

Service Appeal No 76/2014 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others",  
Service Appeal No.532/2016 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others",  
Service Appeal No.153/2018 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others",  
Service Appeal No.1443/2018 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others"  
and Service Appeal No.12170/2020 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and  
others" decided on 28.11.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Fareeha Paul,  
Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,  
PESHAWAR.**

BEFORE: **KALIM ARSHAD KHAN .. CHAIRMAN**  
**FAREEHA PAUL .. MEMBER (Executive)**

*Service Appeal No.76/2014*

**Syed Shahin Shah, Accounts Officer, LG&RDD, Peshawar.**

.....*Appellant*)

Versus

1. **The Government of Khyber Pakhtunkhwa** through the Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil secretariat, Peshawar.**
3. **The Secretary, Establishment Department, Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.**
4. **The Secretary, Local Government & Rural Dev; Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.**
5. **The Deputy Commissioner Peshawar.**

.....*(Respondents)*

Present:

Syed Shain Shah,  
Appellant.....

.....In person.

Mr. Muhammad Riaz Khan Paindakhel,  
Additional Advocate General.....

.....For respondents.

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Date of Institution.....27.12.2013

Dates of Hearing.....28.11.2022

Date of Decision.....28.11.2022

.....  
*Service Appeal No.153/2018*

**Syed Shahin Shah, Account Officer, DG LG&RDD, Khyber Pakhtunkhwa.**

.....*Appellant*)

Versus



Service Appeal No.76/2014 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others",  
Service Appeal No.532/2016 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others",  
Service Appeal No.153/2018 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others",  
Service Appeal No.1443/2018 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others"  
and Service Appeal No.12170/2020 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and  
others" decided on 28.11.2022 by Division Bench comprising Kalim Arshad Khan, Chairman, and Fareeha Paul,  
Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

1. **The Government of Khyber Pakhtunkhwa** through the Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **The Government of Khyber Pakhtunkhwa** through Secretary Establishment, Civil Secretariat, Peshawar.

.....(Respondents)

Present:

Bilal Ud Din Khattak,  
Advocate.....For appellatant.

Mr. Muhammad Riaz Khan Paindakhel,  
Additional Advocate General.....For respondents.

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Date of Institution.....19.04.2016  
Dates of Hearing.....28.11.2022  
Date of Decision.....28.11.2022

.....  
**Service Appeal No.532/2016**

**Syed Shahin Shah**, Deputy District Officer, (Finance) office of the Executive District Officer, Finance & Planning District Government Mardan.

.....(Appellant)

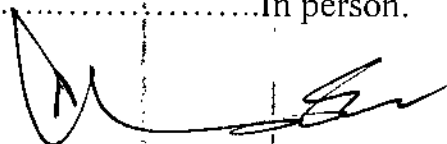
Versus

1. **The Government of Khyber Pakhtunkhwa** through the Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **The Chief Secretary**, Government of Khyber Pakhtunkhwa, Civil secretariat, Peshawar.
3. **The Secretary**, Establishment Department, Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
4. **The Secretary**, Local Government & Rural Dev; Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. **The DG** Local Government & Rural Development Department, Khyber Pakhtunkhwa, Hayatabad Phase-V Peshawar.
6. **The Secretary** Local Council Board, Peshawar

.....(Respondents)

Present:

Syed Shain Shah,  
Appellant .....In person.



Mr. Muhammad Riaz Khan Paindakhel,  
Additional Advocate General.....For respondents.

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Date of Institution.....28.12.2017  
Dates of Hearing.....28.11.2022  
Date of Decision.....28.11.2022

.....  
**Service Appeal No.1443/2018**

**Syed Shahin Shah, Deputy Director (BPS-18) (Finance & Accounts),  
Hayatabad Phase-V, Peshawar.**

.....**Appellant)**

Versus

1. **The Government of Khyber Pakhtunkhwa** through the Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **The Chief Secretary**, Government of Khyber Pakhtunkhwa, Civil secretariat, Peshawar.
3. **The Secretary**, Establishment Department, Government of Khyber Pakhtunkhwa Civil Secretariat, Peshawar.
4. **The Secretary**, Local Government & Rural Dev; Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5. **The Secretary** to the Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
6. **The SSRC** through its Chairman/Secretary to the Government of Khyber Pakhtunkhwa, Establishment Department, Civil Secretariat, Peshawar.

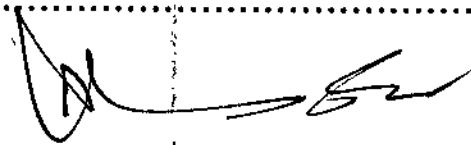
.....**(Respondents)**

Present:

Syed Shain Shah,  
Appellant .....In person.

Mr. Muhammad Riaz Khan Paindakhel,  
Additional Advocate General.....For respondents.

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Date of Institution.....29.11.2018  
Dates of Hearing.....28.11.2022  
Date of Decision.....28.11.2022

.....  


**Service Appeal No.12170/2020**

**Syed Shahin Shah**, Deputy Director (Finance & Accounts), (BPS-18)  
Hayatabad, Phase-V, Peshawar.

.....**Appellant)**

Versus

1. **The Government of Khyber Pakhtunkhwa** through the Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
2. **The Government of Khyber Pakhtunkhwa** through Secretary Establishment, Civil Secretariat, Peshawar.
3. **The Secretary**, Local Government & Rural Dev; Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. **The Secretary** to the Government of Khyber Pakhtunkhwa, Finance Department, Civil Secretariat, Peshawar.
5. **The SSRC** through its Chairman/Secretary to the Government of Khyber Pakhtunkhwa Local Government Department Civil Secretariat, Peshawar.
6. **The Faiz Muhammad** (Deputy Director), BPS-18 office of Directorate General Local Government Rural Development Department, Hayatabad, Phase, 5 Plot No,20.
7. **The Israr Ullah** (Deputy Director), BPS-18 office of Directorate General Local Government Rural Development Department, Hayatabad, Phase, 5 Plot No,20.

.....**(Respondents)**

Present:

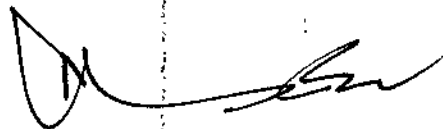
Bilal Ud Din Khattak,  
Advocate.....For appellant.

Mr. Muhammad Riaz Khan Paindakhel,  
Additional Advocate General.....For respondents.

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Date of Institution.....16.10.2020  
Dates of Hearing.....28.11.2022  
Date of Decision.....28.11.2022

**CONSOLIDATED JUDGMENT**

**KALIM ARSHAD KHAN CHAIRMAN:** Through this single judgment this appeal and the above mentioned connected service appeals are decided as all the five

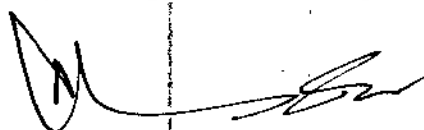


*Service Appeal No.76/2014 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others", Service Appeal No.532/2016 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others", Service Appeal No.153/2018 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others", Service Appeal No.1443/2018 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others" and Service Appeal No 12170/2020 titled "Syed Shahin Shah versus Government of Khyber Pakhtunkhwa and others" decided on 28.11.2022 by Division Bench comprising Kalim Ashad Khan, Chairman, and Fareeha Paul, Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

appeals are filed by the appellant, Syed Shahin Shah, and the controversy in the appeals is almost the same or somehow or the other interdependent or regarding the alleged violation of the terms and conditions of service of the single appellant

02. The appellant joined the Local Government and Rural Development Department, Khyber Pakhtunkhwa as Accounts Officer after being recommended by the Khyber Pakhtunkhwa Public Service Commission; that due to restructuring of the Local Government and Rural Development Department, Khyber Pakhtunkhwa, the appellant became surplus and was adjusted in the office of the then District Coordination Officer, Peshawar against the vacant post of Accounts Officer; that after three months, the appellant was again declared surplus and repatriated to the Local Government and Rural Development Department, Khyber Pakhtunkhwa; that the issue was strongly agitated by the appellant which resulted into his dismissal and then he was reinstated by this Tribunal; that the appellant was transferred again to Buner; that the appellant was then posted as Deputy District Officer (Finance) Mardan; that the appellant was transferred to the Local Government and Rural Development Department, Khyber Pakhtunkhwa under the garb of repatriation and adjustment order dated 29.07.2013; that the appellant remained on the strength of the Local Government and Rural Development Department, Khyber Pakhtunkhwa and was promoted to the post of Deputy Director (Finance and Accounts) BPS-18 by the Local Government and Rural Development Department, Khyber Pakhtunkhwa. During his career he found aggrieved of certain departmental actions and filed the above titled appeals.

03. Through the instant appeal, the appellant has challenged an order No.SO(LG-1)10-458/2008 dated 29.07.2013, whereby the appellant, on repatriation from the



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Establishment Department vide Notification No.SOE-II(ED)2(5)2012 dated 31.12.2012, was adjusted against the vacant post of Accounts Officer (BS-17) in Directorate General, Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar from the date of his arrival i.e. with effect from 04.01.2013. The prayer made in the appeal is that the order dated 29.07.2013 might be set aside and the appellant might be posted against his original post against which he was posted after being declared surplus for the post for the first time on 18.08.2001 with all service benefits including seniority to be counted with Establishment Department. It is at the very outset observed that the appellant through the instant appeal, in a way, seeks annulment of repatriation but he has not challenged the repatriation Notification of 31.12.2012.

04. Service Appeal, No.532/ 2016, under section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 read with order of the honourable Peshawar High Court in writ Petition No.745-P/2012 dated 23.02.2016 to abolish the impugned PMS (Former PCS) Rules, 2007, being against the fundamental rules, Civil Servants Act No.VIII 1973, Notification issued under Civil Servant Act, 1973 and against the article 240(b) and 241 of the Constitution of Islamic Republic of Pakistan. The prayer in the appeal is to declare the scheduled posts quotas in Provincial Management Services (PMS) of section officers, executive group employees and posting of federal civil servants unconstitutional, illegal, without lawful authority, void ab initio, malicious and prejudiced to the rights and claim of the appellant to the post of Additional Secretary (BPS-19) or Special Secretary etc in Finance Department and other, Khyber Pakhtunkhwa with effect from 01.01.2009 with due further promotion and security of dignity and career of appellant as the government already gave approval but restricted and not implemented by the Establishment

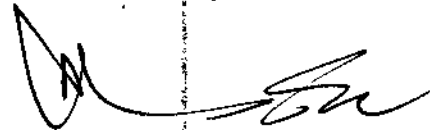


Department where the employee of Provincial Management Service (PMS) etc quota are functioning and the Establishment Department should be directed to issue the notification as prayed.

5. In Service Appeal No.153 of 2018, the appellant has challenged the final seniority list dated 22.08.2017 as stood on 30.12.2016 wherein the name of the appellant was not mentioned in the seniority list of (BS-17 officials) Assistant Directors/Planning Officer of the Local Government & Rural Development Department. It is prayed in the appeal that the respondents might be directed to include the name of the appellant in the seniority list of BPS-17 officers/Assistant Directors/Planning Officers of the Local Government & Rural Development Department dated 22.08.2017 at proper place as per law.

6. In Service Appeal No.1443 of 2018, the appellant has challenged the Notification No.SO(LG-I)2-188/SSRC/2018 dated 01.08.2018, alleging that designation of the appellant as Accounts Officer was not mentioned in the impugned Service Rules of Directorate General, Local Government & Rural Development Department for the post of Director whereas Assistant Director with 12 years' regular service experience and Assistant Director Seniors were mentioned. It is prayed that the respondents might be directed to convene the Standing Service Rules Committee (SSRC) meeting for inclusion and notifying the service designation of Accounts Officer with 12 years' service for the post of Director which is to be notified in the modified notification of the department concerned.

7. In Service Appeal No.12170 of 2020, the appellant has challenged the Notification No.SO(E)LG/2-128/Promotion/2019, dated 11.11.2019, whereby private respondents No.6 & 7 were promoted to the post of Directors (BPS-19) and



the appellant was not. It is prayed in the appeal that the respondents might be directed to revoke the impugned Notification of promotion of under probationers and junior officers to BPS-19 and to further declare the proceedings of the PSB meeting before issuance of impugned notification dated 11.11.2019 illegal, void ab initio, malicious, against the law, without lawful authority, unconstitutional and against the fundamental rights of appellant under article 183(3) of the Constitution.

