

07.04.2021

*Early bearing application
and fixed for 08/07/21*

Due to demise of the Worthy Chairman the Tribunal is defunct, therefore, case is adjourned to 14/07/2021 for the same as before.


READER

08.07.2021

Petitioner alongwith counsel and Mr. Muhammad Adeel Butt, Addl. AG alongwith Ijaz Ahmad, Superintendent jfor the respondents present.

Representative of the respondents submitted copy of corrigendum No. Dir/TPT/1-82/P&T/4870-78, dated 08.07.2021, which shows that the petitioner has been reinstated to his own post as Assistant (BPS-16) w.e.f. 18.01.2021, till outcome of the CPLA No. 400-P/2020 filed before the August Supreme Court of Pakistan.

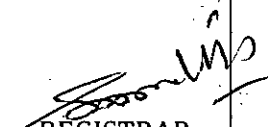


In view of the above, the present execution petition is filed and consigned to record room. The petitioner is at liberty to apply for restoration of execution petition, after final decision of the august Supreme Court of Pakistan, if so advised.


Chairman

FORM OF ORDER SHEET

Court of _____

Execution Petition No. 270 /2021

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	20.01.2021	<p>The Execution Petition of Mr. Bilal submitted by him may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This Execution Petition be put up before S. Bench on <u>08/02/2021</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	08.02.2021	<p>Petitioner present in person.</p> <p>Notice be issued to respondents for 07.04.2021 for implementation report before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p>



J.S.

DIRECTORATE OF TRANSPORT & MASS TRANSIT KHYBER PAKHTUNKHWA

Ground Floor Benevolent Fund Building, Peshawar Cantt: ☎ 091-9214185/9212061

Dated: 08-07-2021

CORRIGENDUM:

No. Dir/TPT/1-82/P&T/ 4870-78 . In Continuation of this office letter No. Dir/TPT/1-82/P&T/4841-46 dated 06-07-2021, Mr. Bilal is hereby reinstated to his own post as Assistant (BPS-16) w.e.f 18-01-2021, till outcome of the CPLA No. 400-P/2020 filed before the August Supreme Court of Pakistan.


**DIRECTOR
Transport & Mass Transit
Khyber Pakhtunkhwa**

Endst: No & Date Even:

A copy is forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Additional Advocate General, Service Tribunal, Khyber Pakhtunkhwa, Peshawar.
3. Secretary Regional Transport Authority, Mardan.
4. District Account Officer, Mardan.
5. PS to Secretary, Transport & Mass Transit Department, Government of Khyber Pakhtunkhwa
6. SO (Litigation), Transport & Mass Transit Department, Government of Khyber Pakhtunkhwa.
7. PA to Director, Transport & Mass Transit, Khyber Pakhtunkhwa.
8. Official Concerned.


**DIRECTOR
Transport & Mass Transit
Khyber Pakhtunkhwa**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Execution Petition No. 273 /2021
In Appeal No. 1104/2019

Bilal son of Haji Muhammadi Gul, R/O Mohallah parich Khel, Village and Post office
Umer Zai, Tehsil and District Charsadda.

... (Petitioner)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Transport and Mass Transit Department, Civil Secretariat, Peshawar.
2. Director Transport and Mass Transit Department, Benevolent Fund Building Peshawar Cantt.
3. Secretary, Regional Transport Authority, Mardan Division Mardan.
... (Respondents)

INDEX OF PETITION.

Sr. No.	Description of documents	Annexure	Pages.
1.	Memo of Execution Petition		01 - 02
2.	Final Order in S.A No. 1104/19 Dated 22.06.2020	"A"	03 - 04
3.	Detailed judgment in S.No. 1102/19 dated 22.06.2020	"B"	05 -09


Petitioner

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Execution Petition No. 278 /2021
 In Appeal No. 1104/2019



Bilal son of Haji Muhammadi Gul, R/O Mohallah parich Khel, Village and Post office Umer Zai, Tehsil and District Charsadda.

... (Petitioner)

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Transport and Mass Transit Department, Civil Secretariat, Peshawar.
2. Director Transport and Mass Transit Department, Benevolent Fund Building Peshawar Cantt.
3. Secretary, Regional Transport Authority, Mardan Division Mardan.
 ... (Respondents)

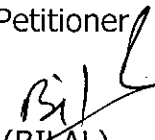
EXECUTION PETITION FOR IMPLEMENTATION OF JUDGMENT/ORDER DATED 22.06.2020 PASSED IN SERVICE APPEAL NO. 1104/2019 BY THIS HON'BLE TRIBUNAL WHEREBY THE RESPONDENTS WERE DIRECTED TO REINSTATE THE PETITIONER IN SERVICE WITH ALL BACK BENEFITS.

