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**BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR**

**Execution Petition No. 93/2020**

**In Service Appeal No. 1219/2013**

Date of Institution... 11.06.2020

Date of Decision. ... 26.10.2021

Irfanullah S/O Shad Muhammad R/O Landi Arbab, Kandy Payan,  
Peshawar. ... (Petitioner)


Versus

1. Government of Khyber Pakhtunkhwa through Chief Secretary,  
Peshawar and three others. ... (Respondents)

Mian Muhammad Imran,  
Advocate ... For petitioner.

Mr. Muhammad Adeel Butt,  
Addl. Advocate General ... For respondents.

ORDER

 AHMAD SULTAN TAREEN, CHAIRMAN. The petitioner through this execution petition No. 93/2020 seeks the implementation of judgment dated 20-02-2020 as passed in Service Appeal No. 1219/20 by this Tribunal. From the copy of the judgment as annexed with the execution petition, The operative part is reproduced herein below:-

**"As a sequel to the above, the appeal is accepted, the post of House Supervisor Governor's House shall be deemed vacant and respondents are directed to give fair, impartial and equal opportunity to the Appellant".**

3. Arguments heard and record perused.

4. It is stated by the petitioner in Para-2 of the execution petition that he after getting the attested of the judgment, forwarded his request to the Chief Secretary Khyber Pakhtunkhwa and also to the respondent No. 02 i.e. the Military Secretary to Governor for implementation, but no heed was paid. The respondents were informed through notice about execution petition. They entered into proceedings and submitted the implementation report in pursuance to the judgment under execution. They stated that in order to implement the judgment dated 20-02-2020 of this tribunal, Departmental Selection/Promotion Committee was constituted for selection of eligible candidates for appointment to the post of House Supervisor (BPS-12) in Governor House Peshawar. Resultantly, Departmental Selection/Promotion Committee recommend Mr. Zahir Shah Attendant (BPS-9) for promotion to the post of House Supervisor

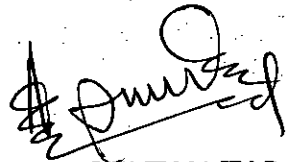


(BPS-12). As per merit, keeping in view his performance, having graduation degree, computer skill and 10 year experience on the post of House Supervisor. They further submitted that judgment of this Tribunal has already been implemented in letter and spirit. According to the copies of the record annexed with reply, the post of House Supervisor was declared as vacant vide order dated 10-06-2020 in compliance with the judgment of this Tribunal and by another office order of even date, Departmental Selection/Promotion Committee was constituted. The said committee held its meeting on 24-06-2020 and made recommendation for promotion of one Zahir Shah from the post of House Attendant (BPS-09) to the post House Supervisor (BPS-12) as per merit. The committee also observed that Mr. Irfan Ullah (present petitioner) being entangled all the time habitual of litigation in one way or the other cannot be offered the post of House Supervisor being a responsible assignment. The minutes of the meeting dated 24-06-2020 in this respect have been annexed with the comments. The report of implementation of the judgment of this Tribunal was communicated to the Registrar of this Tribunal vide letter dated 20-06-2020 as annexed with the report of the respondents. The petitioner in execution petition remained mum about the aforementioned proceedings in pursuance of judgment of this



Tribunal. He came with a selective submission that he after getting attested copy of the judgment forwarded the same to the chief Secretary but no heed was given to it. If submission made in execution petition and reply of the respondents are kept in juxtaposition, the petitioner seems to have not come to this Tribunal with clean hands. With this position, the execution petition at hand is dismissed. There is no order as to cost. File consigned to the record room.

ANNOUNCED  
26.10.2021

  
(AHMAD SULTAN TAREEN)  
Chairman

EP 93/2019

26.10.2021 Counsel for the petitioner present. Mr. Muhammad Adeel But, Additional Advocated General alongwith Mr. Hazrat Ullah for the respondents are present. Argument have been heard and record has been perused.

Vide my detailed order, this execution petition is dismissed. There is no order as to costs. File be consigned to the record room.



(AHMAD SULTAN TAREEN)  
Chairman

ANNOUNCED  
26.10.2021

31.08.2021

Petitioner in person present. Mr. Muhammad Adeel Butt, Additional Advocate General alongwith Mr. Hazrat Ullah, Assistant for respondents present.

Representative of the respondents submitted written reply which is placed on file. A copy of the same handed over to the petitioner. Adjourned. To come up for further proceedings before the S.B on 20.09.2021.

  
(MIAN MUHAMMAD)  
MEMBER (E)

20.09.2021

Junior to counsel for the petitioner and Mr. Muhammad Adeel Butt, Addl. AG alongwith Hazrutullah, Assistant for the respondents present.

Senior counsel for the petitioner is not in attendance and request for adjournment is made. Request is accorded. To come up for further proceedings on 26.10.2021 before S.B.

  
Chairman

26.07.2021

Petitioner present through counsel.

Muhammad Adeel Butt learned Additional Advocate General alongwith Hazrat Ullah Assistant for respondent No.1 to 3 present. Junior to counsel for private respondent No.4 present.

Perusal of record would reveal that appeal filed by the petitioner was accepted with directions to respondents to give fair, impartial and equal opportunity to the petitioner. Implementation report was filed by the respondents which shows that the Departmental Selection/Promotion Committee recommended one Zahir Shah to the post of House Supervisor, whereas, the present petitioner could not be offered the post being entangled all the time and habitual of litigation in one way or the other. Despite directions by the Tribunal in its judgment dated 20.02.2020 fair, impartial and equal opportunity was not provided to the petitioner, therefore, a request was made by the learned counsel for petitioner to submit objections and lastly, objections were filed. Today, learned A.A.G made a request for adjournment in order to go through the entire record coupled with the Minutes of the Meeting dated 24.06.2020 and to submit proper reply to the objections filed by the learned counsel for petitioner.

Case is adjourned to 31.08.2021 for reply/arguments/consideration before S.B.

  
(Rozina Rehman)  
Member (J)

E.P. No. 93/2020  
Irfanullah vs Govt

28.06.2021

Petitioner with counsel present.

Muhammad Adeel Butt learned Additional Advocate General alongwith Hazrat Ullah Assistant for respondents present.

Perusal of order sheet dated 09.12.2020 would reveal that date was adjournment in view of the request of petitioner's counsel in order to submit objections. Today, objection petition in respect of D.P.C Minutes of the Meeting dated 24.06.2020 was filed. A joint request for adjournment was made; allowed. To come up for consideration/arguments on 26.07.2021 before S.B.



(Rozina Rehman)  
Member(J)



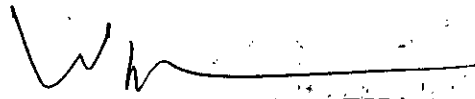
30.03.2021

Counsel for the petitioner present. Mr. Kabirullah Khattak, Additional Advocate General, alongwith Mr. Hazratullah, Assistant on behalf of official respondents and counsel for private respondent No. 4 present.

Learned Additional Advocate General stated that the judgment of this Tribunal dated 20.02.2020 has already been implemented and in this regard implementation report on behalf of official respondents has already been submitted to this Tribunal, therefore, the instant execution petition may be consigned to the record room.

On the other hand, learned counsel for the petitioner stated that he has certain objections on the implementation report submitted by the respondents, therefore, requested for time to submit the objections in writing.

Adjourned to 07.05.2021 on which date file to come up for submission of objection and arguments on implementation report before S:B.

  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

07.05.2021

Due to demise of the Worthy Chairman, the Tribunal is defunct. Therefore, the case is adjourned to 28.06.2021 for the same as before.

  
Reader

EP 93/20

09.12.2020 Counsel for the appellant and Addl. AG alongwith Hazratullah, Asstt. for respondents present.

Representative of respondents has provided copy of minutes of DPC meeting dated 26.06.2020. Learned counsel for the petitioner requests for time to go through the minutes and submit the objections on behalf of the petitioner, if any, on next date of hearing. Adjourned to 27.01.2021 on which date arguments shall also be addressed.

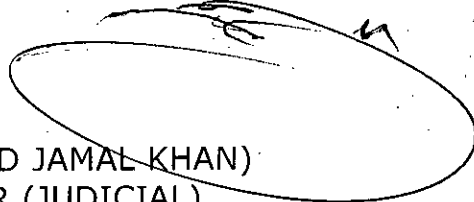
Adjourned accordingly.

  
Chairman

27.01.2021

Petitioner is present in person. Mr. Kabirullah Khattak, Additional Advocate General, for the respondents are also present. According to the petitioner his counsel has proceeded to Islamabad and is not available today. He is seeking time for submission of objections on the minutes of DPC meeting held on 26.06.2020. Time is allowed. File to come up for further proceedings on 26.04.2021 before S.B.

*Handwritten notes:*  
#215 5-3-2021  
Hazratullah Asstt:  
Noted please-

  
(MUHAMMAD JAMAL KHAN)  
MEMBER (JUDICIAL)

09.09.2020

Petitioner in person and Addl. AG alongwith Hazratullah, Asstt. for the respondents present.

Representative of respondents has submitted implementation report to which the petitioner has certain reservations. He, therefore, requests for time to submit the same in writing. Adjourned to 27.10.2020 before S.B.


  
Chairman

27.10.2020

Petitioner in person present.

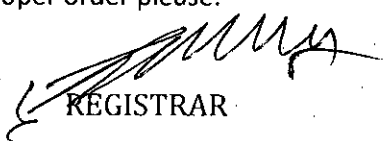

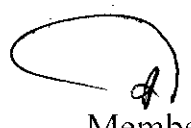
Kabir Ullah Khattak learned Additional Advocate General alongwith Hazrat Ullah Assistant present. Respondent No.4 in person present.

It is evident from the preceding order sheet that implementation report was submitted but the petitioner had certain reservation and he requested for time to submit the same in writing but today, lawyers are on general strike, therefore, case is adjourned to 09.12.2020 before S.B for submission of objection and arguments on implementation report.

  
(Rozina Rehman)  
Member (J)

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Execution Petition No. 43 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	11.06.2020	<p>The execution petition of Mr. Irfanullah submitted today by Mian Muhammad Imran Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>10/07/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	10.07.2020	<p>Counsel for the petitioner present.</p> <p>Notice be issued to respondents No.1 to 3 for implementation report, for 09.09.2020 before S.B.</p> <p style="text-align: right;"> Member (J)</p>

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

Execution Petition No. 93 /2020

In

Service Appeal No. 1219/2013

**Irfanullah** S/O Shad Muhammad R/O Landi Arbab, Kandy Payan, Peshawar

**VS**

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat  
Peshawar et. al.

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Petitioner/Applicant

Through

  
**(Mian Muhammad Imran)**

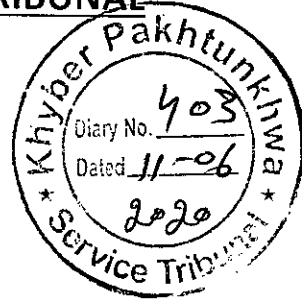
Advocate High Court

0333-9577770

①

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

Execution Petition No. 93 /2020  
In  
Service Appeal No. 1219/2013



Irfanullah S/O Shad Muhammad R/O Landi Arbab, Kandy Payan, Peshawar  
.....Petitioner/Applicant

**VS**

1. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar
2. Military Secretary to Governor, Governor's House, Peshawar
3. Section Officer (MSG), Governor's House, Peshawar
4. Zahir Shah S/O Shah Muhammad, House Supervisor, Governor's House, Peshawar

.....Respondents

**EXECUTION PETITION IN RESPECT OF JUDGMENT DATED:  
20/02/2020 RENDERED IN SERVICE APPEAL NO. 1219/2020 BY THIS  
HONORABLE TRIBUNAL WHEREBY THE SERVICE APPEAL OF THE  
PETITIONER/APPLICANT WAS ACCEPTED**

The petitioner/applicant is pleased to beseech before this Honorable Tribunal as under;

1. That the petitioner/applicant instituted Service Appeal No. 1219/2013 which pertained to promotion of the petitioner/applicant to the post of "House Supervisor" in Governor's House, Peshawar which was heard, and accepted by this Honorable Tribunal on 20/02/2020. **(Copy of the Appeal & Judgment is attached as F/A)**
2. That indispensable is to submit that after getting the attested copy of the above-mentioned judgment, the petitioner/applicant forwarded request to the Worthy Chief Secretary K-P and also to Respondent No. 02 (Military Secretary to Governor) for compliance and implementation of the mentioned above judgment on 18/03/2020 but no heed was paid. **(Copy of the Requests are attached as F/B)**

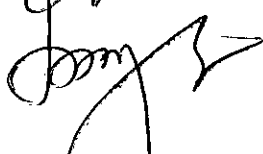
- 3. That it is also intrinsic to submit that even no CPLA has been filed in the Honorable Apex Court of Pakistan against the judgment delivered by this Honorable Service Tribunal which is evident from the letter issued by the Law and Parliamentary affairs department Khyber Pakhtunkhwa to the Respondent No. 04 which signifies the probity that the judgment of this Honorable Tribunal has gained finality. (Copy of the Law Department Letter is attached as F/C)
- 4. That important is to submit before this Honorable Tribunal is that the Service Appeal No. 1219/2013 instituted by the petitioner/applicant was basically for promotion to the post of "House Supervisor" from "House Attendant" which was properly contested by the department and also the private respondent (Zahir Shah) and was accepted on 20/02/2020.
- 5. That despite acceptance of the above-mentioned service appeal, the Respondent no. 02 and 03 are adamant to implement the judgment which is tantamount to show defiance to this Honorable Tribunal and also equivalent to crippling the fundamental rights of the petitioner bestowed upon by the Constitution of Islamic Republic of Pakistan 1973.

**PRAYER:**

In light of the foregoing submissions, it is therefore, most convivially and humbly prayed that on acceptance of the instant petition, this Honorable Tribunal may graciously be pleased to execute its judgment Dated: 20/02/2020 rendered in Service Appeal No. 1219/2013 by directing the Respondent No. 02 & 03 to comply with the decision and to promote the petitioner to the post of "House Supervisor" in the Governor's House Peshawar

  
Petitioner/Applicant

Through

  
**(Mian Muhammad Imran)**  
Advocate High Court  
0333-9577770

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR

(3)

*Service Appeal*

S.A.No. \_\_\_\_\_ /2013

Irfan Ullah son of Shad Muhammad

R/O Landi Arbab, Kandy Payan, Peshawar..... Appellant

Versus

- 1) Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar.
- 2) Military Secretary to Governor, Governor House, Peshawar.
- 3) Section Officer (MSG) Governor's House Peshawar.
- 4) Zahir Shah son of Shah Muhammad, House Supervisor, Governor House, Peshawar.

..... Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER 30.12.2010 WHEREBY INSTEAD OF PROMOTING THE APPELLANT RESPONDENT NO.4 HAS BEEN APPOINTED ON 30.12.2010 AS HOUSE SUPERVISOR (BS-11) BY TRANSFER ON ACTING CHARGE BASIS AGAINST AN EXISTING VACANCY WITH IMMEDIATE EFFECT WHILE THE RESPONDENTS HAVE NOT DECIDED THE DEPARTMENTAL APPEAL/ REPRESENTATION WITHIN STIPULATED PERIOD FILED ON 15.05.2013.

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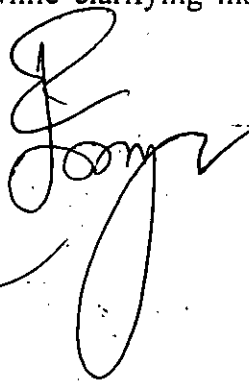
Prayer:

On accepting of this appeal, the order dated 30.12.2010 through which respondent No.4 has been appointed as House Supervisor (BS-11) by transfer on acting charge basis against an existing vacancy with immediate effect may kindly be cancelled and the appellant may kindly be promoted to the said post being competent from 30.12.2010 when the said post fell vacant with all back benefits.

