attached as annexure B.

4. That this Honorable Tribunal was approached against the said termination order, which was not considered in service Appeal before Honorable Service Tribunal on the plea that contract employees are ousted of the jurisdiction of the Honorable Tribunal.

5. That there after the Apex Court of the country was moved and as consequence the appellant along with other appellant's colleagues were reinstated in service as Sub Engineer from the date of termination i.e 04-03-2003 "with all back benefits" as Sub Engineer vide Apex Court of Pakistan judgment dated 25.8.2005. Photo copy of judgment attached as annexure C.

6. That in response to Apex Court of Pakistan judgment dated 25-08-2005, the Secretary L.G.&R.D.D Govt of N.W.F.P now Khyber Pakhtunkhwa vide his letter NO S.O(LG-1)3-323/03 dated 10.11.2005, not only reinstated appellant along with other Appellant's colleagues from the date of termination i.e 04-03-2003 and also regularized appellant whole service from the date of initial appointment i.e 26-11-1988 but "without all back benefits" regarding my promotion when equivalent posts of S.D.O/AE in G-17 were vacant in the Department in 1999 and also earlier. Record of which is available with the Department. The Secretary Local Govt in the said letter in spite of considering my case of promotion in L.G.R.D.D ordered to place appellant along with other appellant's colleagues in surplus pool of L.G.R.D.D. Photo copy of letter attached as annexure D.

7. That a final seniority list of Sub Engineers as stood on 31-05-2006 was issued by Mr. Iliam Khan Khattak S.O establishment vide = S.O (LG-1) 04-126/95 Vol: II dated 20-06-2006 in which Appellant stand at serial No 26 holding Civil Engineering degree as shown Column NO 03 of the said seniority list, all the serial numbers from 1 to 25 are Matric / Diploma holders. Photo copies of Appellant Civil Engineering degree and seniority list are placed as annexure E & F respectively.

8. That a notification / S.O (LG-1) 02-188/93-Vol:II dated 14-04-1998 was issued according to which 10% quota for promotion of S.D.O/AE of Engineering graduates among Sub Engineers was fixed. Photo copy of notification placed at annexure G.

9. That in response to said notification the Deptt. L.G. & R.D.D issued amended recruitment service rules as contained in written reply by Mr. Izzat Ullah S.O establishment LG & R.D.D Peshawar in service appeal NO 773/2007 dated 16/07/2007 before K.P.K service Tribunal in which it is clear in

Para 07 of said reply that during period 2006 and onward there were seven sanctioned posts of AE/S.D.O in G-17 in Fata L.G & R.D.D out of these posts, one post falls to share of degree holder Sub Engineer but appellant was ignored promotion against this one post falling vacant in 2006 being senior most Engineer graduate among Sub Engineers. Photo copy of said reply placed as annexure H.

10. That appellant requested the concerned department several times to promote appellant in grade 17 as ordered by Apex Court of Pakistan dated 25/08/2005 already placed at annexure C "with all back benefits" and also in the light of above notification dated 14.4.1998 already placed at annexure "G" against vacant posts from date of appointment i.e 26/11/1988 till vacant posts in 2006 but the concerned Department did not pay any heed to my requests. Therefore being aggrieved by the litigious attitude of concerned Department regarding appellant promotion as S.D.O/AE in grade 17, appellant applied through departmental appeal dated 22/11/2007 to Secretary L.G & R.D.D KHYBER PAKHTUNKHWA Peshawar to promote appellant in the light of the judgment of Apex Court of Pakistan dated 25/08/2005 and Notification dated 14-04-1998 There after waiting for a period of 90 days and receiving no response from Secretary L.G. & R.D.D, appellant applied for service appeal to KHYBER PAKHTUNKHWA services Tribunal Peshawar dated 14-07-2007 which was registered under No773/2007 dated 16/07/2007. Photo copy of Departmental appeal and service appeal are placed at annexure I & J respectively.

11. That after processing the said Service appeal dated 14-07-2007 the Honorable KHYBER PAKHTUNKHWA service Tribunal vide judgment dated 30/12/2013 passed an order that Secretary L.G. & R.D.D Deptt. KHYBER PAKHTUNKHWA Peshawar shall consider the case of the appellant on sympathetic and humanitarian grounds and shall make a decision for disposal of long standing case of appellant within reasonable time. Photo copy is attached as annexure K.

12. That after waiting for implementation of judgment of Honorable KHYBER PAKHTUNKHWA Service Tribunal dated 30/12/2013, from Secretary L.G & R.D.D KHYBER PAKHTUNKHWA Peshawar and having no response the appellant moved execution application No 09/2014 under Section 7 (2) D of KHYBER PAKHTUNKHWA Service Tribunal Act 1974, which was processed accordingly and respondent NO1 through S.O Establishment in response to notice had come up with a reply, as contained in judgment dated 27/11/2015 of Honorable Service Tribunal Peshawar, that in pursuance of judgment dated 30/12/2013 of KHYBER PAKHTUNKHWA Service Tribunal referred above the case was processed on humanitarian grounds but due to non-availability of any vacant post the appellant could not be accommodated. Photo copy of the judgment dated 27/11/2015 is placed as annexure L.

13. That it is pertinent to point out that contrary to reply of Respondent NO 1 as contained in judgment dated:27/11/2015 referred above posts of AE/S.D.O in G-17 were fallen vacant on 15/05/2009, 01/05/2011, 20/06/2012 and on 05/03/2014 due to retirement of S.D.O's/AE's namely M/S Pir Dad, Muhammad Ramzan, Muhammad Ashique and Aurang Zeb who stand at Serial No 2, Serial No3, Serial No 15 and Serial No 1 respectively in the Seniority list dated: 31/05/2006 who were promoted S.D.O/AE by the LG&R.D.D earlier This fact for vacant posts referred above was concealed in the reply by the respondent NO1 referred above.

14. It is also pertinent to point out that contrary to reply of the Respondent NO1 in reply as contained in judgment dated:27/11/2015 referred above one Mr.Nahed Khan respondent No6 who stood at Serial No 46 of seniority list dated:31/05/2016 referred above and holding Diploma and Not Engineering Degree was promoted in G-17 vide his promotion order No SO(LG-1)2-330/Fata/2012 dated:13/11/2013 In L.G. & R.D.D.Fata Against vacant post available in 2006 as contained in written

reply submitted by Azaz Ullah S.O Establishment already placed as annexure H. Photo copy of promotion order of Mr.Nahed Khan is placed as annexure M.

This fact was also concealed by the Respondent NO1.

15. That since appellant was inducted in service as Sub Engineer on 26/11/1988, in L.G & R.D.D and after serving in L.G & R.D.D for nearly 20 years and due to winding up of various offices in L.G & R.D.D during devolution process in 2001 the appellant along with others while remaining in surplus pool of L.G & R.D.D was only adjusted/ absorbed and not services transferred in Public Health Engg: Deptt vide Govt of N.W.F.P (now KHYBER PAKHTUNKHWA) Works & Service Deptt Peshawar letter No SOE-II / W&S /17-3/99 dated : 13/03/2008,photo copy of letter dated 13/03/2008 is placed in annexure N. Therefore in view of 20 years' Service rendered in L.G & R.D.D and there after only adjustment of my service in Public Health Engg: Deptt. appellant parent Deptt. Still stands as L.G & R.D.D and appellant holds lien with L.G & R.D.D for the sake of promotion etc. 16. That though appellant was promoted as S.D.O/AE in BPS 17 on regular basis w.e.f 13/02/2015 vide notification NO : SO(Est) P.H.E.D/4-53-B/2014 photo copy placed as annexure "O" and posted at Tank but appellant claims his promotion as S.D.O/AE is G-17 from back date earlier from 26/11/1988 to 12/02/2015 specially in 2006,2009,2011,2012 and 2014 when clear vacant posts of S.D.O/AE were available as explained above in Para 13 & 14.

17. That after judgment dated 27/11/2015 passed by the Honorable Service Tribunal the appellant in good faith appealed to Apex Court of Pakistan dated:25/01/2016 but later on the same was withdrawn to approach the proper forum for the remedy of appellant grievances vide Apex Court of Judgment dated: 22/02/2016. Photo copy of judgment placed at "P". Therefore the intervening period from 27/11/2015 to 03/04/2016 was consumed in filing appeal in good faith to Apex Court of Pakistan which was withdrawn dated: 22/02/2016, and in obtaining copies of Judgment of Honorable Service Tribunal and preparation of Departmental and Service appeals.

18. That in pursuant to advice by the Honorable Service Tribunal KHYBER PAKHTUNKHWA contained in judgment 27/11/2015 to re agitate the matter in the prescribed manner if aggrieved, hence appellant being aggrieved by the refusal of Secretary L.G & R.D.D KHYBER PAKHTUNKHWA Peshawar to implement the judgments dated: 30/12/2013 and dated 27/11/2015 of Service Tribunal KHYBER PAKHTUNKHWA in letter and spirit to consider appellant case on sympathetic and humanitarian grounds, when the vacant posts of S.D.O/AE were available in 2006,2009,2011,2012 and 2014 as explained above but appellant was refused promotion against 10% quota of Graduate Engineer and Apex Court of Pakistan judgment 25/08/2005, therefore keeping in view the prescribed manner the departmental appeal, dated: 04/04/2016 was submitted to appellate authority, which was not responded with in a waiting period of 90 days hence this instant Service Tribunal KHYBER PAKHTUNKHWA with in time on inter alia following grounds. Photo copy of departmental appeal dated: 4/04/2016 placed at annexure "Q".

GRUNDS.

1. That appellant is senior most Civil Engineering Graduate among Sub Engineers due for promotion as S.D.O/AE in BPS 17 with effect from back date when posts of S.D.O/AE were vacant during appellant whole Service in L.G & R.D.D/ P.H.E.D, in the light of notification dated: 14/04/1998 and judgment of Apex Court of Pakistan dated: 25/08/2005.

2. That the work and conduct of appellant throughout his service remained up to mark without any complaint or any adverse entry in ACR's, and up till now appellant is performing duties to the entire satisfaction of the superiors.

3. That the appellant is a regular civil servant of the Department.

4. That the appellant holds lien with his parent Deptt (L.G.& R.D.D) while serving in P.H.E.D for the sake of appellant promotion with back date against vacant posts since 26/11/1988 specially in year 2006,2009,2011,2012 and 2014 against 10 % quota for Engineers graduates and judgment dated:25/08/2005 of Apex Court of Pakistan.

5. That in violation of clear instructions Mr.Naheed Khan Respondent NO 06 who stands at serial No 46 of the said seniority list dated:31/05/2006 holding diploma and not Engineering degree holder being junior to appellant who stand at serial NO 26 was promoted in BPS 17, which is clear infringement of appellant legal rights.

PRAYER:

It is therefore very humbly prayed that on acceptance of this service appeal the respondent NO 1 and 02 may graciously be directed to promote appellant as S.D.O/AE in BPS 17 with retrospective effect against a vacant posts in Grade -17 during my whole service as explained in above Para's in this service appeal as per 10% quota of Engineer graduates amongst Sub Engineers and in the light of judgment of Apex court of Pakistan dated: 25/08/2015.

Dated: 30/07/2016

Malik Muhammad Irfan

**Appellant.
Malik Muhammad Irfan.
Through Counsel.**

Malik Muhammad Iqbal Khiara
**Malik Muhammad Iqbal Khiara
Advocate**

District: Bar Association D.I.Khan

GOVERNMENT OF PUNJAB
LOCAL GOVERNMENT, ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT.

NO. Ls. I/ICB/1-8/88,
Dated Peshawar 12th Nov. 1988.

ANNEXURE (A)
PAGE 6

To
1956

Mr. Mohammad Irfan o/o
Malik Ghulam Qasim, Mohallah Sari Faqir, Teal & District,
D. I. Khan.

21/12/88

Subject:- APPOINTMENT ON CONTRACT BASIS.

Further to our letter of even number dated 2-11-1988, and the agreement signed by you on 12th November, 1988 the Provincial Government are pleased to appoint you as Sub-Engineer, on contract basis on the terms and conditions contained in the said agreement (copy enclosed) for the period commencing from the date of assumption of charge un-till 30-6-1989 or earlier as the case may be.

On appointment you are posted in the office of Asstt: Director, LG&RDD, D. I. Khan and advised to report for duty to him on or before 28-11-1988. No T.A/D.A will be admissible to you for the journey on this account.

(SARWAR KHAN)
DEPUTY SECRETARY-I (ICB).

Enclst: of Even Number & Date.

~~Copy of above agreement~~ copy of above agreement is forwarded to:-

1. The Director General, LG & RDD, P&FP, Peshawar.
2. The Divl: Director, LG & RDD, D. I. Khan.
3. The Asstt: Director, LG & RDD, D. I. Khan.
4. The Deputy Secretary-II, Local Council Board.
5. The Secretary to Government of P&FP, Planning and Development Department, Peshawar.

DEPUTY SECRETARY-I (ICB).

Muhammad Iqbal
Advocate
Distt: Bar Association D.I. Khan

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GOVERNMENT OF N.W.F.P.
LOCAL GOVT. ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

NOTIFICATION

Dated Peshawar, the 30th May, 2003.

No. SO(LG-E)3-113/96. - Consequent upon the dismissal of Writ Petitions No.1084 of 1996- Mr. Muhammad Zahoor and others, 82 of 1997- Mrs. Tahira Yasmeen and 138 of 1998 - M/S Muhammad Pervez Khan and Sarfaraz Khan V/S Government of NWFP by the Peshawar High Court Peshawar vide its detailed judgement dated 4-3-2003 on the Writ Petition No.1084 of 1996 Mr. Muhammad Zahoor and others, the competent authority is pleased to order the termination of services of the following contract/project employees presently in the Surplus Pool of Local Government and Rural Development Department with effect from 4-3-2003:-

Sl. No.	Name of office/official	Designation with BPS
1.	Mr. Muhammad Zahoor	Planning Officer (B-17)
2.	Mr. Muhammad Iqbal	-do-
3.	Mr. Zafrullah Khan	-do-
4.	Mr. Muhammad Fahim	-do-
5.	Mrs. Tahira Yasmeen	Asstt. Directress (B-17)
6.	Mr. Pervez Khan	Progress Officer (B-17)
7.	Mr. Fakhr-Uz-Zaman	-do-
8.	Mr. Atiq-Ur-Rehman	-do-
9.	Mr. Sarfaraz Khan	-do-
10.	Mr. Arshad Zia	-do-
11.	Mr. Khalid Saeed	-do-
12.	Mr. Razaullah Khan	-do-
13.	Mr. Sheraz Ahmed	Progress Officer (B-16)
14.	Mr. Abdul Rashid	-do-
15.	Mr. Fazlullah	-do-
16.	Mr. Shad Muhammad	-do-
17.	Mr. Shibli Khan	-do-
18.	Mr. Fazal Rehman	-do-
19.	Mr. Ziaullah	Stenographer (B-12)
20.	Mr. Muhammad Ismail	-do-
21.	Mr. Naseemullah	Assistant (B-11)
22.	Mr. Iqbal Ahmed	-do-
23.	Mr. Siyanoosh	-do-
24.	Mr. Munwar Ahmed	-do-
25.	Mr. Asghar Hussain	Sub-Engineer (B-11)
26.	Mr. Raees Khan	-do-
27.	Mr. Aziz-Ur-Rehman	-do-
28.	Mr. Abdul Hameed	-do-
29.	Mr. Mishah-Ud-Din	-do-
30.	Mr. Hayat Khan	-do-
31.	Mr. Muhammad Saddique	-do-
32.	Mr. Amin Gul	-do-
33.	Mr. Dilawar Khan	-do-
34.	Malik Muhammad Hrao	-do-
35.	Mr. Abdali Shah	-do-
36.	Mr. Muhammad Khan	-do-
37.	Mr. Aminullah	-do-

Muhammad Iqbal
 Muhammad Iqbal
 Advocate
 Distt: Bar Association D.I. Khan

Ahmed

P-8

39.	Mr. Muhammad Ilyas	-do-
40.	Mr. Abdur Rehman	-do-
41.	Mr. Araf Qayum	-do-
42.	Mr. Muhammad Nazif	-do-
43.	Mr. Ghulam Akbar	-do-
44.	Mr. Salim Javed	-do-
45.	Mr. Irtizar Muhammad	-do-

SECRETARY GOVT. OF NWFP
 LOCAL GOVT. ELECTIONS & RURAL
 DEVELOPMENT DEPARTMENT

Encl. No. SO(LG-1)3-113/96/5687-08 Dated Peshawar, the 29th May, 2003

- Copy forwarded to:-
1. All the Administrative Secretaries to Government of NWFP.
 2. The Secretary to Governor NWFP, Peshawar.
 3. The Secretary to Chief Minister, NWFP, Peshawar.
 4. The Advocate General, NWFP, Peshawar with reference to his Memo No. 2806/AG, dated 17-5-2003.
 5. The PS to Chief Secretary, NWFP, Peshawar.
 6. The Accountant General, NWFP, Peshawar.
 7. All District Coordination Officers in NWFP.
 8. The Secretary, Local Council Board, NWFP, Peshawar.
 9. The Deputy Director, LG & RID, NWFP, Peshawar.
 10. All Assistant Directors LG & RID in FATA.
 11. All District/Agency Accounts Officers in NWFP.
 12. The Section Officer (L.F.), Government of NWFP, F&A Department with reference to his letter No. S.O(L.F)F&AD/2-56/97, dated 26-5-2003.
 13. The Officers/officials concerned.
 14. All Sections Officers/Planning Officers in the LG & RID.
 15. The PS to Minister for LG & RID.
 16. The PS to Secretary, LG & RID.
 17. The P As to Addl. Secretary/Deputy Secretary-I and II LG & RID.