8. All the above five appeals were admitted to full hearing and the respondents were directed to file replies. They, on putting appearance, filed replies in all the appeal, raising therein numerous legal and factual positions. The defence setup was, however, a total denial of the claims of the appellant made in the above appeals.

9. We have heard, the appellant in all the appeals, his learned counsel in one of the appeals and learned Additional Advocate General for the respondents.

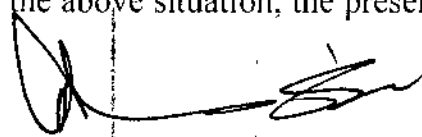
10. The appellant and his learned counsel reiterated the grounds mentioned in all the appeals and submitted for acceptance of the same, while the learned law officer refuted the arguments of the appellant and prayed for dismissal of the appeals.

11. Taking the first appeal first. As aforesaid, through the instant appeal, the appellant, though sought his repatriation to his parent department be declared wrong, has actually assailed the adjustment/posting order. This fact was specifically alleged by the official respondents in paragraph 5 of the reply. Moreover, in SA No.153 of 2018 the appellant is fighting for getting seniority, which means that he has otherwise accepted even his repatriation, by categorically and unequivocally stating in ground "E" of the grounds of SA No.153 of 2018 that he was regular employee of the Local Government & Rural Development Department. While in ground "F" of SA 153/2018 he himself urged that when repatriated to his parent





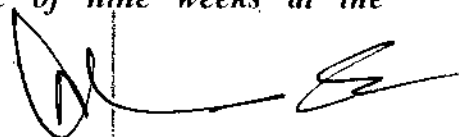
department, his seniority was to be restored. So when he himself is voicing for his alleged service rights in his parent department after his repatriation, even his repatriation could not be interfered with. In paragraph 3 of the reply, the department alleged that the District Coordination Officer and District Nazim were strongly complaining about the poor performance of the appellant and his lack of interest in the official duty and he was placed in the surplus pool for adjustment in any Government Department; that subsequently he was adjusted as Accounts Officer, Directorate of Information, Government of Khyber Pakhtunkhwa by the Establishment Department but again due to inefficiency and unsatisfactory performance he was surrendered and was again placed in the surplus pool; he was then adjusted in the Zakat, Ushar Department and then Planning Officer in the Planning & Development Department but because of his indulgence in direct correspondence with the President of Pakistan, Prime Minister of Pakistan and Chief Minister, Khyber Pakhtunkhwa, using abusive language and misconduct, he was proceeded against under the Khyber Pakhtunkhwa Removal From Service (Special Powers) Ordinance, 2000 and was dismissed from service, however, he was reinstated in service by this Tribunal and posted as Deputy District Officer (Finance) Buner and then Deputy District Officer (Finance), Mardan. Regarding the repatriation, the respondents replied that the appellant was a surplus employee since 2001, however, on revival of the Directorate General, Local Government & Rural Development, one post of Accounts Officer (BS-17) was created against which he was adjusted. Thus on revival of the Directorate General of LG & RD his repatriation to his parent department would not be said to be violation of any of his terms and conditions of service. In view of the above situation, the present appeal is misconceived and is dismissed with costs.



12. Coming to SA No.532 of 2016, in this appeal, the appellant has challenged the rules notified vide Notification No.SOE-II(ED)2(14)2007 dated 11.05.2007. The Rules notified vide the above Notification are called as "The Khyber Pakhtunkhwa Provincial Management Service Rules, 2007". The nomenclature as used shows and clarifies that these are purely meant for the regulation of services of the Provincial Management Service Officers (PMSOs). These pertain to the method of recruitment, minimum qualification, age limit and other matters related thereto for the service as given in schedule I annexed with the rules. Schedule I contains the details of the PMSOs from BS-17 to BS 21 with their respective minimum qualifications, age limit and method of recruitment. These rules were notified in the year 2007 and this appeal has been filed on 19.04.2016 with no application for condonation of delay or even an explanation for its delayed filing. Besides, there is no departmental representation on the file challenging the rules. Last but not the least the respondents have urged in the reply that the appellant did not belong to the PMS, therefore, he could not be absorbed into PMS on the basis of experience as well as qualification because PMS Rules did not provide such absorption other than the prescribed manner. The reply further elaborates that according to the PMS Rules, 2007, recruitment to the post of PMS BS 17 is made in the following manner:-

*a. Fifty percent, through initial recruitment on the recommendations of the Public Service Commission having 2<sup>nd</sup> Division Bachelor Degree from a recognized University based on the result of competitive examination to be conducted by it in accordance with the provisions contained in Schedule IV (Age 21-30 years).*

*b. Twenty percent, on the basis of seniority-cum-fitness, from amongst Tehsildars, who are graduates, on the basis of seniority-cum-fitness, having three years' service as Tehsildar/Naib Tehsildar and have undergone training course of nine weeks at the*



***Pakistan Provincial Services Academy or Provincial Staff Training Institute.***

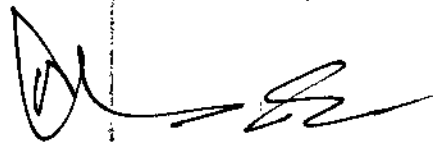
***c. twelve percent, on the basis of seniority-cum-fitness, from amongst Superintendents, who are graduates having three years' service as Superintendent or Assistant and have undergone training course of nine weeks at the Pakistan Provincial Services Academy or Provincial Staff Training Institute.***

***d. Eight percent, on the basis of seniority-cum-fitness, from amongst Private Secretaries or Personal Assistants, who have opted to join Provincial Management Service and are graduates with three years' service as Private Secretary or Personal Assistant and have undergone training course of nine weeks at the Pakistan Provincial Services Academy or Provincial Staff Training Institute.***

***c. Ten percent, by selection from amongst the persons holding substantive posts of Superintendents, Private Secretaries, Assistants, Senior Scale Stenographers, Stenographers, Data Entry Operators, Computer Operators, Senior and Junior Clerks borne on the cadre strength of the Secretariat who possess 2<sup>nd</sup> class Bachelor's Degree qualification from a recognized University with at least five years' service as such.***

It was added that besides the above provision there was no other way for induction/absorption to PMS (BS-17) on the basis of qualification/experience, hence the claim of the appellant was baseless. It was also contended that the case of the appellant for his absorption/appointment into PMS was not covered under the rules.

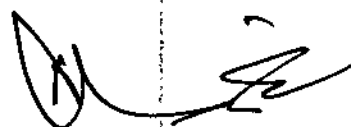
13. Be that as it may, the appellant slept over the issue of rules for a couple of years and no explanation was offered by him for such delay. According to 2018 SCMR 997 titled "Syed Rizwan Ahmad versus Secretary CADD Islamabad", the august Supreme Court of Pakistan held that where a right was required to be asserted, it had to be done vigilantly and no indulgence could be shown to indolent and negligent litigant. In matters relating to arising out of the service matters, a civil servant had to display vigilance and promptitude in approaching the appropriate fora and unexplained delay was always a material factor which could prove fatal for him.



14. Therefore, this appeal being barred by time as well as meritless is dismissed with costs.

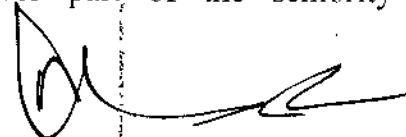
15. Regarding SA No.153/2018, the stance of the respondents, as contended in the reply, is that the appellant belongs to the Accounts Cadre while the service rules framed during the year 1998 pertain to the Planning Officers as well as Assistant Directors of the Local Government & Rural Development Department, which is a separate cadre and has no concern with the appellant. The appellant could not rebut the contention of the respondents that he belonged to Accounts Cadre, which was entirely a separate/different cadre and thus he could not claim seniority with the above two cadres. Therefore, there is no case of the appellant to merge him with a different cadre. Thus this appeal is groundless and is accordingly dismissed with costs.

16. Now coming to the Service Appeal No.1443 of 2018. The appellant in this appeal has challenged the rules notified on 01.08.2018 and alleged that service designation of Accounts Officer with 12 years' service for the post of Director was required to be notified in the modified notification. The respondents in their reply contended that on the basis of the impugned rules, the appellant himself got his promotion vide Notification No.SO(LG-I)2-128/2018 dated 12.10.2018. It is important to observe here that the service rules cannot be framed to suit the convenience or wishes of a particular section or group of employees or an individual. These are for the convenience of the government. It is not disputed that the rules were framed by a duly authorized body or were against any law, it is rather prayed that the post of the appellant should be included in the ladder of another cadre so that he could get benefitted from that. This is a sort of individual wish of



the appellant and rules cannot be framed for individual wishes. As already stated the appellant was promoted on the strength of the disputed rules, therefore, his challenging the same would be an estoppel on his part. During the course of arguments, it was contended by the respondents that by way of the disputed rules, very recently, the post of Deputy Director (Finance and Accounts) BPS-18 was introduced and the appellant was promoted against the same, so it would not be for the interest of public service that another post of Director (Finance and Accounts) should be created in the rules so as to benefit only an individual. Therefore, the appeal cannot succeed and is accordingly dismissed with costs.

17. In Service Appeal No.12170 of 2020, the appellant has challenged the Notification No.SO(E)LG/2-128/Promotion/2019 dated 11.11.2019, whereby private respondents No.6 & 7 were promoted to the post of Directors (BPS-19) and the appellant was not. It is contended by the appellant that he was senior to the private respondents, therefore, the promotion Notification ought to have been struck down. In the reply, the respondents submitted that the private respondents were inducted into service on the recommendations of the Khyber Pakhtunkhwa Public Service Commission against the Administrative Cadre as Assistant Directors (BPS-17), Local Government & Rural Development Department vide order No.SO(LG-1)2-204/90 dated 08.03.1992, while the appellant joined the Local Government & Rural Development Department as Accounts Officer vide No.SO(LG-I)2-204/96 dated 22.04.1996 thus not only he was junior to them but also he was hailing from a separate cadre i.e. Finance and Accounts. It was added that separate seniority lists were maintained by the Local Government & Rural Development Department for Administrative and Finance & Accounts cadres and the appellant being from the Finance and Accounts Cadre was never part of the seniority list of the



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Member, Executive, Khyber Pakhtunkhwa Service Tribunal, Peshawar.*

Administrative Cadre and had never objected to that; that the seniority of the private respondents Faiz Muhammad and Israrullah was unchallenged and final as validated by the decision of this Tribunal in Service Appeal No. 1182 decided on 13.02.2018. There is no denying the fact that name of the appellant is nowhere figuring on the seniority list on the basis of which the private respondents were promoted, therefore, he does not have any cause of action or locus standi to challenge the same. This being so, this appeal is also misconceived and ill-founded and, therefore, dismissed with costs. Copies of this judgment be placed on all the connected files. Consign.

18. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 28<sup>th</sup> day of November, 2022.***



**KALIM ARSHAD KHAN**  
Chairman



**FAREEHA PAUL**  
Member (Executive)

**ORDER**

28<sup>th</sup> Nov, 2022

1. Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present.

2. Vide our detailed judgement of today placed on file this appeal and the connected four appeals are misconceived and ill-founded and, therefore, dismissed with costs. Copy of this judgment be placed in all the connected files. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 28<sup>th</sup> day of November, 2022.*



**(Kalim Arshad Khan)**  
**Chairman**



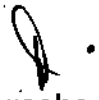
**(Fayeeka Paul)**  
**Member(Executive)**

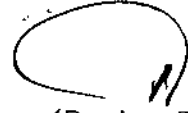
18.07.2022

Appellant alongwith his counsel present.

Muhammad Adeel Butt, learned Additional Advocate General alongwith Irshad Khan S.O for respondents present.

Former requested for adjournment in order to prepare the brief of the case. Adjourned. To come up for arguments on 12.09.2022 before D.B.


  
(Fareeha Paul)  
Member(E)

  
(Rozina Rehman)  
Member (J)

12.09.2022

Appellant in person present. Mr. Muhammad Riaz Khan, Paindakhel, Assistant Advocate General alongwith Mr. Riaz Khan, Superintendent for the respondents present.

Mr. Mian Muhammad, learned Member (Executive) is on leave, therefore, arguments could not be heard. Adjourned. To come up for arguments before the D.B on 28.11.2022

  
(Salah-Ud-Din)  
Member (J)



3-12-21

Proper D.B on Laws, therefore case is adjourned to 16-2-22 for same.