*Respectfully Sheweth;*

Appellant submits as under:

- 1) That appellant was appointed as House Attendant in Governor House, Peshawar in the year 2000. (Copy of appointment letter is Annexure "A")
- 2) That appellant was dismissed from service on 13.05.2006 under false and manufactured allegations regarding absence from duty. (Copy of dismissal order is Annexure "B").
- 3) That appellant challenged the said order before the Hon'ble Service Tribunal Peshawar in service appeal No.474/2006 which was accepted and appellant was reinstated in service with full back benefits vide order dated 10.04.2007. (Copy of the decision is Annexure "C").
- 4) That on the other hand department till 20.06.2007 did not accept the arrival of the appellant. However, on 20.06.2007 the judgment of the Tribunal was partially implemented by reinstating the appellant with all back benefits.
- 5) That again on 27 June and 28 June of 2007 appellant was issued two explanation letters wherein some baseless allegations were leveled. Appellant submitted detailed reply while clarifying his position and denying the charges.

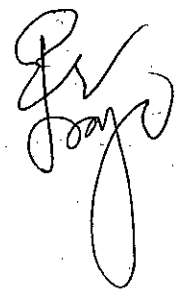
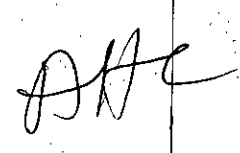
  
Att

- 5
- 6) That the victimization continued even after the reinstatement and on 11.07.2007 appellant received yet another explanation letter and the appellant submitted his reply clarifying the position.
  - 7) That on 24.07.2007 and on 27.07.2007, appellant received two statements of allegations which were exactly the same ditto copy of each other.
  - 8) That as per requirement appellant submitted his defence statement before the enquiry committee wherein he denied the charges and clarified the position.
  - 9) That later on an illegal and unlawful enquiry was conducted and appellant received the show cause notice where in major punishment of dismissal from service and recovery of amount of Rs.467229/- unproposed to which appellant submitted the reply.
  - 10) That on 21.09.2007 appellant once again received a letter for making further clarification and as such further clarification was also made.
  - 11) That on 12.11.2007 the impugned punishment order was passed whereby appellant was dismissed from service with immediate effect and recovery of an amount of Rs.324229/- was ordered. (Copy of dismissal order is Annexure "D").
  - 12) That the said impugned punishment order/ dismissal order was circulated by Military Secretary to Governor purportedly having been issued by the competent authority. However, the said competent authority was not disclosed, therefore, appellant submitted the review petition before the Governor through registered post on 15.11.2007.
  - 13) That the said review petition was not decided within the stipulated period, therefore, appellant filed appeal before the Service Tribunal but the same was not accepted.
  - 14) That against the order of Service Tribunal, appellant filed CPLA in the august Supreme Court of Pakistan, which was accepted and the appellant was reinstated with all back benefits. (Copy of the decision of supreme court is Annexure "E").

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*[Handwritten signature]*

- 15) That respondents refused to implement the orders of the august Supreme Court of Pakistan and the appellant was constrained to file the contempt of court petition in the Hon'ble Peshawar High Court, Peshawar from where notice was issued to the respondents. However, respondents under the orders of the Hon'ble Peshawar High Court, Peshawar reinstated the appellant with all back benefits on 11.05.2012. (Copy of reinstatement order is Annexure "F").
- 16) That although the respondents issued the reinstatement order yet the appellant was not allowed to enter the Governor House, therefore, appellant again filed the contempt of court in Hon'ble Peshawar High Court, Peshawar and thus appellant was allowed to do the job.
- 17) That on 03.10.2012 the appellant was verbally directed to report in FATA Secretariat where on 02.11.2012 copy of order was issued and thus the appellant having no alternative, except to join the same. (Copy of the order is Annexure "G").
- 18) That during service in FATA Secretariat, appellant on 13.05.2013 came to know that during dismissal period of the petitioner, respondents No.1 to 3 have appointed respondent No.4 Head Khidmatgar (BS-7) has been appointed at his place as head attendant (BS-8) on 13.05.2008 and on further inquiry astonished to know that respondent No.4 has been appointed on 30.12.2010 as House Supervisor (BS-11) by transfer on acting charge basis against an existing vacancy with immediate effect. (Copy of the orders are Annexure "H").
- 19) That when came to know regarding the illegal order the petitioner filed appeal to respondent No.1 and to Governor against the illegal order issued on 30.12.2010 through which respondent No.4 was promoted to the post of House Supervisor but two months have been passed but upto now no action has been taken. (Photocopy of appeal is Annexure "I", while the photocopies of receipts are Annexure "J").
- 20) That now aggrieved with, appellant has come before this Hon'ble Tribunal through the instant appeal on the following grounds amongst the others for declaring the said order as illegal, unlawful and may

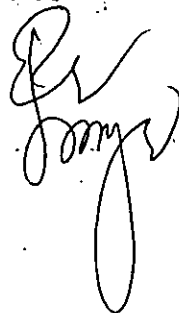
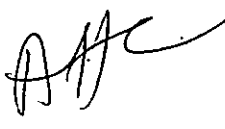
 

(7)

kindly be cancelled and the respondents No.1 to 3 may kindly be directed to promote the appellant on the said post when the seat fell vacant along with benefits.

GROUND:

- a. That the order issued by respondents dated 30.12.2010 through which respondent No.4 was appointed as House Supervisor (BS-11) by transfer on Acting Charge Basis against an existing vacancy with immediate effect is against law facts as well as against services laws and rules and thus is liable to be cancelled.
- b. That under the law appellant is to be promoted to the post of House Supervisor as being senior from respondent No.4 who has been appointed and promoted purely on political basis.
- c. That under the law a Head Khidmatgar cannot be appointed/promoted to the post of House Attendant or House Supervisor.
- d. That respondents failed to appreciate the fact that appellant is serving in the department since 2001 and has a great experience.
- e. That the respondents while issuing the promotion order of the respondent No.4 has totally ignored the service laws and regulations as well as service rules.
- f. That the respondents No.1 to 3 only to promote and appoint the respondent No.4 victimize the appellant on frivolous charges.
- g. That on one hand appellant on one pretext or other involved the appellant in litigation while on the other hand respondent No.4 has been promoted in place of appellant.
- h. That respondents No.1 to 3 only to accommodate illegally respondent No.4, directed the appellant orally on 03.10.2012 to

report to FATA Secretariat and having no choice reported in the FATA Secretariat although the oral was also illegal.

- i. That respondents failed to appreciate the fact that appellant was serving as House Attendant in Governor House while in FATA Secretariat there is no such post.

It is, therefore, requested that on accepting of this appeal, the order dated 30.12.2010 through which respondent No.4 has been appointed as House Supervisor (BS-11) by transfer on acting charge basis against an existing vacancy with immediate effect may kindly be cancelled and the appellant may kindly be promoted to the said post being competent from 30.12.2010 when the said post fell vacant with all back benefits.

*[Handwritten Signature]*  
Appellant

Through

*[Handwritten Signature]*

Muhammad Asif  
Advocate, Peshawar

*[Handwritten Signatures]*

(A)

(9)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR



S.A.No. 1219 /2013

~~1219~~  
~~15-8-13~~

Irfan Ullah son of Shad Muhammad  
R/O Landi Arbab, Kandy Payan, Peshawar..... Appellant

**Versus**

- 1) Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar.
- 2) Military Secretary to Governor, Governor House, Peshawar.
- 3) Section Officer (MSG) Governor's House Peshawar.
- 4) Zahir Shah son of Shah Muhammad, House Supervisor, Governor House, Peshawar.

..... Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER 30.12.2010 WHEREBY INSTEAD OF PROMOTING THE APPELLANT RESPONDENT NO.4 HAS BEEN APPOINTED ON 30.12.2010 AS HOUSE SUPERVISOR (BS-11) BY TRANSFER ON ACTING CHARGE BASIS AGAINST AN EXISTING VACANCY WITH IMMEDIATE EFFECT WHILE THE RESPONDENTS HAVE NOT DECIDED THE DEPARTMENTAL APPEAL/ REPRESENTATION WITHIN STIPULATED PERIOD FILED ON 15.05.2013.

~~1219~~  
~~15/8/13~~

**ATTESTED**  
  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No. 1219/2013

Date of Institution ... 15.08.2013

Date of Decision ... 20.02.2020



Irfanullah son of Shad Muhammad R/O Landi Arbab, Kandy Payan, Peshawar  
... (Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,  
Peshawar and three others. ... (Respondents)

MR. MUHAMMAD ASIF,  
Advocate

--- For appellant.

MR. USMAN GHANI  
District Attorney

--- For respondents No.1 to 3.

MR. ASHRAF ALI KHATTAK,  
Advocate

--- For respondent No.4

MIAN MUHAMMAD  
MUHAMMAD HAMID MUGHAL

--- MEMBER (Executive)  
--- MEMBER (Judicial)

JUDGEMENT

MIAN MUHAMMAD, MEMBER:- Brief facts of the case are that Appellant was appointed as House Attendant in Governor House, Peshawar in 2000 and who has been in service since then. Respondents No. 1 to 3 appointed private respondent No. 4 (working as Khidmatgar (BPS-07) as House Attendant (BS-08) on 13.05.2008 and who was subsequently appointed as House Supervisor (BPS-11) by transfer on Acting Charge basis through office order dated 30.12.2010 ignoring the Appellant against the same position. Aggrieved with this impugned order of Respondent No.2, the present appeal was instituted in this

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*[Handwritten signatures]*

ATTESTED

*[Handwritten signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

Tribunal under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974.

02. Arguments of the learned counsel for the parties heard and available record perused.

**ARGUMENTS:**

03. The question of maintainability of the instant service appeal before this Tribunal was raised by the learned counsel for Private Respondent No. 4. The learned counsel for the appellant rebutted it and argued that this point of law stands settled and decided in judgments of this Tribunal on 03.01.1976 in service appeal No. 01/1976 titled Haji Mohammad Danish.

04. During the course of arguments, the learned counsel for the appellant apprised that services of the private respondent have been regularized by Respondent No.2 through notification No. SO (MSG)/GH/2016 dated 05.08.2016. Copy of the Notification was produced before this Tribunal.

**CONCLUSION:**

05. Respondent-department could not make it clear that the Private Respondent No.4 was blessed with the post of House Supervisor, Governor's House as a new entrant/ initial recruit or by promotion. Learned Deputy District Attorney and learned counsel for Private Respondent No.4 remained unable to demonstrate that the appointment of Private Respondent No.4 as House Supervisor, Governor's House was made in the prescribed manner.

ATTESTED

06. Reference is made to the Hon'able Peshawar High Court, Peshawar which

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

judgment dated 04.06.2013 in Writ Petition No. 2778 of 2012, set aside the



appointment order to the post of Assistant Protocol Officer in the Governor House Peshawar on the ground that respondent had violated essential requirement of Rule 10 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 by not advertising to the public, the vacancy of the post prior to proceed with the appointment process.

07. Article-4 of the Constitution of 1973 guarantees the inalienable and fundamental right of every citizen to be treated equal in accordance <sup>with</sup> law. In the instant case the appellant has not been treated equally and private Respondent No.4 stands preferred over the appellant. In addition to the violation of cardinal principle of "equality before law" as envisaged and guaranteed in the constitution, due course of law and procedure has also been ignored by the Respondents rendering the entire process against the spirit of "transparency" and "good governance".

06. As a sequel to the above, the appeal is accepted, the post of House Supervisor Governor's House shall be deemed vacant and respondents are directed to give fair, impartial and equal opportunity to the Appellant. Parties are left to bear their own costs. File be consigned to the record room.

(MIAN MUHAMMAD)  
MEMBER

(MUHAMMAD HAMID MUGHAL)  
MEMBER

Certified to be true copy

Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

ANNOUNCED  
20.02.2020

Date of Presentation of Application	17/3/2020
Number of Words	1600
Copying Fee	1800
Urgent	400
Total	2200
Name of Copyist	
Date of Completion of Copy	17/3/2020
Date of Delivery of Copy	17/3/2020

To

- 1) The Worth Chief Secretary,  
Khyber Pakhtunkhwa.
- 2) The Military Secretary to Governor,  
Khyber Pakhtunkhwa.

PSIC S Khyber Pakhtunkhwa  
Diary No. 2073 W/E  
Date 18-3-2020

B  
13

Subject: SERVICE APPEAL NO.1219/2013 IN THE WORTHY SERVICE TRIBUNAL, WHICH HAS BEEN ALLOWED VIDE JUDGMENT DATED 20/02/2020.


Dear Sir,

With profound veneration, it is submitted that the undersigned filed/instituted Service Appeal No.1219/2013 for promotion to the post of House Supervisor (BS-15), which has accepted (attested copies attached).

2. It is, therefore, requested that the aforesaid judgment in Service Appeal No.1219/2013 may kindly be complied with and the undersigned may kindly be promoted to the post of House Supervisor (BS-15) please.

Thanks

Yours faithfully,

  
(IRFANULLAH) 18/3/2020  
HOUSE ATTENDANT,  
GOVERNOR'S HOUSE, PESHAWAR  
CONTACT NO.0345-9124545

To

(B)  
14

1) The Worth Chief Secretary,  
Khyber Pakhtunkhwa.

✓ 2) The Military Secretary to Governor,  
Khyber Pakhtunkhwa.

Subject: SERVICE APPEAL NO.1219/2013 IN THE WORTHY SERVICE TRIBUNAL, WHICH HAS BEEN ALLOWED VIDE JUDGMENT DATED 20/02/2020.

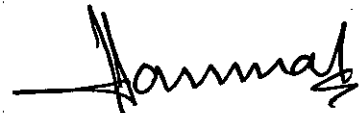
Dear Sir,

With profound veneration, it is submitted that the undersigned filed/instituted Service Appeal No.1219/2013 for promotion to the post of House Supervisor (BS-15), which has accepted (attested copies attached).

2. It is, therefore, requested that the aforesaid judgment in Service Appeal No.1219/2013 may kindly be complied with and the undersigned may kindly be promoted to the post of House Supervisor (BS-15) please.

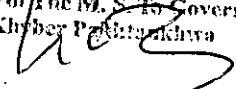
Thanks

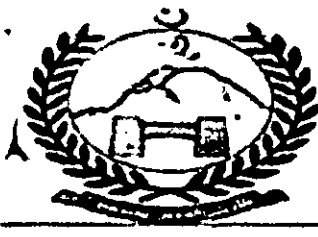
Yours faithfully,

  
(IRFANULLAH) 18/3/2020

HOUSE ATTENDANT,  
GOVERNOR'S HOUSE, PESHAWAR  
CONTACT NO.0345-9124545

DESPATCHER  
Office of The M. S. To Governor  
Khyber Pakhtunkhwa

  
18/03/2020



(15) (C)

**GOVERNMENT OF KHYBER PAKHTUNKHWA  
LAW, PARLIAMENTARY AFFAIRS AND  
HUMAN RIGHTS DEPARTMENT**

No. SO(Lit)/LD/Governor House/2020/ 411232-33  
Dated Peshawar the 21/6/2020

To

1. The Advocate General,  
Khyber Pakhtunkhwa, Peshawar.
2. The Section Officer to MSG,  
Governor House Khyber Pakhtunkhwa, Peshawar.

**Subject:** Service Appeal No.1219/2013 titled Mr. Irfan Ullah Vs Government of Khyber Pakhtunkhwa.

Dear Sir,

I am directed to refer to Section Officer to MSG to Governor Khyber Pakhtunkhwa, Peshawar letter No.SOMSG/GH/2020, dated 28-04-2020 on the subject noted above and to state that the meeting of the Scrutiny Committee was held on 06-05-2020 under the Chairmanship of Secretary Law Department.