Muhammad Iqbal
 Advocate
 Distt: Bar Association D.I. Khan

(DILDAR KHAN KHATTAK)
 SECTION OFFICER (SST)

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Annexure (C)

L-70/05T

(14)

PRESENT

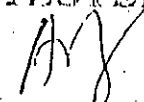
MR. JUSTICE HAMID ALI MIRZA
MR. JUSTICE NASIR-UL-MULK

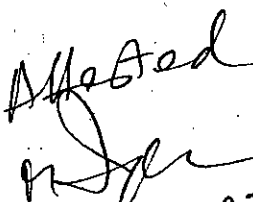
**CIVIL APPEALS NO.44 TO 79 OF 2004 AND
CIVIL PETITIONS NO.1409/2004 & 319/2005**

(On appeal from the judgment of the N.W.F.P. Service Tribunal,
Peshawar, dated 7.2.2004 passed in Service Appeals No.926, 959
to 979, 989, 1037 to 1039, 1048 to 1050, 1067 to 1071, 1085,
1170 of 2003 and 60 of 2004.

Zafarullah Khan	Appellants (in C.A.No.44/05)
Attiqur Rehman	(in C.A.No.45/05)
Khalid Saeed	(in C.A.No.46/05)
Muhammad Zahoor	(in C.A.No.47/05)
Fakhr-uz-Zaman Khan	(in C.A.No.48/05)
Muhammad Fahim	(in C.A.No.49/05)
Shad Mohammad	(in C.A.No.50/05)
Raza Ullah Khan	(in C.A.No.51/05)
Muhammad Iqbal Khan	(in C.A.No.52/05)
Sheraz Ahmed	(in C.A.No.53/05)
Abdur Rashid	(in C.A.No.54/05)
Arshad Zia	(in C.A.No.55/05)
Fazlullah	(in C.A.No.56/05)
Muhammad Rases Khan	(in C.A.No.57/05)
Muhammad Ilyas	(in C.A.No.58/05)
Aziz-ur-Rehman	(in C.A.No.59/05)
Muhammad Sadiq	(in C.A.No.60/05)
Asghar Hussain	(in C.A.No.61/05)
Salim Javed	(in C.A.No.62/05)
Amin Gul	(in C.A.No.63/05)
Dilawar Khan	(in C.A.No.64/05)
Munawar Ahmed	(in C.A.No.65/05)
Schwanosh	(in C.A.No.66/05)
Muhammad Nazif	(in C.A.No.67/05)
Ghulam Akbar	(in C.A.No.68/05)

ATTESTED


Superintendent
Supreme Court of Pakistan
ISLAMABAD


Muhammad Iqbal
Advocate
Distt. Bar Association D.I.Khan

15

Aman Ullah Khan	(in C.A.No.69/05)
Abdali Shah	(in C.A.No.70/05)
Intizar Muhammad	(in C.A.No.71/05)
Muhammad Khan	(in C.A.No.72/05)
Arif Qayyum	(in C.A.No.73/05)
Abdul Hameed	(in C.A.No.74/05)
Nasem Ullah	(in C.A.No.75/05)
Muhammad Ismail	(in C.A.No.76/05)
Fazal-ur-Rehman	(in C.A.No.77/05)
Malik Irfan	(in C.A.No.78/05)
Iqbal Ahmed	(in C.A.No.79/05)
Pervez Khan	Petitioner (in C.P.No.1409/04)
Sarfraz Khan	(in C.P.No.319/05)
Government of N.W.F.P. and others For the Appellants: (in C.A.Nos.44 to 56/05)	Versus Respondents Mr. Muhammad Akram Sheikh, Sr. A.S.C. Mr. Muhammad Ahmed Zaidi, A.O.R.
For the Appellants (in C.A.Nos.57 to 79/05 & C.P.1409/04)	Mr. Abdul Rehman Siddiqui, A.S.C. Ch. Muhammad Akram, A.O.R.
For the Petitioner (in C.P.No.319/05)	Mr. Muhammad Aslam Uns, A.S.C. Mr. Arshad Ali Ch. A.O.R.
For the Respondents (in all cases)	Mr. Muhammad Essa Khan, Addl.A.G. N.W.F.P.
Date of hearing:	25 th August 2005

JUDGMENT

NASIR-UL-MULK, J.- By this single judgment, it is proposed to dispose of Civil Appeals No.44 to 79 of 2005 and Civil Petitions No.1409 of 2004 and 319 of 2005. In the civil appeals, leave to appeal was granted to consider inter-alia "whether by virtue of N.W.F.P. Employees On Contract Basis (Regularization of Services) Act, 1989 (Act No. VIII of 1989) as amended by N.W.F.P. Act No. II of 1990, the petitioners were to be treated as regularly appointed civil servants notwithstanding that their original initial appointment was on contract basis."

ATTESTED

AY
Superintendent
Supreme Court of Pakistan
ISLAMABAD

Attested
Muhammad Iqbal
Advocate
Distt. Bar Association D.I.Khan

2. The facts of all these matters, except civil appeal No.46 of 2005, filed by Khalid Saqad, are materially similar. In these similar appeals/petitions, the appellants/petitioners had applied in the year 1986 for the various posts, advertised for appointments on ad-hoc basis by the Government of N.W.F.P, Local Government, Elections and Rural Development Department, Peshawar (hereinafter referred to as the Department), published in the National Dailies of 30.10.1987. The total numbers of posts advertised were 136. The appellants, upon the recommendation of the Selection Board, constituted for the purpose, were appointed in November 1988 on the posts for which they were selected. As a specimen it will be worthwhile to reproduce the letter of appointment of one of the appellants, namely Zafarullah Khan, appellant in civil appeal No.44 of 2005:-

"GOVERNMENT OF NWFP
LOCAL GOVERNMENT, ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

NO.DS.1/LCB/1-8/88
Dated Peshawar 22nd Nov.1988.

To

Mr. Zafar ullah Khan s/o
Gul Faraz Khan, c/o Abdul Sattar, Office Supdt. FIA,
Mall Road Peshawar Cantt.

Subject: APPOINTMENT ON CONTRACT BASIS.

Further to our letter of even number dated 2-11-88, and the agreement signed by you on 13th November, 1988 the Provincial Government are pleased to appoint you as Planning Officer (Karak), on contract basis on the terms and conditions contained in the said agreement (copy enclosed) for the period commencing from the date of assumption of charge until 30.6.1989 or earlier as the case may be.

On appointment you are posted in the office of Asstt. Director LG & RDD (Karak). And advised to report for duty to him on or before 28.11.1988. No TA/DA will be admissible to you for the journey on this account.

(SARWAR KHAN)
DEPUTY SECRETARY-I(LCB)."

ATTESTED

AS

Superintendent
Supreme Court of Pakistan
ISLAMABAD

Attested

Muhammad Iqbal
Advocate
Distt: Bar Association D.I.Khan

The letters of appointment of the other appellants were similarly worded. It may be noted that though the posts were advertised to be filled on ad-hoc basis, the appointments were made on contract basis. The case of the appellants is that the nature of employment was changed on account of ban imposed on recruitment on ad-hoc basis by the N.W.F.P. Civil Servants (Regularization of Services) Act, 1988.

3. The appellant in civil appeal No.46 of 2005 was appointed on 12.3.1990 as Planning Officer in BPS-17 under the Scheme "Strengthening of Local Government and Rural Development" purely on the contract basis. The terms and the date of employment of this appellant makes his case distinguishable from the rest of the appellants.

4. All the appellants were serving the Department when in the year 1996 the Accountant General, N.W.F.P. stopped payment of their salaries, impelling them to file Constitutional Petitions (Writ Petition No.1084 of 1996 etc.) wherein they prayed that they be declared to be duly regularized civil servants in the light of provisions of the N.W.F.P. Employees on Contract Basis (Regularization of Service) Act 1989 (Act VIII of 1989) as amended by the Act No.II of 1990. The writ petition was dismissed on 4.3.2003. During the pendency of the petitions, the appellants remained in service on account of the interim orders passed in their favour by the High Court. The appellants being aggrieved of the decision of the High Court filed constitutional petitions for leave to appeal before this Court. During the pendency of the petitions the appellants' services were terminated in the light of judgment of the High Court. In view of this development, this Court was of the opinion that the appellants had to assail the orders of termination of their services before the Service Tribunal. A direction was given to the Service Tribunal that in case appeals were filed by the appellants, the same be disposed of expeditiously. While disposing of the petitions in the above terms, this Court directed the Government of N.W.F.P. to pay the appellants their outstanding salaries if not paid so far.

ATTESTED

Signature

Superintendent
Supreme Court of Pakistan

Signature
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan


Signature
Muhammad Iqbal
Advocate
District Bar Association
Dera Ismail Khan

5. The appellants thereafter filed their respective appeals before the Service Tribunal. All the appeals, except one filed by Tahira Yasmeen, were dismissed. That case was held to be distinguishable for the employee had been appointed on temporary and not on contract basis. The reasons for dismissal of the appeals have been stated in para 10 of the impugned judgment, dated 7.2.2004, which reads as under:-

"10. A look at the record would show that appointments of the appellants were made purely on contract basis initially for a period of six months. Agreement deeds were also executed between the employers and employees. The prayer of the appellants for their regularization was not acceded to by the respondent department. It is evident that status of the appellants ever since their initial appointments till the termination of their services remained as contract employees. Since the appellants were contract employees, therefore, they are not civil servants within the meaning of section 2(b) of the NWFP Civil Servants Act, 1973. Therefore, this Tribunal lacks jurisdiction in the matter in hand. Accordingly, the instant appeal as well as the connected appeals mentioned above, except Appeal No.926/03 figures at S.No.1 at page-2 of the judgment, fail and are dismissed, with no order as to costs."

6. The Service Tribunal thus declined to exercise jurisdiction on the ground that the appellants being contract employees were not civil servants and thus could not file appeals before the Service Tribunal. These findings run contrary to the order of this Court dated 10.6.2003 passed in C.P.No.185-P of 2003 wherein it was expressly stated that the appellants may file appeals before the N.W.F.P. Service Tribunal against their orders of termination and direction was also given to the Service Tribunal for the expeditious disposal of the appeals, if filed. The Service Tribunal, on account of above findings, did not attend to the merits of the appeals before it.

7. The case of the appellants throughout has been that they were to be appointed on ad-hoc basis as advertised but on account of the ban imposed on

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Advocate
District Bar Association
Dera Ismail Khan

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such employment by the Act of 1988, they were appointed on contract basis. That in any case their services as civil servants stood regularized by Act VIII of 1989 as amended by Act II of 1990. That throughout their service they had been treated as civil servants and were given all benefits of such service.

8. Mr. Muhammad Akram Sheikh, Sr. A.S.C. elaborating the case of the appellants submitted that the appellants had served the Department continuously for 15/16 years and though their initial period of contract had expired, they remained in employment without further extension of the contractual service. That all along, the appellants had been treated as civil servants, probably on account of Act VIII of 1989, and thus the non-issuance of any formal order/notification regularising the appellants' service under the said statutory provisions would be a lapse of the Department. Countering the claim of the Department that the appellants belonged to a project/scheme of the Department and were not appointed to regular posts in the Department, the learned Sr. A.S.C. submitted that neither the advertisement advertising the posts nor the appellants' orders of appointment had referred to employment in any scheme/project. For his submissions, the learned counsel cited "Ahmed Khan v Secretary to Government (1997 SCMR 1477) and "Government of N.W.F.P. v Rukhsar Ali (2005 SCMR 22)."

9. Mr. Abdul Rehman Siddiqui and Mr. Muhammad Aslam Uns, learned ASC who appeared for some of the appellants adopted the arguments advanced by Mr. Muhammad Akram Sheikh, Sr. A.S.C.

10. Before referring to the contentions of Mr. Muhammad Essa Khan, learned Additional Advocate General, N.W.F.P. representing the Department, it would be appropriate to state the statutory provisions relevant for determination of the main questions raised before us. As already mentioned the posts in question were advertised on 30.10.1987 to be filled on ad-hoc basis. Section 5 of N.W.F.P. Civil

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Advocate
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Dera Ismail Khan

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Superintendent
Supreme Court of Pakistan
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Servants (Regularization of Service) Act 1988, enacted on 23.1.1988, is reproduced as follows:-

"5. Ban on recruitment on ad hoc basis:- (1) Notwithstanding anything contained in any law or rule there shall be no recruitments by way of ad hoc appointments for a period of ten years from the date of commencement of this Act.

(2) The Government may fill in short term or temporary vacancies by way of contractual appointment in such manner and on such terms and conditions as may be prescribed for a period not exceeding two years during which period the selectees of the Public Service Commission against the vacancies, to fill in the posts, shall be made available by the Public Service Commission."

11. The above act was enacted after the advertisement but before the appellants' appointments. It would thus appear that it was on account of this intervening event of ban on ad-hoc appointments by the above statutory provision that the appellants' appointments were made on contractual basis, notwithstanding that according to the advertisement the appointments were to be made on ad-hoc basis. However, on 13.11.1989, N.W.F.P. Act No.VIII of 1989 was enacted for the purpose of regularizing the services of contractual employees. The relevant provisions, embodied in Sections 3 and 4 of the Act as under:-

"3. Special provision regarding employees on contract basis:- Notwithstanding any thing contained in sub-section (1) of section 2 of the North West Frontier Province Civil Servants Act, 1973 (N.W.F.P. Act No.XVIII of 1978), any candidate appointed on contract basis in any Government Department against any post on contract basis under section 5 of the North West Frontier Province Civil Servants (Regularization of Services) Act, 1988 (N.W.F.P. Act No.1 of

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Supreme Court of Pakistan

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District Bar Association
Dera Ismail Khan

1988) till the commencing day of this Act shall be always be deemed to have been so appointed.

4.(1) Notwithstanding anything contained in any law for the time being enforce, any Civil Servant, who is, or has been appointed or deemed to have been appointed against any post in any Government Department under section 3 of this Act shall be deemed to have been regularly appointed from the date of his continuous officiation, subject to eligibility, according to the service rules applicable to the post, verified by the Administrative Secretary of the department concerned;

Provided that if any Civil Servant is aggrieved regarding his eligibility, he shall have one right of appeal to the Chief Secretary, Government of North West Frontier Province, and his decision I the case shall be final:

Provided further that if there is any gap in service of any Civil Servant between this enactment and the date of appointment under section 3 of this Act, due to termination of contractual services only the same shall be deemed to have been condoned as extraordinary leave without pay.

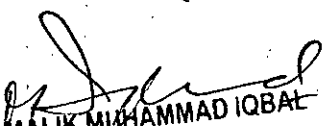
(2) The inter se seniority of the civil servants under this Act shall be determined by the Government, according to service rules in vogue."

12. Section 4 reproduced above was substituted by an amending Act (N.W.F.P. Act-No. II of 1990). The substituted provisions did not bring much material change in the original section and to a greater extent was a reproduction of the substituted provision. Under Section 3 of Act VIII of 1989 a candidate appointed on contract basis against any post under Section 5 of the Act I of 1988 was deemed to have been appointed on ad hoc basis from the date of his appointment. By virtue of Section 4 such person, who is deemed to have been appointed under Section 3 on ad hoc basis, shall be considered to have been regularly appointed from the date of his continuous employment. This however has been made subject to verification of eligibility of the candidate for the post by the Administrative Secretary of the Department. The appellants, as stated above, had been appointed on contract basis under Section 5 of Act I of 1988 as

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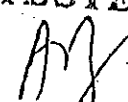
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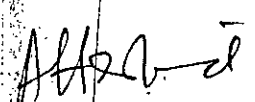


MALIK MUHAMMAD IQBAL
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they could not have been appointed on ad-hoc basis on account of the ban imposed by the Act. Thus, their employment was to be considered as appointment of civil servant on ad hoc basis under Section 3 of Act VIII of 1989 and consequently were deemed to have been regularly appointed by virtue of Section 4 of the Act. Act VIII of 1989 did not envisage the issuance of any notification for regularization of employees falling within the scope of Sections 3 and 4. Such employees became civil servants by operation of law. The only condition was verification of eligibility of the employees by the Administrative Secretary. It is not the case of the Department that appellants were not eligible for the posts to which they were appointed. Even if the formal exercise of verification was to be carried out, the same was to be undertaken by the Secretary and obviously the appellants cannot be made to suffer for non-performance of a statutory responsibility imposed on the head of the Department.