16-2-22

*J. Raza*

Due to Retirement of the Honble Chairman the case is adjourned to come up for the same as before on 11-5-22

*M. Raza*

11<sup>th</sup> May, 2022

Appellant present in person. Mr. Muhammad Riaz Khan Paindakhel, Assistant A.G alongwith Muhammad Riaz Superintendent for the respondents present.

Learned counsel for the appellant is not in attendance. Last opportunity is granted to the appellant to produce his counsel on next date, otherwise, the case will be decided on the basis of available record. To come up for arguments on 18.07.2022 before the D.B.



(Fareeha Paul)  
Member(E)

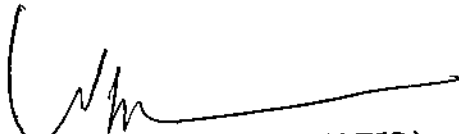


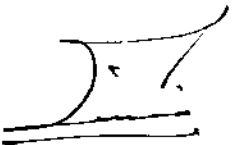
(Kalim Arshad Khan)  
Chairman

03.09.2021

Appellant alongwith his counsel Syed Noman Ali Bukhari, Advocate, present. Mr. Riaz, Superintendent and Mr. Rasheed Ahmed, Assistant (Litigation) alongwith Mr. Riaz Ahmed Paindakheil, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested that as other Service Appeals of the appellant are also pending adjudication in this Tribunal and in this respect, the appellant is going to submit an application for fixing of all the service appeals on same date. Adjourned. To come up for arguments before the D.B on 01.10.2021.

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

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

1-10-2021

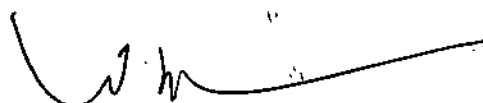
*Due to non Availability of the concerned DB The case is adjourned to 10-11-2021*

  
Reader

10.11.2021

Appellant alongwith his counsel Syed Noman Ali Bukhari, Advocate present. Mr. Naheed Gul, Assistant alongwith Mr. Javed Ullah, Assistant Advocate General for respondents present.

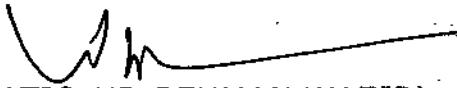
Learned counsel for the appellant requested for adjournment as he has not made preparation for arguments. Adjourned. To come up for arguments before the D.B on 03.12.2021.

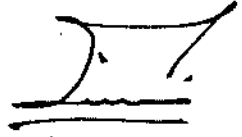
  
(ATIQU UR REHMAN WAZIR)  
MEMBER (E)

  
(SALAH-UD-DIN)  
MEMBER (J)

27.07.2021

Appellant in person present. Mr. Muhammad Rasheed, Deputy District Attorney for the respondents present and requested for adjournment on the ground that he has not prepared the brief of the instant appeal. Adjourned. To come up for arguments before the D.B on 26.08.2021.

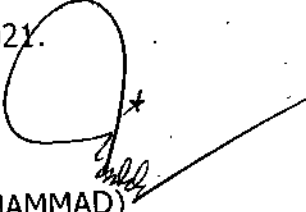
  
(ATIQ-UR-REHMAN WAZIR)  
MEMBER (EXECUTIVE)

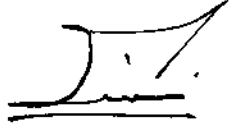
  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

26.08 .2021

Appellant in person present. Mr. Muhammad Rashid, DDA for respondents present.

Appellant requested for adjournment for further preparation for arguments. Adjourned. To come up for arguments before the D.B on 03.09.2021.

  
(MIAN MUHAMMAD)  
MEMBER (EXECUTIVE)

  
(SALAH-UD-DIN)  
MEMBER (JUDICIAL)

29.12.2020

Due to summer vacation, case is adjourned to 31.03.2021 for the same as before.



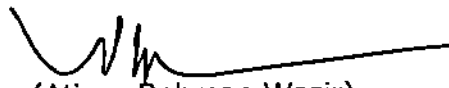
Reader

31.03.2021

Appellant in person present.

Mr. Kabirullah Khattak, Addl. AG for respondents present.

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, case is adjourned to 15.07.2021 for arguments before the D.B.



(Atiqur Rehman Wazir)  
Member(E)




(Rozina Rehman)  
Member(J)


15.07.2021

Appellant in person present. Muhammad Adeel Butt, Additional Advocate General for the respondents present.

Appellant requested that he want to argue the instant appeal personally, therefore, time may be granted to him for preparation. Adjourned. To come up for arguments before the D.B on 27.07.2021.



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



(SALAH-UD-DIN)  
MEMBER (JUDICIAL)



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

Dated Peshawar, the December 31, 2012

**NOTIFICATION**

**NO.SOE-II(ED) 2(5)/2012:-** Consequent upon the enforcement of Khyber Pakhtunkhwa Local Government Act, 2012 w,e,f. 1<sup>st</sup> January, 2013 and abolition of the BS-17 posts of DDO(R), DDO(J), HRDOs and DDO(F), the Provincial Government is pleased to repatriate the following officers to their parent Departments as noted against each:-

S. N O	NAME OF OFFICER	FROM	TO
1.	Mr. Sher Rehman, Tehsildar (BS-16)	Former DDO(J), Charsadda	Board of Revenue, Khyber Pakhtunkhwa
2.	Mr. Lal Said, Tehsildar (BS-16)	Former DDO(J), Mardan	Board of Revenue, Khyber Pakhtunkhwa
3.	Syed Iftikhar Hussain Shah, PS (BS-16)	Former HRDO, D.I.Khan	Board of Revenue, Khyber Pakhtunkhwa
4.	S. Khalid Israr Shah (BS-17), Surplus employee of LG&RDD	Former HRDO, Lakki Marwat	LG&RD Deptt: / SO(E-V), Establishment Department.
5.	Mr. Sharafat Gul, Research Officer (BS-17)	Former HRDO, Nowshera	Agriculture Department
6.	Mr. Alamzeb, Asstt: Accounts Officer (BS-17)	Former DDO(F), Peshawar	Accountant General, Khyber Pakhtunkhwa.
7.	Mr. Khanwar Khan, Audit Officer (BS-18)	Former DDO(F), Charsadda	Director General (Audit), Distt: Govt. Khyber Pakhtunkhwa.
8.	Syed Shahinshah, BS-17 Surplus employee of LG&RDD	Former DDO(F), Mardan	LG&RD Deptt: / E-V Section, Establishment Department
9.	Mr. Muhammad Ibrahim, Surplus EAC/Illaqa Qazi (BS-17)	Former DDO(F), Malakand	Report to E-V Section, Establishment Department.
10.	Mr. Babar Bashir, Subject Specialist (BS-17)	Former DDO(F), Mansehra	Elementary & Secondary Education Department

CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

P.T.O.

**Endst. No. of even and date.**

*Copy forwarded to the:-*

1. Additional Chief Secretary, P&D, Khyber Pakhtunkhwa.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Additional Chief Secretary, FATA Secretariat.
4. Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Provincial Police Officer, Khyber Pakhtunkhwa.
9. Accountant General, Khyber Pakhtunkhwa.
10. All Deputy Commissioners in Khyber Pakhtunkhwa.
11. All Political Agents in FATA
12. Director (PD) Establishment Division, Islamabad.
13. Section Officer (E-5/PAS) Establishment Division, Islamabad.
14. Director, Information, Khyber Pakhtunkhwa.
15. Officers concerned.
16. Manager, Govt. Printing Press Peshawar.
17. SO(Secret) /SO(Admn)/ EO/Librarian, E&A Department.
18. PS to Chief Secretary, Khyber Pakhtunkhwa.
19. PS to Secretary Establishment.
20. PS to Special Secretary(Estt), Establishment Department.
21. PAs to AS(E)/AS(HRD)/DS(E) /DS(Admn), E&A Department.

**SECTION OFFICER (E-II)**

**\*\*IHSAN AFRIDI\*\***

13.03.2020

Appellant in person present. Mr. Zia Ullah learned Deputy District Attorney present. Appellant submitted wakalat nama in favor of Bilal ud Din Advocate and seeks adjournment. Adjourn. To come up for arguments on 30.04.2020 before D.B.

  
Member

  
Member

30.04.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 06.08.2020 before D.B.

  
Reader

06.08.2020


Due to summer vacation case to come up for the same on 26.10.2020 before D.B.


  
Reader

26.10.2020

Appellant in person and Addl. AG for the respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 29.12.2020 for hearing before the D.B.

  
(Atiq-ur-Rehman Wazir)  
Member

  
Chairman

12.12.2019

Appellant in person present and seeks adjournment. Zar Muhammad Assistant representative of the respondent department present. Lawyers are on strike on the call of Khyber Pakhtunkhwa Bar Council. Adjourn. To come up for further proceedings/arguments on 16.01.2020 before D.B.

  
Member

  
Member

16.01.2020

Appellant absent. Learned counsel for the appellant absent. Mr. Kabirullah Khattak learned Additional Advocate General for the respondents present. Due to general strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the case is adjourned. To come up for further proceedings/arguments on 27.02.2020 before D.B. Appellant be put to notice for the date fixed.

  
Member

  
Member

27.02.2020

Appellant with counsel present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General alongwith Zar Muhammad Assistant present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 13.03.2020 before D.B.

Member

  
Member



19.07.2019


Appellant in person and Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Saleem, Superintendent for the respondents present. Appellant requested for adjournment on the ground that his counsel is busy in the Hon'be Peshawar High Court, Peshawar. Adjourned to 13.09.2019 for arguments before D.B.

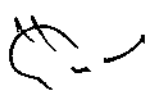
  
(HUSSAIN SHAH)  
MEMBER

  
(M. AMIN KHAN KUNDI)  
MEMBER

13.09.2019


Appellant with counsel present. Mr. Zia Ullah learned, Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned by way of last chance. To come up for arguments on 03.10.2019 before D.B.


  
Member

  
Member

03.10.2019

Appellant in person present. Mr. Riaz Khan Paindakheil learned Assistant Advocate General present. Appellant seeks adjournment as his counsel is not in attendance. Adjourn. To come up for arguments on 12.12.2019 before D.B.

  
Member


  
Member


04.1.2019

Appellant in person and Mr. Ziaullah, Deputy District Attorney alongwith Saleem Khan, Superintendent for the respondents present.

The appellant states that his learned counsel is appearing before the Apex Court, Islamabad today, therefore, requests for adjournment.

Adjourned to 12.3.2019 for arguments before the D.B.

  
Member

  
Chairman

12.03.2019

Appellant in person and Mr. Ziaullah, DDA alongwith Nizamud Din, Assistant for the respondents present.

Appellant requests for adjournment as his learned counsel is busy before the Honourable High Court today in many cases.

Adjourned to 10.05.2019 before the D.B.

  
Member


  
Chairman

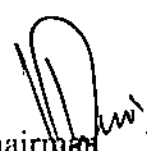
10.05.2019

Counsel for the appellant and Mr. Ziaullah, DDA alongwith Mr. Saleem Khan, SO for respondents present.

Learned counsel for the appellant argued that case at some length but when confronted with the proposition regarding portion/part of surplus pool policy dated 08.06.2001 applicable to the case of the appellant, he requested for further time to prepare the brief.

Adjourned to 19.05.2019 for arguments before D.B.

  
Member

  
Chairman

05.09.2018

Appellant absent. Learned counsel for the appellant is also absent. However, junior counsel for the appellant present and requested for adjournment on the ground that learned senior counsel for the appellant is busy before the august Supreme Court of Pakistan. Mr. Muhammad Jan, Deputy District Attorney alongwith Mr. Muhammad Saleem, Superintendent for the respondents present. Adjourned. To come up for arguments on 05.10.2018 before D.B.

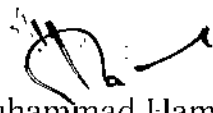
  
(M. Amin Khan Kundi)  
Member

  
(M. Hamid Mughal)  
Member

05.10.2018

Learned counsel for the appellant and Mr. Riaz Paindakheil learned Assistant Advocate General alongwith Mr. Saleem Khan Superintendent present. Learned counsel for appellant seeks adjournment. Adjourned. To come up for arguments on 15.11.2018 before D.B.