After threadbare discussion on the subject case, it was decided with consensus by the Scrutiny Committee that the subject was not a fit case being badly time barred for filing of CPLA in the Supreme Court of Pakistan and the Representative of the Governor House failed to point out ground of condonation. Moreover the Governor House was also advised to comply with judgment dated 20-02-2020 passed by the Khyber Pakhtunkhwa Service Tribunal and to give fair, impartial and equal opportunity to the appellant as directed by the Khyber Pakhtunkhwa Service Tribunal in Para-6 of the said Judgment, please.

Yours faithfully,

  
Additional Secretary (Op.)

**Endst: No.& Date Even.**

Copy is forwarded to the:

1. PS to Secretary Law Department Khyber Pakhtunkhwa.

  
Additional Secretary (Op.)

6-5-2020

50

47012  
ایڈوکیٹ:



بار کونسل ایسوسی ایشن نمبر: 13-4213  
رابطہ نمبر: 0333 9597770

پشاور بار ایسوسی ایشن، خیبر پختونخواہ

بعدالت جناب: میر محمد نوازہ سروس سٹریٹیجیوں کے

مخاطب:	دعویٰ: Execution Petition
عرفان اللہ	علت نمبر: in Service
بنام	مورخہ: Appeal No: 1219/13
گورنمنٹ ایف اے او	جرم:
	تھانہ:

### باعت تحریر آگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دی کاروائی متعلقہ  
 آن مقام سسور کیلئے میاں محمد انیس خان، ایڈووکیٹ کو وکیل مقرر  
 کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کمال اختیار ہوگا، نیز وکیل صاحب کو  
 راضی نامہ کرنے و تقرر ثالث و فیصلہ برحلف دینے جواب دعویٰ اقبال دعویٰ اور درخواست از ہر قسم کی تصدیق  
 زریں پر دستخط کرنے کا اختیار ہوگا، نیز بصورت عدم پیروی یا ڈگری ٹیکٹ فرم یا اپیل کی برآمدگی اور منسوخی، نیز  
 دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا اور بصورت ضرورت مقدمہ مذکورہ کے کل یا جزوی  
 کاروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے تقرر کا اختیار ہوگا اور صاحب  
 مقرر شدہ کو وہی جملہ مذکورہ با اختیارات حاصل ہوں گے اور اس کا ساختہ پر داختم منظور و قبول ہوگا  
 دوران مقدمہ میں جو خرچہ ہر جانب التوائے مقدمہ کے سبب سے ہوگا کوئی تاریخ پیشی مقام دورہ یا حد سے  
 باہر ہو تو وکیل صاحب پابند نہ ہوں گے کہ پیروی مذکورہ کریں، لہذا وکالت نامہ لکھ دیا تاکہ سند رہے  
 المرقوم: 11-06-2020

PESHAWAR BAR ASSOCIATION  
KHYBER PAKHTUNKHWA

عرفان اللہ ولد سادقم سکنہ لندلی باغ  
سیدہ عیاشی اور

مقام: \_\_\_\_\_ کے لیے منظور ہے۔

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

Mian Muhammad  
Imran CAHE

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

**Implementation of Khyber Pakhtunkhwa Service Tribunal, Peshawar Judgment dated 20.02.2020 in Execution Petition No. 93/2020 / S.A No.1219/2013 from Respondents No.1,2&3.**

Irfan Ullah son of Shad Muhammad  
R/O Landi Arbab, Kandy Payan, Peshawar

**Versus**

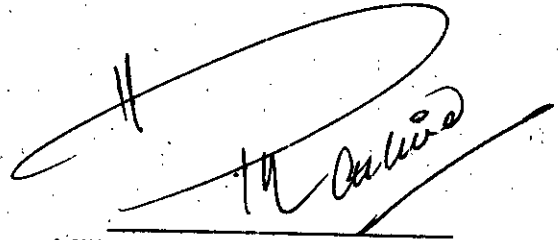
Govt. of Khyber Pakhtunkhwa through Chief Secretary etc.  
..... Respondents

Respectfully Sheweth;

- 1) That in compliance of Khyber Pakhtunkhwa Service Tribunal, Peshawar Judgment dated 20.02.2020, the Competent Authority vide order No. SO(MSG)/GH/1-7/1999 dated 10.06.2020 reverted respondent No.4 i.e Mr. Zahir Shah, House Supervisor (BPS-12) to the post of House Attendant (BPS-9). As a result of which the post of House Supervisor, Governor's House, Peshawar became vacant. **(Annex-I)**
- 2) Incorrect. In order to implement the Judgment dated 20.02.2020 of Khyber Pakhtunkhwa Service Tribunal, Peshawar, A Departmental Selection / Promotion Committee was constituted for selection of eligible candidate for appointment to the post of House Supervisor (BPS-12) in the Governor's House, Peshawar **(Annex-II)**. Resultantly, the Departmental Selection / Promotion Committee has recommended Mr. Zahir Shah House Attendant (BPS-09) for promotion to the post of House Supervisor (BPS-12) as per merit, keeping in view his good performance, having graduation degree, computer skill and ten years experience on the post of House Supervisor. **(Annex-III)**
- 3) As replied in Para-1 & 2, Judgment of the Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 20.02.2020 has already been implemented in letter and spirit.
- 4) Mr. Irfan Ullah (Applicant) being habitual of litigation and irresponsible in his conduct, not only wasting his time but also the time of others. In any way the applicant cannot be adjusted on the same slot.

- 5) Incorrect. On 30.06.2020 the department respondents forwarded implementation letter addressed to Registrar Khyber Pakhtunkhwa Service Tribunal, Peshawar alongwith vacation order of the post of House Supervisor and reversion Order of respondent No:4. **(Annex-IV)**

In view of the foregoing, the instant Execution Petition being devoid of merits may please be dismissed as the Judgment dated 20.02.2020 of this Honourable Service Tribunal has already been implemented in letter and spirit.



Military Secretary to Governor,  
Khyber Pakhtunkhwa.  
(Respondent No.2)



153  
GOVERNOR'S HOUSE  
PESHAWAR

10<sup>th</sup> June, 2020

**OFFICE ORDER**

No.SQ(MSG)/GH/1-7/1999 In Compliance of Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar Judgement dated 20.02.2020 passed in Service Appeal No.1219/2013 titled Mr. Irfan ullah V/S Government, the Competent Authority is pleased to vacate the post of House Supervisor (BPS-12) and revert Mr. Zahir Shah, House Supervisor (BS-12) to the post of House Attendant (BS-09) with immediate effect.

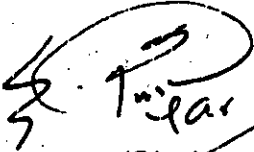
**MILITARY SECRETARY TO GOVERNOR**

Endst.No. SO(MSG)/GH/1-7/1999/251-56

Dated 10<sup>th</sup> June, 2020

Copy forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Comptroller, Governor's House, Peshawar.
3. Section Officer (B&A), Governor's House, Peshawar.
4. Care Taker, Governor's House, Peshawar.
5. Official concerned.
6. Personal file.

  
(Shohryar)  
Section Officer to MSG  
Governor's House, Peshawar





GOVERNOR'S HOUSE  
PESHAWAR

10<sup>th</sup> June, 2020

OFFICE ORDER.

No. SO(MSG)/GH/1-7/1999

In Compliance of Honorable Service Tribunal Khyber Pakhtunkhwa, Peshawar Judgement dated 20.02.2020 passed in Service Appeal No.1219/2013 titled Mr. Irfan ullah V/S Government and in pursuance with the decision of Scrutiny Committee of Law Department, dated 06.05.2020, the following Departmental Selection/Promotion Committee is hereby constituted for selection of eligible candidate for appointment to the post of House Supervisor (BPS-12) in the Governor's House, Peshawar: -

- |   |          |
|---|----------|
| 1. Military Secretary to Governor.                  | Chairman |
| 2. Comptroller, Governor's House, Peshawar          | Member   |
| 3. Section Officer (B&A) Governor's House, Peshawar | Member   |
| 4. Section Officer (MSG) Governor's House, Peshawar | Member   |

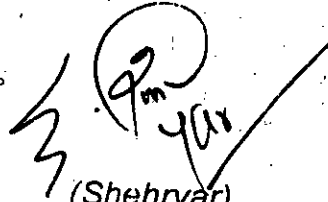
MILITARY SECRETARY TO GOVERNOR

Endst.No. SO (MSG)/GH/1-7/1999/257-59 Dated

10<sup>th</sup> June, 2020.

Copy forwarded for information and necessary action to the:-

1. Comptroller, Governor's House, Peshawar.
2. Section Officer (B&A), Governor's House, Peshawar.
3. P.S to MSG, Governor's House, Peshawar.

  
(Shehryar)  
Section Officer to MSG  
Governor's House, Peshawar



169  
GOVERNOR'S HOUSE  
PESHAWAR

29 June, 2020

**NOTIFICATION.**


No.SO(MSG)/GH/1-7/1999 On the recommendation of Departmental Selection / Promotion Committee, the Competent Authority has been pleased to promote Mr. Zahir Shah, House Attendant (BPS-09) as House Supervisor (BPS-12) Governor's House, Peshawar against the House Hold vacant post with immediate effect.

**MILITARY SECRETARY TO GOVERNOR**

Endst.No. SO(MSG)/GH/1-7/1999 / 295-99 Dated 29 June, 2020

Copy forwarded for information and necessary action to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Comptroller, Governor's House, Peshawar.
3. Section Officer (B&A), Governor's House, Peshawar.
4. Care Taker, Governor's House, Peshawar.
5. Official concerned.
6. Personal file.

  
(Shehryar)  
Section Officer (MSG)  
Governor's House, Peshawar

O/C



GOVERNOR'S  
PESHAWAR

No. SOMSG/GH/1-7/1999/30  
30<sup>th</sup> June, 2020

To

The Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar.

Subject: **IMPLEMENTATION OF THE KHYBER PAKHTUNKHWA  
SERVICE TRIBUNAL JUDGEMENT DATED 20.02.2020  
PASSED IN S.A NO.1219/2013 TITLED IRFAN ULLAH VS  
GOVERNMENT**

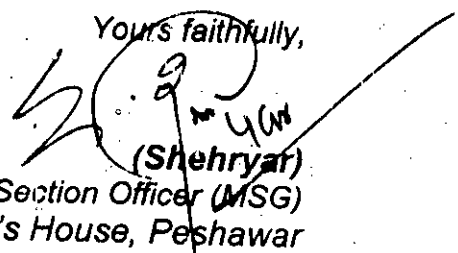
Dear Sir,

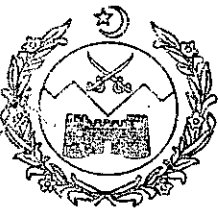
I am directed to refer to your letter No. 1140/ST dated 15.05.2020 on the subject noted above and to state that as per decision of the Khyber Pakhtunkhwa, Service Tribunal, Peshawar 20.02.2020 i.e.

**"The post of House Supervisor Governor's House shall be deemed vacant and respondents are directed to give fair, impartial and equal opportunity to the Appellant"**

In view of the above, this office has complied with the above Judgement of Khyber Pakhtunkhwa Service Tribunal, Peshawar, vacated the post of House Supervisor and reverted Mr. Zahir Shah, House Supervisor (Respondent No.4) to the post of House Attendant accordingly, please (copy enclosed for ready reference).

Yours faithfully,

  
(Shehryar)  
Section Officer (MSG)  
Governor's House, Peshawar



**MINUTES OF THE MEETING DATED 24.06.2020 REGARDING IMPLEMENTATION OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL JUDGEMENT DATED 20.02.2020 PASSED IN S.A NO.1219/2013 TITLED IRFAN ULLAH VS GOVERNMENT. APPOINTMENT TO THE POST OF HOUSE SUPERVISOR (BS-12), GOVERNOR HOUSE PESHAWAR.**

The captioned meeting held in the office of the Military Secretary to Governor Khyber Pakhtunkhwa on 24.06.2020 under his Chairmanship. A Departmental Selection / Promotion Committee was constituted for selection of eligible candidate for appointment to the post of House Supervisor (BPS-12) in the Governor's House, Peshawar.

The following attended the meeting:-

Col Shahid Rehan Chaudhry, Military Secretary to Governor	-	(Chairman)
Mr. Munawar Khan Comptroller, Governor's House	-	(Member)
Mr. Muhammad Aslam, Section Officer (B&A), Governor's House	-	(Member)
Mr. Shehryar, Section Officer to MSG	-	(Member)

The Chairman welcomed the participants and highlighted the brief background of the subject appointment that as per decision of the Khyber Pakhtunkhwa, Service Tribunal, Peshawar and in line with the decision of Scrutiny Committee of Law Department dated 06.05.2020 i.e

**"The post of House Supervisor Governor's House shall be deemed vacant and respondents are directed to give fair, impartial and equal opportunity to the Appellant."**

In order to implement the above court Judgement, after approval of the Competent Authority the reversion order of Mr. Zahir Shah, House Supervisor (BPS-12) to the post of House Attendant (BPS-9) has been issued vide order No. SO(MSG)/GH/1-7/1999 dated 10.06.2020.

Since there is one post of House Attendant which has already been filled. In this regard a case for creation of supernumerary post of House Attendant (BPS-9) for a period of two months w.e.f 09.06.2020 to 08.08.2020 was forwarded to Finance Department and accordingly approved.



166  
GOVERNOR'S HOUSE  
PESHAWAR

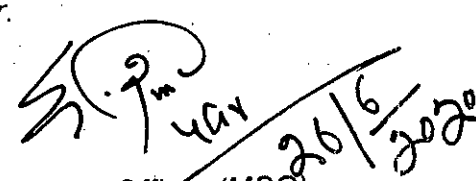
After threadbare discussion, the Departmental Selection / Promotion Committee has evaluated the candidates according to their academics, experience and allegations against them. Resultantly, the Departmental Selection / Promotion Committee has recommended Mr. Zahir Shah House Attendant (BPS-09) for promotion to the post of House Supervisor (BPS-12) as per merit, keeping in view his good performance, having graduation degree, computer skill and ten years experience on the post of House Supervisor while Mr. Irfan Ullah being entangled all the time and habitual of litigation in one way or the other cannot be offered the post of House Supervisor being a responsible assignment.

The meeting ended with votes of thanks from and to the Chairman of the Committee.

**Military Secretary to Governor**

Copy forwarded to the-

1. Comptroller / Caretaker, Governor's House, Peshawar
2. Section Officer (B&A), Governor's House, Peshawar.
3. Section Officer (MSG), Governor's House, Peshawar.
4. PS to MSG, Governor's House, Peshawar.

  
Section Officer (MSG)  
Governor's House, Peshawar



GOVERNOR'S HOUSE  
PESHAWAR

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

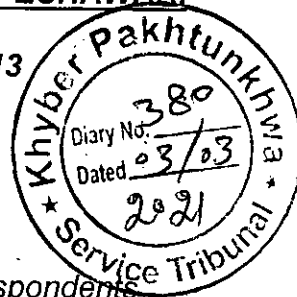
**EXECUTION PETITION NO. 93/2020 / S.A NO.1219/2013**

Irfan Ullah son of Shad Muhammad

**Versus**

Govt. of Khyber Pakhtunkhwa etc. ....