13. In view of the above clear statutory provisions favouring the appellants, the learned Additional Advocate General, N.W.F.P. laid stress upon the Department's stand that the appellants were employed for a project and were never appointed to any regular post in the Department. Elaborating the point he submitted that the Department had started a scheme called "Strengthening of Local Government and Rural Development Department" for which PC-I was approved and it was for the running of the scheme that the appellants were employed. That the appellants were to be paid from the developmental funds and not from the Provincial Exchequer. The learned Additional Advocate General maintained that with the restructuring of the Department in the process of devolution of powers, the office of the Director General, Local Government and Rural Development and all its offices and schemes were abolished and thus the services of the appellants, who were contractual employees for a scheme, had to be terminated.

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14. The position taken by the learned Additional Advocate General, regarding the appellants' nature of employment, does not find support from the relevant documents. By the advertisement of 30.10.1987 the Department invited applications for filling up certain posts in the Rural Development of the Government of N.W.F.P. There was no mention of the posts being related to any project or scheme. The letters of appointment, one of which has been reproduced above, also does not make such a reference. These two are the relevant documents for the purpose of determining as to whether the appellants were appointed for a project or in the Department. As neither the advertisement nor the letters of appointments, both issued by the Local Government and Rural Development Department of the Government of N.W.F.P., state that employment is for any particular project or scheme, the same is deemed to have been made in the Department. Additionally, the appellants, who had served the Department for 15 years, had been treated as regular employees of the Department and not as employees of a project. Circumstances indicative of this treatment have been highlighted by the Service Tribunal in the impugned judgment and have not been controverted by the Department, either before the Tribunal or before us. The appellants had been granted revised basic pay scales like all other civil servants in the years 1991 and 1994 along with annual increments. They were given the benefit of the scheme of basic pay, allowances and pension enhanced by the Provincial Government in the year 2001 for the provincial civil servants. The appellants were regular subscribers to the G.P. Fund and the Benevolent Fund, and it is stated that on transfer of one of the appellants to Peshawar, the G. P. Fund was also transferred to the office of Accountant General, N.W.F.P. Peshawar. These are normal incidence of service of civil servants and not of employment in a project. The source of funds for paying the salaries to the appellants or the contents of any P.C.1 is a matter of internal administration of the Provincial Government. The nature of the appellants' employment is to be decided on the basis of the letters of

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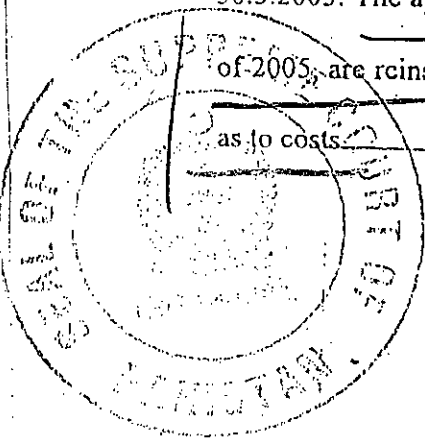
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appointment and the manner in which their employments have been considered thereafter. The foregoing discussion shows that the appellants were employees of the Department and not of any Scheme or Project and by virtue of the provisions of Act VIII of 1989, as amended, had become regular civil servants.

15. The case of Khalid Saeed, appellant in Civil Appeal No.46 of 2005, however, stands on a different footing. He was appointed on 12.3.1990 after the enactment of Act VIII of 1989 and Act II of 1990, the latter is dated 25.2.1990, though it has been enforced retrospectively w. e. f. 13.11.1989. The two Acts had regularized the services of those employees who were employed on contract basis till coming into force of the Acts on 13.11.1989. Obviously, Khalid Saeed cannot claim benefit of these Acts.

16. In view of the above, Civil Appeal No.46 of 2005 is dismissed whereas Civil Appeals No.44, 45, 47 to 79 of 2005 are allowed, Civil Petition Nos. 1409 of 2004 and 319 of 2005 are converted into appeals and allowed. Resultantly, the impugned judgment and order of the N.W.F.P. Service Tribunal to that extent are set aside and so also the order of termination of the said appellants dated 30.5.2003. The appellants, except Khalid Saeed, appellant in Civil Appeal No.46

of 2005, are reinstated in service with all back benefits. There shall be no order as to costs.



Sd/- Hamid Ali Mirza
Sd/- Nazir-ud-Din
Certified to be true copy

Superintendent
Supreme Court of Pakistan
98 ISLAMABAD
13/9/2005

Islamabad
August 25, 2005
Shirazi/*

8/9/05
Attested
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Case No.	447/05
Code of Presentation	25-8-05
"NOT APPROVED FOR REPORTING" Words:	306
No. of Pages	33
Registered Fee Paid	S.M
Copy Fee Paid	
Court Fee Paid	F.O.C
Date of delivery of Copy	13-9-2005
Copy	14-9-05

Annexure (D)

(25)

GOVERNMENT OF N.W.F.P.,
LOCAL GOVT., ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

NOTIFICATION

Dated Peshawar, the 10th November, 2005

No.SO(LG-I)3-323/03.- Consequent upon acceptance of Civil Appeals No.44, 45, 47 to 79 of 2005, 1409 of 2004 and 319 of 2005 and setting aside of this Department Notification No.SO(LG-I)2-113/96, dated 30-5-2003 by the Supreme Court of Pakistan vide Judgement dated 25-08-2005, the Competent Authority is pleased to re-instate in service the following officers/officials of the Local Government and Rural Development Department, NWFP with effect from the date of their termination from service viz 30-5-2003 with all back benefits and their services regularized from the date of their initial appointment:-

Sl.No.	Name of officer/official	Designation with BPS
1.	Mr.Zafrullah Khan	Planning Officer (BPS-17)
2.	Mr.Muhammad Zahoor	-do-
3.	Mr.Muhammad Faheem	-do-
4.	Mr.Muhammad Iqbal	-do-
5.	Mr.Peryez Khan	-do-
6.	Mr.Attiq-Ur-Rehman.	-do-
7.	Mr.Fakhr-Uz-Zaman	-do-
8.	Mr.Sarfaraz Khan	-do-
9.	Mr.Arshad Zia	--do--
10.	Mr.Shad Muhammad	Progress Officer (BPS-16)
11.	Mr.Raza Ullah Khan	-do-
12.	Mr.Sheraz Ahmed	-do-
13.	Mr.Abdur Rashid	-do-
14.	Mr.Fazlullah	-do-
15.	Mr.Muhammad Raees Khan	Sub-Engineer (BPS-11).
16.	Mr.Muhammad Ilyas	-do-
17.	Mr.Aziz-Ur-Rehman	-do-
18.	Mr.Muhammad Siddiq	-do-
19.	Mr.Asghar Hussain	-do-
20.	Mr.Salim Javed	-do-
21.	Mr.Amin Gul	-do-
22.	Mr.Dilawar Khan	-do-

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Advocate
District Bar Association
Dera Ismail Khan

23.	Mr.Munawar Ahmed	-do-
24.	Mr.Muhammad Nazif	-do-
25.	Mr.Ghulam Akbar.	-do-
26.	Mr.Amanullah Khan	-do-
27.	Mr.Abdali Shah	-do-
28.	Mr.Intizar Muhammad	-do-
29.	Mr.Muhammad Khan	-do-
30.	Mr.Arif Qayum	-do-
31.	Mr.Abdul Hameed	-do-
32. ✓	Malik Mohammad Irfan	-do-
33.	Mr.Fazal-Ur-Rehman	Stenographer (Jr. Scale (BPS-12).
34.	Mr.Sehwanosh	Assistant (BPS-11)
35.	Mr.Naseemullah	-do-
36.	Mr.Muhammad Ismail	-do-
37.	Mr.Iqbal Ahmed	-do-

2. On re-instatement these officers/officials are placed in the Surplus Pool of Local Government and Rural Development Department for which Finance Department shall create posts, till they are adjusted as per policy of the Provincial Government.

SECRETARY TO GOVT. OF NWFP,
LOCAL GOVT., ELECTIONS & RURAL
DEVELOPMENT DEPARTMENT

Endst. No.SO(LG-I)3-323/03

Dated Peshawar, the 10th November, 2005

Copy is forwarded to:-

1. All the Administrative Secretaries, Government of NWFP.
2. The Accountant General, NWFP, Peshawar.
3. The Registrar, NWFP Service Tribunal, Peshawar.
4. The Director General (D&M), LG & RDD.
5. All District Coordination Officers in NWFP.
6. The PS to Chief Secretary, NWFP, Peshawar.
7. The PS to Minister for LG & RD, NWFP, Peshawar.
8. The PS to Secretary, LG & RDD.
9. The Director, FATA, LG & RDD, Peshawar.
10. The Section Officer (Surplus Pool), E&A Department.
11. The Section Officer (General), LG & RDD.
12. All Officers/officials concerned.
13. Personal file of the officer/official concerned.

(DIL MUHAMMAD)
SECTION OFFICER (ETAB:)

Malik Muhammad Irfan
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Annexure (12)

(E)

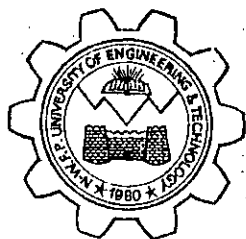
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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Roll No. 1363

Registered No. 81-CIVIL-333

N-W.F.P. University of Engineering and Technology



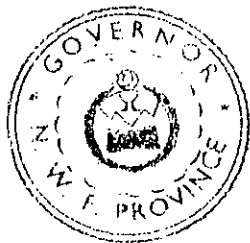
Session 1984-85

This is to certify that

MOHAMMAD IRFAN SON OF GHULAM QASIM KHAN

of this University has been duly admitted to the degree
of Bachelor of Science in CIVIL Engineering.

He has been placed in FIRST Division.



Peshawar, the 26TH OCT: 1987.

[Signature]

Chancellor

[Signature]

Vice-Chancellor

[Signature]

Registrar

[Signature]

MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

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GOVERNMENT OF N.W.F.P.,
LOCAL GOVT., ELECTIONS AND RURAL
DEVELOPMENT DEPARTMENT

No: SO(LG-I)-4-126/95/Voi;II

Dated: Peshawar, the 20th June, 2006

To

All Sub-Engineers
in LG & RDD.

Subject:- FINAL SENIORITY LIST OF SUB-ENGINEERS AS STOOD ON 31-05-2006.

Memo:

I am directed to forward herewith final seniority list of Sub-Engineers of Local Government and Rural Development Department for information and record.

Encl: As Above.

(ILAM KHAN KHATTAK)
SECTION OFFICER (ESTAB:)

Endst. Even No. & Date.

Copy is forwarded to:-

1. The Secretary, LCB, NWFP, Peshawar. He is requested that seniority list may be circulated amongst Sub-Engineers LG & RDD working in TMAs under his kind control.
2. The Director, FATA, LG & RDD, NWFP, Peshawar. He is requested to circulate Sub-Engineers, LG & RDD working in FATA.
3. All Assistant Directors LG & RDD in FATA.

(ILAM KHAN KHATTAK)
SECTION OFFICER (ESTAB:)

MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

FINAL SENIORITY LIST OF SUB-ENGINEERS (BPS-11) OF L.G. & AS STOPPED ON 31-05-2006.

Abbreviation "C" Passed Departmental Grade "B" Examination.

Sl. No.	Name	Educational / Technical qualification	Date of Birth with Domicile	Date of entry into Govt. Service	Date of 1st into Govt. Service	Date of passing of Departmental Grade "B" Examination.	Date of appointment/promotion/absorption/regularization to the present post.	Remarks
1	2	3	4	5	6	7	8	
1 ✓	Mr. Aurang Zeb	Mature/Diploma Holder	05-03-1954 DH Khan	4-2-1975			4-2-1975	
2 ✓	Mr. Pir Dad Khan	Matric/Diploma Holder	15-5-1949 SW. Agency	09-05-1974 (SE RWP)			11-03-1975	
3 ✓	Mr. Muhammad Kamran	-do-	01-05-1951 Fark	6-6-1975			06-06-1975	
4	Mr. Jehan Alam	-do-	11-03-1955 Lakki	16-07-1975			16-7-1975	
5	Mr. Muhammad Saeed	-do-	01-05-1959 Peshawar	29-11-1978			29-11-1978	
6	Mr. Saeed Ahmad Bhatti	-do-	21-12-1956 Manshera	28-09-1980			28-09-1980	
7	Mr. Manzoor Ahmad	-do-	10-03-1954 Haripur	04-01-1981			04-01-1981	
8	Mr. Sabir Ali Shah	-do-	01-01-1960 Mardan	04-1-1981			04-01-1981	
9	Mr. Mumtaz Khan	-do-	10-03-1959 NW-Agency	21-7-1979 (SE IRDP)			03-04-1981	
10	Mr. Sher Dad Khan	-do-	17-01-1960 Mehmand	16-08-1982			16-08-1982	
11	Mr. Rafiq-Din	-do-	15-12-1960 Chitral	10-08-1982			10-08-1982	

MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Section Officer
Local Govt. Election Deptt
Govt. of N.W.F.P.

12.	Mr. Zahoor Ahmad	-do-	01-01-1962 Swabi	10-08-1982		10-08-1982	Seniority given on the decision of the Supreme Court of Pakistan.
13.	Mr. Javed Iqbal	-do-	13-11-1960 Lakki	17-12-1980 (SE in PUCF)		21-3-1983	Seniority given from the date of absorption in RRDD.
14.	Mr. Saleh Muhammad	-do-	01-01-1948 Swabi.	12-3-1973 (Surveyor) 01-06-1974 (SE RRDD)		01-07-1984	Seniority given from the date of absorption in RRDD.
✓ 15.	Mr. Muhammad Ashiq	-do-	20-06-1952 Dikhan	01-10-1975 (SE RRDD)		01-07-1984	-do-
16.	Mr. Faiz-Ul-Hassan Shah	-do-	03-01-1954 Dikhan	01-10-1975 (SE RRDD)		-do-	-do-
17.	Mr. Akbar Jan	-do-	01-04-1954 SW-Agency	10-12-1975 (SE RRDD)		01-07-1984	-do-
18.	Mr. Malik Dad	-do-	02-08-1952 Swabi.	20-07-1976 (SE RRDD)		-do-	-do-
19.	Mr. Hazrat Mir	-do-	02-09-1962 Mardan	26-08-1984		26-08-1984	-do-
20.	Mr. Munir Ahmad		01-11-1948 Dikhan	1-7-1972 (W/M RVP) 28-7-1975 (W/M, RDD)		27-11-1984	-do-
21.	Mr. Afaq Khan	Matric "C"	27-04-1958 Nowshera	10-5-1976 (W/M RDD) 1-12-1984 (SE in BPS-11)		27-11-1984	Seniority given to the official from the date of allowing BPS-11 by the Director General, LG & RRDD vide Corrigendum No. DG/RRW/12(5)/73, dated 28-5-1999.
22.	Mr. Mukhtar Alam	B.Sc (Diploma Holder)	30-5-1957 Charsadda	19-03-1978 (SE RRDD)		10-06-1986	Seniority given from the date of absorption in RRDD.