  
(Hussain Shah)  
Member

  
(Muhammad Hamid Mughal)  
Member

15.11.2018

Due to retirement of Hon'ble Chairman, the Tribunal is defunct. Therefore, the case is adjourned. To come up on 04.01.2019.

  
READER

09.1.20178


Appellant in person and Mr. Muhammad Jan, DDA alongwith Khanzad Gul, SO for the respondents present. Counsel for the appellant was stated to be busy before the Worthy High Court. Seeks adjournment. To come up for arguments on 13.03.2018 before the D.B.


  
Member

  
Chairman

13.03.2018

Learned counsel for appellant and Mr. Usman Ghani, learned District Attorney alongwith Hayat Ullah, Superintendent for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 02.05.2018 before D.B

  
(M.Amin Khan Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

02.05.2018


Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak, learned Additional Advocate General alongwith Atta Ur Rehman ASI for the respondents present. The Tribunal is defunct due to retirement of Hon'ble Chairman. Therefore the case is adjourned. To come up for the same on 17.07.2018.

  
READER

17.07.2018

Learned counsel for the appellant and Mr. Muhammad Jan, Learned Deputy District Attorney present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 05.09.2018 before D.B

  
(Ahmad Hassan)  
Member

  
(Muhammad Hamid Mughal)  
Member

23.05.2017

Counsel for the appellant present. Mr. Hayatullah, Superintendent alongwith Mr. Kabirullah Khattak, Assistant AG for the respondents also present. Learned counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 08.08.2017 before D.B.

(GUL ZEE KHAN)  
MEMBER

(MUHAMMAD AMIN KHAN KUNDI)  
MEMBER

08.08.2017

Clerk of the counsel for appellant present. Mr. Muhammad Jan, Deputy District Attorney for the respondents present. Arguments could not be heard as lawyer community is on general strike. Adjourned. To come up for arguments on 03.11.2017 before D.B.

(Muhammad Amin Khan Kundi)  
Member (J)

(Muhammad Hamid Mughal)  
Member (J)

3.11.2017

Appellant with counsel and Mr. Ziaullah, DDA alongwith Muhammad Saleem, Supdt. for the respondents present. The learned counsel for the appellant seeks adjournment. To come up for arguments before the D.B on 09.01.2018.

Member

Chairman

01.06.2016

Appellant in person and Mr. Hayatullah, Supdt alongwith Mr. Usman Ghani, Sr.Gp for respondents present. Appellant requested for adjournment. To come up for arguments on 18.10.2016.



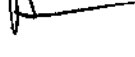
Member



Member

18.10.2016

Mr. Taimur Khan, Advocate, Junior to counsel for the appellant and Mr. Hayatullah, Supdt alongwith Asst: AG for respondents present. Junior to counsel for the appellant requested for adjournment as senior counsel was busy before the Peshawar High Court, Peshawar. To come up for arguments on 15.02.2017.




(ABDUL LATIF)  
MEMBER




(PIR BAKHSH SHAH)  
MEMBER

15.02.2017

Counsel for the appellant and Mr. Ziaullah, GP alongwith Mr. Hayat Ullah, Supdt for respondents present. Counsel for the appellant requested for adjournment. Request accepted. To come up for arguments on 23.05.2017 before D.B.




(AHMAD HASSAN)  
MEMBER



(ASHFAQUE TAJ)  
MEMBER

20.02.2015

Appellant with counsel and Mr. Hayatullah, Supdt. for respondents No. 3, 4 & 5 alongwith Muhammad Jan, G.P for respondents present. Written reply on behalf of respondents No. 3, 4 & 5 submitted. To come up for rejoinder on 9.6.2015.

  
Member,  
SDF, Peshawar,  
Peshawar, FATA  
Office, Peshawar.

09.06.2015


Counsel for the appellant and Addl. A.G for respondents present. Learned counsel for the appellant requested for adjournment. The appeal is assigned to D.B for rejoinder and final hearing for 11.11.2015.

  
Chairman

11.11.2015

Appellant in person and Mr. Muhammad Jan, GP for the respondents present. Rejoinder received. Copy handed over to the learned GP. To come up for arguments on

16-3-2016

  
Member

  
Member

16.03.2016

Clerk to counsel for the appellant and Mr. Wahdat, SDFO alongwith Mr. Ziaullah, GP for respondents present. Learned counsel for the appellant stated to be busy before the Hon'ble Peshawar High Court, therefore, case is adjourned to 1-6-16 for arguments.

  
MEMBER

  
MEMBER

Appeal No. 76/2014  
Syed Shauqat

15.05.2014

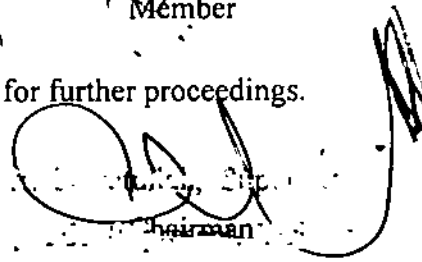
Counsel for the appellant present. Preliminary argument heard and case file perused. Counsel for the appellant contended that the appellant has not been treated in accordance with law/rules. Against the impugned order dated 29.07.2013 as received to the appellant on 20.08.2013, he filed departmental appeal on 28.08.2013, which has not been responded within the statutory period of 90 days, hence the present appeal on 27.12.2013. Points raised at the Bar need consideration. The appeal is admitted to regular hearing subject to all legal objections. The appellant is directed to deposit the security amount and process fee within 10 days. Thereafter, Notices be issued to the respondents. To come up for written reply/comments on 08.08.2014.

Appellant Deposited  
Security & Process Fee  
RS - - - 240/- Bank  
Receipts Attached with File.

  
Member

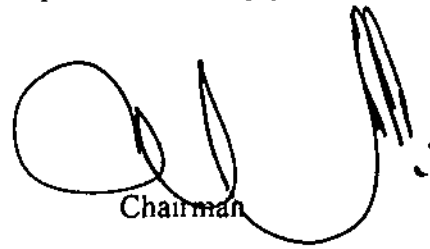
15.05.2014

This case be put before the Final Bench I for further proceedings.



08.08.2014

Counsel for the appellant and Mr. Hayatullah, Supdt. for respondent No. 4 with AAG for the respondents present. Written reply has not been received, and request for further time made on behalf of the respondents. To come up for written reply/comments on 5.12.2014.

  
Chairman

05.12.2014

Appellant in person and Mr. Hayatullah, Supdt. for respondent No. 4 with Mr. Muhammad Adeel Butt, AAG for the respondents present. The Tribunal is incomplete. To come up for written reply/comments on 20.02.2015.

  
Reader



3 -

13.03.2014


Counsel for the appellant present and requested for adjournment. To come up for preliminary hearing with special reference to Establishment Department order dated 31.12.2013 on 02.04.2014.

  
Member

4.

02.04.2014



Appellant in person present and filed copies of Establishment Department Notification dated 31.12.2012 and Local Government Department order dated 29.07.2013. He requested for adjournment. To come up for preliminary hearing on 15.05.2014.

  
Member

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_

Case No. 76/2014


S.No.	Date of order Proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	15/01/2014	<p>The appeal of Syed Shahinshah resubmitted today by Mr. M. Asif Yousafzai Advocate may be entered in the Institution register and put up to the Worthy Chairman for preliminary hearing.</p> <p style="text-align: right;">   REGISTRAR </p>
2	20-1-2016	<p>This case is entrusted to Primary Bench for preliminary hearing to be put up there on <u>13-3-2016</u></p> <p style="text-align: right;">   CHAIRMAN </p>

The appeal of Syed Shahinshah Accounts Office LG&RDD Peshawar received today i.e. on 27.12.2013 is incomplete on the following scores which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Appeal may be got signed by the appellant.
2. Annexures of the appeal may be attested.
3. Eight more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 1868 /S.T.

Dt. 27/12 /2013

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. M. Asim JAW@Adv. Pesh.

*Re-submitted after compliance*  
*Jan Sai*

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

Appeal No. 76 /2018/

Syed Shahinshah

V/S


Government of KPK etc.

**INDEX**

S.No.	Documents	Annexure	Page No.
1.	Memo of Appeal	-----	01-04
2.	Copy of Notification (22.4.1996)	- A -	05
3.	Copy of Adjustment Order (18.8.2011)	- B -	06-
4.	Copy of Judgment of KPK Service Tribunal	- C -	07-16
5.	Copy of Judgment of Supreme Court of Pakistan	- D -	17-26
6.	Copy of Order of KPK Service Tribunal.	- E -	27-28
7.	Copy of Judgment of KPK Service Tribunal	- F -	29-31
8.	Copy of Notification (24.5.2010)	-G-	32
9.	Copy of Order (29.7.2013)	-H-	33
10.	Copy of Order of the KPK Service Tribunal.	-I-	34
11.	Copy of Appeal	-J-	35-37
12.	Copy of Policy	-K-	38-41
13.	Wakat Nama	---	42

APPELLANT  
Syed Shahinshah

THROUGH:

  
( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.

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


Appeal No. 76 /2013

Syed Shahinshah,  
Accounts Officer, LG&RDD.  
Peshawar.

Q. W. J. Peshawar  
Incharge Peshawar  
Case No. 1687  
Dated 27-12-13

**APPELLANT**

**VERSUS**

1. The Government of Khyber Pakhtunkhwa through the Chief Secretary, KPK, Peshawar.
2. The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
3. The Secretary, Establishment Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
4. The Secretary, Local Government & Rural Dev; Department, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
5.  The Deputy Commissioner Peshawar.


**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA, SERVICE TRIBUNAL ACT, 1974 AGAINST THE ORDER DATED. 29.7.2013 WHEREBY THE APPELLANT HAS BEEN REPATRIATED AND ADJUSTED IN VIOLATION OF LAW AND RULES TO DAMAGE HIS CAREER AND AGAINST NOT TAKING ANY ACTION ON THE APPEAL OF APPELLANT WITHIN STATUTORY PERIOD OF NINETY DAYS.

**PRAYER:**

THAT ON ACCEPTANCE OF THIS APPEAL, THE ORDER DATED. 29.7.2013 MAY BE SET-ASIDE AND THE RESPONDENTS MAY BE DIRECTED TO POST THE APPELLANT AGAINST HIS ORIGINAL POST AGAINST WHICH HE WAS POSTED AFTER BEING

co-submitted to  
and filed.

  
15/11/2014

DECLARED SURPLUS FOR THE FIRST TIME ON 18.8.2001 WITH ALL SERVICE BENEFITS INCLUDING SENIORITY BENEFITS IS TO BE COUNTED WITH ESTABLISHMENT DEPTT. ANY OTHER REMEDY, WHICH THIS AUGUST TRIBUNAL DEEMS FIT AND APPROPRIATE THAT MAY ALSO BE AWARDED IN FAVOUR OF APPELLANT.

**RESPECTFULLY SHEWETH:**

1. That the appellant was appointed as Accounts officer (BPS-17) in the LG&RDD after the proper selection through KPK Public Service Commission. Copy of the Notification is attached as Annexure-A.
2. That due to restructuring of LG&RDD, the appellant was became surplus and was adjusted in the DCO office Peshawar against the vacant post of Accounts Officer. Copy of Adjustment order is attached as Annexure-B.
3. That after thee months, the appellant was again declared surplus and repatriated to LG&RDD. That issue strongly agitated by the appellant which was resulted in the removal of the appellant from service. The appellant then moved to Service Tribunal and the august Tribunal was pleased to reinstate the appellant. The said judgment of the august Tribunal was also upheld by the august Supreme Court of Pakistan. The appellant was transferred again to Buner to defeat the appeal of the appellant which was pending before the Tribunal for declaring the re-surplus order as illegal and unlawful. Therefore both the appeals bearing No.1546/09 and 773/09 were clubbed together and were decided through single judgment on 29.12.2009. The copies of the Judgments are attached as Annexure-C, D, E and F.
4. That after the judgment of the Tribunal, the appellant was posted temporarily as DDO (F) Mardan vide Notification dated 24.5.2010. Copy of the Notification is attached as Annexure-G.
5. That during the pendency of appeal No. 274/2011, the respondents again passed an order in which the

appellant has been transferred to LG&RDD under the garb of "*repatriation & adjusted*" vide order dated. 29.7.2013. Therefore the appellant withdrew his previous appeal with the permission to file a fresh one. Copies of order, Tribunal's order are attached as Annexure – H,I.