Respondents



SB

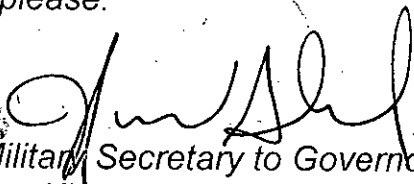
Subject: **APPLICATION FOR EARLY DATE OF HEARING.**

Respectfully Sheweth,

- 1) That the above captioned Execution petition is pending adjudication before this Honourable Tribunal which is fixed for 20.04.2021.
- 2) The valuable rights of the respondents are involved with the fate of this Execution Petition that the appellant and his counsel do not attend the court.
- 3) That, the department respondents have already implemented the Judgement dated 20.02.2020 of Khyber Pakhtunkhwa Service Tribunal, Peshawar.

In view of the foregoing, it is requested that the instant case may be fixed at an early date instead of 20.04.2021, please.

Put up to the court with relevant Execution Petition.

  
Military Secretary to Governor,  
Khyber Pakhtunkhwa.  
(Respondent No.2)

Reader

03/03/2021  
May be accelerated to a date in last week of March, 2021. Notice cost to be borne by applicant.

  
4/3/2021

30/03

9



GOVERNOR'S HOUSE  
PESHAWAR

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

**EXECUTION PETITION NO. 93/2020 / S.A NO.1219/2013**

*Irfan Ullah son of Shad Muhammad*

**Versus**


*Govt. of Khyber Pakhtunkhwa etc. .... Respondents*

**Subject: APPLICATION FOR EARLY DATE OF HEARING.**

*Respectfully Sheweth,*

- 1) *That the above captioned Execution petition is pending adjudication before this Honourable Tribunal which is fixed for 20.04.2021.*
- 2) *The valuable rights of the respondents are involved with the fate of this Execution Petition that the appellant and his counsel do not attend the court.*
- 3) *That the department respondents have already implemented the Judgement dated 20.02.2020 of Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

*In view of the foregoing, it is requested that the instant case may be fixed at an early date instead of 20.04.2021, please.*

  
*Military Secretary to Governor,  
Khyber Pakhtunkhwa.  
(Respondent No.2)*

# POWER OF ATTORNEY

Before the Honorable Service Tribunal Peshawar,

In Re: Execution Petition No. 93/20

Imranullah

Plaintiff/Petitioner  
Applicant  
Appellant  
Complainant

Versus

Govt of Khyber Pakhtunkhwa  
& others

Defendant/Respondent  
Accused  
Complainant

KNOW ALL to whom these presents shall come that I/we, the undersigned, do hereby appoint and authorized Abdul Munim Khan ASC & Jamil Khan Advocates Peshawar.

To be the Advocate for the Respond No. 4 in the above mentioned cause, to do all the following acts, deeds and things or any of them, that is to say:

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

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

AND I hereby agree to ratify the result of the said cause in consequence of his absence from the Court when the said cause is called upon for hearing.

AND I hereby agree that in the event of the whole or any part of the fee agreed by me to be paid to the Advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said until the same is paid, without having any liability for withdrawal from the prosecution.

IN WITNESS WHEREOF I/WE hereby set my/our hand(s) to these presents the contents of which have been explained to and understood by me/us on this day of 20.3.2021.

Accepted by:

Subject to payment of all legal fees:

Abdul Munim Khan ASC

0300-2738911

BC-10-6812

Jamil Advocate

0346 9261826

(Signature or thumb impression)

Respondent No. 4

(Zahid Shah)

**Chambers:-** 10-A, 1<sup>st</sup> Floor, Cantonment Buildings, Seokarno Square, Khyber Bazar, Peshawar. Landline: 091-2553040 Cell: 0300 2738911  
email: [munim\\_marwat@yahoo.com](mailto:munim_marwat@yahoo.com)



**BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE  
TRIBUNAL PESHAWAR**

Objection Petition No. \_\_\_\_\_ /2021

IN

Execution Petition No. 93/2020

Out of

Service Appeal No. 1219/2013.

Irfan Ullah Son of Shad Muhammad

VERSUS

Government of Khyber Pakhtunkhwa & Others

**Reply for / on behalf of Respondent No. 2 & 3**

Respectfully Sheweth:-

**Preliminary Objections:-**

- A. That the Departmental Promotion Committee after due process of law, was observed in processing Civil Servant's Promotion and the Committee acted with reasonableness and considered the suitability/fitness of the candidates /employees for the post of House Supervisor. Thus, the objection petition is not maintainable.
- B. That the appointee acquired the requisite experience and having higher academic qualifications, skills required for promotion to the higher post as compared to the objector.
- C. The appointee acquired the requisite experience and having higher academic qualifications, skills required for promotion to the higher post as compared to the objector. Section 9 (1) of the Civil Servant Act provide that the civil servant with the right to be considered for promotion if same was eligible on account of possessing the prescribed minimum qualification etc, however, civil servant had no vested right to be promoted nor it is vested right of employee. Thus the objections taken by the Objector are not sustainable.
- D. It is settled principle that the Civil Servant cannot ask for promotion as a right, and the granting or refusal of promotion

is a matter, which is within exclusive domain of the Government/executive Authority. If promotion is denied to a civil servant, it could not be termed as denial of any fundamental right.

- E. That the Orders / Notification of appointment as promotion is challengeable before the competent authority in accordance to service laws and not be impugned in the objection petition.

### **ON FACTS**

1. That in implementation of the judgment of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 20.02.2020, through notification dated 10.06.2020 declared the post of House Supervisor (BS-12) in the Governor House Peshawar as vacant, and reverted the incumbent / Zahir Shah to the post of House Attendant (BS-09). On 10.06.2020, a Departmental Promotion Committee was constituted to consider the House Attendants (BS-09) for promotion to the post of House Supervisor according to law and rules to the promotion case as remanded by the worthy Tribunal for post of House Supervisor (BS-12).

2. That post of House Supervisor (BS-12) was filled through Departmental promotion by considering amongst eligible candidates in accordance to the applicable rules and contestant were provided equal and fair opportunity to compete for post. The competent authority duly constituted the Departmental Promotion Committee through Notification dated 10.06.2020, the constitution of the committee is as under:-

1	Military Secretary to Governor KP	Chairman
2	Comptroller, Governor House, Peshawar.	Member
3	Section Officer (B&A), GH, Peshawar	Member
4	Section Officer (MSG), GH, Peshawar	Member

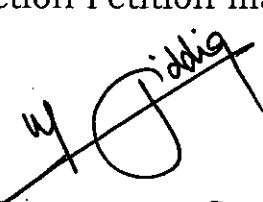
After conduction of fair and unbiased proceedings, the Departmental Promotional Committee recommended the appointment through promotion of Zahir Shah House Attendant (BS-09) to the post of House Supervisor (BS-12) because due process of law was observed in processing Civil Servant's promotion and the Committee acted with certain amount of reasonableness and considered the suitability/fitness of the candidates /employees for the post of House Supervisor. The appointee acquired the requisite experience and having higher academic qualifications, skills required for promotion to the higher post as compared to others.

3. Incorrect. As explained supra, the Departmental Promotion Committee after due process of law was observed in processing Civil Servant's promotion and the Committee acted with certain amount of reasonableness and considered the suitability/fitness of the candidates /employees for the post of House Supervisor. The appointee acquired the requisite experience and having higher academic qualifications, skills required for promotion to the higher post as compared to the objector. Moreover, through Judgment passed by worthy Service Tribunal, had only set aside the process of recruitment only.
- 4-5. Incorrect. The averments are based on surmises and conjectures and no instant of discrimination, partiality and biasness is proved through any cogent supportive evidence. The credentials and service history of the Objector and the appointee are crystal clear. No extra weightage or consideration is given to the appointee by the Committee, but considered the case of promotion on basis of merit.
6. Incorrect. The promotion is not automatic but it depends on many other factors, such as competence, availability of post and antecedents etc and none of the said factors is less important than seniority. It is settled principle that the Civil Servant cannot ask for promotion as a right and the granting

or refusal of promotion is a matter, which is within exclusive domain of the Government/executive Authority. If promotion is denied to a Civil Servant, it could not be termed as denial of any fundamental right.

7. Incorrect. The appointee acquired the requisite experience and having higher academic qualifications, skills required for promotion to the higher post as compared to the objector. Section 9 (1) of the Civil Servant Act provide that the Civil Servant with the right to be considered for promotion if same was eligible on account of possessing the prescribed minimum qualification etc, however, Civil Servant had no vested right to be promoted nor it is vested right of employee. The recommendations were passed by the DPC after due consideration and after comparative suitability and entitlement amongst House Attendants / employees.
8. Incorrect. The Departmental Promotion Committee was duly constituted under the Chairmanship of Military Secretary to Governor KP. All the allegations and averments made by the objector are based on malice and can only be addressed if he is promoted to the post.
9. That the respondent / Zahir Shah was appointed as Care Taker (BPS-16) on initial recruitment. Moreover, the post of House Supervisor will be filled according to rules on the subject.

In view of the aforesaid submissions, it is humbly prayed that on acceptance of the parawise reply, the Objection Petition may kindly be dismissed with costs.

  
Military Secretary to Governor KP

**Respondent No. 2**

  
Section Officer (MSG)

**Respondent No. 3**

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUKHWA**  
**PESHAWAR**

In Re;

Objection Petition No. \_\_\_\_\_/2021

IN

Execution Petition No. 93/2020

IN

Service appeal no.1219/2013

Irfanullah

VS

Government of Khyber Pakhtunkhwa Et. Al.

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Petitioner

Through

(Mian Muhammad Imran)  
Advocate High Court

①

**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUKHWA**  
**PESHAWAR**

In Re;

**Objection Petition No. \_\_\_\_\_/2021**

IN

**Execution Petition No. 93/2020**

IN

**Service Appeal No.1219/2013**

Irfanullah

VS

Government of Khyber Pakhtunkhwa Et. Al.

**OBJECTION PETITION IN RESPECT OF DPC MINUTES OF THE MEETING DATED: 24-06-2020 REGARDING IMPLEMENTATION OF THE JUDGMENT DATED: 20-02-2020 RENDERED IN SERVICE APPEAL NO. 1219/2013 FOR APPOINTMENT TO THE POST OF "HOUSE SUPERVISOR" AT "GOVERNOR'S HOUSE PESHAWAR"**

The petitioner is pleased to beseech before this Honorable Tribunal as under;

1. That the **Service Appeal No.1219/2013** was instituted by the petitioner for promotion to the post of "House Supervisor". It is indispensable to submit that the aforesaid service appeal was decided by this Honorable Tribunal on 20/02/2020 whereby it was held that the post of "House Supervisor" shall be deemed vacant and respondents were directed to give fair, impartial and equal opportunity to the appellant. (Copy of Service Appeal & Judgment is attached as F/A)
2. That it is also axiomatic to submit that a meeting of "**Departmental Selection/Promotion Committee**" (DSC) was held on 24/06/2020 regarding appointment/promotion of "House Supervisor" in the Governor's House Peshawar" wherein "**Zahir Shah**" was promoted. **(Copy of the Minutes is attached as F/B)**
3. That it is also rudimentary to submit that by violating the mandate of the judgment of this Honorable Tribunal whereby it was clearly directed "to provide fair, impartial and equal opportunity to the appellant" but in fact the petitioner was pushed to the wall through illegal means as "**Zahir Shah**" was promoted based on his graduation & computer skills which is not even the requirement for the post of House Supervisor under the relevant rules.

Regarding 10 years of experience of Zahir Shah, it is also a question mark because the petitioner in his Service Appeal which was instituted in the year 2013 had impugned the Office Order Dated: 30/12/2010 based on which "Zahir Shah" was appointed/promoted as "House Supervisor" instead of the petitioner. In the operative para of the revered judgment, this Honorable Tribunal was pleased to accept the appeal of the petitioner meaning thereby that the order of "Zahir Shah" was illegal and his experience did not hold any water at all. It is also added that the petitioner is equipped with 20 years of experience. (Copy of Appointment Order of Petitioner is attached as F/C)

4. That as per the "Black's Law Dictionary 10<sup>th</sup> Edition", the word "fair" means "characterized by honesty, impartiality, candor, just, equitable and disinterested". The same word has also been defined as "free of bias or prejudice". Furthermore, the meaning of the word "impartial" as per Black's Law Dictionary is "not favoring one side more than another, unbiased, disinterested and un-swayed by personal interest". Besides, the term "equality" means "the State or Condition of being equal". Thus, no fair, impartial and equal opportunity has been provided to the petitioner which is brazen violation of the command rendered in the judgment of this Honorable Tribunal. The facet of discrimination, partiality and biasness is crystalline from this fact that when the rules don't provide any requirement qua computer literacy and graduation then how undue weightage has been given to "Zahir Shah" apart from the fact that the petitioner has got 20 years of experience while the experience of Zahir Shah which is said to be only 10 years which is also shrouded in mystery.
5. That the meaning of the above mentioned terms are very conspicuous which have been used in the judgment of this Honorable Court in favor of the petitioner but the same weightage has not been extended to the appellant rather discrimination has been surfaced on the part of the respondents.
6. That it is of utmost importance to submit that in the rules the relevant qualification for the post of "House Supervisor" is "initial appointment or promotion from the post of House Attendant" keeping in view the fact that the appellant has been working on the post of "House Attendant" since 2000 till date. As for as the litigation of the appellant is concerned he has been dismissed from the service twice i.e 13/05/2006 and 12/11/2007. This Honorable Tribunal was pleased to reinstate him vide Dated: 10/04/2007 while in the second case the petitioner was reinstated by the Honorable Apex Court of Pakistan with all back benefits on 17/03/2011. So, the allegations against the petitioner of being habitual of litigation is nothing else but beating around the bushes because he was dismissed twice through illegal

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orders which forced him to knock to the door of the proper fora whereby he was reinstated with all back benefits. (Copy of Relevant Rules & Reinstatements is attached as F/D & F/E respectively)

7. That the undue weightage extended to "Zahir Shah" by giving him undue favor of graduation and computer skill is something which comes in the sphere of biasness, discrimination and partiality on the part of Respondent No. 2 and 3 keeping in view the fact that there is no speck of requirement in the relevant rules regarding graduation or computer literacy.
8. That it is also intrinsic to submit that the Departmental Selection/promotion Committee (DSC) meeting constituted for selection of eligible candidate for appointment to the post of "House Supervisor" is tainted with illegality as the instructions qua constitution of Departmental Selection Committee for the post in BPS-15 and below have not been honored because the constitution of the DSC was required to be as under;

**1. Appointing Authority (chairman)**

**2. An officer to be nominated by Administrative Department concerned (member)**

**3. Officer to be nominated by the Appointing Authority (member)**

Thus, the committee constituted for such selection is also a question mark which was against the mandate of instructions issued by the Establishment Department, Government of Khyber Pakhtunkhwa. It is also added that the composition of the Committee consisted of the Chairman and members from the Governor's House only is skeptical on the ground that the aspect of mala fide and mendacity can be ignored. Secondly, there was no member associated from the office of the Administrative Secretary (Secretary to Governor) or Establishment Department which was also essential. (Copy of the Instructions is attached as F/F)

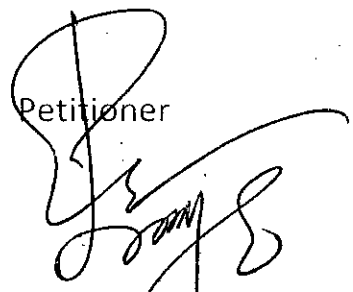
9. That it is indispensable to submit that the post of the House Supervisor is vacant because "Zahir Shah" has been appointed on the post of "Care Taker (BPS-16)" vide Office Order No. MSG/GH/PF/1-7/99 Dated: 08<sup>th</sup> May, 2021. Further submitted that there is no competitor or contestant for the post of "House Supervisor" therefore, the petitioner is



entitled to be promoted for the post of "House Supervisor" keeping in view his eligibility. (Copy of Zahir Shah Appointment Order as CT is attached as F/G)

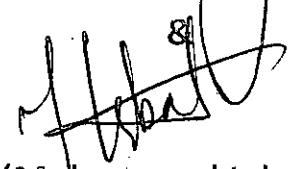
**PRAYER:**

It is therefore, most convivially and humbly prayed that on acceptance of the instant Objection Petition, the minutes of the "Departmental Selection Committee" (DSC) meeting Dated: <sup>Dated 30/6/2020 & 29/6/2020</sup> 24/06/2020 and implementation order may be declared null & void, of no legal effect, illegal as well as tainted with *mala fide & spitefulness* and also against the Judgment rendered in Service Appeal No. 1219/2013 and liable to be set at naught and subsequently, Respondents may graciously be directed to promote the petitioner on the post of "House Supervisor" in the Governor's House Peshawar.