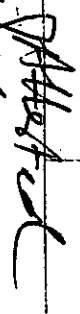
Section Officer
 Local Govt. Election
 Kural, Dera Ismail Khan
 District Bar Association
 Dera Ismail Khan

MALIK MUHAMMAD IOBAJ
 Advocate
 District Bar Association
 Dera Ismail Khan

23.	Mr. Aminullah	-do-	01-07-1952	20-01-1981 (SIF HRDP)	28-8-1988	-do-
24.	Mr. Muhammad Khan	Diploma Holder	Mardan 23-1-1954 Haripur	22-11-1988	22-11-1988	Seniority has been given in the judgement of the Supreme Court of Pakistan dated 25- 08-1005 vide this Department Notification No. SO/LG-13-323/03, dated 10-11-2005 and 16-12-2005.
25.	Mr. Amanullah	-do-	2-3-1955 Peshawar	22-11-1988	22-11-1988	-do-
26.	Malik Muhammad Irfan	B.Sc (Civil Engineering)	16-6-1959 D.I.Khan	22-11-1988	22-11-1988	-do-
27.	Mr. Abdul Hamid Khan	-do-	16-9-1959 Kohat	22-11-1988	22-11-1988	-do-
28.	Mr. Anwar Ahmad	B.Sc (Civil Engineering)	1-2-1960 Lakki Marwat	22-11-1988	22-11-1988	-do-
29.	Mr. Jafzar Muhammad	Diploma Holder (Civil)	20-12-1960 Swabi	22-11-1988	22-11-1988	-do-
30.	Mr. Dilawar Khan	Diploma Holder (Civil)	23-2-1962 NW-Agency	22-11-1988	22-11-1988	-do-
31.	Mr. Muhammad Ilyas	-do-	25-3-1962 NW-Agency	22-11-1988	22-11-1988	-do-
32.	Mr. Abdur Rehman	B.Sc (Civil Engg/Degree Holder)	27-6-1962 Karak	22-11-1988	22-11-1988	-do-
33.	Mr. Muhammad Siddiq	Diploma Holder/B.Sc Civil Engineer	15-8-1962 Swabi	22-11-1988	22-11-1988	-do-
34.	Mr. Aziz-Ur-Rehman	Diploma Holder (Civil)	8-10-1962 Khyber Agency	22-11-1988	22-11-1988	-do-

MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

35.	Mr. Muhammad Raees	-do-	20-4-1963	22-11-1988	22-11-1988	-do-
36.	Mr. Farid Khan	Diploma Holder (B.A.)	SW-Agency 1-4-1964	22-11-1988	22-11-1988	-do-
37.	Mr. Afshabuddin	Diploma Holder (Civil)	20-02-1965 Dir Lower	22-11-1988	22-11-1988	-do-
38.	Mr. Salim Javed	Diploma Holder/B.Sc (Civil Engg.)	1-4-1965 Malakand	22-11-1988	22-11-1988	-do-
39.	Mr. Abdull Shah	Diploma Holder (Civil)	1-2-1966 Malakand	22-11-1988	22-11-1988	-do-
40.	Mr. Arif Qayum	-do-	12-9-1966 Bannu	22-11-1988	22-11-1988	-do-
41.	Mr. Amin Gul	Diploma Holder (Civil) M.A (Economics)	15-10-1966 Malakand	22-11-1988	22-11-1988	-do-
42.	Mr. Asghar Hussain	Diploma Holder (Civil)	14-11-1968 Khyber Agency	22-11-1988	22-11-1988	-do-
43.	Mahammad Nazif	-do-	5-1-1964 Nowshera	30-11-1988	30-11-1988	-do-
44.	Mr. Chulian Akbar	-do-	5-9-1963 Dikan	1989	1989	-do-
45.	Mr. Attaullah	Matric/ Diploma Holder	13-08-1961 Nowshera	25-08-1984 (SE in on Farm Water Management)	24-11-1990	-
46.	Mr. Nahid Khan	-do-	15-3-1964 Lakki	15-03-1985 (SE in Pakistan Railway)	24-11-1990	-
47.	Mr. Noor Nawaz	-do-	09-01-1965 Karak	10-04-1990 Teacher Edu)	24-11-1990	-
48.	Mr. Muhammad Shakeel Ahmad	-do-	05-08-1967 D/Khan	15-10-1988 (Surveyor in Trage)	24-11-1990	-
49.	Mr. Inamullah	-do-	15-11-1968 Charsadda	24-11-1990	24-11-1990	-


MALIK MUHAMMAD IQBAL
 Advocate
 District Bar Association
 Dera Ismail Khan

50.	Mr. Mian Noor	B.Sc (Civil Engineering)	20-03-1962 Karak	01-09-1992	01-09-1992
51.	Mian Sajjad Hayat	F.A/Diploma Holder	15-03-1969 Nowshera	01-09-1992	01-09-1992
52.	Mr. Ghulam Akbar	Matric "C"	01-10-1947 DEKhan	16-4-1964 (W/M RWP) 1- 9-1975 (W/M RDD) 18-1- 1979 (SE. adhoc in NPS-9)	18-3-1993
53.	Mr. Hidayatullah	F.A "C"	10-01-1965 Mohmand	8-1-1985 (W/M RDD) 31-12- 1988 (SE. in BPS-9)	18-3-1993
54.	Mr. Muhammad Asghar	Matric "C"	15-04-1955 Tank	27-7-1975 (RWP W/M) 4- 12-1984 (RDD W/M)	21-3-1993
55.	Mr. Abdul Hamid	-do-	11-5-1954 Manshra	21-5-1975 (Tracer IRDP)	1-8-1994
56.	Syed Mehboob Hussain Shah.	F.A "C"	01-05-1961 Manshra	10-1-1982 (W/M IRDP) 23-5-1990 (W/M (RDD))	1-8-1994
57.	Mr. Khaliq Noor	Matric "C"	21-03-1960 NW-Agency	13-12-1977 (W/M RDD)	14-09-1994
58.	Mr. Muhammad Asghar	F.A "C"	16-03-1961 Kurram	11-12-1982 (W/M RDD)	05-01-1997
59.	Mr. Ejaz-Ul-Haq	Matric "C"	10-01-1965 Nowshera	13-6-1983 (W/M RWP) 9- 1-1985 (W/M RDD)	05-01-1997
60.	Mr. Muhammad Nawaz	F.Sc "C"	08-06-1954 SW-Agency	13-11-1975 (W/M)	21-01-2006
61.	Mr. Mumtaz Hussain	Matric "C"	20-10-1953	01-07-1979	21-01-2006

Asghar

M. Asghar
MALIK MUHAMMAD IQBAL
 Advocate
 District Bar Association
 Dera Ismail Khan

M. Asghar
 Section Officer-I,
 Local Govt. Election
 & Rural Dev. Deptt.
 Govt. of N.W.F.P.



NOTIFICATION

Annexure (G)

34

Peshawar, dated the 14th April, 1998.

No. SO(LG-I)2-188/93-Vol-II: In exercise of the powers conferred by sub-rule (2) of rule 3 of the North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the Local Government and Rural Development Department, in consultation with the Services and General Administration Department, and the Finance Department, hereby directs that in this Department Notification No. DG(RWP)7(2)/73, dated 26.1.1978, the following further amendments shall be made namely:

AMENDMENTS.

In the Appendix, -

(a) for the existing entries at serial No. 1, the following shall respectively be substituted, namely.

1.	2.	3.	4.	5.	6.
"1.	Director/ Chief Planning Officer.	-	-	-	i) Seventy five percent by promotion, on the basis of seniority-cum-fitness from amongst Assistant Directors/Planning Officers with five years service as such; and ii) twenty five per cent by transfer."

(b) for the existing entries at serial No. 2, the following shall respectively be substituted, namely:

1	2	3.	4.	5.	6.
"2.	Assistant Director/ Planning Officer.	Master degree or equivalent qualification from a recognised University.	-	21 to 30 years	i) Fifty percent by initial recruitment; and ii) fifty percent by promotion, on the basis of seniority-cum-fitness from amongst

Attested

 MALIK MUHAMMAD IQBAL
 Advocate
 District Bar Association
 Dera Ismail Khan

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the Progress Officers with three years service as such.";

(c) for the existing entries in column 6 against serial No. 6, the following shall be substituted, namely:

" By promotion, on the basis of seniority-cum-fitness, from amongst Assistants/Accountants and Senior Scale Stenographers with five years services as such."

Note.- A joint seniority list of Assistants/Accountants and Senior Scale Stenographers shall be maintained, on the basis of their regular continuous appointments to the respective posts, for the purpose of promotion; provided that if the date of regular appointments is the same, the Assistant/Accounts shall rank senior to Senior Scale Stenographers."

d) for the existing entries in columns 3,5 and 6 against serial No. 7, the following shall respectively be substituted, namely:

3.	5.	6.
"Bachelor Degree or equivalent qualification from recognised University.	12 to 25 years	i) Seventy Five per cent by promotion, on the basis of seniority-cum fitness, from amongst the Senior Auditors and Senior Clerks with three years service as such; and ii) twenty five per cent by initial recruitment.

Note.- A joint seniority list of Senior auditors and Senior Clerks shall be maintained, on the basis of their regular continuous appointment to the respective posts, for the purpose of promotion; provided that if the date of regular appointment is the same the Senior Auditors shall rank senior to Senior Clerk."

(e) for the existing entries in columns 3,5 and 6 against serial No. 9, the following shall respectively be substituted, namely:

Attested
[Signature]
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

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3.	5.	6.
"Bachelor Degree in Engineering or equivalent qualification in the relevant field from recognised University.	12 to 30 years	i) <u>Seventy per cent by initial recruitment;</u> ii) ten per cent by promotion on the basis of seniority cum-fitness, from amongst Sub-Engineer who possess Bachelor Degree in Engineering or equivalent qualification from a recognised University; and iii) twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst diploma holder Sub-Engineers having ten years service as such and have passed the prescribed departmental examination."; and

(f) for the existing entries in columns 3,5 and 6 against serial No. 10, the following shall respectively be substituted, namely:

3.	4.	5.	6.
"Bachelor Degree from recognised University	-	21 to 25 years	(1) Seventy five per cent by promotion, on the basis of seniority-cum-fitness, from amongst Village Secretaries with five year service as such; and (ii) twenty-five per cent by initial recruitment."; and

(g) for the existing entries in columns 6 against serial No. 11, the following shall respectively be substituted, namely:

"By promotion, on the basis of seniority-cum-fitness, from amongst Junior Clerks with two years service as such."

Secretary to Government of North-West Frontier Province, Local Government, Elections and Rural Development Department.

Abstract
[Signature]
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Contd..page-4.

Endst: No. SO(LG-I)2-188/89 Dated. the 14th April 1998.

Copy of the above is forwarded to:

1. All Administrative Secretaries to Government of NWFP.
2. All Divisional Commissioners in NWFP.
3. Secretary to Governor, NWFP, Peshawar.
4. Secretary, NWFP, Public Service Commission, Peshawar.
5. Director General, LG&RDD, NWFP, Peshawar.
6. All Heads of Attached Departments in NWFP.
7. Secretary Local Council Board, NWFP, Peshawar.
8. Secretary Provincial Election Authority, Peshawar.
9. All Divisional Directors, LG&RDD in NWFP.
10. All Deputy Commissioners in NWFP.
11. All District & Session Judges in NWFP.
12. Registrar, Peshawar High Court Peshawar.
13. All Assistant Directors, LG&RDD in Peshawar.
14. Section Officer(Legis.), Govt: of NWFP, Law Deptt:
15. Section Officer (Urdu Cell) Govt: of NWFP, S&GAD with reference to his letter No. SOUC(S&GAD)6-22/90/Vol-III, dated 24-2-1998.
16. Manager Govt: Printing Press, Peshawar for publication in the next Government Gazettee Notification, 40 copies of the Notification may be sent to this Department.

HM/AQ.

Arbab Waheed Alam

(ARBAB WAHEED ALAM)
Section Officer-I.

Malik Muhammad Iqbal
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

EXECUTION APPLICATION NO.09/2014 - MALIK MUHAMMAD IRFAN, SUB-ENGINEER, PUBLIC HEALTH ENGINEERING DEPARTMENT VERSUS SECRETARY, LGE&RDD

The subject application was fixed for hearing before this Hon'ble Services Tribunal on 22-09-2014. The learned Tribunal has directed representative of respondents No.1 and 2 to positively make available detail showing availability of vacancies for graduate Engineers in the LGE&RDD from 2006 onwards for further proceedings on 10-12-2014.

The details of the case are elaborated as under:-

1) According to the amended Recruitment Services Rules, the following method of recruitment was prescribed for the post of Assistant Engineer (BS-17) in LG&RDD vide notification dated 14-04-1998 (Annexure-A):-

i. Seventy per cent by initial recruitment:

✓ii. Ten per cent by promotion on the basis of seniority-cum-fitness, from amongst Sub-Engineers who possess Bachelor Degree in Engineering or equivalent qualification from a recognized University and

iii. Twenty per cent by promotion, on the basis of seniority-cum-fitness, from amongst diploma holder Sub-Engineers having ten years service as such and have passed the prescribed departmental examination.

2) As a result of amendment of above Service Rules, the following three degree holder Sub-Engineers were promoted against ten percent quota of Assistant Engineers reserved for Degree holder Sub-Engineers during 1999:

- (1) Mr. Qismat Khan
- (2) Mr. Muhammad Salim
- (3) Mr. Said Bahadar

3) One Mr. Muhammad Saeed, Sub-Engineer challenged the amended Service Rules as well as promotion of the above incumbents in the Service Tribunal through Service Appeal No.556/1999 (Annexure-B). The case remained sub-judice there and ultimately appeal of the appellant was dismissed on 20-12-2005 (Annexure-C).

4) Aggrieved of the judgement of the Service Tribunal, the appellant (Mr. Muhammad Saeed) filed Civil Petition in the Supreme Court of Pakistan during 2006 against judgement of the learned Service Tribunal (Annex:D).

5) The Supreme Court of Pakistan dismissed Civil Petition filed by Mr. Muhammad Saeed, Sub-Engineer against decision of the Service Tribunal on 04-03-2013 for non-prosecution (Annexure-E).


MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan


- 6) As submitted in the written statement of the respondents, the Directorate General, LG&RDD and its allied offices in the settled districts alongwith posts were abolished during 2001 in devolution process. The Assistant Engineers as well as Sub-Engineers became surplus were either adjusted in Planning and Development Department or in TMAs.

- 7) As regards details of the posts of Assistant Engineer (BS-17) during 2006 and onward, it is clarified that there were seven sanctioned posts of Assistant Engineers (BS-17) in FATA LG&RDD during 2006. Out of these posts, one post falls to the share of Degree Holder Sub-Engineers, but the same could not be filled-in as the Service Rules on the basis of which Degree Holder Sub-Engineers are promoted were sub-judice in the Service Tribunal as well as in the Supreme Court of Pakistan. When the Civil Petition filed by Mr. Muhammad Saeed was decided on 04-03-2013 by the Apex Court, then the promotion case of Mr. Naheed Khan, Degree holder Sub-Engineer who was in LG&RDD was processed and promoted to the post of Assistant Engineer (BS-17) in LG&RDD against the quota reserved in the Service Rules for degree holder Sub-Engineers.



(Ijaz Ullah)
Section Officer (Estab)
LG,E&RD Department
(Representative of Respondent No.1 & 2)

Abdullah



MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

To,

The Secretary to Govt: of NWFP
Local Govt: Election & RDD,
Peshawar.
Departmental Appeal for Promotion

Annexure (I)

(40-40)

Subject: PROMOTION AS SDO/ASSISTANT ENGINEER (BPS-17).

Sir,

Most respectfully, I submit the following for your favourable and sympathetic consideration:-

1. That I, being Graduate Civil Engineer was inducted in Service of the Local Govt: N.W.F.P as Sub Engineer, with effect from 26.11.1988 and performed duties in various offices of the Local Govt: Department.
2. That my performance throughout Service remained up to the mark which was appreciated by my superiors for which record is available.
3. That No adverse remark against the under signed were ever recorded by my superiors in my A.C.Rs.
4. That in the first instance I was appointed on contract basis along with my other batch fellows, while my service was regularized with effect from the date of appointment 26.11.1988, as a result of Judgment of the Apex Court of the country without back benefits.
5. That due to winding up of certain offices of the NWFP Local Govt: were placed in surplus pool and I was one amongst those waiting next for promotion as per Govt: policies vide notification No: SO (LG-1)2-188/93- Vol:II Judgment of the Apex Court of Pakistan dated:28.05.2005 "with all back benefits".

It is therefore, requested that I may graciously be considered for promotion in BPS-17 against one of the vacant equivalent posts to meet the ends of the Justice.

Thanking in anticipation.

Malik Muhammad Irfan

Yours Obediently,

Dated: 22-11-2006

(Malik Muhammad Irfan)
Sub Engineer (S. Pool)

Attested
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Eng: Malik Muhammad Irfan
S/O Malik Ghulam Qasim Khan,
R/O Mohallah Serhi Faqir, D.I. Khan

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Annexure (J)

42

HEARING AT D.I.KHAN
BEFORE THE N.W.F.P SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/of 2007

Malik Muhamamd Irfan,
Sub Engineer,
Office of Defunct Assistant Director,
Local Govt: & Rural Development Department D.I.Khan

Appellant

V E R S U S

1. N.W:F.P, Throughout Secretary Local Govt: Department Peshawar.
2. Secretary to Local Govt: Elections & Rural Development N.W.F.P Peshawar.
3. District Co-ordination Officer, D.I.Khan.
4. Secretary Public Health Engineering Department Khyber Pakhtunkhwa Peshawar.
5. Chief Engineer Public Health Engineering Department Khyber Pakhtunkhwa Peshawar.