6. That the appellant filed appeal against the order dated. 29.7.2013 for transfer against his original post of Accounts Officer. The appellant waited for 90 days but no reply has been received so far. Hence, the present appeal on the following grounds amongst the others. Copy of the Appeal is attached as Annexure-J.

**GROUNDS:**

- A) That the order dated. 29.7.2013 and not posting the appellant against his original post of Accounts Officer at DCO/DC Office Peshawar and not deciding the appeal within statutory period is against the norms of justice, surplus pool policies and material on record.
- B) That as per surplus pool policy of the Government, the appellant could not be declared again as surplus because once adjusted can not be readjusted. Therefore, the whole action of the respondents is against the policy and norms of justice. Copy of the Policy is attached as Annexure-K.
- C) That the attitude and whole actions of the respondents are against the spirits of law, rules, surplus policy and principles of fair play. Therefore the same are not sustainable in the eyes of law.
- D) That the appellant has been made a rolling stone by the respondents by not letting him to serve the Government with zeal and honesty.
- E) That the order dated 29.7.2013 is against the spirit of law, Govt: instructions and amount to an arbitrary act on the part of the respondents.

- F) That the appellant has not been treated according to law and rules and the respondents have also acted in excess of their authorities.
- G) That the appellant seeks permission to advance others grounds and proofs at the time of hearing.

It is, therefore, most humbly prayed that the appeal of the appellant maybe accepted as prayed for.

APPELLANT  
Syed Shahinshah

THROUGH:

( M. ASIF YOUSAFZAI )  
ADVOCATE, PESHAWAR.



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

DATED PESHAWAR THE 22ND APRIL, 1996

N O T I F I C A T I O N

NO.SO(LG-I)2-204/96.- In pursuance of this Department Notification No.SO(LG-I)2-204/96, dated the 7th April, 1996, the Provincial Government in the Local Government, Elections and Rural Development Department are pleased to post Syed Shahin Shah S/O Aftinosh of District Peshawar as Accounts Officer in Basic Pay Scale No.17 (3880-290-7360) in the Directorate General, Local Govt. and Rural Development Department, NWFP, Peshawar against a vacant post.

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

Endst. NO. SO(LG-I)2-204/96 Dated Pesh. the 22nd April, 1996

A copy forwarded to:-

1. The Accountant General, N.W.F.P., Peshawar.
2. The Director General, LG&RDD, NWFP, Peshawar.
3. Syed Shahin Shah S/O Aftinosh, r/o Jamal-ud-Din Afghani Road University Town Peshawar.
4. The Manager Govt. Printing Press Peshawar.
5. Personal file of the officer concerned.

ALAM ZEB MALIK  
SECTION OFFICER-I

**ATTESTED**

**ATTESTED**

B 6

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

DATED PESHAWAR THE 18<sup>TH</sup> AUGUST, 2001

NOTIFICATION

No. SO(LG-I)4-116/DG/2001/KC:- Consequent upon the restructuring of the Local Government and Rural Development Department in NWFP, the competent authority has been pleased to adjust the following Officers in the Office of DCO Peshawar with effect from 1-7-2001.

1. ✓ Syed Shahinshah,  
Accounts Officer (BPS-17),  
Dte: General, LG & RDD,  
NWFP, Peshawar.
2. Mr. Muhammad Salim,  
Computer Programmer Officer (B-17),  
Dte: General, LG & RDD, Peshawar.

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

Encl. No. SO(LG-I)4-116/DG/2001

Dated Peshawar 18<sup>th</sup> August, 2001

CC:

1. All the Administrative Secretaries to Government of NWFP.
2. The Accountant General, NWFP, Peshawar.
3. The District Coordination Officer, Peshawar.
4. ✓ The PS to Secretary LG & RDD, Peshawar.
5. The Director (FATA), LG & RDD, NWFP, Peshawar.
6. The Section Officer (Surplus Pool), Estt. Admn. Department.
7. The Officers concerned.

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SECTION OFFICER (ESTAB.)

18/08/01

EDOI (E&I)

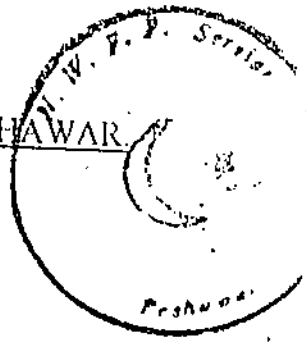
Accounts Officer

Programmer Officer

PS

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BEFORE THE NWFP SERVICE TRIBUNAL, PESHAWAR



Appeal No. 340/2006

Date of institution- 22.04.2006

Date of decision - 27.08.2007

Syed Shahin Shah, Ex-Accounts Officer, Local Government & Rural Development Department, Government of NWFP Peshawar... (Respondents)

VERSUS

- 1. Government of NWFP, through Chief Secretary, Civil secretariat, Peshawar.
2. Secretary to Government of NWFP, Local Government, Election and Rural Development, Civil Secretariat, Peshawar... (Respondents)

Appeal U/s 10 of the NWFP Removal from Service (Special Powers) Ordinance, 2000 read with all amendments and provisions of the NWFP Services Tribunals Act 1974, against the orders dated 23.1.2006 and 30.3.2006 passed by the respondents whereby through order dated 23.1.2006 the major penalty of dismissal from service was imposed on appellant while through the order dated 30.3.2006 the representation / Review of the appellant had been filed and not accepted.

PRAYER

By accepting this appeal the appellant may be re-instated with all back benefits and the orders of the respondents passed on 23.1.2006 and 30.3.2006 be declared incorrect, void, illegal, without lawful authority and both the orders be set aside. Furthermore, the appellant be acquitted of the charges imposed by the respondents and he be exonerated from giving him any sort of punishment/penalty. The charges against the appellant be declared baseless and incorrect.

Mr. Shahabud Din Burq, Advocate... For appellant.
Mr. Zaffar Abbas Mirza, A.G.P... For respondents.

MR. SHAH SAHIB... MEMBER.
MR. SULTAN MAHMOOD KHATTAK... MEMBER.

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JUDGEMENT.

SHAH SAHIB, MEMBER:- The appellant had filed the instant appeal against the orders of Respondent No. 2 dated 23.1.2006 and that of Respondent No.1 dated 30.3.2006 whereby he had been dismissed from service and his departmental appeal against the impugned order had been filed. He had prayed that the impugned orders may be set aside and he be re-instated in service with all back benefits.

2. Brief facts of the case are that the appellant had joined the Directorate General, Local Government and Rural Development Department as Accounts Officer following the recommendation of his appointment by the NWFP Public Service Commission in 1996. On the restructuring of LG & RDD as a result of the Devolution Plan, the appellant had been posted as Accounts Officer in the office of DCO, Peshawar on 18.8.2001. The DCO, Peshawar had, however, declared him surplus and directed him to report to the Surplus Pool on 8.11.2001 following the misappreciation of the decision that the Accounts Officers in all 24 districts of the province would be provided by the Accountant General's office. He had been accordingly placed in the Provincial Surplus Pool w.e.f. 1.7.2002. His services had been placed at the disposal of Information Department for adjustment vide order dated 23.10.2003. The appellant had been paid remuneration uptill 30.6.2005 through creation of a post of OSD on 12.5.2005. On 8/12/2005, the appellant had been proceeded against with the following charges leveled in the Show Cause Notice;

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- (i) On restructuring of the LG & RD Department as a result of devolution, you were adjusted against the vacant post of Accounts Officer in the office of DCO, Peshawar on 18.8.2001, but the DCO as well as District Nazim, Peshawar had complained against your poor performance. Resultantly, you were repatriated by the Establishment Department to the LG & RD Department;
- (ii). Again your services were placed at the disposal of Information Department for adjustment against the vacant post of Accounts Officer in the Directorate of Information NWFP, Peshawar vide LG & RD Department where you worked for one year and again repatriated by the Establishment Department vide order dated 4.11.2004;
- (iii). you were offered a post of District Zakat Officer in Zakat, Ushr Department, vide order dated 25.5.2005 but you declined and submitted unwillingness for adjustment against the said post;
- (iv). you were again offered a post of Planning Officer (BPS-17) in the P&D Department vide order dated 2.9.2005 but you did not furnish your willingness and refused;
- (v). you were also asked vide order dated 13.10.2005 to furnish your willingness for adjustment against the post of Accounts Officer in the office of DCO Hangu. This time also you declined to accept the adjustment / posting against the post of Accounts Officer;

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(10)

(vi) you have also been found in making direct correspondence with the higher authorities in violation of the relevant rules.

3. The appellant had been tossed from one place to another, without any reason or fault of him and completing his normal tenure. Neither any evidence / documents had been mentioned in the Show Cause Notice nor had any trace of it been annexed with it. No Inquiry had been instituted to ascertain the truth nor had any Inquiry Officer been appointed and the appellant had been terminated from service with little regard to his long continued service. The appellant had preferred a departmental representation to Respondent No.1 but the same had also been dismissed vide order dated 30<sup>th</sup> March, 2006. Aggrieved with the said order, the appellant had filed the instant appeal based on his following submissions to the six (6) points of allegations leveled in the Show Cause Notice:-

i. The allegation of complaint of poor performance by the DCO as well as District Nazim Peshawar had been totally incorrect as the same had not been communicated to the appellant which amounts to punishment without hearing. The law says that no one should be condemned unheard. If the documents regarding complaint had been communicated to the appellant with Show Cause Notice or an Inquiry Officer had been appointed, the appellant would have explained each and every fact including transfer matter but intentionally the same legal obligations were omitted just to keep the cat in bag and to conceal/suppress a high objectionable attitude and behavior of the politician to ward off the Public servants;

ii. The allegation No. ii leveled in the Show Cause Notice in fact did not constitute any act of omission / commission. It does not show that during one year service in Information Department there had been any complaint, against the appellant;

iii. In Para No. iii of the Show Cause Notice there had been no legal charge against the appellant. The appellant's willingness for the Post of District Zakat Officer had been sought. It meant

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that the matter had been left to the appellant's discretion to accept or decline the offer of the post of District Zakat Officer and implied no order or direction to the appellant on behalf of any authority. So, the question of disobedience etc. does not arise at all in the matter. According to the adjustment/absorption policy of the Provincial Govt. an employee, on adjustment in another post/ department, had to be placed at the bottom of seniority list i.e. the most junior. Further more, the place of posting had also not been mentioned and there had been also an apprehension of the stoppage of salary for an indefinite period while the appellant had already suffered such experience in the past years:

- iv. Para No. (iv) of the Show Cause Notice does not constitute in itself any wrong or misconduct on the appellant's part. It clearly says that only the appellant's willingness had been sought for a post of Planning Officer for unknown place/city in the P & D Department and no order or direction had been given to the appellant by any authority. Thus, the decision had been put on the appellant's sweet discretion and a detailed reply was available in Para No. iii above. However, the appellant had tendered his willingness with certain clarifications and therefore Para No. (iv) was incorrect;
- v. Para No. (v), of the Show Cause Notice had also been incorrect. In fact the appellant had never been posted in the office of DCO, Hangu. The reply had been the same as mentioned in the above paras No. iii & iv as no clear order or direction had been given to the appellant to join office of the DCO Hangu. Thus, the question of the disobedience does not arise and no wrong had been committed by him. Further more, a post of the appellant as Accounts Officer in his original Department in his own District had still existed. He had been appointed Accounts Officer through the Public Service Commission and the Govt. having no suitable person for that post should have filled it with the appellant. The business had been running through deputationist for which repeated requests had been made by the Provisional Govt. to the Federal Govt. in different times. Furthermore, the appellant's transfer from home district to another District had been against the transfer policy of the Govt. The said post in Hangu had not been lying vacant as another person had been posted and he had been willing to take charge. In such circumstances, the appellant had not been ready to become a shuttle cock between the two districts when there had also an apprehension of stoppage of salary effecting seniority and going out of home station for ever as it had been adjustment and not transfer / posting.

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vi. Para No (vi) in the Show Cause Notice had been totally incorrect. No description of such allegation had ever been given to the appellant. However, when the appellant's salary had been stopped illegally, he made representation to the concerned quarters in accordance with the procedure laid down in law. The same had been the appellant's legal and constitutional right for which he is not to be blamed.