  
Petitioner

Through

(Mian Muhammad Imran)



(Muhammad Iqbal Safi)

Advocate High Court

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**BEFORE THE HONORABLE SERVICE TRIBUNAL KHYBER PAKHTUKHWA**  
**PESHAWAR**

In Re;

Objection Petition No. \_\_\_\_\_/2021  
IN  
Execution Petition No. 93/2020  
IN  
Service appeal no.1219/2013


Irfanullah  
VS  
Government of Khyber Pakhtunkhwa Et. Al.

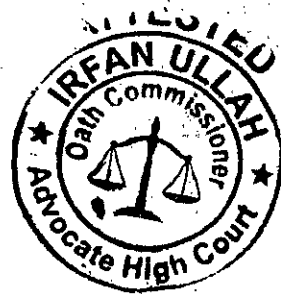
**AFFIDAVIT**

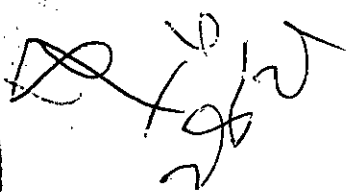
I, Irfanullah S/O Shad Muhammad R/O Landi Arbab Peshawar do hereby solemnly affirm and declare that the contents of the accompanied Objection Petition are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Tribunal.

Identified by

(Mian Muhammad Imran)  
Advocate High Court

  
Deponent



  
28/2/21

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL  
PESHAWAR

6

*Service Appeal*

S.A.No. \_\_\_\_\_ /2013

Irfan Ullah son of Shad Muhammad  
R/O Landi Arbab, Kandy Payan, Peshawar..... Appellant

Versus

- 1) Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar.
- 2) Military Secretary to Governor, Governor House, Peshawar.
- 3) Section Officer (MSG) Governor's House Peshawar.
- 4) Zahir Shah son of Shah Muhammad, House Supervisor, Governor House, Peshawar.

..... Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER 30.12.2010 WHEREBY INSTEAD OF PROMOTING THE APPELLANT RESPONDENT NO.4 HAS BEEN APPOINTED ON 30.12.2010 AS HOUSE SUPERVISOR (BS-11) BY TRANSFER ON ACTING CHARGE BASIS AGAINST AN EXISTING VACANCY WITH IMMEDIATE EFFECT WHILE THE RESPONDENTS HAVE NOT DECIDED THE DEPARTMENTAL APPEAL/ REPRESENTATION WITHIN STIPULATED PERIOD FILED ON 15.05.2013.

*Government is represented by Federal Smt. Staff-3 Government*

*→ pay slip  
→ app. date*

7

Prayer:

On accepting of this appeal, the order dated 30.12.2010 through which respondent No.4 has been appointed as House Supervisor (BS-11) by transfer on acting charge basis against an existing vacancy with immediate effect may kindly be cancelled and the appellant may kindly be promoted to the said post being competent from 30.12.2010 when the said post fell vacant with all back benefits.

*Respondent was appointed on acting charge*

*Respectfully Sheweth;*

Appellant submits as under:

- 1) That appellant was appointed as House Attendant in Governor House, Peshavar in the year 2000. (Copy of appointment letter is Annexure "A")
- 2) That appellant was dismissed from service on 13.05.2006 under false and manufactured allegations regarding absence from duty. (Copy of dismissal order is Annexure "B").
- 3) That appellant challenged the said order before the Hon'ble Service Tribunal Peshavar in service appeal No.474/2006 which was accepted and appellant was reinstated in service with full back benefits vide order dated 10.04.2007. (Copy of the decision is Annexure "C").
- 4) That on the other hand department till 20.06.2007 did not accept the arrival of the appellant. However, on 20.06.2007 the judgment of the Tribunal was partially implemented by reinstating the appellant with all back benefits.
- 5) That again on 27 June and 28 June of 2007 appellant was issued two explanation letters wherein some baseless allegations were leveled. Appellant submitted detailed reply while clarifying his position and denying the charges.

*Adm*

*Reinstated by Service Tribunal*

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- 6) That the victimization continued even after the reinstatement and on 11.07.2007 appellant received yet another explanation letter and the appellant submitted his reply clarifying the position.
  - 7) That on 24.07.2007 and on 27.07.2007, appellant received two statements of allegations which were exactly the same ditto copy of each other.
  - 8) That as per requirement appellant submitted his defence statement before the enquiry committee wherein he denied the charges and clarified the position.
  - 9) That later on an illegal and unlawful enquiry was conducted and appellant received the show cause notice where in major punishment of dismissal from service and recovery of amount of Rs.467229/- unproposed to which appellant submitted the reply.
  - 10) That on 21.09.2007 appellant once again received a letter for making further clarification and as such further clarification was also made.
  - 11) That on 12.11.2007 the impugned punishment order was passed whereby appellant was dismissed from service with immediate effect and recovery of an amount of Rs.324229/- was ordered. (Copy of dismissal order is Annexure "D").
  - 12) That the said impugned punishment order/ dismissal order was circulated by Military Secretary to Governor purportedly having been issued by the competent authority. However, the said competent authority was not disclosed, therefore, appellant submitted the review petition before the Governor through registered post on 15.11.2007.
  - 13) That the said review petition was not decided within the stipulated period, therefore, appellant filed appeal before the Service Tribunal but the same was not accepted.
  - 14) That against the order of Service Tribunal, appellant filed CPLA in the august Supreme Court of Pakistan, which was accepted and the appellant was reinstated with all back benefits. (Copy of the decision of supreme court is Annexure "E").

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- 15) That respondents refused to implement the orders of the august Supreme Court of Pakistan and the appellant was constrained to file the contempt of court petition in the Hon'ble Peshawar High Court, Peshawar from where notice was issued to the respondents. However, respondents under the orders of the Hon'ble Peshawar High Court, Peshawar reinstated the appellant with all back benefits on 11.05.2012. (Copy of reinstatement order is Annexure "F").
- 16) That although the respondents issued the reinstatement order yet the appellant was not allowed to enter the Governor House, therefore, appellant again filed the contempt of court in Hon'ble Peshawar High Court, Peshawar and thus appellant was allowed to do the job.
- 17) That on 03.10.2012 the appellant was verbally directed to report in FATA Secretariat where on 02.11.2012 copy of order was issued and thus the appellant having no alternative, except to join the same. (Copy of the order is Annexure "G").
- 18) That during service in FATA Secretariat, appellant on 13.05.2013 came to know that during dismissal period of the petitioner, respondents No.1 to 3 have appointed respondent No.4 Head Khidmatgar (BS-7) has been appointed at his place as head attendant (BS-8) on 13.05.2008 and on further inquiry astonished to know that respondent No.4 has been appointed on 30.12.2010 as House Supervisor (BS-11) by transfer on acting charge basis against an existing vacancy with immediate effect. (Copy of the orders are Annexure "H").
- 19) That when came to know regarding the illegal order the petitioner filed appeal to respondent No.1 and to Governor against the illegal order issued on 30.12.2010 through which respondent No.4 was promoted to the post of House Supervisor but two months have been passed but upto now no action has been taken. (Photocopy of appeal is Annexure "I" while the photocopies of receipts are Annexure "J").
- 20) That now aggrieved with, appellant has come before this Hon'ble Tribunal through the instant appeal on the following grounds amongst the others for declaring the said order as illegal, unlawful and may

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kindly be cancelled and the respondents No.1 to 3. may kindly be directed to promote the appellant on the said post when the seat fell vacant along with benefits.

GROUND:

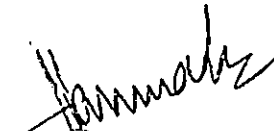
- a. That the order issued by respondents dated 30.12.2010 through which respondent No.4 was appointed as House Supervisor (BS-11) by transfer on Acting Charge Basis against an existing vacancy with immediate effect is against law facts as well as against services laws and rules and thus is liable to be cancelled.
- b. That under the law appellant is to be promoted to the post of House Supervisor as being senior from respondent No.4 who has been appointed and promoted purely on political basis.
- c. That under the law a Head Khidmatgar cannot be appointed/ promoted to the post of House Attendant or House Supervisor.
- d. That respondents failed to appreciate the fact that appellant is serving in the department since 2001 and has a great experience.
- e. That the respondents while issuing the promotion order of the respondent No.4 has totally ignored the service laws and regulations as well as service rules.
- f. That the respondents No.1 to 3 only to promote and appoint the respondent No.4 victimize the appellant on frivolous charges.
- g. That on one hand appellant on one pretext or other involved the appellant in litigation while on the other hand respondent No.4 has been promoted in place of appellant.
- h. That respondents No.1 to 3 only to accommodate illegally respondent No.4, directed the appellant orally on 03.10.2012 to

report to FATA Secretariat and having no choice reported in the FATA Secretariat although the oral was also illegal.

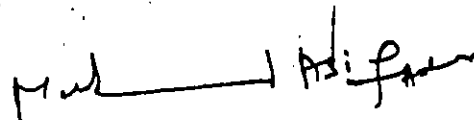
(11)

i. That respondents failed to appreciate the fact that appellant was serving as House Attendant in Governor House while in FATA Secretariat there is no such post.

It is, therefore, requested that on accepting of this appeal, the order dated 30.12.2010 through which respondent No.4 has been appointed as House Supervisor (BS-11) by transfer on acting charge basis against an existing vacancy with immediate effect may kindly be cancelled and the appellant may kindly be promoted to the said post being competent from 30.12.2010 when the said post fell vacant with all back benefits.

  
Appellant

Through

  
Muhammad Asif  
Advocate, Peshawar



BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL  
PESHAWAR

12



S.A.No. 1219 /2013

~~1253~~  
~~15-8-13~~

Irfan Ullah son of Shad Muhammad  
R/O Landi Arbab, Kandy Payan, Peshawar..... Appellant

**Versus**

- 1) Govt. of KPK through Chief Secretary, Civil Secretariat, Peshawar.
- 2) Military Secretary to Governor, Governor House, Peshawar.
- 3) Section Officer (MSG) Governor's House Peshawar.
- 4) Zahir Shah son of Shah Muhammad, House Supervisor, Governor House, Peshawar.

.....Respondents

APPEAL U/S 4 OF THE SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER 30.12.2010 WHEREBY INSTEAD OF PROMOTING THE APPELLANT RESPONDENT NO.4 HAS BEEN APPOINTED ON 30.12.2010 AS HOUSE SUPERVISOR (BS-11) BY TRANSFER ON ACTING CHARGE BASIS AGAINST AN EXISTING VACANCY WITH IMMEDIATE EFFECT WHILE THE RESPONDENTS HAVE NOT DECIDED THE DEPARTMENTAL APPEAL/ REPRESENTATION WITHIN STIPULATED PERIOD FILED ON 15.05.2013.

~~1253~~  
~~15/8/13~~

**ATTESTED**  
  
CLERK  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

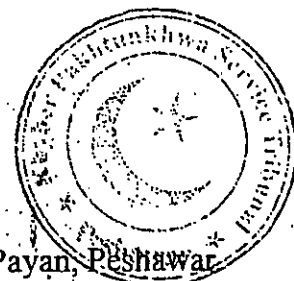
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BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Appeal No. 1219/2013

Date of Institution ... 15.08.2013

Date of Decision ... 20.02.2020



Irfanullah son of Shad Muhammad R/O Landi Arbab, Kandy Payan, Peshawar  
(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat,  
Peshawar and three others. ... (Respondents)

MR. MUHAMMAD ASIF,  
Advocate

--- For appellant.

MR. USMAN GHANI  
District Attorney

--- For respondents No.1 to 3.

MR. ASHRAF ALI KHATTAK,  
Advocate

--- For respondent No.4

MIAN MUHAMMAD  
MUHAMMAD HAMID MUGHAL

--- MEMBER (Executive)  
--- MEMBER (Judicial)

JUDGEMENT

MIAN MUHAMMAD, MEMBER:- Brief facts of the case are that Appellant was appointed as House Attendant in Governor House, Peshawar in 2000 and who has been in service since then. Respondents No. 1 to 3 appointed private respondent No. 4 (working as Khidmatgar (BPS-07) as House Attendant (BS-08) on 13.05.2008 and who was subsequently appointed as House Supervisor (BPS-11) by transfer on Acting Charge basis through office order dated 30.12.2010 ignoring the Appellant against the same position. Aggrieved with this impugned order of Respondent No.2, the present appeal was instituted in this

*[Handwritten signature]*

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ATTESTED

*[Handwritten signature]*  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal.

Tribunal under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974.

02. Arguments of the learned counsel for the parties heard and available record perused.

ARGUMENTS:

03. The question of maintainability of the instant service appeal before this Tribunal was raised by the learned counsel for Private Respondent No. 4. The learned counsel for the appellant rebutted it and argued that this point of law stands settled and decided in judgments of this Tribunal on 03.01.1976 in service appeal No. 01/1976 titled Haji Mohammad Danish.

04. During the course of arguments, the learned counsel for the appellant appraised that services of the private respondent have been regularized by Respondent No.2 through notification No. SO (MSG)/GH/2016 dated 05.08.2016. Copy of the Notification was produced before this Tribunal.

CONCLUSION:

05. Respondent-department could not make it clear that the Private Respondent No.4 was blessed with the post of House Supervisor, Governor's House as a new entrant/ initial recruit or by promotion. Learned Deputy District Attorney and learned counsel for Private Respondent No.4 remained unable to demonstrate that the appointment of Private Respondent No.4 as House Supervisor, Governor's House was made in the prescribed manner:

ATTESTED

Deputy District Attorney  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

06. Reference is made to the Hon'able Peshawar High Court, Peshawar which vide judgment dated 04.06.2013 in Writ Petition No. 2778 of 2012, set aside the

Signature

15

appointment order to the post of Assistant Protocol Officer in the Governor House Peshawar on the ground that respondent had violated essential requirement of Rule 10 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion & Transfer) Rules, 1989 by not advertising to the public, the vacancy of the post prior to proceed with the appointment process.

07. Article-4 of the Constitution of 1973 guarantees the inalienable and fundamental right of every citizen to be treated equal in accordance <sup>with</sup> law. In the instant case the appellant has not been treated equally and private Respondent No.4 stands preferred over the appellant. In addition to the violation of cardinal principle of "equality before law" as envisaged and guaranteed in the constitution, due course of law and procedure has also been ignored by the Respondents rendering the entire process against the spirit of "transparency" and "good governance".

06. As a sequel to the above, the appeal is accepted, the post of House Supervisor Governor's House shall be deemed vacant and respondents are directed to give fair, impartial and equal opportunity to the Appellant. Parties are left to bear their own costs. File be consigned to the record room.