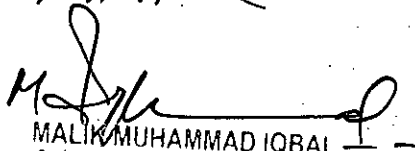
(Respondents)

Respectfully sheweth,

The appellant submits as under:-

1. That the appellant being B.Sc Engineering was inducted in service of the Local Govt: Department as Sub Engineer w.e.f 26.11.1988 after observing usual codal formalities for selection and worked in different offices of the Local Govt: Department with good record of service without any adverse remarks in A.C.R s or any complaint throughout service. (Copy of Service Book attached as Annexure-A).
2. That in the first instance the appellant alongwith others was appointed on contract basis although in advertisement applications for appointment on Adhoc basis were invited against clear vacancies but later on the services of all the employees were terminated w.e.f 30.05.2003

Attested


MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan


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3. That this Honourable Tribunal was approached against the termination order, which was not considered in the service appeal before it, on the plea that contract employees are ousted of the jurisdiction of this Honourable Tribunal.
4. That the Apex Court of the country was moved and as a consequence the Honorable Supreme Court of Pakistan vide its detailed (Contd: Page-2) 25.08.2005 re-instated the petitioners treating them as Civil Servant with all back benefits. (Copy Annexure-B).
5. That the appellant was therefore re-instated alongwith others w.e.f 30.05.2003 with all back benefits and further the service was regularized from the date of initial appointment viz 26.11.1988 vide Notification No. SO(G-1)B-323/03 dated 10.11.2005 (Copy Annexure-C).
6. That I am one of the senior most Graduate Engineers waiting for promotion as Sub Divisional Officer / Assistant Engineer (BPS-17) as would appear from the final Seniority List of Sub Engineer corrected upto 31.05.2006 (Copy Annexure-D).
7. That due the winding up the varlous offices of the Local Govt; Department the appellant alongwith others was placed in surplus pool and no further adjustment has been made so for.
8. That certain equalent posts (BPS-17) are lying vacant in the Department for which the appellant approached the competent authority on various occasion but with no result.
9. That Departmental appeal was submitted on 22.11.2006 (Copy as Annexure-E) with no response within the waiting time, hence this appeal on Inter Alia the following grounds:-

GROUNDS:-

- i. That the appellant is one of the senior most Graduate Sub Engineer due for promotion as Sub Divisional Officer / Assistant Engineer (BPS-17).

Attested

MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Better copy

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- ii. That the work and conduct of the appellant throughout remained upto the mark without complaint or any adverse entry in A.C.Rs.
- iii. That the appellant is the regular Civil Servant of the Department.
- iv. That equalent posts of BPS-17 are still lying vacant and the appellant can be considered against one of the same, as per surplus policy.

It is therefore, humbly prayed that on acceptance of this appeal, the respondent Department may graciously be directed to consider the appellant for promotion to BPS-17 as Sub Divisional Officer / Assistant Engineer to meet the ends of justice.

Your humble Appellant,
Through Counsel

Dated 14.07.2007

Sd _____
Sheikh Muhammad Bashir Gohar
Advocate High Court D.I.Khan.

NOTE:-

1. The addresses of the parties as given in the heading of the service appeal are correct and sufficient for the purpose of service.
2. The appeal is within time

AFFIDAVIT:-

I, Sheikh Muhammad Bashir Gohar Advocate High Court D.I.Khan (Counsel for the petitioner, do hereby solemnly declare on Oath that the contents of the above service appeal are true and correct as per instructions of my client.

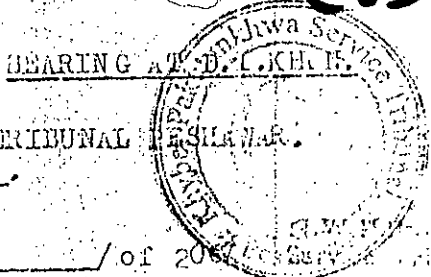
Dated 14.07.2007

Malik Muhammad Iqbal
M. Iqbal
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Sd _____
Sheikh Muhammad Bashir Gohar
Advocate High Court D.I.Khan.

- ANNEXURE (D)

(42)



BEFORE THE N.W.F.P. SERVICE TRIBUNAL DERA ISMAIL KHAN.

Service Appeal No. 773 / of 2004

Case No. 826
Dated 16/7/07

Malik Muhammad Iqbal,
Sub Engineer,
Office of Deputied Assistant Director,
Local Govt: Rural Development Department,
D.I.Khan.

Appellant.

ISSUES

- 1- N.W.F.P. through Secretary Local Govt: Department, Dera Ismail Khan.
- 2- Secretary to Govt: Local Govt: Elections & Rural Development, D.I.K. Dera Ismail Khan.
- 3- District Co-Ordination Officer, D.I.Khan.
- 4- Secretary, Public Health Engineering Dept. K.P.K. Peshawar
- 5- Chief Engineer, Public Health Engineering Dept. K.P.K. Peshawar

APPEAL AGAINST THE RESERVATION FROM P.O. THE
AS S.D.O/ASSISTANT ENGINEER (BPS-17).

Respectfully Sheweth:

The appellant submits as under:-

1- That the appellant being B.Sc Engineering was inducted in service of the Local Govt: Department as Sub Engineer with effect from 26.11.1968 after observing usual local formalities for selection and worked in different offices of the Local Govt: Department with good record of service without any adverse remarks in A.C.R.'s or any complaint during his service. (Copy of Service Book attached as Annexure-1).

2- That in the first instance the appellant along with others was appointed on contract basis although in subsequent applications for appointment on adhoc basis were invited against clear vacancies but later on the services of all the employees were terminated with effect from 30.09.2003.

ATTESTED

Muhammad Iqbal
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

*Archival copy
dated 4-11-11
Respondent are
provided against
appellate. Date order
sent dated 2-5-11.*

*Filed to-day
16/7/07*

*Malik Muhammad Iqbal
Advocate
District Bar Association
Dera Ismail Khan*

3-

That this Hon'ble Tribunal was approached against the termination order, which was not considered in service appeal before it, on the plea that contract employees were ousted of the jurisdiction of this Hon'ble Tribunal.

4-

That the apex court of the country was moved and as a consequence the Hon'ble Supreme Court of Pakistan vide its detailed Judgement dated- 25.11.2005 re-instated the petitioners treating them as civil servant with all back benefits. (Copy ANNEXURE-018).

ANNEXURE-018

5-

That the appellant was therefore re-instated alongwith others with effect from 30.9.2003 with all back benefits and further the service was regularized from the date of initial appeal i.e. 26.11.1983 vide Notification No. SO.6-1) 4-323/03 dated 10.11.2005 (Copy ANNEXURE-019).

ANNEXURE-019

6-

That I am one of the senior most Graduate Engineers waiting for promotion as S.D.O/ Assistant Engineer (BPS-17) as would appear from the Final Seniority List of Sub Engineers corrected upto 31.5.2006 (Copy ANNEXURE-020).

ANNEXURE-020

7-

That due the winding up the various offices of the local Govt. Department the appellant alongwith others was placed in surplus pool and no further adjustment has been made so far.

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8-

That certain vacant posts (BPS-17) are lying vacant in the Department for which the appellant approached the competent authority at various occasions but with no result.

9-

As the departmental appeal was submitted on 1.11.11 (copy ANNEXURE-021) with no response within the stipulated time, hence this appeal on facts follows. Hence:-

Handwritten signature

MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

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GROUND S:-

- i- That the appellant is one of the senior most Graduate Sub Engineer due for promotion as S.D.C/Assistant Engineer (BPS-17).
- ii- That the work and conduct of the appellant throughout remained upto the mark without complaint or any adverse entry in A.C.R.s.
- iii- That the appellant is the regular Civil servant of the Department.
- iv- That equivalent posts of BPS-17 are still lying vacant and the appellant can be considered against one of the same, as per surplus policy.

It is, therefore, humbly prayed that on acceptance of this appeal, the respondent department may graciously be directed to consider the appellant for promotion to BPS-17 as S.D.C/Assistant Engineer to meet the ends of justice.

Your humble Appellant,

Through Counsel:-

Dated:- 14.7.2007

Signature
Shahid Muhammad Bashir Counsel,
Advocate High Court, D. I. Khan.

ORDER:-

- 1- The addresses of the parties as given in the headings of the service appeal are correct and sufficient for the purpose of service.

The appeal is within time.

ADVOCATE

I, Shahid Muhammad Bashir Bashir, Advocate High Court D. I. Khan (Counsel for the petitioner), do hereby solemnly declare on oath that the contents of the above service appeal are true and correct as per instructions of my client.

Dated:- 14.7.2007

Signature
Shahid Muhammad Bashir Counsel,
Advocate High Court, D. I. Khan.

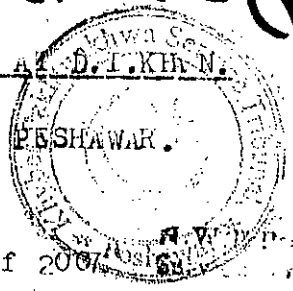
14/7/07

Signature

MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Certificate to be affixed
 KHYBER PAKHTUNKHWA
 SERVICES TRIBUNAL
 Peshawar

BEFORE THE N.W.F.P. SERVICE TRIBUNAL PESHAWAR.



Service Appeal No. 773 / of 2007

Disary No. 886
Dated 16/7/07

Malik Muhammad Irfan,
Sub Engineer,
Office of Defunct Assistant Director,
Local Govt: & Rural Development Department,
D. I. Khan.

---appellant.

VERSUS

- 1- N.W.F.P. Through Secretary Local Govt: Department, Peshawar.
- 2- Secretary to Govt: Local Govt: Elections & Rural Development, N.W.F.P. Peshawar.
- 3- District Co-Ordination Officer, D. I. Khan.
- 4- Secretary, Public Health Engineering Dept. K.P.K. Peshawar
- 5- Chief Engineer, Public Health Engineering Dept. K.P.K. Peshawar

APPEAL AGAINST ILLEGAL DEPRIVATION FROM PROMOTION AS S. D.O/ASSISTANT ENGINEER (BPS-17).

Respectfully Sheweth;

The appellant submits as under:-

1- That the appellant being B.Sc Engineering was inducted in service of the Local Govt: Department as Sub Engineer with effect from 26.11.1988 after observing usual code formalities for selection and worked in different offices of the Local Govt: Department with good record of service without any adverse remarks in A.C.R.s or any complaint throughout service. (Copy of Service Book attached as ANNEXURE-"A".)

2- That in the first instance the appellant alongwith others was appointed on contract basis although in advertisement applications for appointment on adhoc basis were invited against clear vacancies but later on the services of all the employees were terminated with effect from 30.5.2003.

(Contd: Page-2)

Attested

MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Added vide order sheet dated 4-1-11

*Res
Respondents are provided against appropriate order sheet dated 2-5-11.*

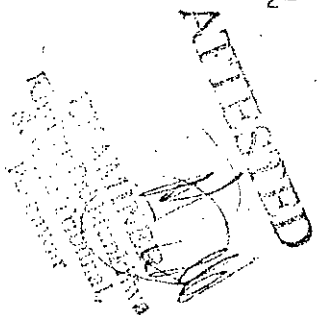
*Res
The P.D. signed copy of the order sheet dated 2-5-11.*

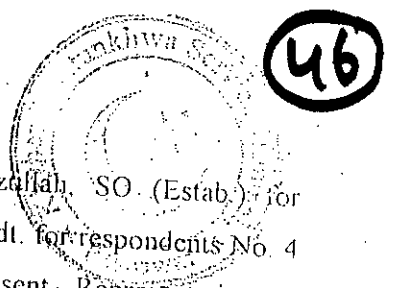
Filed to-day

*M. Iqbal
Registrar*

16/7/07

ANNEXURE-"A"





30.12.2013

Appellant with counsel, M/S. Aizazullah, SO. (Estab.) for respondents No. 1 and 2 and Maazullah, Supdt. for respondents No. 4 and 5 with AAG for the respondents present. Representative of respondents No. 1 and 2 stated that pursuant to the direction of the Tribunal dated 24.12.2013, he submitted office note to the Secretary Local Government, who has approved a non-binding recommendation by the Tribunal for sympathetic consideration of the long standing case of the appellant for promotion on humanitarian grounds; as the appellant, unfortunately, suffered due to devolution and other policies of the Government making it next to impossible for the appellant to stay at one place and one department for pursuing his promotion case. In view of nature of the case, including relief claimed and other circumstances adding to the predicament of the appellant in seeking his legal remedy, the learned counsel for the appellant would agree to the arrangement; whereby, the case is referred to the authority i.e. Secretary, Local Government, Elections and Rural Development Department, KPK, Peshawar for consideration of the case of the appellant on sympathetic and humanitarian grounds, while taking into consideration the developments taking place in the aftermath of devolution policy and judgment of the august Supreme Court of Pakistan dated 25.3.2005, and making a decision for disposal of this long standing case, within reasonable time.

awkward

The appeal is accordingly disposed of in the above terms, with no order as to costs. /

ANNOUNCED
30.12.2013

Self Member

SRJ Chairman

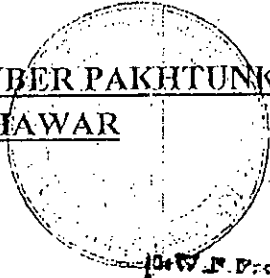
Attended

[Signature]
MALIK MUHAMMAD IQBAL
 Advocate
 District Bar Association
 Dera Ismail Khan

Date of presentation of Application 7-1-2014
 Fee paid 800
 Fee received 6
 Balance 7
 Date of disposal 7-1-2014
 Date of execution 7-1-2014

-10-

BEFORE THE HON'BLE CHAIRMAN, KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL PESHAWAR



Execution Application No. 09 /2014

118
Dated 12-2-14

Malik Muhammad Irfan,
Sub Engineer,
Office of defunct Assistant Director,
Local Government & Rural Development, D.I.Khan.

PETITIONER

VERSUS

1. Government of KPK through Secretary Local Government Department Peshawar.
2. Secretary to Government of KPK, Local Government, Elections & Rural Development Department, Peshawar.
3. District Co-Ordination Officer, D.I.Khan.
4. Secretary, Public Health Engineering Department KPK, Peshawar.
5. Chief Engineer, Public Health Engineering Department Peshawar.

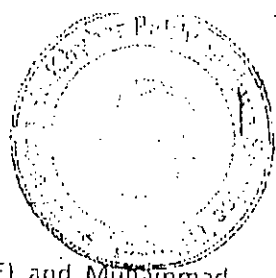
RESPONDENTS

ATTESTED

Secretary, Peshawar

APPLICATION UNDER SECTION
7 (2) (D) OF THE KHYBER
PAKHTUNKHWA SERVICE
TRIBUNAL ACT, 1974 FOR
EXECUTION OF ORDER DATED
30-12-2013 PASSED IN SERVICE
APPEAL NO. 773/2007.

MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan



- 1st -

27.11.2015

Petitioner with counsel, M/S Izazullah, SO(E) and Muhammad Yasin, Supdt. alongwith Adll: A.G for respondents present. Arguments heard and record perused.

This Tribunal, vide judgment/order dated 30.12.2013, has passed an order that Secretary, Local Government, Election and Rural Development Department, KPK, Peshawar shall consider the case of the petitioner on sympathetic and humanitarian grounds and shall make a decision for disposal of long standing case of the petitioner within reasonable time.

After giving notice to respondents, they have come up with a reply that in pursuance of the judgment referred to above the case was processed on humanitarian grounds but due to non-availability of any post the petitioner could not be accommodated.

Learned counsel for the petitioner was of the view that the respondents were obliged to accommodate the petitioner as mandated by the order passed on the commitment of the representative of the respondents before the Court reflecting in the order dated 31.12.2013.

Since the Commitment of the representative of respondents was to the effect that a non-binding office note to be submitted to the Secretary Local Government for sympathetic consideration of long standing case of the petitioner for promotion on humanitarian grounds and the said commitment was complied with but due to non-availability of the post the petitioner could not be accommodated as such the order of the Tribunal referred to above stood complied with and, therefore, the implementation petition is disposed of without any further action.

The petitioner may, if so advised, re-agitate the matter in the prescribed manners if aggrieved of the said departmental order.

Altaf

sd/-
Chairman

ANNOUNCED
27.11.2015

Certified true copy
Khan
Service

Malik Muhammad Iqbal
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan
7-11-15

Annexure (M)

49



GOVERNMENT OF KHYBER PAKHTUNKHWA
LOCAL GOVERNMENT, ELECTIONS & RURAL DEVELOPMENT DEPARTMENT

ORDER

Dated Peshawar, the 13th November, 2013

No.SO(LG-I)2-330/FATA/2012:- The Competent Authority in consultation with the Departmental Promotion Committee has been pleased to promote Mr. Naheed Khan, Sub-Engineer, Office of the Assistant Director, Local Government and Rural Development Department, Bajour Agency to the post of Assistant Engineer (BS-17) in the Local Government, Elections and Rural Development Department with immediate effect.

2. On his promotion, the terms and conditions of his service on which he was initially appointed will remain the same.
3. On his promotion, the officer will remain on probation, as per rules.

SECRETARY TO GOVT. OF KHYBER
PAKHTUNKHWA, LG&RDD

Endst No.SO(LG-I)2-330/FATA/2012

Dated Pesh: the 13th November, 2013

Copy is forwarded:-

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. The Director General, LG,E&RDD, Khyber Pakhtunkhwa, Peshawar.
3. The Director, FATA, LG&RDD, Warsak Road, Peshawar.
4. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa.
5. The Assistant Director, LG&RDD, Bajour Agency.
6. The Agency Accounts Officer, Bajour Agency.
7. The Officer concerned.
8. The Manager Government Printing Press, Peshawar.
9. The PS to Secretary, LG,E&RDD.
10. The office order file.