4. That the malafide against the appellant had been evident from his illegal transfers as well as the incorrect statements brought up in the Show Cause Notice. The appellant had been condemned un-heard as neither any inquiry officer had been appointed nor had any material, regarding the allegations, been supplied to the appellant. The departmental appeal / representation had not been considered as the impugned order had not been a speaking order. Neither any adverse entry had been entered in the appellant's ACR nor had any such matter been communicated to him in accordance with the requirements of law. Hence, the appellant's dismissal order dated 23.1.2006 had been totally illegal. There had been no allegation of dishonesty or corruption or mal-practice etc. against the appellant whereas the charges referred to in the Show Cause Notice had been incorrect and baseless and had not been sufficient ground for the appellant's dismissal from service. The same had been against the principles of natural justice, equity, law and against the Provision of Constitution of the Islamic Republic of Pakistan. Furthermore, the appellant's dismissal from service had been against the teachings of Islam and on this score too the termination order had been passed in sheer violation of the provision of the Constitution. It appears from the contents of the Show Cause Notice that the allegations against the appellant had

NWFP Service Tribunal  
EXAMINER  
Peshawar

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(Appointment, Promotion and Transfer) Rules, 1989, Respondent No. 2  
Department) whereas, as stipulated in the NWFP Civil Servants  
Respondent No. 2 (Secretary, Local Government & Rural Development

penalty on the appellant, being a BPS-17 officer, had been signed by  
procedure and liable to be set aside. The order of imposition of major  
upon the appellant which had been against the laid down prescribed

thereafter, the major penalty of dismissal from service had been imposed  
communicated to the appellant nor had the same been proved against him.

allegations leveled against him. Neither the said allegations had ever been  
also allegations to which he had submitted his reply and fully denied the

the Removal from Service (Special Powers) Ordinance, 2000 containing  
had been adopted. He had been issued only a Show Cause Notice under

penalty on the appellant no proper procedure for conducting legal inquiry  
formally but a mandatory requirement of law. While imposing the major

with statement of allegations. The framing of charge was not only a  
had been framed nor had the same been communicated to the appellant

7. The learned Counsel for the appellant contended that neither charge  
8. Arguments heard and record perused.

claim of the appellant.  
9. representatives, filed written reply, contested the appeal and denied the

5. The case had been admitted to full hearing on 13.6.2006 and the  
respondents had been put on notice. They appeared through their

into the appellant's knowledge before the issuance of Show Cause Notice.  
been very old and strange enough that the same had never been brought

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(Chief Secretary, NWFP) had been the 'authority' in his case. Thus, the impugned order suffered a flaw incurable at the appellate stage and was liable to be set aside. Similarly, Chief Minister, NWFP had been the appellate forum, as per the Civil Servants (Appeals) Rules, 1986, against an order passed by Respondent No.1. The appellant preferred a departmental representation against the impugned order purported to have been passed by Respondent No.1 (though apparently it is not corroborated), but instead of its disposal by the relevant authority after affording him opportunity of hearing a formal, a Section Officer by the name of Dil Muhammad conveyed him only the outcome of his appeal. Reliance was placed on case law quoted in the case 2005 SCMR 1225 Muhammad Saeed Wazir former General Manager (T&R) PTCL. " Issuance of Show Cause Notice and holding of Inquiry, in the given circumstances was necessary under Section 5 of Removal from Service (Special Powers) Ordinance, 2000." and 2007 PLC (CS) 727 Federation of Pakistan through Secretary Establishment Division, Islamabad, "Only a Show Cause Notice was issued against the employee under Removal from Service (Special Powers) Ordinance, 2000 and no full-fledged inquiry as contemplated under Section 5 of the said Ordinance was conducted..... While awarding major penalty, a proper inquiry was to be conducted in accordance with law where full opportunity of defense was to be provided to the delinquent employee- Provision of Section 5 of Removal from Service (Special Powers) Ordinance, 2000 clearly that in case of charge of misconduct as defined in Section 3 of the said Ordinance, a full-fledged inquiry was to be conducted which admittedly had not been done in the present case- Petition for leave to

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alone the imposition of the harshest punishment such as the major penalty of the dismissal from service on the appellant. Moreover, he had been frequently transferred from one post to another without any reason and had been made a rolling stone with out letting him complete his normal tenure at any one of his place of duty. The authorities appear to have demonstrated little regard for the posting / transfer policy of the government envisaging a minimum period as tenure of civil servants at a post. Due to the frequent breaks in his service, his salary too had remained unpaid to him for more than 2 years and ultimately a post of OSD had to be created to enable him draw his emoluments accruing up to 30.6.2005. But, when a case for extending that arrangement in the ensuing fiscal year had been submitted by the respondent department, Respondent No. 1 passed order in an arbitrary manner of proceeding against the appellant under the law for his alleged poor service record. As the respondent department had not been prepared for this unpredicted revelation, it put in the Charge Sheet every small / big matter that came across their way to justify the appellant's expulsion from service, without realizing that these might one day come under stringent quasi-judicial scrutiny. To top it all, the order of imposition of the major penalty of dismissal from service on him was passed him by Respondent No. 2 instead of Respondent No. 1 as an authority competent to pass such an order. Needless to say that the order passed by the incompetent authority had been void ab initio, without lawful authority and not binding on the appellant. Moreover, the respondents had ignored instituting / ordering a full scale inquiry, a mandatory requirement of law.

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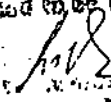
while imposing a harsh punishment of dismissal from service on the appellant.

10. In view of the foregoing reasoning, the Tribunal accepts the appeal, sets aside the impugned order of his dismissal from service and holds that the appellant is deemed to have remained in service all through the period between passing the impugned order and this judgement today. He is therefore entitled to receive all service / back benefits. The respondent department is accordingly directed to pass appropriate orders to this effect with in two months' time. There are no orders as to costs. File be consigned to the record after completion.

ANNOUNCED  
27.08.2007.

  
(SHAH SAHIB)  
MEMBER.

  
(SULTAN MAHMOOD KHATTAK)  
MEMBER.

Verified to be true copy  
  
Secretary  
Service Tribunal  
Patna

**ATTESTED**  


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IN THE SUPREME COURT  
(Appellate Jurisdiction)

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**PRESENT:**  
MR. JUSTICE IJAZ-UL-HASSAN  
MR. JUSTICE CH. EJAZ YOUSAF

C.P.L.A. NO. 593-P OF 2007  
(On appeal from the judgment dated 27.8.2007 in  
Appeal No. 349/2006 passed by the NWFP  
Service Tribunal, Peshawar)

The Chief Secretary Govt. of NWFP Peshawar & another  
..... Petitioners

Versus

Syed Shahin Shah  
..... Respondent

For the Petitioners: Sardar Shaukat Hayat, Addl. A.G. NWFP  
Mr. Azam Jan. S.O. Local Govt. NWFP

Respondent: N/A

Date of hearing: 24.8.2008

JUDGMENT

CH. EJAZ YOUSAF, J: This petition for leave to appeal is directed against the judgment dated 27.8.2007 passed by NWFP Service Tribunal, Peshawar, whereby appeal filed by the respondent against imposition of major penalty of dismissal from service was allowed and he was reinstated in service with all back benefits.

2. Facts of the case, in brief, are that the respondent had joined the Directorate General, Local Government and Rural

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Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

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Development Department (hereinafter referred to as the "LG&RDD") as Accounts Officer in 1996. As a result of restructuring, in devolution process, the office of Director General LG& RDD and its allied offices in the settled districts were abolished w.e.f. 1.7.2001. The respondent was therefore, adjusted and posted as Accounts Officer in the office of District coordination Officer, City District Government, Peshawar on 18.8.2001. Since he was complained against, on account of poor performance, therefore, he was later on posted in the Directorate of Accounts as Accounts Officer, wherefrom he was repatriated and his services were placed in the surplus pool of LG&RDD as well as Establishment Department. The respondent was then readjusted/posted against the post of accounts Officer in the directorate of Information, Peshawar on 23.10.2003. Subsequently different posts, in the Zakat & Ushr Department, P&D Department and office of the DCO, Hangu, were offered to him but he declined to accept the same. He was thus proceeded against. Show cause notice was issued to him, to which, no satisfactory reply was furnished, ultimately he was dismissed from service vide order dated 23.1.2006. The respondent filed departmental representation but was of no avail, it was dismissed vide order dated 30.3.2006. Being aggrieved the respondent approached the Service Tribunal by way of appeal which was allowed, hence this petition.

3. Sardar Shaukat Hayat, learned Additional Advocate General, NWFP, has contended that respondent was an unwilling worker as thrice various posts were offered to him but he did not

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Supreme Court of Pakistan  
ISLAMABAD

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give willingness for appointment and since the charges were fairly and squarely proved against him, therefore, learned Federal Service Tribunal was not justified in setting aside the order of dismissal and reinstating the respondent in service. In reply to the query as to why full fledged inquiry was not conducted before infliction of major penalty of dismissed on the respondent, he submitted that since sufficient evidence was available on record, therefore it was not needed. He however, frankly conceded that neither there was any adverse entry against the respondent in any of his ACRs, nor was there any allegation of dishonesty or corruption.

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4. We have given our anxious consideration to the contentions raised by the learned counsel for the petitioner and have also perused the available record with his assistance.

5. Record indicates that the reasons weighed with the learned Tribunal in setting aside the order of dismissal, inter-alia, were; that no inquiry was conducted before passing the impugned order; that the departmental appeal/representation was not properly considered and the impugned order was not a speaking order; that there was no adverse entry in respondent's ACRs; that there was no allegation of dishonesty or corruption, etc. against him; that before imposition of major penalty neither charge was framed nor inquiry was conducted against the respondent which was a mandatory requirement; that in the absence of full-fledged inquiry within the purview of section 3 of the NWFP Removal from Service (Special Power) Ordinance, 2000, the impugned order was not sustainable; that the impugned order was passed by the Secretary to

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Secretary  
Government of Pakistan  
Islamabad

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Government of NWFP, (Local Government) whereas, in the case of respondent, it was the Government of NWFP which was the competent authority to pass such an order; and that the allegations contained in the show cause notice being minor in nature, even otherwise did not warrant imposition of major penalty.

6. Perusal of the record shows that though the respondent had time and again declined adjustment against various posts and he was also reported against by some departments on account of poor performance, yet, neither there was any charge of corruption, misappropriation, or dishonesty against him, nor was there any adverse entry in his ACRs. It is also an admitted fact that pursuant to show cause notice no inquiry as contemplated by rule 5 of the NWFP Removal from Service (Special Powers) Ordinance, 2000 was conducted before passing the order of dismissal from service against the respondent. It is also not disputed that the impugned order was passed by Secretary to the Govt. of NWFP, Local Govt. Elections & Rural Development Department, whereas under the Rules it was the Government of NWFP who was the competent authority in case of the respondent, therefore in our view, the order of dismissal was rightly set aside by the learned Tribunal.

7. It is well settled that major penalty cannot be imposed on a government servant unless his guilt is properly inquired into and he is served with a proper show cause notice or charge sheet containing statement of allegations. The proposition in hand came up for consideration before this court in the case of Tariq Mehmood v.

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Solicitor General  
Supreme Court of Pakistan  
ISLAMABAD

ATTORNEY  
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District Police Officer, Toba Tek Singh & another (C.A. No.23 of 2006),

decided on 29.2.2008 and it was answered in the following words:-

"5. No doubt, reduction in rank is one of the major penalties prescribed by rule 4(1)(b)(i) of the E&D Rules, 1973. The said rule reads as follows:-

4. Penalties.- (1) The following are the minor and major penalties, namely:-

(a) Minor Penalties:

(i) .....

(ii) .....

(iii) .....

(iv) .....

(b) Major Penalties:

(i) Reduction to a lower post or time-scale, or to a lower stage in time-scale;

(ii) .....

(iii) .....

(iv) .....

It appears from the record that though in pursuance of show cause notice personal hearing was afforded to the appellant by the enquiry officer on 7.4.2004 yet, neither any evidence was recorded or taken by him nor the petitioner was afforded opportunity to rebut the same. It is well settled that if major penalty is required to be imposed on any Government employee, then procedure as laid down in rule 6 of the E&D Rules, 1973 is required to be adhered to. The relevant provision reads as under:-

"6. Procedure to be observed by the Inquiry Officer and Inquiry Committee: Where an Inquiry Committee is appointed, the authorized officer shall-

(1) Frame a charge and communicate it to the accused together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration.

(2) Require the accused within a reasonable time, which shall not be less than seven days or more than fourteen days from the day the charge has been communicated to him, to put in a written defence and to state at the same time whether he desires to be heard in person.