*[Signature]*

(MIAN MUHAMMAD)  
MEMBER

*[Signature]*

(MUHAMMAD HAMID MUGHAL)  
MEMBER

Certified to be true copy  
*[Signature]*  
Khyber Pakhtunkhwa  
Service Tribunal,  
Peshawar

**ANNOUNCED**  
20.02.2020

*[Signatures]*

Date of Presentation of Application 17/3/2020  
Number of Words 1600  
Copying Fee 1800  
Urgent 400  
Total 2200  
Name of Copyist [Signature]  
Date of Issuance of Copy 17/3/2020



16

**MINUTES OF THE MEETING DATED 24.06.2020 REGARDING IMPLEMENTATION OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL JUDGEMENT DATED 20.02.2020 PASSED IN S.A NO.1219/2013 TITLED IRFAN ULLAH VS GOVERNMENT, APPOINTMENT TO THE POST OF HOUSE SUPERVISOR (BS-12), GOVERNOR HOUSE PESHAWAR.**

The captioned meeting held in the office of the Military Secretary to Governor Khyber Pakhtunkhwa on 24.06.2020 under his Chairmanship. A Departmental Selection / Promotion Committee was constituted for selection of eligible candidate for appointment to the post of House Supervisor (BPS-12) in the Governor's House, Peshawar.

The following attended the meeting:-

- |  |   |            |
|--|---|------------|
| Col Shahid Rehan Chaudhry,<br>Military Secretary to Governor   | - | (Chairman) |
| Mr. Munawar Khan<br>Comptroller, Governor's House              | - | (Member)   |
| Mr. Muhammad Aslam,<br>Section Officer (B&A), Governor's House | - | (Member)   |
| Mr. Shehryar,<br>Section Officer to MSG                        | - | (Member)   |

The Chairman welcomed the participants and highlighted the brief background of the subject appointment that as per decision of the Khyber Pakhtunkhwa, Service Tribunal, Peshawar and in line with the decision of Scrutiny Committee of Law Department dated 06.05.2020 i.e.

**"The post of House Supervisor Governor's House shall be deemed vacant and respondents are directed to give fair, impartial and equal opportunity to the Appellant."**

In order to implement the above court Judgement, after approval of the Competent Authority the reversion order of Mr. Zahir Shah, House Supervisor (BPS-12) to the post of House Attendant (BPS-9) has been issued vide order No. SO(MSG)/GH/1-7/1999 dated 10.06.2020.

Since there is one post of House Attendant which has already been filled. In this regard a case for creation of supernumerary post of House Attendant (BPS-9) for a period of two months w.e.f 09.06.2020 to 08.08.2020 was forwarded to Finance Department and accordingly approved.



GOVERNOR'S HOUSE  
PESHAWAR

17


After threadbare discussion, the Departmental Selection / Promotion Committee has evaluated the candidates according to their academics, experience and allegations against them. Resultantly, the Departmental Selection / Promotion Committee has recommended Mr. Zahir Shah House Attendant (BPS-09) for promotion to the post of House Supervisor (BPS-12) as per merit, keeping in view his good performance, having graduation degree, computer skill and ten years experience on the post of House Supervisor while Mr. Irfan Ullah being entangled all the time and habitual of litigation in one way or the other cannot be offered the post of House Supervisor being a responsible assignment.

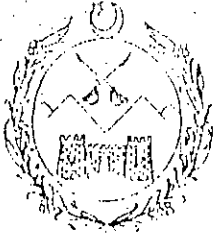
The meeting ended with votes of thanks from and to the Chairman of the Committee.

Military Secretary to Governor

Copy forwarded to the-

1. Comptroller / Caretaker, Governor's House, Peshawar
2. Section Officer (B&A), Governor's House, Peshawar.
3. Section Officer (MSG), Governor's House, Peshawar.
4. PS to MSG, Governor's House, Peshawar.

  
26/6/2020  
Section Officer (MSG)  
Governor's House, Peshawar



~~Amir~~

(S)

18

GOVERNOR'S HOUSE

PESHAWAR

No. MSG/944/1001P/2500

21 August, 2000

OFFICE ORDER

The Governor NWFP has been pleased to change the Post & appoint Mr. Irfanullah Naib Qasid BPS-01 to the post of House Attendant BPS-05 w.e.f. 20-8-2000 against the vacant post.

*Amir's  
Appointment*

*Naeem*

Lt Col  
(Naeem Anwar Butt)  
Military Secretary to Governor NWFP

Endst. No. & date even.

Copy forwarded to the:-

1. Accountant General, NWFP, Peshawar.
2. Comptroller, Governor's House, Peshawar.
3. Accountant, Governor's House, Peshawar.
4. Official Concerned.
5. Personal File.
6. Order of the day file.

*Naeem*

Lt Col  
(Naeem Anwar Butt)  
Military Secretary to Governor NWFP

19

Islamabad, the 8th June, 1993

10-11-11

From: S.M. Shamim Naqvi,  
Section Officer.

To: A.G.P.R.,  
Islamabad.

A.G./Punjab, Lahore/Sindh, Karachi/  
NWFP, Peshawar/Balochistan, Quatta.

Subject: STAFF OF THE PRESIDENT'S SECRETARIAT (PERSONAL),  
PRIME MINISTER'S SECRETARIAT (INTERNAL) AND  
THE GOVERNOR'S HOUSES - UPGRADATION/GRANT OF  
HIGHER SCALES TO HOUSE SUPERVISOR AND HOUSE ATTENDANT.

Sir,

I am directed to refer to the Cabinet Division's letter of even number dated the 3rd May, 1984, on the above subject and to convey sanction of the President to the upgradation of the posts of House Supervisor and House Attendant in the President's Secretariat (Personal), Prime Minister's Secretariat (Internal) and the Governor's Houses of the Punjab, Sindh, NWFP and Balochistan as under with effect from 12th April, 1993 and until further orders:-

- a) House Supervisor BPS-11 On initial appointment or on promotion of House Attendant.
- BPS-14 After completion of 5 years service as House Supervisor (BPS-11).
- b) House Attendant BPS-8 On initial appointment or on promotion
- BPS-10 For presently serving House Attendants in BPS-7.

The other terms & Conditions would remain the same.


- 2.
- 3. This issues with the concurrence of the Finance Division (Regulations Wing) vide their u.o. No.782-R-3/93 dated 31.5.1993.

Your obedient servant,

(S.M. Shamim Naqvi)  
Section Officer

contd...P/2....



  
**CABINET DIVISION**  
**Government of Pakistan**

No.2/11/80-Min-II

Islamabad, the 8<sup>th</sup> June, 1993

20

From:- S.M Shamim Naqvi  
Section Officer.

To A.G.P.R  
Islamabad

A.G/ Punjab, Lahore/ Sindh, Karachi/  
NWFP, Peshawar / Balochistan, Quetta.

Subject: STAFF OF THE PRESIDENT'S SECRETARIAT (PERSONAL) PRIME MINISTER'S SECRETARIAT (INTERNAL) AND THE GOVERNOR'S HOUSE - UPGRADATION GRANT OF HIGHER SCALES TO HOUSE SUPERVISOR AND HOUSE ATTENDANT.

Sir,

I am directed to refer to the Cabinet Division's letter of even number date the 3<sup>rd</sup> May, 1984, on the above subject and to convey sanction of the President to the upgradation of the posts of House Supervisor and House Attendant in the President's Secretariat (Personal), Prime Minister's Secretariat (Internal) and the Governor's House of the Punjab, Sindh, NWFP and Baluchistan as under with effect from 12 April, 1993 and until further orders:

a) House Supervisors

BPS-11 On initial appointment or on promotion of house Attendant

BPS-14 After completion of 5 years service as house Supervisor (BPS-11)

b) House Attendant

BPS-8 On initial appointment or on promotion.

BPS-10 For presently serving House Attendants in BPS-7

2. The other terms & conditions would remain the same.

3. This issues with the concurrence of the Finance Division (regulations Wing) vide their U.C.No.782-R-3/93 dated 31.05.1993.

Your obedient servant

Sd/-

(S.M. Shamim Naqvi)  
Section Officer

GOVERNMENT OF PAKISTAN  
CABINET SECRETARIAT  
(CABINET DIVISION)

No. 2/11/80-M.H. II.

Rawalpindi, the 3rd May, 1981.

21

From: Muhammad Hussain Curoobi,  
Deputy Secretary,  
Government of Pakistan.

To: 1. A. G. P. H.,  
Rawalpindi.

A. G. Punjab, Lahore/Sind, Karachi/  
N.W.F.P., Peshawar/Daluchistan, Quetta.

Subject: STAFF OF THE PRESIDENT HOUSE/CMLA'S SECRETARIAT  
(INTERNAL) AND THE GOVERNOR'S HOUSE.

Sir, I am directed to refer to the Cabinet Division's letter of even number dated the 3rd February, 1981 and 8th May, 1982 on the above subject and to convey sanction of the President to the further evolution of the terms, conditions and nomenclature of the Staff of President's House/CMLA's Secretariat (Internal) and the Governor's House of the Punjab, Sind, N.W.F.P. and Daluchistan as under with effect from 1st April, 1981 and until further orders:-

The following Scale of Pay in respect of the posts of House Supervisor and House Attendant in the President's Secretariat (Personal), CMLA's Secretariat (Internal) and Governor's House:-

a) House Supervisor NPS-9 For new entrants with Intermediate as minimum qualification.

In addition they would be entitled to free accommodation, free use of water, free electricity upto 30 units and fuel subsidy upto Rs. 40/- p.m.

The designation of the post will be House Supervisor for all the Houses.

b) House Attendant NPS-6 For new entrants with Matriculation as minimum qualification.

DPS-7 After five years service.

Contd....P/2..

GOVERNMENT OF PAKISTAN  
CABINET SECRETARIAT  
(CABINET DIVISION)

22

No.2/11/80-Min-II

Rawalpindi, the 3<sup>rd</sup> May, 1984.

From:- Mhammad Haseem Qureshi  
Deputy Secretary  
Government of Pakistan

To A.G.P.R  
Rawalpindi

A.G/ Punjab, Lahore/ Sindh, Karachi/  
NWFP, Peshawar / Baluchistan, Quetta.

Subject: STAFF OF THE PRESIDENT'S HOUSE/ CMIA'S SECRETARIAT  
(INTERNAL) AND THE GOVERNOR HOUSE

Sir,

I am directed to refer to the Cabinet Division's letter of even number date the 3<sup>rd</sup> February, 1981, and 6<sup>th</sup> May, 1982 on the above subject and to convey sanction of the President to the further revision of the terms, conditions and nomenclature of the Staff of President's House? CMIA's Secretariat (Internal) and the Governor's House of the Punjab, Sindh, NWFP and Baluchistan as under with effect from 1<sup>st</sup> April, 1984 and until further orders:

The following (sic) Scales of Pay in respect of the posts of House Supervisor and House Attendant in the President's Secretariat (Personal), CMLA's Secretariat (Internal) and Governor's House.

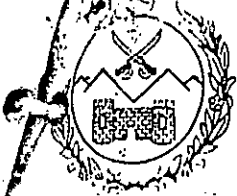
a) <u>House Supervisors</u>	BPS-9	For new entrants with intermediate <del>as</del> minimum qualification.
	BPS-11	After five years service.

In addition they would be entitled to free accommodation, free use of water, free electricity upto 30 units and fuel subsidy upto Rs.40/- pm.

The designation of the post will be House Supervisor for all the Houses.

(b) <u>House Attendant</u>	BPS-6	For new entrants with Matriculation <del>as</del> minimum qualification.
	BPS-7	After five years service.

2  
Received on 17.5.06  
23  
**ANNEXURE**  
GOVERNOR'S HOUSE  
PESHAWAR



**OFFICE ORDER**

NO.MSG/PF/1(10)/93/702-11 Mr. Irfanullah, House Attendant (BPS-8), Governor's House Peshawar is hereby dismissed from service on account of his willful absence from duty under Section-3 (a) of the NWFP Removal from Service (Special Powers) (Amendment) Ordinance, 2001.

Lt Col  
**(SAEEDULLAH)**  
Competent Authority

Military Secretary to Governor NWFP

Endst. NO. MSG/PF/1(10)/93/702-11

Dated 13 May, 2006

Copy to: -

1. Accountant General, NWFP, Peshawar.
2. Comptroller, Governor's House, Peshawar.
3. ADC to Governor NWFP, Peshawar.
4. PS to Governor NWFP, Peshawar
5. PS to Secretary to Governor, NWFP.
6. PS to MS to Governor NWFP, Peshawar.
7. Cashier, Governor's House, Peshawar.
8. Bill Assistant, Governor's House, Peshawar.
9. House Supervisor, Governor's House, Peshawar.
- ✓ 10. Mr. Irfanullah, Governor's House Colony, Peshawar

*Copy forwarded to House Supervisor*

Lt Col  
**(SAEEDULLAH)**  
Competent Authority

Military Secretary to Governor NWFP

*Amir*  
**ATTESTED**

BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 474/2006

Date of Institution.... 28.6.2006

Date of Decision..... 10.4.2007

Irfanullah Ex-House Attendant, Governor's House,  
Peshawar, R/O Landi Arbab Kanday Payan, Peshawar.....(Appellant)

VERSUS

1. Government of NWFP through  
Chief Secretary, Peshawar.
2. Military Secretary to Governor,  
Governor's House, Peshawar.
3. Section Officer(MSG) Governor's House,  
Peshawar.....(Respondents)

APPEAL UNDER SECTION 4 OF THE NWFP SERVICE  
TRIBUNAL ACT, 1974 READ WITH SECTION 10 OF  
REMOVAL FROM SERVICE (SPECIAL POWERS)  
ORDINANCE 2000 AGAINST OFFICE ORDER NO.  
MSG/PF/1(10)/93/702-II DATED 13.5.2006 OF  
RESPONDENT NO.2 WHEREBY APPELLANT IS  
DISMISSED FROM SERVICE AND DEPARTMENTAL  
APPEAL/REPRESENTATION IS REJECTED/FILED VIDE  
APPELLATE ORDER NO.SO/MSG/976-77, DATED  
14.06.2006.

PRAYER

THAT ON ACCEPTANCE OF THIS SERVICE  
APPEAL THE IMPUGNED ORDER DATED  
13.5.2006 AND APPELLATE ORDER DATED  
14.6.2006 BE SET ASIDE AS BEING ILLEGAL,  
UNLAWFUL, VOID AND INEFFECTIVE AND  
APPELLANT BE REINSTATED IN SERVICE WITH  
FULL BACK BENEFITS AND WAGES WITH SUCH  
OTHER RELIEF AS MAY DEEM FIT IN THE  
CIRCUMSTANCES OF THE CASE MAY ALSO BE  
GRANTED.

MR. WAQAR AHMAD SETH

Advocate

MR. USMAN GHANI, A.G.P

.. For appellant

.. For respondents.

ATTESTED

25



JUDGEMENT

MUHAMMAD UMAR AFRIDI, MEMBER: This appeal has been filed by Mr. Irfanullah, Ex-House Attendant, Governor's House, Peshawar under section 4 of the NWFP Service Tribunals Act, 1974, read with section 10 of the NWFP Removal from Service (Special Powers) Ordinance, 2000 against office order No. MSG/PF/1(10)/93/702-II, dated 13.5.2006 of respondent No.2 whereby appellant is dismissed from service and departmental appeal/representation is rejected/filed vide appellate order No. SO/MSG/976-77, dated 14.06.2006.