Attested
M. Iqbal
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

M. Iqbal
(IZAZ ULLAH)
SECTION OFFICER (ESTAB)

GOVERNMENT OF NWFP
WORKS & SERVICES DEPARTMENT

Dated Peshawar, the March 13, 2008

Annexure (N)

(50)

ORDER

No. SOE-II/W&S/17-3/99 In compliance with the decision of Supreme Court of Pakistan dated 25.08.2005 the competent authority has been pleased to absorb/adjust the following surplus Sub Engineers (BPS-11) of Local Govt. & Rural Dev. Department, Peshawar against the vacant posts of Sub Engineers (BPS-11) in the Public Health Engineering Works & Services Department with immediate effect.

1. Mr. Mohammad Khan
2. Mr. Amanullah
- ✓ 3. Malik Mohammad Irfan
4. Mr. Abdul Hamid Khan
5. Mr. Munawar Ahmed
6. Mr. Intizar Mohammad
7. Mr. Dilawar Khan
8. Mohammad Ilyas Khan
9. Mr. Abdul Rahman
10. Mr. Mohammad Siddiq
11. Mr. Aziz-ur-Rahman
12. Mr. Mohammad Raees
13. Mr. Tariq Khan
14. Mr. Mislahuddin
15. Mr. Salim Javed.
16. Mr. Abdali Shah
17. Mr. Arif Qayum
18. Mr. Amin Gul
19. Mr. Asghar Hussain
20. Mr. Mohammad Nazif

2. Their services are placed at the disposal of Chief Engineer PHE Works & Services for further posting against the vacant posts.

3. They shall be placed at the bottom of seniority list of Sub Engineers in the PHE cadre Works & Services Department in accordance with their interse-seniority in their parent department.

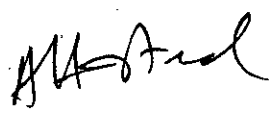
SECRETARY

Attested
M. Irfan
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan


51

Copy is forwarded to the:-

1. Accountant General NWFP, Peshawar.
2. Principal Secretary to Chief Minister NWFP, Peshawar.
3. Secretary to Govt. of NWFP, Establishment & Admn Deptt, Peshawar.
4. Secretary to Govt. of NWFP, Local Govt, & Rural Dev: Deptt, Peshawar.
5. Secretary Local Council Board, NWFP Peshawar.
6. Chief Engineer Works & Services Peshawar.
7. Chief Engineer (E) Works & Services Peshawar.
8. Chief Engineer (TA) Works & Services Peshawar.
9. Section Officer (Est-I) W&S Department Peshawar.
10. Section Officer (Est-II) W&S Department Peshawar.
11. Section Officer (Surplus Pool) Establishment Deptt: Peshawar.
12. Incharge Control Cell, Works & Services Department Peshawar.
13. PS to Secretary Works & Services Department, Peshawar.
14. PA to Adm: Secretary W&S Department Peshawar.
15. Officials concerned.
16. Office file/Personal file.



(SYED BAQAR SHAH)
SECTION OFFICER (EST-II)



MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the February 13, 2015

NOTIFICATION

No.SO(Estt)/PHED/4-53-B/2014: The competent authority, on the recommendations of the Departmental Promotion Committee, is pleased to promote the following acting charge SDOs/Direct Graduate and Diploma Holder Sub Engineers (BPS-11) of the Public Health Engineering Department to the posts of Assistant Engineers/Assistant Design Engineer/Sub Divisional Officers (BPS-17) on regular basis, with immediate effect:-

Direct Graduate:

- i. Malik Muhammad Irfan
- ii. Mr. Munawar Ahmad,

Diploma Holder:

- i. Mr. Fazle Mabood
- ii. Mr. Sajjad Ali
- iii. Mr. Mushtaq Ahmad
- iv. Mr. Alam Zeb
- v. Mr. Allah Nawaz
- vi. Mr. Khurshid Anwar

2. The officers, on promotion, will remain on probation for a period of one year extendable for another year in terms of Rule-15 of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. In order to actualize their appointment, the following postings/transfers/adjustments are made henceforth:-

S.No	Name	From	To	Remarks
1.	Malik Muhammad Irfan, BPS-11	Sub Engineer PHE Division D.I. Khan	Assistant Design Engineer (BPS-17) Office of the C.E (South) PHE Peshawar on regular basis	Against the vacant post
2.	Mr. Munawar Ahmad, BPS-17	SDO (acting charge) PHE Sub Division No.1 Bannu	SDO PHE Sub Division No.1 Bannu on regular basis	Against the existing vacancy.
3.	Mr. Fazle Mabood, BPS-11	SDO (OPS) PHE Sub Division Tor Ghar	SDO (BPS-17) PHE Sub Division Tor Ghar on regular basis	Against the existing vacancy
4.	Mr. Sajjad Ali, BPS-17	SDO (acting charge) PHE Sub Division Swat	SDO (BPS-17) PHE Sub Division Swat on regular basis	Against the existing vacancy.
5.	Mr. Mushtaq Ahmad, BPS-17	SDO (acting charge) PHE Sub Division Dassu Kohistan	SDO (BPS-17) PHE Sub Division Dassu Kohistan on regular basis	Against the existing vacancy
6.	Mr. Alam Zeb, BPS-11	SDO (OPS) PHE Sub Division No.2 Bannu	SDO (BPS-17) PHE Sub Division No.2 Bannu on regular basis	Against the existing vacancy
7.	Mr. Allah Nawaz, BPS-17	SDO (acting charge) PHE Sub Division Lakki Marwat	SDO (BPS-17) PHE Sub Division Lakki Marwat on regular basis	Against the existing vacancy
8.	Mr. Khurshid Anwar BPS-17	SDO (acting charge) PHE Sub Division Tank	SDO (BPS-17) PHE Sub Division Tank on regular basis	Against the existing vacancy

Attested

SECRETARY
PHE DEPARTMENT

Malik Muhammad Iqbal
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

53

Endst: No.SO(Estt)/PHED/4-53-B/2014 Dated Peshawar, the February 13, 2015

Copy forwarded for information and necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (North) PHE Khyber Pakhtunkhwa Peshawar.
4. Superintending Engineers PHE concerned.
5. Executive Engineer PHE concerned.
6. District Accounts Officer concerned.
7. PS to Minister for PHE Khyber Pakhtunkhwa Peshawar.
8. PS to Secretary PHE Department Khyber Pakhtunkhwa.
9. Officers concerned.
10. Office Order / Personal Files.

13/02/2015
SECTION OFFICER (ESTT)

Added
M. Iqbal
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO.139 OF 2016
(On appeal from judgment/order dated
27.11.2015, passed by the Khyber
Pakhtunkhwa Service Tribunal,
Peshawar, in EA No.09/2014)

Malik Muhammad Irfan ... Petitioner (s)

Versus

Govt. of KPK through Secretary,
Local Government Department,
Peshawar and others ... Respondent (s)

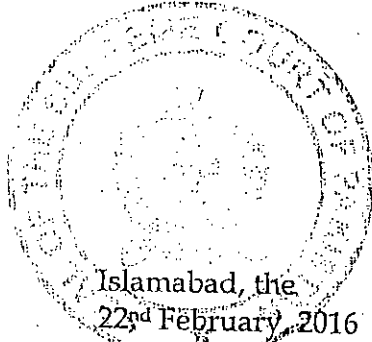
For the Petitioner (s) : Mr. Dil Muhammad Khan Alizai, ASC

Respondent (s) : N.R.

Date of Hearing : 22.02.2016

ORDER

SH. AZMAT SAEED, J. The learned counsel for the
Petitioner after arguing the case at some length, does not press this
Civil Petition in order to avail alternate remedy, if available, under
the law. Dismissed as not pressed.



Sd/- Sh. Azmat Saeed, J
Sd/- Faisal Arab, J
Certified to be True Copy

[Handwritten Signature]
Court Associate
Supreme Court of Pakistan
Islamabad

~~NOT APPROVED FOR REPORTING~~ for Civil/Criminal
Mahtab

[Handwritten Signature]
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

Date of Presentment: 22/2/16
No of Words: 8
No of Pages: 1
Requisition for Stamp: 5.00
Copy Fee: 1.80
Court Fee Stamp: 6.88
Date of Completion of Copy: 5.3.16
Date of delivery of Copy: 2.3.16
Compared by/Prepared by: *[Signature]*
Received by: *[Signature]*

55

**"POWER OF ATTORNEY TO ADVOCATE-ON-RECORD"
IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)**

Case No. _____ of 20/6

Malik Muhammad Iqbal
Petitioner(s) Appellant(s)

VERSUS

Government of P.K. and others
Respondent(s)

I/We Petitioners

Petitioner(s) Appellant(s) Respondent(s) in the above petition/appeal do hereby appoint and constitute **Mehmood Ahmed Sheikh** Advocate-on-Record, Supreme Court of Pakistan, the Advocate-on-Record for aforesaid Petitioner(s) Appellant(s) Respondent(s) to commence and prosecute or to appear and defend this action/appeal/petition on my/our behalf and all proceedings that may be taken in respect of any application connected with the same including proceedings in taxation and applications for review, to withdraw deposit money, to file and take back documents, to accept the process of the Court, to appoint and instruct counsel, to represent the aforesaid Petitioner(s) Appellant(s) Respondent(s) in the above matter and to do all things incidental to such acting for the aforesaid Petitioner(s) Appellant(s) Respondent(s). The Petitioner(s) Appellant(s) Respondent(s) agree(s) to rectify all acts and done by the aforesaid Advocate-on-Record in pursuance of this authority.

In witnesses whereof I/We do hereunto set my/our hand(s) this the 25th day of Jan 2016

Accepted:

Mehmood Ahmed Sheikh
Advocate-on-Record
Supreme Court of Pakistan
Islamabad
Cell No.03355499724
0321-5230086

Malik Muhammad Iqbal

Signature or
Thumb Impression

Malik Muhammad Iqbal

12101-7449840-7

Note:- Mr. Dil Mohammad Khan Pizar ASC

shall appear on behalf of petitioners Cell No. 0300/6861055

Malik Muhammad Iqbal
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

56

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

CPLA No. 139 /2016

Malik Muhammad Irfan

.....Petitioner

VERSUS

Government of KPK etc

.....Respondents

Court Appealed From:

Khyber Pakhtunkhwa Service Tribunal, Peshawar

Counsel for the Petitioner:

Dil Muhammad Khan Alizai, ASC

with Mehmood A Sheikh, AOR

Counsel for the Respondents:

INDEX

Sr. No.	Description	Date	Page No.
1	Concise Statement	25.01.2016	A-B
2	CPLA	25.01.2016	1-9
3	Impugned Judgment and Order of High Court	27.11.2015	10-12
4	Grounds of Execution Application No. 09/2014	04.02.2014	13-19
5	Order of Secretary to Government of KPK, LG&RDD	13.11.2013	20
6	Notification issued by Secretary to Government of NWFP, LG&RDD	14.04.1998	21-24
7	Order of Chairman, Service Tribunal, KPK, Peshawar	24.12.2013	25
8	Order of Chairman, Service Tribunal, KPK, Peshawar	30.12.2013	26
9	Letter of SO(ESTAB) to Petitioner regarding Service Appeal No. 773/2007	15.01.2014	27
10	Letter of SO(ESTAB) to all Sub Engineers regarding Final Seniority List	20.06.2006	28
11	Copy of Final Seniority List		29-33
12	Grounds of Appeal of Sheik Muhammad Bashir filed before the NWFP Service Tribunal, Peshawar	16.07.2007	34-36
13	Affidavits of AOR	25.01.2016	37-38

Certified that the paper book as bound is complete and correct

Dated: 25.01.2016

Malik Muhammad Irfan
Malik Muhammad Irfan
MALIK MUHAMMAD IQBAL
 Advocate
 District Bar Association
 Dera Ismail Khan

Mehmood A Sheikh
Mehmood A Sheikh
 Advocate-on-Record
 For the Petitioner

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IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

CPLA No. 139 /2016

Malik Muhammad Irfan

.....Petitioner

VERSUS

Government of KPK etc

.....Respondents

CONCISE STATEMENT

I

Subject Matter and the Law

Service Matter

II

Which side has filed this petition:-

The present petitioner filed Execution Application before the learned Service Tribunal.

III

Sr. No.	Court Forum	Dates a. Filing b. Decision	Who filed it and with what result
1	Chairman, Service Tribunal, KPK, Service Tribunal, Peshawar	a. _____ b. 30.12.2013	The Service Appeal filed by the present petitioner in which a direction was passed, which is being reproduced hereunder:- <i>“Representative of respondent Nos. 1 & 2 stated that pursuant to the direction of the Tribunal dated 24.12.2013, he submitted “Office Note” to the Secretary, Local Government, Elections and Rural Development Department, who approved a non-binding recommendation by the Tribunal for sympathetic consideration of the long standing case of the appellant for promotion on humanitarian grounds; as the appellant, unfortunately, suffered due to devolution and other policies of the Government making it next to impossible for the appellant to stay at one place and in one department for perusing his promotion case. In view of nature of the case, including relief claimed and other</i>

Malik Muhammad Irfan
Malik Muhammad Irfan
MALIK MUHAMMAD IQBAL
 Advocate
 District Bar Association
 Dera Ismail Khan

-B-

58

			circumstances adding to the predicament of the appellant in seeking his legal remedy, the learned counsel for the appellant would agree to the arrangement, whereby, the case is referred to the authority i.e. Rural Development Department, KPK, Peshawar, for consideration of the case of the appellant on sympathetic and humanitarian grounds, while taking into consideration the developments taking place in the aftermath of devolution police and Judgment and Order of the August Supreme Court of Pakistan 25.08.2005, and making a decision for disposal of this long standing case within reasonable time. The appeal is accordingly disposed of in the above terms, with no order as to costs".
2	Chairman, Service Tribunal, KPK, Service Tribunal, Peshawar	a. _____ b. 27.11.2015	The present petitioner filed Execution Application No. 09/2014, for implementation of the Order dated 30.12.2013, which was disposed of.

VI


Points Noted in the Impugned Judgment and Order	Treatment of the Points in the Impugned Judgment and Order
Whether the reasons stated by the learned Service Tribunal in support of its Judgment and Order, are legally sustainable?	That the reasons stated by the learned Service Tribunal in support of its Judgment and Order, are not legally sustainable.

V. Case Law on the Point

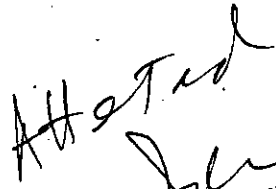
FOR	AGAINST
-----	---------

CERTIFICATE OF COUNSEL

Certified that I have myself prepared this Concise Statement and that it is found correct


 Mehmood A Sheikh
 Advocate-on-Record
 For the Petitioner

Dated: 25.01.2016


 MALIK MUHAMMAD IQBAL
 Advocate
 District Bar Association
 Dera Ismail Khan

Annexure (A)

(59)

To,

The Chief Secretary,
Govt: of Khyber Pakhtunkhwa
Peshawar.

Through: Proper Channel.

Subject: IN PURSUANCE TO ADVICE BY THE HONOUABLE SERVICE TRIBUNAL IN JUDGMENT DATED 27.11.2015 TO RE-AGITATE THE MATTER IN THE PRESCRIBED MANNER IF AGGRIEVED OF THE SAID DEPARTMENTAL ORDER, HENCE THIS DEPARTMENTAL APPEAL.

PRAYER:-

To please take cognizance of the case by issuing direction to the competent authority to promote appellant as SDO / AE in Grade-17 with retrospective date of creation of post of SDO / AE under back benefits & against 10% promotion quota for engineer graduates as per judgment dated 25.08.2005 of Apex Court Of Pakistan and notification 14.04.1978 respectively.