(3) The Inquiry Officer or the Committee, as the case may be shall inquire into the charge and may examine

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Supervisor  
N. K. ...

District Police Officer, Tobn Tek Singh & another (C.A. No.23 of 2006),

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decided on 29.2.2008 and it was answered in the following words:-

"5. No doubt, reduction in rank is one of the major penalties prescribed by rule 4(1)(b)(i) of the E&D Rules, 1973. The said rule reads as follows:-

4. Penalties.- (1) The following are the minor and major penalties, namely:-

(a) Minor Penalties:

(i) .....

(ii) .....

(iii) .....

(iv) .....

(b) Major Penalties:

(i) Reduction in a lower post or time-scale, or to a lower stage in time-scale;

(ii) .....

(iii) .....

(iv) .....

It appears from the record that though in pursuance of show cause notice personal hearing was afforded to the appellant by the enquiry officer on 7.4.2004 yet, neither any evidence was recorded or taken by him nor the petitioner was afforded opportunity to rebut the same. It is well settled that if major penalty is required to be imposed on any Government employee, then procedure as laid down in rule 6 of the E&D Rules, 1973 is required to be adhered to. The relevant provision reads as under:-

6. Procedure to be observed by the Inquiry Officer and Inquiry Committee: Where an Inquiry Committee is appointed, the authorized officer shall-

(1) Frame a charge and communicate it to the accused, together with statement of the allegations explaining the charge and of any other relevant circumstances which are proposed to be taken into consideration.

(2) Require the accused within a reasonable time, which shall not be less than seven days or more than fourteen days from the day the charge has been communicated to him, to put in a written defence and to state at the same time whether he desires to be heard in person.

(3) The Inquiry Officer or the Committee, as the case may be shall inquire into the charge and may examine

*[Signature]*  
Supreme Court of India  
Bhopal

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23

such oral documentary evidence in support of the charge or in defence of the accused as may be considered necessary and the accused shall be entitled to cross-examine the witness against him.

Here it would also be advantageous to have a glance at rule 5 of the E&D Rules, which empowers the Authorized Officer to direct enquiry against Government Servant through an Inquiry Officer or an Inquiry Committee which reads as under:-

"5. Inquiry Procedure: (1) The following procedure shall be observed when a government servant is proceeded against under these rules:-

(i) In case where a government servant is accused of subversion, corruption or misconduct, the authorized officer may require him to proceed on leave or, with the approval of the authority, suspend him;

Provided that any continuation of such leave or suspension shall require approval of the authority after every three months;

Provided further that where the authority is President or Prime Minister the powers of the authority under this clause shall be executed by the Secretary, Establishment division.

(ii) The authorized officer shall decide whether in the light of facts of the case or the interest of justice an inquiry should be conducted through an Inquiry committee. If he so decides, the procedure indicated in rule 56 shall apply.

(iii) If the authorized officer decides that, it is not necessary to have an inquiry conducted through an Inquiry committee, he shall -

(a) by order in writing, inform the accused of the action proposed to be taken in regard to him and the grounds of the action; and

(b) given him a reasonable opportunity of showing cause against that action;

Provided that no such opportunity shall be given where the authority is satisfied that in the interest of the security of Pakistan or any part thereof it is not expedient to give such opportunity.

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Superintendent  
Supreme Court of Pakistan  
ISLAMABAD

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(iv) On receipt of the report of the Inquiry Officer or Inquiry committee or where no such Officer or committee is appointed, on receipt of the explanation of the accused, if any, the authorized officer shall determine whether the charge has been proved. If it is proposed to impose a minor penalty he shall pass orders accordingly. If it is proposed to impose a major penalty, he shall forward the case to the authority alongwith the charge and statement of all allegations served on the accused, the explanation of the accused the findings of the Inquiry Officer or Inquiry Committee, if appointed and his own recommendations regarding the penalty to the imposed. The authority shall pass such orders as it may deem proper.

(2) The exercise of powers under clauses (i) and (iv) of sub-rule (1) by the authorized officers in the Pakistan Missions abroad shall, unless already so provided, always be subject to the approval of the authority."

A bare perusal of the aforesaid provisions lead to the conclusion that no major penalty can be imposed on a Government Servant unless his guilt is properly inquired into by appointing an inquiry officer or an inquiry committee within the purview of rule 5 of the E&D Rules, 1973 and the accused is served with a proper show cause notice pr. charge sheet containing statement of allegations on which the penalty is proposed to be inflicted. Law is well settled in this regard. In the case of Jau Muhammad v. The General manager, Karachi Telecommunication Region (1993 SCMR 1440), the appellant was served with a charge sheet on the ground that he had disobeyed order of his superior which amounted to misconduct. He submitted his reply. After formal investigation order of compulsory retirement from government service was passed. It was held that Order of compulsory retirement was not sustainable as inquiry was not held in accordance with procedure laid down under rule 6 of the

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Sup. Court of Pak. Islamabad

*[Signature]*

E&D Rules, 1973, the order, therefore, was set-aside. In the case of Glulam Muhammad Khan v. Prime Minister of Pakistan & others (PLD 1994 SC 222), while referring to the case of Nawab Khan & another v. Government of Pakistan through Secretary, Ministry of Defence & others (1996 SCMR 802), it was held that there is a marked distinction between Rule 5 and Rule 6 of the E&D Rules, inasmuch as under the former Rule, a regular inquiry can be dispensed with, whereas the latter rule envisages conducting of regular inquiry which would necessitate the examination of witnesses in support of the charges brought against the accused civil servant, his right to cross-examine such witnesses and his right to produce evidence in rebuttal. The question, as to whether the charge of a particular misconduct needs holding of a regular inquiry or not, would depend on the nature of the alleged misconduct. If the nature of the alleged misconduct was such on which a finding of fact could not be recorded without examining the witnesses in support of the charge or charges, the regular inquiry could not be dispensed with. In the case of Rashid Mehmood versus Additional Inspector-General of Police and 2 others (2002 SCMR 57) the appellant was acquitted from a criminal charge by the trial Court. Despite acquittal, he was proceeded against by the department on the ground that since, he had become criminal minded, therefore, was unfit to be retained in service. On finalization of the proceedings, the appellant was dismissed from service. The Service Tribunal maintained the decision of the departmental authority. Appeal was preferred to the Supreme Court which was allowed and it was held that regular inquiry having not been conducted by the departmental authority, there were no basis to hold that the civil servant was guilty of misconduct. Judgment passed by the Service Tribunal was accordingly set aside and the authority was directed to reinstate the appellant in service with back benefits. What to speak of holding of an inquiry prior to imposition of major penalty, in the case of Inspector General of Police v. Shafiq Mehmood (2003 SCMR 207), it was held that failure to associate

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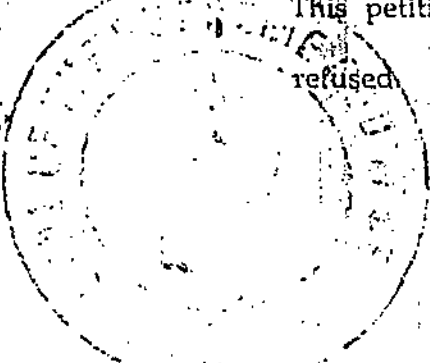
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(S)

civil servant with inquiry conducted against him would render the proceedings as unsustainable. In the said case, respondent was dismissed from service on the basis of registration of a criminal case, whereas the judgment of the trial Court, whereby the respondent was acquitted, was not considered by the department. It was born out from the record that regular inquiry, as required under Sindh Police (I.C.I.) Rules, 1988, was not conducted, however, a fact finding committee, to investigate the matter, was constituted in which respondent was not even allowed to participate. The Tribunal, after careful consideration and following the rule laid down by this Court in the case of Rashid Mehmood v. Additional Inspector General of Police and others (2002 SCMR 57), (supra) allowed the appeal which was up held by this Court."

8: Upshot of the above discussion is that since in the instant case major penalty of dismissal from service was inflicted on the petitioner without proper inquiry and recording of evidence, therefore, it was rightly set aside by the learned Tribunal. The impugned judgement therefore, does not warrant any interference.

This petition being misconceived is hereby dismissed and leave



refused

Mr. Ijazul-Hasan J  
 Mr. Ejaz Yousof J.

Certified to be true copy

Signature of Mr. Ejaz Yousof  
 4/6/08  
 Superintendent  
 Supra Court of Pakistan  
 Islamabad

90/8

Islamabad  
 24.3.2008  
 (Zulfikar)

NOT APPROVED FOR REPORTING

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4-6-2008  
 7/6/2008  
 S. S. Siani

BEFORE THE LEARNED SERVICE TRIBUNAL, NWFP THROUGH ITS  
CHAIRMAN

(27)

Appealed No. 1534/08

SYED SHAHINSHAH  
Budget & Accounts Officer,  
Local Government / Establishment Department, NWFP

APPELLANT

N.W.F.P. PROVINCE  
Service Tribunal

Diary No. 2060

Dated 30/10/08

VERSUS

1. The Government of NWFP Through Chief Secretary
2. The Government of NWFP Through Secretary Establishment
3. The Government of NWFP Through Local Government & Rural Development, <sup>Secretary</sup> Civil Secretariat, Pesh.
4. The Controller General of Accounts, Pakistan Blue Area, Islamabad.
5. District Coordination Officer Peshawar.  
(On Behalf of Prov. Govt. Being Funded By Prov. Exchequer and Not by Local Fund)

APPEAL UNDER SECTION 4 (A) OF NWFP SERVICE TRIBUNAL ACT, 1974 AGAINST THE ILLEGAL TRANSFER / REPATRIATION FROM THE

DISTRICT COORDINATION OFFICER, PESHAWAR TO ADMINISTRATIVE DEPARTMENT OF LOCAL GOVERNMENT,

ELECTIONS & RURAL DEVELOPMENT, NWFP.

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N.W.F.P. Service Tribunal  
Peshawar

22.11.2008

Appellant in person. He contends that he has submitted departmental representation in 2002 which has not yet been decided, that his services were terminated but he was reinstated into service in August, 2008. But he is still not declared entitled to regain his original post. The departmental appeal of 2002 has become old, and the appellant did not come to this Tribunal within the prescribed

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No. of Order or Proceedings

Date of Order or Proceedings

Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary

period. No final order has yet been issued on the said representation. In the meanwhile the services of the appellant were terminated but he was reinstated into service.

In the light of the above, the present appeal is considered as departmental representation. The office is directed to urgently send the same to the competent authority for consideration and disposal within the prescribed period. The appellant shall have all the rights available to him under the law, including Section 4 of the NWFP Service Tribunals Act, 1974.

ANNOUNCED.  
22.11.2008.

*Signature*

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*Handwritten notes and stamps, including dates like 17-11-09 and 17-11-09.*

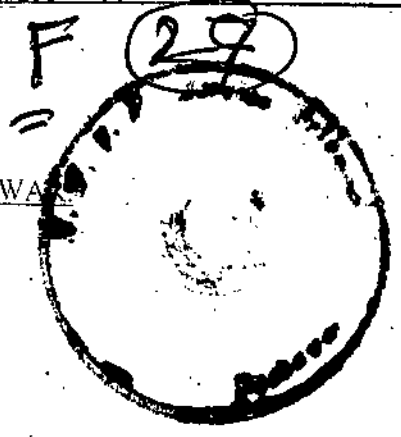
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BEFORE THE NWFP SERVICE TRIBUNAL PESHAWAR



Appeal No. 1546/2009

Date of institution - 02.09.2009

Date of decision - 29.12.2009

Syed Shahinshah, OSD Acctts; Officer, LG&RDD, NWFP Peshawar.....(Appellant)

VERSUS

1. Government of NWFP, through Chief Secretary NWFP Peshawar.
2. Secretary Establishment NWFP-Peshawar.
3. Secretary LG&RDD, NWFP Peshawar.
4. D.C.O Peshawar.....(Respondents)

Appeal u/s 4 of the Service Tribunals Act 1974, against the order dated 8.6.2009 whereby the appellant has been transferred to Buner and against the final rejection order dated 20.8.2009.

Mr. M. Asif Yousafzai, Advocate.....For appellant.

Mr. Jamal Abdul Nasir, A.G.P.....For Respondents.

MR. ABDUL JALIL.....MEMBER.  
SYED MANZOOR ALI SHAH.....MEMBER.