2. Brief fact of the case are that the appellant was performing duties as House Attendant in the Governor's House, Peshawar when on 22.11.2005 he received a letter of Explanation/show cause wherein it was alleged that the appellant was non-serious and had a casual attitude towards the performance of his duties. As the allegations were totally false and fabricated, therefore, the appellant submitted his reply wherein he denied the charges levelled against him and clarified his position. The appellant was surrendered to Administration Department vide letter No. SO/MSG/GH/PF/1(10)93/2117 dated 29.11.2005. Accordingly the appellant approached the Administration Department Peshawar but on 9.12.2005, the said Department vide letter No. L&A(A.D)4(B)/2005 dated 9.12.2005, informed the Governor's House that no post of House Keeper was available. The appellant was made a rolling stone when he was surrendered to Governor's Secretariat FATA, Warsak Road, Peshawar vide letter No. SO/MSG/GH/2005/2320, dated 27.12.2005. The appellant time and again visited the office of Governor's Secretariat, FATA but was not

*[Handwritten signature and scribbles]*

(2)

26

adjusted over there by the officers and finally the Governor's House was informed vide letter No. SO(MSG)/E/100-27(Vol-3)/1853, dated 24.3.2006 that they had no vacant post in BPS-8 to adjust the appellant. On 13.4.2006, the appellant vide Governor's House letter No. SO/MSG/GH/PF/1(10)/93/512 received a show cause notice of absence from duty. The appellant submitted his reply to the show cause and denied the allegations and clarified his position vide letter No. Nil, dated 20.4.2006. The competent authority vide order No. MSG/PF/1(10)/93/702-11, dated 13.5.2006, dismissed the appellant from service on account of his willful absence from duties under section-3 (a) of the NWFP Removal from Service (Special Powers) (Amendment) Ordinance, 2001. The impugned order of dismissal was received by the appellant on 17.5.2006. Feeling aggrieved, the appellant submitted his departmental appeal to the appellate authority on 29.5.2006, which was filed vide Governor's House letter No. SO/MSG/976-77, dated 14.6.2006, hence the present appeal with the prayer that on acceptance of this Service appeal, the impugned order dated 13.5.2006 and appellate order dated 14.6.2006 be set aside as being illegal, unlawful, void and ineffective and appellant be reinstated in service with full back benefits and wages with such other relief as may deem fit in the circumstances of the case may also be granted.

3. The appeal was admitted to full hearing on 8.8.2006. Notices were issued to the respondents for filing their replies. They filed their replies and contested the appeal. The appellant also filed his rejoinder in rebuttal.

4. Arguments heard and record perused.

5. The learned counsel for the appellant contended that the impugned order was passed on 13.5.2006 and the departmental

appeal was filed on 29.5.2006 which was well within time. The departmental appeal was rejected on 14.6.2006. Hence the present appeal was filed on 28.6.2006 which is within the statutory period. The learned counsel for the appellant argued that it was mandatory on the authority while dispensing with regular enquiry, to give the explicit reasons as to why the enquiry is dispensed with and to provide the documentary evidence to the accused. In this regard he relied on 2003 PLC (C.S) 353 Citation B, wherein it had been held that :-

"Regular enquiry, requirement of ---Without an explicit order of dispensation of requirement of regular inquiry, departure from normal rule was not legal---Requirement of regular inquiry could be dispensed with in exceptional circumstances---Where recording of evidence was necessary to establish the charges, then departure from requirement of regular inquiry under the Rules would amount to condemn a person unheard."

It was stated by the learned counsel that in this case no regular enquiry was held. Even personal hearing was not offered to the appellant. The learned counsel for the appellant made reliance on 1997 SCMR Page 1552(citation-c). The respondents were bound to conduct a formal enquiry.

It was stated by the learned counsel for the appellant that the appellant was injured in a road accident and the medical prescriptions alongwith the X-Rays were sent to the respondents. The learned counsel for the appellant contended that a thorough examination of the entire record would indicate that the authorities had failed to abide by the relevant rules concerning the enquiry. The procedure pertaining to conducting of enquiry had not been adhered to strictly. Charges had not been framed properly and the statement of allegations was also ambiguous. The Imposition of penalty of



dismissal from service was harsh. In this connection, the learned counsel referred to 2000-SCMR-1743. He requested for acceptance of the appeal.

6. The learned A.G.P, on the other hand, argued that the respondents had completed all the codal formalities. Under section 5(4) of the NWFP Removal from Service (Special Powers) Ordinance, 2000, there was no need of holding an enquiry if the competent authority felt satisfied. The appellant was heard in person but he could not satisfy the competent authority. To ensure his personal hearing the appellant was informed vide letter dated 4.5.2006, on official address which was duly received by him. The appellant did not inform the respondent department about his accident/illness and remained absent from duty for a considerable period. The appellant was properly served with show cause notice/explanation. The appellant submitted reply against the show cause notice which was not found satisfactory by the competent authority. The services of the appellant were surrendered to the Administration Department and Governor's Secretariat FATA on 29.11.2005 and 27.12.2005 respectively but he did not obey the said orders and remained absent. He requested for dismissal of the appeal.

7. The Tribunal heard the arguments of both the parties and perused the available record. The Tribunal has noticed that the statement of allegations is ambiguous and not clearly defined. The Tribunal agrees with the views of the learned counsel for the appellant that framing of charges and its communication to civil servants alongwith the statement of allegations is not mere a formality but is a mandatory requisite which is to be followed. The procedure as prescribed in the rules has neither been adhered to by the respondent department which aspect of the matter has escaped unnoticed and resulted in serious miscarriage of justice. The

competent authority has also not given explicit reasons for dispensing with regular enquiry. This departure from normal rules was not legal. Requirement of regular enquiry can be dispensed with in exceptional circumstances: Where recording of evidence is necessary to establish the charges, then departure from requirement of regular enquiry under the rules will amount to condemn a person unheard. The Tribunal holds that the appellant has been charged with misconduct of such a nature, which cannot be proved without holding of regular enquiry. Therefore, his dismissal from service on the basis of summary enquiry is not sustainable in the eyes of law. In view of the foregoing discussion, the Tribunal sets aside the impugned orders dated 13.5.2006 and dated 14.6.2006 and orders reinstatement of the appellant from the date he was dismissed from service, with all back benefits. No order as to costs. File be consigned to the record.

ANNOUNCED.  
10.4.2007.

*M. Umar Afridi*  
(MUHAMMAD UMAR AFRIDI)  
MEMBER

*(Signature)*  
(ADALAT KHAN KHATTAK)  
MEMBER

*(Signature)*

2400 30/4/07  
1400  
1200  
1600  
30/4/07  
30/4/07

*(Signature)*  
TESTED



30

ANNEXURE

GOVERNOR'S HOUSE  
PESHAWAR

*Annex*

Peshawar the 12 November 2007

ORDER

No SOMSG/1-3/2007/2567-71. Whereas, Mr Irfan Ullah, House Attendant (BPS-8), Governor's House, Peshawar was served with a Show Cause Notice under the NWFP Removal from Service (Special Powers) Ordinance, 2000 for the charges mentioned in the Show Cause Notice dated 10 September 2007 and Statement of Allegations, on the basis of enquiry conducted by the Enquiry Committee constituted for the purpose.

Now therefore, the Competent Authority, after having considered the charges, evidence on record, reply/explanation of the accused official to the Show Cause, findings of the Enquiry Committee and record note of the personal hearing, and exercising his powers under Section-3 read with Section-8 of the NWFP Removal from Service (Special Powers) Ordinance 2000 read with Special Terms and Conditions for Household Establishment of 1970, has been pleased to impose upon Mr Irfan Ullah, House Attendant (BPS-8) the following major and minor penalties :-

- a. Dismissal from Service with immediate effect and
- b. Recovery of amount of Rs 3,24,229/- (Rupees Three Lac Twenty Four Thousand Two Hundred and Twenty Nine) on account of claim of M/S Sabrina Tent Service, Peshawar.

Col  
(Saeed Ullah)  
Military Secretary to Governor NWFP

Endst No & date even

Copy forwarded to :-

1. The Accountant General NWFP, Peshawar
2. The ADC to Governor NWFP
3. The Comptroller, Governor's House, Peshawar
4. The Section Officer (B&A), Governor's House, Peshawar
5. Mr Irfan Ullah, Governor's House, Peshawar

*[Signature]*

*[Signature]*  
(Asdul Malik)  
Section Officer to MSG

31

IN THE SUPREME COURT OF PAKISTAN  
(Appellate Jurisdiction)

Present:  
Mr. Justice Nasir-ul-Mulk  
Mr. Justice Amir Hani Muslim

Civil Petition No.305-P of 2009.  
(On appeal from judgment dated 8.4.2009 of the  
NWFP Service Tribunal, Peshawar, passed in  
Service Appeal No(72/2008)

Irfanullah. ...Petitioner.

VS

The Chief Secretary, NWFP  
and others. ...Respondents.

For the petitioner: Mr. Waqar Ahmed Seth, ASC.  
Mir Adam Khan, AOR.

For the respondents: Mr. Naveed Akhtar, Addl.A.G, KPK.

Date of hearing: 17.3.2011

JUDGMENT

AMIR HANI MUSLIM, J. - Through this petition, the petitioner has impugned the judgment of the NWFP Service Tribunal by which the departmental penalty of dismissal from service of the petitioner was converted into removal from service. However, the penalty of recovery of amount was maintained by the Tribunal.

2. The facts as they appear from the record are that the petitioner was previously proceeded departmentally on the ground of absence from duty and was reinstated by the Tribunal by its judgment 10.4.2007. The order of reinstatement was complied with by the department and on 20.6.2007, he resumed the job. On

that he has failed to personally deliver a closed envelop to the Political Agent, South Waziristan Agency and failed to bring along some items to the Governor's House, Peshawar leaving the task unaccomplished. On 28.6.2007 another explanation letter was issued by the department in which it was alleged that the petitioner has failed to share responsibility with his other colleagues especially during the entire programme of President of Pakistan and preferred to sit idle in the office. The petitioner claims that he submitted replies to the aforesaid explanations. On 11.7.2007 yet another explanation letter was issued to the petitioner on the ground that though his application for grant of three days leave on medical ground was regretted, he remained absent from duty with effect from 4.7.2007 to 10.7.2007. The petitioner claims that he has already submitted medical certificate with his application and has also submitted separate reply to the explanation. On 24.7.2007, the petitioner was issued notice under the NWFP Removal From Service (Special Powers) Ordinance, 2000 (hereinafter referred to as the Ordinance) with the statement of allegations. It was alleged that the petitioner has failed to make payment to Messrs Sabrina Tent Service, University Town, Peshawar for an amount of Rs.3,24,229/-, which he received for payment to the said company from the Military Secretary to the Governor. The second allegation against him was that he has received an amount of Rs.38,000/- from one Syed Lal Hussain Shah, Ex-Garage Superintendent, Governor's House, Peshawar in connivance with Haji Sirajud Din, Security Guard, State Bank of Pakistan, who at the relevant time was absconder and the said amount was not paid by him. The next allegation against the petitioner was that the Ghafoor Shah Driver, Governor's House has complained that the petitioner has received a sum of Rs.1,05,000/- for purchase of Prize Bonds during the period pertaining 2002 which amount was still outstanding against him. Further allegation against him was that the name of the petitioner has appeared in the press in a popular prize Bond fraud, which has given bad impression to the prestigious office of the Governor. The last

**ATTESTED**

allegation against the petitioner was that he pretended himself as ill and presented a medical certificate for three days leave w.e.f. 4.7.2007 to 6.7.2007 and remained absent from 7.7.2007 to 10.7.2007.

3. The petitioner claims that he has submitted his detailed reply to the statement of allegations denying the charges. The petitioner claims that the inquiry was ordered in which the statements of the witnesses were not recorded in his presence during such inquiry proceedings nor any voucher was produced in the inquiry to substantiate the claim of Rs.3,24,229/-. It is further claimed that the M.S.G, who claimed to have paid the amount of Rs.3,24,229/- to the petitioner was never produced before the inquiry committee. The inquiry committee recommended his reduction to the lower scale but the authority went on to dismiss him from service. The representation made by the petitioner was rejected by the department against which the petitioner preferred appeal which too, with the aforesaid modification, was dismissed by the Service Tribunal which findings are impugned in these proceedings.

4. The learned counsel for the petitioner submitted that the petitioner was previously dismissed from service on the ground of his absence from duty and was reinstated on 10.4.2007 by the Tribunal. He contends that the ground for alleged payment of Rs.3,24,229/- which relates to the period of 2004-2005 was never raised in the previous departmental proceedings. He further submitted that in November, 2005, on his transfer to the Establishment Department, the Governor's House has issued a clearance certificate which does not reflect any outstanding amount against him. He next contended that the impugned judgment is bad in law in which it has been observed that the right of cross-examining to the witnesses deposing against the petitioner was not mandatory. According to the learned counsel, in terms of Section 5-C of the Ordinance, the petitioner had the right to cross-examine the witnesses which not only was denied but even statements of

ATTESTED

witnesses were not recorded in presence of the petitioner. He has argued that for the aforesaid reasons, the show cause notice based on the statement of allegations was tainted with malice and findings of the inquiry, in the manner in which it was conducted, does not attract the penalty under the service law. He has relied on the cases of Shibli Farooqui vs. Federation of Pakistan (2009 SCMR 281) and Naseeb Khan vs. Divisional Superintendent, Pakistan Railways (2008 SCMR 1369) in support of his contentions.

5. The learned Additional Advocate General has contended that recommendation of the inquiry committee for lesser punishment is not binding on the competent authority and has supported the impugned judgment.

6. We have heard the learned counsel for the petitioner and learned Additional Advocate General and have perused the record. The amount which is claimed against the petitioner in the statement of allegations pertains to the bills of 2004- 2005 whereafter the petitioner was proceeded against and was reinstated on 10.4.2007. Why such amount was not made part of the allegations against the petitioner by the department when the department proceeded against the petitioner in the year 2006. The learned Tribunal as well as the department has not offered any plausible explanation. As far as the other allegations regarding receipt of payments from private person are concerned, they have no nexus with the petitioner's duties. The petitioner has produced the medical certificate for his absence along with application which fact has not been disputed by the department, therefore, his absence from duty from 4.7.2007 to 10.7.2007 was not willful. The conduct of the respondent after re-instatement of the petitioner on 20.6.2007 was unusual as immediately on joining the duty by the petitioner, the petitioner was issued explanations one after the other and then he was issued the show cause notice with the statement of allegations under the Ordinance. We find that the allegations incorporated in the statement were tainted with malice and the

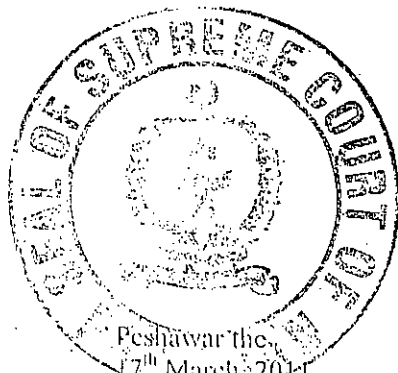
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respondents apparently did not accept the previous verdict of the Tribunal dated 10.4.2007 by which the petitioner was reinstated. We further find that the judgment of the Tribunal and the order of the department by which the petitioner was dismissed from service are not sustainable at law. The manner in which the inquiry was conducted in which statements of witnesses were not recorded in presence of the petitioner nor he was provided opportunity to cross-examine the witnesses itself was sufficient to nullify its findings.

7. For the aforesaid reasons, we set aside the judgment of the Tribunal dated 8.4.2009 while converting this petition into appeal allows the same. The appellant shall be reinstated in service immediately with all back benefits.



Peshawar the  
17<sup>th</sup> March 2011.  
Not approved for reporting.  
Sd/-

Sd/- Nasir-ul-Mulk, J

Sd/- Amir Hamid Muslim

Certified to be true copy

Assistant Registrar  
Supreme Court of Pakistan  
Peshawar.