Respectfully sheweth

1. That the petitioner was removed from service by the respondents on 29.04.2019 which order was assailed by the petitioner in Service Appeal No. 1104/2019. The said removal order was set aside by this Hon'ble Tribunal vide judgment/order dated 22.06.2020. Copy of judgment/order is attached as annexure-A.
2. That subsequently, the petitioner submitted his arrival report to the respondents but the respondents neither reinstated the petitioner nor accepted his arrival report what to say of extending all back benefits.
3. That the judgment/order dated 22.06.2020 has not been suspended or set aside by the Apex Court till date and the respondents are bound to implement the judgment/order of this Honble Tribunal.

4. That a period of more than six months elapsed but judgment/order dated 22.06.2020 has not been implemented so far.
5. That the petitioner is a poor person and is facing huge financial problems.

It is, therefore, respectfully prayed that on acceptance of instant Execution Petition, the respondents may very graciously be directed to implement the judgment/order dated 22.06.2020 in letter & spirit and reinstate the petitioner in service with all back benefits.

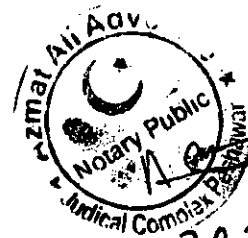
Petitioner

(BILAL)


AFFIDAVIT

I Bilal son of Haji Muhammadi Gul R/O Mohallah Parich Khel, Village and post office Umar Zai, Tehsil and District Charsadda do hereby solemnly affirm and declare on Oath that the contents of the accompanying Execution Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.


DEPONENT

ATTESTED




20-01-2021

L 3 Annex A

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



S.A.No. 1104 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1190

Dated 23/8/2019

Bilal S/o Haji Muhammadi Gul
R/o Mohallah Parich Khel, Village & PO Umar Zai,
Tehsil & District Charsadda.

Appellant

Versus

- 1) Govt. of Khyber Pakhtunkhwa through Secretary Transport & Mass Transit Department, Civil Secretariat, Peshawar.
- 2) Director Transport & Mass Transit Department, Benevolent Fund Building Peshawar Cantt.
- 3) Secretary Regional Transport Authority, Mardan Division, Mardan.

Respondents

Filed to-day

[Signature]
Registrar

23/8/19

Appeal u/s 4 of the KP Service Tribunal Act, 1974 against the termination order of removal from service dated 29.04.2019 and appellate order dated 01.08.2019 upon departmental appeal,

Re-submitted to-day
and filed.

[Signature]
Registrar

29/8/19

wherein departmental appeal has been dismissed be declared as illegal, against the law and facts.

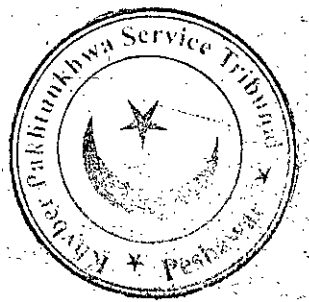
PRAYER

On acceptance of this appeal the impugned termination order of removal from service dated

ATTESTED
[Signature]
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

1

BEFORE THE KHYBER PAKHTUNKHWA, SERVICE
TRIBUNAL, PESHAWAR



S.A.No. 1102 /2019

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1192

Date 23/8/2019

Hayat Wali Shah S/o Sher Wali Shah
R/o Shah Bronze Owir, Tehsil Mastuj, District Chitral.

..... Appellant

Versus

- 1) Govt. of Khyber Pakhtunkhwa through Secretary Transport & Mass Transit Department, Civil Secretariat, Peshawar.
- 2) Director Transport & Mass Transit Department, Benevolent Fund Building Peshawar Cantt.
- 3) Secretary Regional Transport Authority, Malakand Division, Malakand.

..... Respondents

Appeal u/s 4 of the KP Service Tribunal Act, 1974 against the termination order of removal from service dated 29.04.2019 and appellate order dated 01.08.2019 upon departmental appeal, wherein departmental appeal has been dismissed be declared as illegal, against the law and facts.