Respected Sir,

1. That as per commitment dated 30.12.2013 before Honourable Service Tribunal KPK by the Secretary Local Govt: and Rural Development to consider my case on humanitarian grounds but later on refused to implement the judgment 30.12.2013 of Honourable Service Tribunal. Hence this departmental appeal in response to above subject is addressed to your kind honour being next higher appellate authority.
2. That I was inducted in service as Sub Engineer Local Govt: on contract basis w.e.f 26.11.1988 i.e from the date of joining of post vide appointment letter No. DSL/LCB/1-8/88 dated 22.11.1988 (photo copy attached as annexure A).
3. That after serving as Sub Engineer on contract basis, I was regularized w.e.f 10.11.2005 vide Secretary to Govt: NWFP now KPK LG & RDD, vide Notification No. SO(LG-1)3-3230/03 dated 10.11.2005 (photo copy attached as annexure-B).
4. That I was terminated from said service alongwith my other colleagues vide letter No. SO(LG-1)3-113/96 dated 04.03.2003 (photo copy attached as annexure-C).
5. That later on I alongwith my other colleagues were reinstated in service from the date of initial appointment with "all back benefits" vide Apex Court Of Pakistan judgment dated 25.08.2005 (photo copy attached as annexure-D).
6. That in response to Apex Court Of Pakistan dated 25.08.2005 the Secretary LG & RDD Govt: of NWFP now KPK vide his No. SOS.O(LG-1)3-323/03 dated

Attended
MALIK MUHAMMAD IQBAL
Advocate
District Bar Association
Dera Ismail Khan

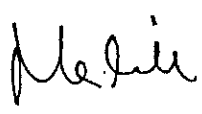
- 10.11.2005 not only reinstated me alongwith my other colleagues from the date of initial apptt: but "without all back benefits" & regularized my whole service & ordered to place me alongwith my other colleagues in surplus pool of LG & RDD (photo copy already annexed as annexure-B).
7. That a final seniority list of Sub Engineers as stood on 29.05.2006 was issued by Mr. Ilam Khan Khattak Section Officer Estab: vide No SO(LG-1)4-126/95/Vol:II dated 20.06,2006, in which I stand at Sr. No. 26 already holding degree of BSc Civil Engineering as shown in Column No.2 of the said list (photo copy attached as annexure-E).
 8. That in violation of judgment of Apex Court Of Pakistan I was neglected to be promoted as SDO/AE under all back benefits hence I applied vide departmental appeal to Secretary LG & RDD to promote me as SDO/AE in B.P.S-17 in response to judgment of Apex Court Of Pakistan (photo copy judgment already placed as annexure-D).
 9. That receiving no response regarding my departmental appeal to competent department / appellant authority and after waiting for the prescribed period of 90-days I submitted my service appeal to Honourable Service Tribunal NWFP now KPK which was registered under No. 773/2007 dated 16.07.2007 (photo copy of service appeal is annexed as annexure-F).
 10. That after processing the said service appeal and as per final judgment of Honourable Service Tribunal dated 27.11.2015, I was advised to re-agitate my promotion case in the prescribed manner if aggrieved of the said department order. (photo copy attached as annexure-G).
 11. That since I am BSc Civil Engineer copy of said degree attached as annexure-H, therefore, as per Notification No SO(LG-1)2-188/93 Vol-II dated 14.04.1978 annexed as annexure-I, I am also entitled to be promoted in B.P.S-17 on the basis of 10% quota of graduate engineers but instead ignoring the instruction contained in the said Notification Mr. Naheed Khan a Diploma Holder who stands at Sr. No.46 of said seniority list has been promoted as SDO/AE vide order No. SO(LG-1)2-330 FATA/2012 dated 13.11.2013 copy of said promotion order is annexed as annexure-J illegally which is the infringement of my legal rights because I was not only holding lien with Local Govt: at that time of promotion of Mr. Naheed Khan but at the same time my Service Tribunal Appeal was also pending for decision in the sense also that I stand at Sr. No. 26 of the seniority

- 12. That according to the said seniority list dated 31.05.2006 though stand at Sr. No 26 but I am senior to Sr. No. 46 who ^{is} ~~are~~ Matric /Diploma holder while I am B.Sc Engineering degree holder by virtue of Notification dated 14.04.1978. Therefore, as such I am entitled to be promoted in Grade-17 in the light of Notification and also under "all back benefits" as ordered by Apex Court Of Pakistan.
- 13. That it is to inform you that I was adjusted in Public Health Engineering Department w.e.f 14.03.2008 vide letter No. SOE-II/W&S/17-3/99 dated 13.03.2008 photo copy attached as annexure-K and uptill now I am serving in Public Health Engineering Department.
- 14. That since I was promoted as SDO/AE in B.P.S-17 on regular basis w.e.f 13.02.2015 vide Notification No. SO(Estt:) PHED/4-53-B/2014 copy of Notification is attached as annexure-L and posted at Tank, but I claim my promotion as SDO/AE from back date i.e from the date of creation of post of S.D.O/A.E earlier either in Local Govt: Department or Public Health Engineering Department, in the light of Notification dated 14.04.1978 and judgment of Apex Court Of Pakistan 25.08.2005 already placed as annexure I & D respectively.
- 15. That since I have been adjusted to serve from LG & RDD to Public Health Engineering Department after my service for more than 19-years in Local Govt; therefore, I hold my lien in Local Govt: for the sake of my promotion and other benefits being serving in Public Health Engineering Department in the light of my service record.

It is therefore requested your kind honour to consider sympathetically in the light of what has been explained in paragraphs 2-15 in direction to competent authority to promote me in Grade-17 from back date of creation of post of S.D.O/A.E earlier in LG & RDD or in Public Engineering Department.

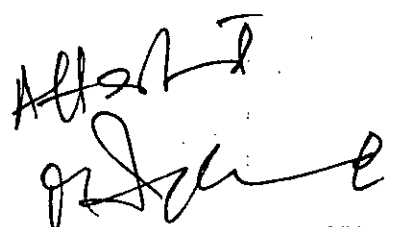
Thanks.

Your's obediently,



Malik Muhammad Irfan
 Mohallah Sadi Yaqir
 Dera Ismail Khan
 Cell # 0334-777-4355
 CNIC # 12101-94-9840-7

Dated: 04/04/2016



MALIK MUHAMMAD IQBAL
 Advocate
 District Bar Association
 Dera Ismail Khan

وکالت نامہ

کورت فیس		قیمت ایک روپیہ
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بعدالت جناب K.P.K سرویس ٹریڈنگ - لٹا در

منجانب ایس ایم فرط

مکد محمد عرفان بنام حکومت K.P.K سرویس ٹریڈنگ لٹا در

دعویٰ یا جرم

ایس

تفصیل دعویٰ یا جرم

باعث تحریر آنکہ

مقدمہ مندرجہ بالا عنوان میں اپنی طرف واسطے بیروی وجود بدنی برائے پیشی یا تصفیہ مقدمہ بمقام دیوار کے لیے مکد محمد عرفان نے

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے، کہ میں بر پیشی پر خود بذریعہ مختیار خاص رو برو عدالت حاضر ہوتا ہوں گا۔ اور ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دیکر حاضر عدالت کروں گا، اگر پیشی پر مظہر حاضر نہ ہوں اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور پر میرے برخلاف ہو گیا۔ تو صاحب موصوف اسکے کسی طرح ذمہ دار نہ ہوں گے، نیز وکیل صاحب موصوف صدر مقام پچھری کے علاوہ کسی جگہ یا پچھری کے اوقات سے پہلے یا پچھے یا بروز تعطیل بیروی کرنے کے ذمہ دار نہ ہوں گے۔ نیز وکیل صاحب موصوف صدر مقام پچھری کے علاوہ کسی جگہ یا پچھری کے اوقات سے پہلے یا پچھے یا بروز تعطیل بیروی کرنے کے ذمہ دار نہ ہوں گے۔ اور مقدمہ صدر پچھری کے علاوہ اور جگہ ساعت ہونے یا بروز تعطیل یا پچھری کے اوقات کے آگے پچھے پیش ہونے پر مظہر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا عتقانہ واپس کرنے کے بھی موصوف ذمہ دار نہ ہوں گے۔ مجھ کو کل ساختہ پر داخل صاحب موصوف مثل کردہ ذات خود منظور قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ، یا جواب دعویٰ یا درخواست اجراءے ڈگری و نظر ثانی اپیل و گمرانی و ہر قسم درخواست پر دستخط و تصدیق کرنے کا بھی اختیار ہوگا۔ اور کسی حکم یا ڈگری کرانے اور ہر قسم کاروبار وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور اس پر پیشی یا راضی نامہ و فیصلہ بر حلف کرنے، اقبال دعویٰ کا بھی اختیار ہوگا۔ اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکورہ بیرون از پچھری صدر بیروی مقدمہ مذکورہ نظر ثانی و اپیل و گمرانی و برآمدگی مقدمہ یا منسوخی ڈگری یکطرف یا درخواست حکم امتناعی یا قرتی یا گرفتاری قبل از فیصلہ اجراءے ڈگری بھی صاحب موصوف کو بشرط ادائیگی علیحدہ عتقانہ بیروی کا اختیار ہوگا اور تمام ساختہ پر داخل صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہوگا کہ مقدمہ مذکورہ یا اسکے کسی جزو کی کارروائی بصورت درخواست نظر ثانی اپیل یا گمرانی یا دیگر معاملہ مقدمہ مذکورہ کسی دوسرے وکیل یا ایئر مٹر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں۔ اور ایسے مشیر قانون کو بھی ہر امر میں وہی اور ویسے اختیارات حاصل ہوں گے، جیسے صاحب موصوف کو حاصل ہیں، اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑیگا، وہ صاحب موصوف کا حق ہوگا۔ مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا۔ تو صاحب موصوف کو پورا اختیار ہوگا کہ وہ مقدمہ کی بیروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔

لہذا وکالت نامہ لکھ دیا ہے۔ تاکہ سند ہے
مورخہ 30 جولائی 2016

مضمون وکالت نامہ سن لیا ہے۔ اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

العبد العبد العبد


مکد محمد عرفان ایس ایڈوکیٹ

Muhammad Islam


Accepted
19 Jun

Accepted
K.P.K
Advocate
Dikhan

VAKALATNAMA

**N.W.F.R.
BAR COUNCIL**

MUHAMMAD ISMAIL ALIZAI
Advocate High Court
N.J.C. 12101-0958025-3
S.No 1228


Issuing Authority

Father's Name: MUHAMMAD IDRAR KHAN ALIZAI
Address: ALI AHMAD HOUSE KOTI ALIZAI,
DIKHAH
Office Tel: 03448400133, 03135023779
Enrolment Dt. S.C: 08/04/21-03-2001
Enrolment Dt. N.C.: 25-05-2003
Place of Practice: DARA ISMAIL KHAN
Date of Birth: 12-04-1958
Blood Group: B+ve

Partner Q.No. 20 - Khyber Road Peshawar Ph: 031-9211172
E-mail: ismail@ismailal.com, mwfbarcouncil@gmail.com

BEFORE THE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA, PESHAWAR.

In Service Appeal ... Jahid Muhammad Inqas ... Vs ... Govt of K.P etc

I/WE, ... Nabeed Khan, Regd. No. 6 ... Appellant,

hereby appoint Mr. Muhammad Ismail Alizai, Advocate High Court,

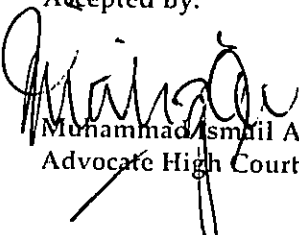
Farmanullah Kundi, Ahmad Shahbaz Alizai, Advocates High Court, DIKhan,
in the above mentioned matter / case and authorize him/them to do all or any of the following acts,
in my/our name and on my/our behalf, that is to say,

1. To appear, act and plead for me/us in the above mentioned case in this Court/ tribunal in which the same may be tried or heard or any other proceedings what so ever, ancillary thereto, including appeal, revision etc; on payment of fees separately for each court by me / us,
2. To sign, verify, file, present or withdraw all/any proceedings, petitions, appeals, cross objections and application for compromise or withdrawal, or for submission to arbitration of the said case or any other documents, as may be deemed necessary or advisable by him/them and to conduct prosecution or defense of the said case at all its stages,
3. To undertake execution proceedings, deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be conferred to be done for the progress and in the course of prosecution of the said case,
4. To appoint and instruct any other Advocate/ legal practitioner authorizing him to exercise the power and authority conferred upon the advocate whenever he/they may think fit to do so and to sign Power of Attorney on our behalf,

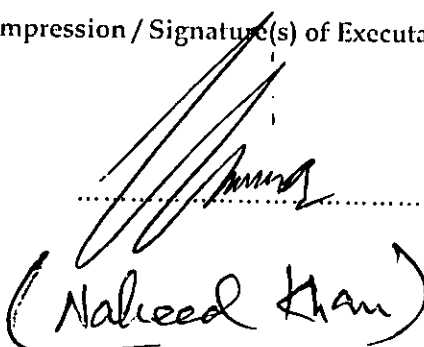
I /we, the undersigned do hereby agree to ratify and confirm all acts done by the advocate or his authorized substitute in the matter as my /our own acts, as if done by me/us to intents and purposes, and I / we undertake that I /we or my/our duly authorized agent shall appear in the court on all hearings and will inform the advocate(s) for appearance when case is called and I/we the undersigned agree hereby not to hold the advocate(s) or his/their substitute responsible if the said case be proceeded ex-parte or dismissed in default in consequence of my/our absence from court when it is called for hearing and for the result of the said case, the adjournment costs whenever ordered by the court shall be of the advocate(s) which he/they may receive and retain himself/themselves. I/we the undersigned do hereby agree that in the event of the whole or part of the fees agreed by me/us to be paid to the advocate(s), if remain unpaid, he/they shall be entitled to withdraw from prosecution of the above said case until the same is paid and fee settled is only for the above said case and above court and I /we agree hereby that once fee is paid, I/we shall not be entitled for refund of the same in any case whatsoever.

IN WITNESS WHEREOF, I /we do hereby set my/our hand to these presents, the contents of which have been read / read over, explained fully and understood by me/us on this... 16th ... Day of July 2017

Accepted By:


Muhammad Ismail Alizai,
Advocate High Court.

Thumb Impression / Signature(s) of Executant(s)


(Nabeed Khan)



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGINEERING DEPARTMENT

Dated Peshawar, the July 25, 2017

AUTHORITY LETTER

No.SO(Estt)/PHED/14-42/2017: Engr. Muhammad Younas Khattak, Superintending Engineer Public Health Engineering Circle D.I. Khan is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Camp Court D.I. Khan in connection with the Service Appeal No.923/2016 titled "Malik Muhammad Irfan Versus Government of Khyber Pakhtunkhwa" on behalf of the undersigned to protect the Government interest.

(NIZAM-UD-DIN) 25/07/17
SECRETARY PHED

Secretary to Govt. of
Khyber Pakhtunkhwa
P.H.E. Department



**GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGINEERING DEPARTMENT**

Date: Dwar, the July 25, 2017

AUTHORITY LETTER

No. (Estt)/PHED/14-42/2017: Engr. Muhammad Younas Khan, Superintending Engineer Public Health Engineering Circle D.I. Khan is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Appeal Court D.I. Khan in connection with the Service Appeal No.973/2017 titled "Malik Muhammad Irfan Versus Government of Khyber Pakhtunkhwa" on behalf of the undersigned to protect the Government interest.

(NIZAMUDDIN) 25/07/17
SECRETARY PHED

Secretary to Government
Khyber Pakhtunkhwa
P.H.E, Department

MOST IMMEDIATE

COURT MATTER
Government Of Khyber Pakhtunkhwa
Local Government Elections & Rural
Development Department

No. SO(LG-D)/3-369/S.1/2016

Dated Peshawar, the 25th July, 2017

To

✓
 Mr. Naheed Khan,
 Assistant Engineer, LG&RDD
 Khyber Agency.

SUBJECT:- SERVICE APPEAL NO. 923/2016 FILED BY MALIK MUHAMMAD
RFAN, SDO PHE VERSUS GOVT. OF KHYBER PAKHTUNKHWA

You are hereby authorized to attend the Khyber Pakhtunkhwa Services Tribunal camp office at D.I.Khan on each date of hearing on behalf of the undersigned and intimate court proceedings of each date of hearing to this Department regularly.

SECRETARY LG, E&RDD

Endst. Even No. & Date.

Copy is forwarded to:-

1. The Registrar, Service Tribunal Khyber Pakhtunkhwa, Peshawar.
2. The Director General, LG&RDD Peshawar.
3. The PS, to Secretary LG, E&RD Department Peshawar.

SECTION OFFICER (PR) (ESTAB)
 Phone # 091-9213224

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL,
PESHAWAR.

Service Appeal No.923/2016

Malik Muhammad Irfan, Ex-Surplus Sub Engineer,

LGE&RDD (Now SDO, PHE Department, Tank) Petitioner

Versus

1. **Secretary, LG, E&RDD and others.....**

2. **Secretary, Public Health Engg: Deptt.....**

3. **Chief Secretary, Khyber Pakhtunkhwa.....**

4. **Chief Engineer Public Health Engg: Deptt:....**

5. **Director General, LG&RDD**

6. **Naheed Khan, Asstt: Engineer, LG&RDD, Respondents**

Para-wise Reply/Comments on behalf of Respondent No.2 ¹⁴⁵ ?

Preliminary objections:-

- i The appellant has got no cause of action and locus-standi to institute the instant appeal.
- ii The Tribunal has no jurisdiction to entertain appeal of the appellant.
- iii The appellant is an employee of the Public Health & Engineering Department.
- iv The appellant has not come to the Tribunal with clean hands.
- v The Appeal of the appellant is not maintainable in its present form.
- vi The appellant has concealed material facts of the case.
- vii Appeal of the appellant is time barred.