CR No. ~~21/03/2011~~ 2989/2011  
 Date of presentation of application 21-03-2011  
 No. of Words 1500  
 No. of Folios 15  
 Requisition Fee 5.00  
 Copying Fee 9.30  
 Court Fee 14.30  
 Date of completion 22-03-2011  
 Date of Delivery 25-03-2011  
 Composed by Mr. Iqbal Khan, J.A.  
 Received by [Signature]  
 Total Amount [Signature]  
 Advance [Signature]  
 Balance [Signature]

FILED  
10 FEB  
2011  
COPY





OFFICE ORDER.

Re-instatement  
order

GOVERNOR'S HOUSE  
PESHAWAR

May, 2012

Handwritten notes and a circled number 36.

No.SO(MSG)/GH/2012/ \_\_\_\_\_ In pursuance of judgement of the Supreme Court of Pakistan dated 17.03.2011 passed in Civil Petition No.305 of 2009 and Order of the Peshawar High Court in Cr. M (CoC) No.38-P/2012 dated 03.04.2012, the Competent Authority is pleased to re-instate Mr. Irfanullah, Ex. House Attendant, Governor's House, Peshawar w.e.f 12.11.2007 i.e the date of his dismissal with all back benefits in accordance with the provision of rules, subject to the decision by the Supreme Court of Pakistan on Review Petition filed by the Governor's House, Peshawar.

MILITARY SECRETARY TO GOVERNOR

Endst. No.SO (MSG)/GH/2012/ 1020-29

Dated 11 May, 2012.

Copy forwarded to the:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. ADC to Governor, Governor's House, Peshawar.
3. Private Secretary to Chief Secretary, Khyber Pakhtunkhwa.
4. Comptroller, Governor's House, Peshawar.
5. Section Officer (B&A), Governor's House, Peshawar.
6. Section Officer (Lit), Establishment Department, Peshawar.
7. Section Officer (Lit), Law, Parliamentary Affairs & Human Rights Deptt.
8. Advocate on Record, Supreme Court of Pakistan.
9. Additional Registrar-J, Peshawar High Court, Peshawar w/r to their letter No.4592/Judl. Dated 06.04.2012.
10. Mr. Irfanullah S/O Shad Muhammad, resident of Landi Arbab, Kandi Payan, Peshawar.

  
(Muhammad Islam)  
Section Officer to MSG

CONSTITUTION OF PSB,DPC & DSC

NOTIFICATION  
Peshawar, dated the 22nd August, 1991.

No.SORI(S&GAD)4-1/75(Vol.I):- In pursuance of the provisions contained in clause(d) and (g) of rule 2 of the North-West Frontier Province Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, read with rule 7(1) thereof and in supersession of this Department's Notification No.SOS-III (S&GAD)1-206/74-III, dated 16.5.1975, and No.SORI(S&GAD) 4-1/75, dated 18.9.1989, issued in this behalf, the Governor of North-West Frontier Province is pleased to constitute the Provincial Selection Board and the Departmental Promotion Committees for making selection to various posts as under:-

**A- Provincial Selection Board**

1. The Provincial Selection Board shall consist of the following:-

- |     |   |     |                      |
|-----|---|-----|----------------------|
| (1) | Chief Secretary, NWFP                                   | ... | Chairman             |
| (2) | Additional Chief Secretary, NWFP                        | ... | Member               |
| (3) | Senior Member, Board of Revenue, NWFP                   | ... | Member               |
| (4) | Administrative Secretary concerned                      | ... | Member               |
| (5) | Secretary Services & General Administration Department. | ... | Member/<br>Secretary |

2. "The Board shall make recommendations for appointment by promotion or transfer to all posts in Basic Pay Scale-18 and above and shall also assess fitness/suitability of officers for move-over to BPS-20 and make its recommendations."

**B- DEPARTMENTAL PROMOTION COMMITTEES**

1. For each Department, there shall be a Departmental Promotion Committee consisting of the following:-

- |     |   |     |           |
|-----|---|-----|-----------|
| (1) | Secretary of the Department concerned         | ... | Chairman  |
| (2) | Additional Secretary, S&GAD.                  | ... | Member    |
| (3) | Additional Secretary, Finance Department      | ... | Member    |
| (4) | Head of Attached Department concerned         | ... | Member    |
| (5) | Deputy Secretary of the Department concerned. | ... | Secretary |

2. The Departmental Promotion Committee shall make recommendations for appointment by promotion or transfer to posts in BPS-16 and BPS-17 and shall also assess fitness/suitability of officers for move over from BPS-15 to BPS-16, or BPS-16 to BPS-17 or BPS-17 to BPS-18, or BPS-18 to BPS 19 as the case may be, and make its recommendations."

1. Para 2 under A substituted by Notification No.SORI(S&GAD)4-1/75(Vol.II), dated 27.9.97.

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3. In all cases, whether pertaining to promotion, transfer or move over, the Department concerned shall strictly adhere to the guidelines/policy instructions issued by the S&GAD from time to time.

4. No meeting of the Departmental Promotion Committee shall be held without representative of the S&GAD.

NOTIFICATION  
Peshawar, dated the 17th June, 1989.

No.SORI(S&GAD)4-1/75:- In pursuance of the provisions in rule 5 of the North-West Frontier Province Civil Servants (Appointment, Promotion & Transfer) Rules, 1989, the Services and General Administration Department is pleased to lay down the constitution of the Departmental Promotion Committee and the Departmental Selection Committee for the purpose of making selection for promotion, transfer and initial appointment to the posts in BPS-15 and below in the Attached Departments/Offices as under:-

- |     |  |     |          |
|-----|--|-----|----------|
| (1) | Appointing Authority   | ... | Chairman |
| (2) | An officer to be nominated by the Administrative Department concerned. | ... | Member   |
| (3) | An Officer to be nominated by Appointing Authority.                    | ... | Member   |

**Constitution of Departmental Selection Committees for posts in BPS-15 and below**

Reference this Department's circular letter No.SORI(S&GAD) 4-1/75 (Vol.I), dated 4th March, 1992 as amended vide this department letter of even number dated 12th October, 1992, it was inter alia provided that candidates qualifying the written test for posts in BPS-11 to 15 be interviewed by a broadbased panel of Selection Committees of five/six members headed by the Ministries concerned.

2. It has been decided by the Provincial Government to withdraw the above orders with immediate effect to the extent that henceforth the Departmental Selection Committees, as constituted vide Notification No.SOS.III(S&GAD)1-206/74-1, dated 16.5.1975, and No.SORI(S&GAD)4-1/75, dated 17.6.1989, for posts in BPS-15 and below, shall stand revived as per details given below:-

**I. Posts in the NWFP Civil Secretariat**

- |     |   |     |          |
|-----|---|-----|----------|
| (1) | Secretary, S&GAD                          | ... | Chairman |
| (2) | Deputy Secretary, S&GAD                   | ... | Member   |
| (3) | Deputy Secretary (Opinion) Law Department | ... | Member   |

II. Attached Departments/Offices in NWFP

- |     |   |     |          |
|-----|---|-----|----------|
| (1) | Appointing Authority.   | ... | Chairman |
| (2) | An officer to be nominated by the Administrative Departments concerned. | ... | Member   |
| (3) | An officer to be nominated by the Appointing Authority.                 | ... | Member   |

3. It is requested to bring these instructions to the notice of all concerned for strict compliance.

(Authority:-SORI(S&GAD)4-1/75(Vol.II), dated 13th June,1993.)

**PROCEDURE FOR SELECTION FOR PROMOTION/INITIAL RECRUITMENT**

I am directed to say that under rule 7 of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules,1975 appointment by promotion to posts in BPS-2 to BPS-16 shall be made on the recommendations of the appropriate Departmental Promotion Committee. Similarly, under rule 11 of the rules ibid, initial appointments to posts in BPS-1 to 15 shall be made on the recommendation of the Departmental Selection Committee after the vacancies have been advertised in newspapers. However, no criteria for selection has so far been prescribed.

2. In order to ensure a fair degree of selection, minimise the chances of discretion and favouritism, the Provincial Government have laid down the following criteria for selection for promotion vis-a-vis initial recruitment to the posts which are filled by the department concerned:-

- (1) **Criteria for Selection for Promotion:-**Promotion to any post in a grade below Grade-16 shall not be subject to any test. The suitability of candidates shall be determined on the basis of service record i.e seniority-cum-fitness.
- (II) **Criteria of Selection for initial recruitment:-**
- (i) **For post in Grades 1 to 4-** No special criteria has been laid down and the committee concerned shall adopt its own method and procedure for selection.
- (ii) **For posts in Grade-5 and above in all departments-**  
-In addition to the total marks allocated for a written competitive examination, if any held, the total marks will be 100 as per distribution given below:-

(a) Prescribed qualification ...70

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3. Para 2 above indicates only the general distribution of the marks. To enable the Administrative Departments to develop criteria of comparative grading of candidates within the above overall framework, S&GAD has done a model exercise(attached as Annexure) for guidance of all concerned.

4. I am accordingly directed to request you to kindly ensure that the aforesaid criteria for selection for promotion vis-a-vis initial recruitment to posts is adhered to strictly in filling the vacant posts in future.

(Authority: Circular letter No.SORI(S&GAD)45-1/75, dated 11.2.1987)

**ANNEXURE**

**COMPARATIVE GRADING OF QUALIFICATION**

A. Minimum Prescribed Qualification.

**1. For Non-Professional Posts.**

	First	Second	Third	Total Mark
	70	53	42	70
(i) Matric	70	53	42	
(ii) Matric	35	26	21	
FA/F.Sc	35	27	21	
(iii) Matric	23	17	14	
FA/F.Sc	23	17	14	
B.A/B.Sc	24	18	14	
(iv) Matric	17	13	10	
F.A/F.Sc	17	13	10	
B.A/B.Sc	17	13	11	
M.A/M.Sc	19	14	11	

**2. For Professional Posts.**

(i) <u>For four examination</u>				
Ist Professional.	17	13	10	
2 <sup>nd</sup> Professional	17	13	10	
3 <sup>rd</sup> Professional	17	13	10	
Final	19	14	12	
(ii) <u>For three examination</u>				
Ist Professional.	23	17	14	
2 <sup>nd</sup> Professional	23	17	14	
Final	24	19	14	
(iii) <u>For two examination</u>				
Ist Professional	35	26	21	
Final	35	27	21	

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GOVERNOR'S HOUSE  
PESHAWAR

08<sup>th</sup> May, 2021

OFFICE ORDER.

No. MSG/GH/PF/1-7/99

On the recommendation of Departmental Selection Committee for the Appointment to the post of Care Taker (EPS-16) Governor's House Peshawar the Competent Authority is pleased to appoint Mr. Zahir Shah House Supervisor (EPS-12) as Care Taker (EPS-16) Governor's House Peshawar against an existing vacancy house hold post with immediate effect

2 Terms and Conditions of his service will remain the same as laid down in Office Order No. MSG/PF/1-7-99 dated 01<sup>st</sup> March, 1999.

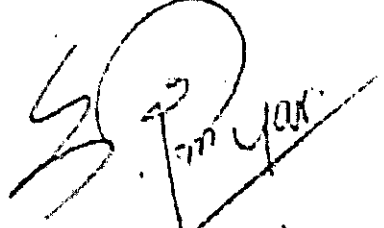
Military Secretary to Governor

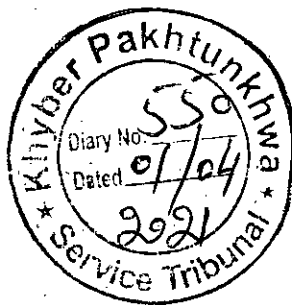
Dated 08<sup>th</sup> May, 2021

Endst.No. MSG/GH/PF/1-7/99

Copy forwarded for information and necessary action to:-

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. PS to Secretary Establishment Department, Khyber Pakhtunkhwa.
3. PS to Secretary Finance Department, Khyber Pakhtunkhwa
4. Comptroller, Governor's House, Peshawar.
5. Section Officer (B&A), Governor's House, Peshawar.
6. DSP (Security) Governor's House, Peshawar.
7. Mr. Zahir Shah S/o Shah Muhammad, resident of Moh: Majeed Khel, Sun Zai Bala, Tehsil & District Peshawar.
8. Personal file

  
(Shehryar)  
Section Officer (MSG)



GOVERNOR'S HOUSE  
PESHAWAR

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

Put up to the court with  
relevant Ex. Petition, Irfan Ullah son of Shad Muhammad

**Versus**

Govt. of Khyber Pakhtunkhwa etc. .... Respondents

01/04/2021  
Subject: **APPLICATION FOR EARLY DATE OF HEARING IN EXECUTION  
PETITION NO. 93/2020 / S.A NO.1219/2013**

Respectfully Sheweth,

- 1) That the above captioned Execution petition is pending adjudication before this Honourable Tribunal which is fixed for 07.05.2021.
- 2) The valuable rights of the respondents are involved with the fate of this Execution Petition and the appellant and his counsel do not attend the court / respond.
- 3) That the department respondents have already implemented the Judgement dated 20.02.2020 of Khyber Pakhtunkhwa Service Tribunal, Peshawar.

In view of the foregoing, it is requested that the instant case may be fixed at an early date instead of 07.05.2021, please.

Put up to the court with  
relevant Execution Petition

Military Secretary to Governor  
Khyber Pakhtunkhwa  
(Respondent No.2)

Respectfully

01/04/2021

To

The Worthy Registrar,  
Khyber Pakhtunkhwa Service Tribunal,  
Peshawar

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 579

Dated 1-4-2021

Subject: REQUEST FOR PRIOR NOTICE TO THE UNDERSIGNED OR HIS CLIENT "IRFANULLAH" IF THE EXECUTION PETITION NO. 93/2020 HAVING THE TITLE "IRFANULLAH VS GOVERNMENT" IS ACCELERATED ON ANY APPLICATION FORWARDED BY THE GOVERNMENT

Put up to the court with relevant S.P.

Respected Sir,

With profound veneration, it is submitted that the Execution Petition No. 93/2020 is pending adjudication which is fixed for 7/5/2021. It is indispensable to submit that previously, the said execution petition was fixed before the Honorable Chairman wherein the Worthy Chairman was pleased to allow the undersigned to submit objection petition and next date was fixed as 20/04/2021. All of sudden, the Government/Respondent filed application for early hearing of the aforementioned execution petition which was allowed and the date from 20/04/2021 was accelerated to 30/03/2021. It is remorseful to bring into your kind notice that neither the undersigned was informed regarding the new date of hearing nor his client/Irfanullah. In fact, on the same day on 30/03/2021, the undersigned had some proceedings before the Honorable Accountability Court-IV, Peshawar where he had obtained an opportunity to visit the Worthy Service Tribunal K-P in order to meet one of his client but the undersigned was astonished to know the proceedings being conducted in the above Execution Petition, even arguments were concluded by the Learned "Kabir Khattak Sahib" as well as "Abdul Muneem Marwat (Advocate)", which was heard by the Worthy Executive Member "Mr. Attique Sahib". It is further added that the undersigned appeared before the Worthy Member and placed forth the exact situation on which the case was re-listed for 07/05/2021.

It seems to be axiomatic to submit that the client namely "Irfanullah" has been transferred to "District Abbottabad" (Comptroller House/Cottage Nathiagali) and any notice if issued, on the address of the Governor's House Peshawar would be of no use. The universal adage of "*Audi Alteram Partem*" as well as fair opportunity is the grace and beauty of the judicial system which has been elaborately dictated by the Honorable Apex Court of Pakistan in catena of judgments.

It is therefore, most humbly requested that for the sake of justice and fair-play, if in future, the above Execution Petition is accelerated to a near date for hearing, Irfanullah or the undersigned being the Legal Aid/Counsel of "Irfanullah" (Petitioner in the Execution Petition), has got an infallible right to be informed please.

1/4/2021

  
(Mian Muhammad Imran)

Advocate High Court

0333/9577770