Filed to-day

Registrar

23/8/19

PRAYER

On acceptance of this appeal the impugned termination order of removal from service dated 29.04.2019 and appellate order

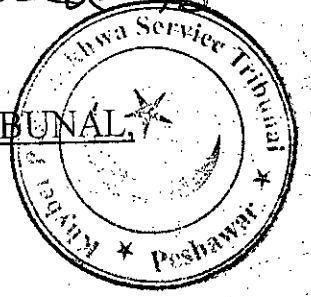
ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Re-submitted to-day
and filed.

Registrar
23/8/19

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,



Service appeal No. 1102/2019

Date of institution ... 23.08.2019

Date of decision 22.06.2020

Hayat Wali Shah S/O Sher Wali Shah, R/O Shah Bronze Owir, Tehsil Mastuj,
District Chitral. ... (Appellant)

Versus

Government of Khyber Pakhtunkhwa through Secretary Transport &
Mass Transit Department, Civil Secretariat, Peshawar and Two (02)
others. ... (Respondents)

Present

Mr. Zia-ur-Rehman Tajik,
Advocate

... For appellant.

Mr. Riaz Paindakhel,
Assistant Advocate General

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. MIAN MUHAMMAD,


... CHAIRMAN
... MEMBER(E).

JUDGMENTHAMID FAROOQ DURRANI, CHAIRMAN:-

Instant judgment is proposed to decide also Service Appeals No.
1103/2019 (Adnan Naz Vs Government of Khyber Pakhtunkhwa
Peshawar & others), Service appeal No. 1104/2019 (Bilal Vs Government
of Khyber Pakhtunkhwa Peshawar & others) and Service appeal No.
1105/2019 (Zahid Alam Vs Government of Khyber Pakhtunkhwa
Peshawar & others), as similar proposition is involved in all the appeals.

Besides, all the appellants are aggrieved of Office Orders issued on
29.04.2019 by Director Transport & Mass Transit Department
Peshawar/respondent No.2. The appellants were proceeded against

ATTESTED


CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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purportedly under Khyber Pakhtunkhwa Civil Servant (Efficiency & Disciplinary) Rules, 2011 and were awarded major penalty of removal from service. The departmental representations/appeals of all the appellants were rejected through a single order on 01.08.2019.

2. In order to recapitulate the facts involved in the appeals, it is useful to note that the appellants Hayat wali Shah, Adnan Naz & Bilal were appointed as Office Assistant (then BS-14) by respondent No. 1 on 09.07.2013, 11.11.2013 and 18.07.2013, respectively. The appellant Zahid Alam was promoted as such on 04.05.2012. The appellants duly took charge of their respective positions and started performing duties as Assistant for a formidable period when in the year 2019, the respondent No.1 was pleased to order departmental proceedings against them. Inquiry was conducted and the recruitment/promotion of the appellants was regarded as void abinitio. They were recommended for penalty. On 13.03.2019, Show Cause Notices were issued to all the appellants which were duly replied by them. Ultimately, on 29.04.2019 the impugned orders of removal from service were passed against the appellant.

3. We have heard learned counsel for the appellants, learned Asst. AG on behalf of the respondents and have also gone through the available record.

4. Learned counsel for the appellants vehemently argued that the appellants were awarded major penalty and were deprived of the service for no fault on their part. He emphatically relied on judgments reported as

1996 SCMR 8413, 2006 SCMR 678, 2004 SCMR 1077, 2009 SCMR 663 and 2004 SCMR 203 and contended that, if at all, any irregularity was committed during the process of appointment/promotion of appellants, it

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar



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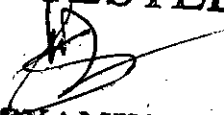
was on the part of respondents. The appellants were duly qualified for the post at the relevant time and had also under-gone the necessary procedure. It was also the argument of learned counsel that the appellants could not be removed under the principle of locus-poenitentiae after having put in many years of service. In that regard he relied on 2015 SCMR 1418.

5. Learned Asst. AG, on the other hand, argued that the appointment/promotion of appellants was void abinitio, therefore, there accrued no right in their favor to have prayed for their reinstatement in service. He also referred to the inquiry report dated 20.02.2019 and contended that all the charges were duly proved against the appellants.