Reply/comments on the appeal of the appellant.

Para-1 Incorrect. Mr. Naheed Khan is working as Assistant Engineer in the office of Assistant Director, LG&RDD, Khyber Agency.

Para-2 The appellant was appointed as Sub-Engineer under a scheme "Strengthening of LG&RDD" during 1988 purely on contract basis. Being a contract/project employee, his pay was met out from 2% contingency of development funds.

- Para-3** The appellant and others had filed writ petition in the Peshawar High Court Peshawar for the regularization of their service. The Peshawar High Court dismissed petition of the petitioners having no merit. To implement the Judgment of the Peshawar High Court, Peshawar, service of all contract/project employees including the appellant were terminated on 30-05-2003 **(Annexure-A)**
- Para-4** Correct.
- Para-5** The Supreme Court of Pakistan re-instated the appellant as well as other contract / project employees in service vide its Judgment dated 25-08-2005 **(Annexure-B)**.
- Para-6** Judgment of the Apex Court was implemented and the appellant as well as other contract employees were re-instated in service and placed in the Surplus Pool of LG&RDD on 10-11-2005 as the offices in which such employees were posted were abolished alongwith posts during 2001 in devolution process.
- Para-7** Not correct. The appellant was at Sl. No. 26 of the seniority list of Sub-Engineers issued on 30-06-2006.
- Para-8** In response to para-8, it is clarified that according to the service rules notified vide No.SO(LG-1)2-188/93/Vol:II, dated 14-04-1998 10% quota was reserved for promotion of Degree holder Sub-Engineers (civil). M/S Qismat Khan, Muhammad Saleem and Said Bahadar who were degree holder (Civil) Sub-Engineers were promoted to the post of Assistant Engineers (BPS-17) against 10% quota at that time.
- Para-9** Incorrect. It is added that there were seven sanctioned posts of Assistant Engineers (BS-17) in FATA, LG&RDD during 2006. Out of these posts, one post falls to the share of Degree Holder Sub-Engineers, but the same could not be filed-in as the Service Rules on the basis of which Degree Holder Sub-Engineers are promoted were sub-judiced in the Service Tribunal as well as in the Supreme Court of Pakistan, When the Civil Petition filed by

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Annexure - (B)
PRESENT

MR. JUSTICE HAMID ALI MIRZA
MR. JUSTICE NASIR-UL-MULK

CIVIL APPEALS NO.44 TO 79 OF 2004 AND
CIVIL PETITIONS NO.1409/2004 & 319/2005

(On appeal from the judgment of the N.W.F.P. Service Tribunal,
Peshawar, dated 7.2.2004 passed in Service Appeals No.926, 959
to 979, 989, 1037 to 1039, 1048 to 1050, 1067 to 1071, 1085,
1170 of 2003 and 60 of 2004.

Zafarullah Khan	Appellants (in C.A.No.44/05)
Attiqur Rehman	(in C.A.No.45/05)
Khalid Saeed	(in C.A.No.46/05)
Muhammad Zahoor	(in C.A.No.47/05)
Fakhr-uz-Zaman Khan	(in C.A.No.48/05)
Muhammad Fahim	(in C.A.No.49/05)
Shad Mohammad	(in C.A.No.50/05)
Raza Ullah Khan	(in C.A.No.51/05)
Muhammad Iqbal Khan	(in C.A.No.52/05)
Sheraz Ahmed	(in C.A.No.53/05)
Abdur Rashid	(in C.A.No.54/05)
Arshad Zia	(in C.A.No.55/05)
Fazlullah	(in C.A.No.56/05)
Muhammad Rases Khan	(in C.A.No.57/05)
Muhammad Ilyas	(in C.A.No.58/05)
Aziz-ur-Rehman	(in C.A.No.59/05)
Muhammad Sadiq	(in C.A.No.60/05)
Asghar Hussain	(in C.A.No.61/05)
Salim Javed	(in C.A.No.62/05)
Amin Gul	(in C.A.No.63/05)
Dilawar Khan	(in C.A.No.64/05)
Munawar Ahmed	(in C.A.No.65/05)
Schwanosh	(in C.A.No.66/05)
Muhammad Nazif	(in C.A.No.67/05)
Ghulam Akbar	(in C.A.No.68/05)

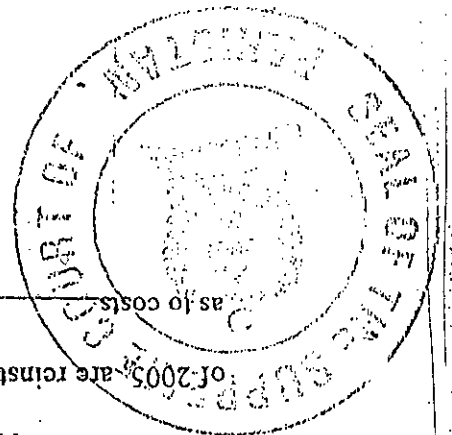
ATTESTED

AS
Superintendent
Supreme Court of Pakistan
ISLAMABAD

appointment and the manner in which their employments have been considered thereafter. The foregoing discussion shows that the appellants were employees of the Department and not of any Scheme or Project and by virtue of the provisions of Act VIII of 1989, as amended, had become regular civil servants.

15. The case of Khalid Saeed, appellant in Civil Appeal No.46 of 2005, however, stands on a different footing. He was appointed on 12.3.1990 after the enactment of Act VIII of 1989 and Act II of 1990, the latter is dated 25.2.1990, though it has been enforced retrospectively w. e. f. 13.11.1989. The two Acts had regularized the services of those employees who were employed on contract basis till coming into force of the Acts on 13.11.1989. Obviously, Khalid Saeed cannot claim benefit of these Acts.

16. In view of the above, Civil Appeal No.46 of 2005 is dismissed whereas Civil Appeals No.44, 45, 47 to 79 of 2005 are allowed, Civil Petition Nos. 1409 of 2004 and 319 of 2005 are converted into appeals and allowed. Resultantly, the impugned judgment and order of the N.W.F.P. Service Tribunal to that extent are set aside and so also the order of termination of the said appellants dated 30.5.2003. The appellants, except Khalid Saeed, appellant in Civil Appeal No.46 of 2005, are reinstated in service with all back benefits. There shall be no order as to costs.



Islamabad
August 25, 2005
Shirazi*

8/9/05

Sd/- Hamid A. Mirza
Sd/- Aziz-ur-Rahman
Certified to be true copy

Superintendent
Supreme Court of Pakistan
ISLAMABAD

M. H. Mirza
13/9/2005

Case No.	25-8-05
Date of Presentation	25-8-05
No. of Pages	35
Registration Fee Paid	500
Copy Fee Paid	
Order Fee Paid	
Order No.	F-07
Date of Delivery of Copy	13-9-2005
Case No.	14-9-05

NOT APPROVED FOR REPORTING



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGG: DEPARTMENT

Dated Peshawar, the February 13, 2015

NOTIFICATION

No.SO(Est0)/PHED/4-53-B/2014: The competent authority, on the recommendations of the Departmental Promotion Committee, is pleased to promote the following acting charge SDOs/Direct Graduate and Diploma Holder Sub Engineers (BPS-11) of the Public Health Engineering Department to the posts of Assistant Engineers/Assistant Design Engineer/Sub Divisional Officers (BPS-17) on regular basis, with immediate effect:-

Direct Graduate:

- i. Malik Muhammad Irfan
- ii. Mr. Munawar Ahmad,

Diploma Holder:

- i. Mr. Fazle Mahood
- ii. Mr. Sajjad Ali
- iii. Mr. Mushtaq Ahmad
- iv. Mr. Alam Zeb
- v. Mr. Allah Nawaz
- vi. Mr. Khurshid Anwar

2. The officers, on promotion, will remain on probation for a period of one year extendable for another year in terms of Rule-15 of Khyber Pakhtunkhwa, Civil Servants (Appointment, Promotion & Transfer) Rules, 1989.

3. In order to actualize their appointment, the following postings/transfers/adjustments are made henceforth:-

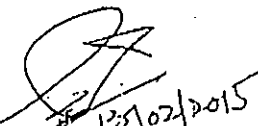
S.No	Name	From	To	Remarks
1.	Malik Muhammad Irfan, BPS-11	Sub Engineer PHE Division D.I. Khan	Assistant Design Engineer (BPS-17) Office of the C.E (South) PHE Peshawar on regular basis	Against the vacant post
2.	Mr. Munawar Ahmad, BPS-17	SDO (acting charge) PHE Sub Division No.1 Bannu	SDO PHE Sub Division No.1 Bannu on regular basis	Against the existing vacancy.
3.	Mr. Fazle Mahood, BPS-11	SDO (OPS) PHE Sub Division Tor Ghar	SDO (BPS-17) PHE Sub Division Tor Ghar on regular basis	Against the existing vacancy
4.	Mr. Sajjad Ali, BPS-17	SDO (acting charge) PHE Sub Division Swat	SDO (BPS-17) PHE Sub Division Swat on regular basis	Against the existing vacancy.
5.	Mr. Mushtaq Ahmad, BPS-17	SDO (acting charge) PHE Sub Division Dasso Kohistan	SDO (BPS-17) PHE Sub Division Dasso Kohistan on regular basis	Against the existing vacancy
6.	Mr. Alam Zeb, BPS-11	SDO (OPS) PHE Sub Division No.2 Bannu	SDO (BPS-17) PHE Sub Division No.2 Bannu on regular basis	Against the existing vacancy
7.	Mr. Allah Nawaz, BPS-17	SDO (acting charge) PHE Sub Division Lakki Marwat	SDO (BPS-17) PHE Sub Division Lakki Marwat on regular basis	Against the existing vacancy
8.	Mr. Khurshid Anwar BPS-17	SDO (acting charge) PHE Sub Division Tank	SDO (BPS-17) PHE Sub Division Tank on regular basis	Against the existing vacancy

SECRETARY
PHE DEPARTMENT

Endst: No.SO(Estt)/PHED/4-53-D/2014 Dated Peshawar, the February 13, 2015

Copy forwarded for information and necessary action to the:-

1. Accountant General Khyber Pakhtunkhwa Peshawar.
2. Chief Engineer (South) PHE Khyber Pakhtunkhwa Peshawar.
3. Chief Engineer (North) PHE Khyber Pakhtunkhwa Peshawar.
4. Superintending Engineers PHE concerned.
5. Executive Engineer PHE concerned.
6. District Accounts Officer concerned.
7. PS to Minister for PHE Khyber Pakhtunkhwa Peshawar.
8. PS to Secretary PHE Department Khyber Pakhtunkhwa.
9. Officers concerned.
10. Office Order / Personal Files.


13/02/2015
SECTION OFFICER (ESTT)

①

**BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUN KHWA
(D.I.KHAN BENCH)**

Service Appeal No.923 / 2016.

Title:

Malik Muhammad Irfan SDO PHED / Sub Engineer LGRDD

Versus

**Govt. of Khyber Pakhtunkhwa through Secretary LG&RDD and
others.**

Written Comments on behalf of Respondent No. 2 & 4.

Respectively Sheweth,

1. Correct.
2. No comments, as not concerned. Issue relates to LG&RDD.
3. No comments, as not concerned.
4. No comments, as not concerned.
5. No comments, as not concerned.
6. No comments, as not concerned.
7. No comments, as not concerned.
8. No comments, as not concerned.
9. No comments, as not concerned.
10. No comments, as not concerned.
11. No comments, as not concerned.

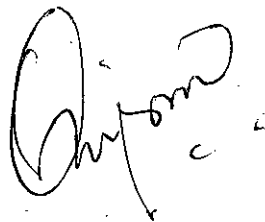
Amir

- ②
12. No comments, as not concerned.
 13. No comments, as not concerned.
 14. No comments, as not concerned.
 15. No comments, as not concerned. Former Works & Services Department KPK cease to exist after E&A Department KPK Notification dated 24.11.2009.
 16. The appellant has been adjusted and reflected in the Seniority List of Sub Engineers as per his seniority inherited from LG&RDD and was promoted on 13.02.2015. The appellant has not challenged any final order of the Public Health Engineering Department KPK. He claims back benefits from LG&RDD.
 17. No comments, as not concerned.
 18. No comments, as not concerned.

GROUND:

1. No comments, as not concerned. The issue relates to LG&RDD.
2. No comments.
3. Correct to the extent of his present service in PHE Department.
4. No comments, as not concerned.
5. No comments, as not concerned.

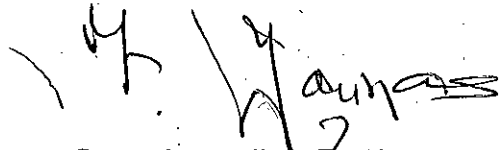
The appellant has been promoted to BPS-17 in PHE Department on his turn as per seniority list of Sub Engineers. Thus his any



3

claim against Respondent No. 2 & 4 of PHE Department is unjustified. The appellant claim relates to LG&RDD for his back benefits. The appeal may be dismissed with cost.

Dated: 24 /10/2017.



Superintending Engineer,
PHE Circle D.I.Khan.
(For Respondent No.2 & 4)

Through:
District Attorney D.I.Khan
Govt. of Khyber Pakhtunkhwa.



GOVERNMENT OF KHYBER PAKHTUNKHWA
PUBLIC HEALTH ENGINEERING DEPARTMENT

Dated Peshawar, the July 25, 2017

AUTHORITY LETTER

No.SO(Estt)/PHED/14-42/2017: Engr. Muhammad Younas Khattak, Superintending Engineer Public Health Engineering Circle D.I. Khan is hereby authorized to attend the Khyber Pakhtunkhwa Service Tribunal Camp Court D.I. Khan in connection with the Service Appeal No.923/2016 titled "Malik Muhammad Irfan Versus Government of Khyber Pakhtunkhwa" on behalf of the undersigned to protect the Government interest.

A handwritten signature in black ink, appearing to read 'Nizam-ud-Din', written over a horizontal line.

(NIZAM-UD-DIN) 25/07/17
SECRETARY PHED

Secretary to Govt. of
Khyber Pakhtunkhwa
P.H.E. Department



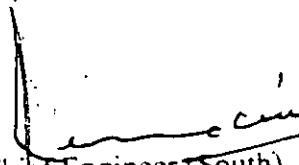
OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPTT: KHYBER PAKHTUNKHWA, PESHAWAR
Ph#091-9212934 Fax#091-9210228 E-mail: Ce.s.phe.d.pr5419@gmail.com

No. 03-19-4-A/ST /PHE,

Dated Peshawar, the 14/9/2017

AUTHORIZATION

Mr. Muhammad Younis Khattak, Superintending Engineer PHE Circle D.I.Khan is hereby authorized to attend the honourable Service Tribunal Khyber Pakhtunkhwa Peshawar at Camp Court D.I.Khan in connection with the cases of Malik Irfan versus Govt of Khyber Pakhtunkhwa and others on behalf of the Department, on 25.10.2017 and every date.


Chief Engineer (South)

AN
ACT

*to amend the Khyber Pakhtunkhwa Civil
Servants Act, 1973.*

WHEREAS it is expedient to amend the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), for the purposes hereinafter appearing;

It is hereby enacted as follows:

1. **Short title and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2015.

(2) It shall come into force at once.

2. **Insertion of new section in the Khyber Pakhtunkhwa Act No. XVIII of 2013.**--- In the Khyber Pakhtunkhwa Civil Servants Act, 1973 (Khyber Pakhtunkhwa Act No. XVIII of 1973), hereinafter referred to as the said Act, after section 11A, the following new section shall be inserted, namely:

“11B. Absorption or appointment of Federal employees.--- (1) Notwithstanding anything contained in this Act, all those employees of the Federal Government, who are holding various posts in Federal Government entities on regular basis, before the commencement of the Constitution (Eighteenth Amendment) Act, 2010 (X of 2010) and the said entities being devolved to Province in pursuance of aforesaid amendment, shall be deemed to be the civil servants of the Province for all intents and purposes under this Act.

(2) All such Federal Government employees,-

(a) if their relevant cadre is available in Government, shall be absorbed in the said cadre in the prescribed manner; and

(b) if no relevant cadre is available in Government, shall be deemed to have been appointed on regular basis to various cadres posts to be created for this purpose:

Provided that on such appointment or absorption, as the case may be,-

(i) their seniority shall be determined in accordance with the provision of this Act; and

(ii) their liabilities with regard to pension, gratuity, group insurance, benevolent fund and leave encashment shall be proportionally shared between the Federal Government and Government in such a manner as may be agreed upon.

(3) Government shall constitute a committee consisting of Secretary to government, Establishment Department, Secretary to Government, Finance Department, Secretary to Government, Law, parliamentary Affairs and Human Rights Department, Secretary to Government, Inter Provincial Coordination Department and Secretary of the concerned Department to remove difficulties, if any, in implementation of this section.”

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)
Secretary
Provincial Assembly of Khyber
Pakhtunkhwa