6. Before proceeding further, it is useful to provide here-under the gist of allegations against the appellants;-

- a) *As per law (BS-14) were required to be recruited on the recommendation of Khyber Pakhtunkhwa Public Service Commission.*
- b) *Recruitment record/documents i.e. Advertisement, short listing procedure, call letters to the candidate for interview, interview papers, merit lists, requisition to the Public Service Commission and recommendation by the PSC are not available in the Department.*
- c) *Since no prescribed procedure was followed therefore, the appointment of appellants was illegal/ fake and void-abinitio.*

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

The allegations, even if proved, would clearly suggest that those pertained to a period before appointment/ promotion of appellants. Similarly, the same could not be attributed as misdeed/wrong doing on the part of appellants for proceedings against them on account of misconduct. Throughout the record it could not be brought forth by the respondents




that any of the appellants was ever instrumental in the irregularities as detailed in the statement of allegations as well as Show Cause Notice. The charges essentially suggested that the respondents department, more particularly the respondent No.1 was to be dubbed as defaulter. It is however ironical that no proceedings were ever under taken against the delinquent officer(s).

7. From the record, it also appears that in the year 2014 an inquiry was initiated against the appellants on the grounds similar to the inquiry in 2018. The claim of appellants is that they were exonerated and the previous inquiry was filed, on the other hand the respondents could not deny the exoneration of appellants and in the relevant Para of their replies provided evasive contents. In the circumstances, the vexing of appellants twice for the same alleged act could not be ruled out.

8. It is evident from the record that each of the appellant had put in more than five (05) years of service as Assistant (BS-16) after his appointment/promotion. It is also not denied that any of the appellants lacked qualification for disputed appointment. In the circumstances, initiation of departmental proceedings against them and passing of order of removal from service at such belated stage would not be justifiable. In other words, instead of taking action against the appellants it was more

ATTESTED


EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

appropriate to have taken the appointing authorities to task who, prima facie, committed the act of misconduct.

For what has been discussed above we are of the firm view that the impugned orders dated 29.04.2019 as well as dated 01.08.2019 are not legally sustainable. Resultantly, the appeals are hereby allowed as prayed for.

Parties are left to bear their own costs. File be consigned to the record room.

(Mian Muhammad)
Member (E)

(Hamid Farooq Durrani)
Chairman

ANNOUNCED
22.06.2020

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 20/1/21

Number of 2000

Copies 20/1/21

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Date of Delivery of Copy 20/1/21



DIRECTORATE OF TRANSPORT & MASS TRANSIT KHYBER PAKHTUNKHWA

Ground Floor Benevolent Fund Building, Peshawar Cantt: ☎ 091-9214185/9212061

Dated: 06-07-2021

ORDER:

No.Dir/TPT/1-82/P&T/ 4841-46 . Consequent upon the order of Hon'ble Service Tribunal, Khyber Pakhtunkhwa, Peshawar in appeal No. 1104/2019, dated: 22-06-2020 and vide Execution Petition No. 27/2021, Mr. Bilal is hereby Conditionally reinstated to his post as Assistant (BPS-16) with immediate effect, till outcome of the CPLA No. 400-P/2020 filed before the August Supreme Court of Pakistan.


DIRECTOR
Transport & Mass Transit
Khyber Pakhtunkhwa

Endst: No & Date Even:

A copy is forwarded for information to the:-

1. Accountant General, Khyber Pakhtunkhwa.
2. Additional Advocate General, Service Tribunal, Khyber Pakhtunkhwa, Peshawar.
3. PS to Secretary, Transport & Mass Transit Department, Government of Khyber Pakhtunkhwa
4. SO (Litigation), Transport & Mass Transit Department, Government of Khyber Pakhtunkhwa.
5. PA to Director, Transport & Mass Transit, Khyber Pakhtunkhwa.
6. Officials Concerned.


DIRECTOR
Transport & Mass Transit
Khyber Pakhtunkhwa

3. That the valuable rights of appellant/petitioner has been attached with the instant petition, hence need early fixation.

It is, therefore, requested that on acceptance of this application, an early date of hearing may kindly be fixed in the above noted execution petition.

Dated:- 27/05/2021

[Signature]
Petitioner/Appellant

Through:-

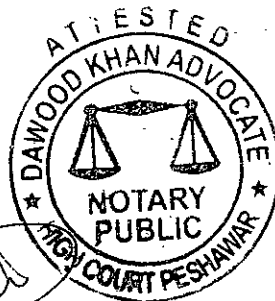
[Signature]
Asad Jan
Advocate Supreme Court

AFFIDAVIT:-

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

[Signature]
Identified by ASAD JAN
ASC

[Signature]
DEPONENT



[Signature]
27 MAY 2021