JUDGMENT.

ABDUL JALIL, MEMBER :- This appeal has been filed by the appellant against the impugned order dated 8.6.2009 whereby he was transferred to Buner. He has prayed that the impugned order may be set aside being based on malafide intention to defeat the pending appeal of the appellant bearing No. 773/2009 and Respondent No. 2 be directed to adjust him against available post of Accounts Officer in DCO Office Peshawar.

2. Brief facts of the case are that the appellant was appointed as Accounts Officer (BPS-17) through NWFP Public Service Commission. He performed his duty as Accounts Officer in the office of Director General Local Government and Rural Development Department Peshawar till August 2001. In the wake of devolution he was declared surplus and posted in the office of DCO Peshawar. After serving 3 months in

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NWFP Service Tribunal  
Peshawar

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the office of DCO Peshawar he was again declared surplus and an employee of A.G office namely Matiur Rehman was brought on deputation. The appellant preferred a departmental appeal, on which S.O. (Establishment) department sought some clarification from DCO and subsequently the DCO was asked to withdraw the posting order of Accounts Officer deputed from the Accountant General office and consequently the deputationist from the A.G. office was repatriated. The Secretary LG&RDD vide order dated 27.7.2002 repatriated the appellant to his parent department (L.G) and made him OSD. The controversy of adjustment went in adverse level and the appellant was dismissed from service and through Service Appeal No. 340/2006 the appellant was re-instated in service with all back benefits. The department went in appeal before the Hon'ble Supreme Court of Pakistan against the judgment of this Tribunal which was upheld. After re-instatement, the appellant filed service appeal which was disposed of in terms that the service appeal may be treated as departmental appeal. The above appeal was not responded by the authority within the statutory period, therefore, the appellant filed Appeal No. 773/2009 which is still pending. The appellant filed a departmental appeal against the order dated 8.6.2009 but the same has been rejected. Hence, the present appeal.

3. Arguments heard and record perused.

4. The learned counsel for the appellant argued that the impugned order has been passed by the respondent department in violation of surplus pool policy. He further argued that the order dated 27.7.2002 is against the spirit of law and rules as the appellant was again declared surplus and repatriated to RDD. According to surplus pool policy once adjusted cannot be re-adjusted and the adjustment to be made in the District of domicile. As his adjustment was according to the surplus pool policy as he was having Peshawar domicile. The posting of Accounts Officer from Accountant General Office was against the surplus pool policy as no vacant post was available. The impugned order is in violation of posting/transfer policy in which it was clearly mentioned that no Government servant to be victimized. The impugned order is malafide to defeat the pending appeal No. 773/2009. The appellant was specifically appointed as Accounts Officer in Director General LG&RDD which was not

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ENCL. NO. 10/10/2009  
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 PESHAWAR

transferable post. The impugned order will dislocate and disturb the appellant and his family. It was in the knowledge of the respondent department that in Buner law and order situation is abnormal and out of control and only to punish the appellant, the impugned order was passed.

5. The A.G.P argued that the appellant was transferred from DCO Office because of his poor performance and lack of interest in official duty. It is incorrect that on his repatriation from District Government Peshawar, he was made OSD. He was placed in surplus pool and on availability of post he was adjusted in Directorate of Information, because of his ill-attitude and inefficiency he was surrendered by the Information department to LG&RDD and once again placed in surplus pool. His denial to take over charge as Accounts Officer in Zakat & Usher Department, Planning Officer in Planning and Development Department which amount to mis-conduct, for which he was proceeded against under the NWFP Removal from Service (Special Powers) Ordinance 2000. He was re-instated in service in compliance of the judgment of the Service Tribunal. He further argued that as per term of Section 10 of NWFP Civil Servants Act 1973, every civil servant shall be liable to serve any where within or outside the Province. Therefore, he was repatriated and placed in the surplus pool. The adjust of the surplus pool staff in the home district of domicile is applicable to civil servants from BPS-1 to BPS-15. The law and order situation in Buner is better. The Government servants are secured and have been performing their duties.

6. In view of the above discussion, the impugned order is modified with direction to the respondent department to post out the appellant nearest to his home station subject to availability of vacant post. Till then the impugned order will hold and the appellant could comply with the order issued by the respondent department.

7. This judgment will also disposed of his another connected appeal bearing No. 773/2009, involving common question of law, in the same manner.

No order as to costs. File be consigned to the record.

ANNOUNCED.  
29.12.2009.

(SYED MANZOOR ALI SHAH)  
MEMBER.

(ABDUL JALIL)  
MEMBER.

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GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

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Dated Peshawar the 24.05.2010

NOTIFICATION

NO.SOE-II (ED)1-6/2001/AOS:- The Provincial Government is pleased to transfer Syed Shahinshah, BS-17 (surplus employee of LG&RDD), presently working as DDO(F), Buner and to post him as DDO(F), Mardan, purely on temporary basis, against the vacant post, with immediate effect, in the public interest.

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA

ENDST NO. AND DATE EVEN.

A Copy is forwarded to:-

1. Secretary to Govt. of Khyber Pakhtunkhwa, LG&RDD.
2. Commissioner, Mardan Division, Mardan.
3. Commissioner, Malakand Division, Swat.
4. District Coordination Officer, Mardan.
5. District Coordination Officer, Buner.
6. District Accounts Officer, Mardan.
7. District Accounts Officer, Buner.
8. SO(Secret)/EO/Librarian, ER&AD
9. PS to Chief Secretary, K.PK.
10. PS to Secretary Establishment Department.
11. Officer concerned.
12. PA to AS(E)/DS(E)Estt:Dept.
13. Office order file.

(KALIMULLAH)  
Section Officer(E-II)

ATTESTED  
*[Signature]*

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*[Signature]*



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

**ORDER**

Dated Peshawar, the 29<sup>th</sup> July, 2013

No.SO(LG-I)10-458/2008.- Consequent upon his repatriation by the Government of Khyber Pakhtunkhwa, Establishment & Administration Department Notification No.SOE-II(ED)2(5)2012, dated 31-01-2012 and approval of the Competent Authority, Syed Shahin-Shah, Accounts-Officer-(BS-17) is hereby adjusted against the vacant post of Accounts Officer (BS-17) in Directorate General, Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar from the date of his arrival i.e. with effect from 04-01-2013.

SECRETARY TO GOVT.OF KHYBER  
PAKHTUNKHWA, LG,E&RDD

Endst No.SO(LG-I)10-458/2008

Dated Peshawar, the 29<sup>th</sup> July, 2013

Copy is forwarded:-

1. The Secretary to Govt.of Khyber Pakhtukhwa, Establishment Department.
2. The Secretary to Govt.of Khyber Pakhtunkhwa, Finance Department.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The Director General, Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
5. The Director Information, Khyber Pakhtunkhwa, Peshawar.
6. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa.
7. Syed Shahinshah, Accounts Officer, Dte:General, LG&RDD, Peshawar.
8. The Section Officer (E-II), Government of Khyber Pakhtunkhwa, Establishment Department.
9. The PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
10. The PS to Secretary, LG,E&RDD.
11. The PS to Special Secretary, LG,E&RDD.
12. The office order file.

(IZAZ JELAH)  
SECTION OFFICER (ESTAB)

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**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR.**

APPEAL NO. 274 /2011.



K.P. Province  
Service Tribunal  
Case No 274  
Date 10-2-11

Mr. Syed Shahinshah,  
DDO (F), Mardan.....Appellant.

VERSUS

- 1- The Govt: of KPK Through The Chief Secretary KPK Peshawar.
- 2- The Chief Secretary KPK Peshawar.
- 3- The Secretary Establishment, KPK Peshawar.
- 4- The Secretary LG&RDD, KPK Peshawar.

.....Respondents.

**APPEAL UNDER SECTION 4 OF THE KPK SERVICE TRIBUNAL ACT 1974 FOR DIRECTING THE RESPONDENTS TO REPATRIATE THE APPELLANT TO HIS ORIGINAL POST OF ACCOUNTS OFFICER IN THE OFFICE OF THE DCO PESHAWAR.**

*Certified to be true copy*  
Khyber Pakhtunkhwa Service Tribunal Peshawar

27.8.2013

Counsel for the appellant and Mr. Muhammad Jan, GP with Shakirullah, SO for the respondents present. Counsel for the appellant requested for withdrawal of the appeal with permission to file fresh one due to some technical reason. His signature also obtained in the margin of order sheet. Request is accepted. The appeal is dismissed as withdrawn with permission to file fresh one subject to all legal objections. File be consigned to the record

ANNOUNCED  
27.8.2013.

*27-8-2013* *sd/-* *sd/-*  
*Members* *Mardan*

Date of Presentation of Appeal  
400  
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*3-9-2013*  
*3-9-2013*

Date

J  
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SYED SHAHINSHAH  
ACCOUNTS OFFICER  
DIRECTORATE GENERAL  
LG&RDD, GOVT. OF  
KHYBER PAKHTUNKHWA  
Dated Peshawar, 28/08/2013

To

Through: Proper Channel via Local Govt. Deptt: by Advance Copy.

**CHIEF SECRETARY TO GOVERNMENT OF KHYBER  
PAKHTUNKHWA.**

Subject: Appeal for Posting, Seniority, and Promotion as per Laws/Policy and Judgments of Supreme Court of Pakistan in Civil Secretariat Against the Order vide No.SO(LG-I)10-458/2008 dated 29<sup>th</sup> July, 2013 received on 20<sup>th</sup> August, 2013 (F.N).

Dear Sir,

With due respect and to state that the Undersigned has been repatriated to Local Government, Elections & Rural Development Department. The above order is attached as Annex-A. The said order is against Laws/Policy and Judgments of Supreme Court of Pakistan. The details of the case are as:

**ATTESTED**

- The Undersigned joined the Local Government on the recommendation of the Public Service Commission in 1996. During devolution, 2001 the Undersigned was adjusted in DCO office Peshawar by Chairman Devolution committee/ Secretary LG as per adjusted/ Absorption POLICY. However, due to illegal manners, the Undersigned was not allowed to work in DCO office Peshawar, compelling to Undersigned to file the following service Appeals. Copy of recommendations and adjustment are available in a file.
- The Undersigned preferred an Appeal No1530/2008 in service Tribunal which was converted into departmental Representation. Another appeal was preferred No.773/2009 in the service Tribunal. Meanwhile the Undersigned was transferred to Buner Compelling the Undersigned for another service appeal No. 1546/2009 in a service Tribunal. Both the appeals were clubbed together and decided that the Undersigned may be posted nearest to his home station subject to the availability of vacant posts, such vacant posts were shown/mentioned but the Undersigned was forcibly transferred to Buner. Latter on the Undersigned was posted in Mardan on temporary basis which lasted for 2 years and seven months ignoring the seniority/ promotion of the Undersigned as per adjusted/ absorption policy and a self explanatory letter vide No SORV (E & AD 1-2/2003 Dated 05/07/2003. Which further compelled Undersigned to file another Service Appeal in Service Tribunal. Copies are available in the file.
- Since the transfer and adjustment of Applicant in the attached Department of Local Govt. is not feasible as per law because there is no such devolution justifying the transfer on

any ground as advised in above mentioned letter. On such status in Civil Service there is a decision of the Supreme Court of Pakistan that any employee who had been posted in a Civil Department purely on temporary shall stand to regularize on permanent basis. Such judgment of the Supreme Court of Pakistan shall be produced if asked.

- That an amendment was made in the Appointment, Promotion and Transfer Rules 1989, 17 (3), wherein in the event of merger/restructuring the inter-se Seniority of Civil Servant so affected by merger/restructuring shall be determined from the date of regular appointment. Copies are available in the file.
- The above amendment was made in 2002 overriding the seniority clause in adjustment/absorption policy issued in 2000 by Establishment Department. Since the adjustment policy is available with the department needs not to be annexed.
- That on seniority/ promotion the decision/authority of Finance Department, KPK vide U.O. No OP.6 (6)81/07 Dated Pesh: the 6/9/81 of employees of former States Dir/Swat. The principle laid down is that to correct wrong, if done to Civil servant, there should be no limitation or bar for Government. So service of employees of former State Dir/Swat was admitted. Seniority given. Promotion became due. It is vetted by Law Department too. This authority is available in the file.
- That the Applicant had already been adjusted by Chairman Devolution Committee/ Secretary Local Govt. in 2001. The Applicant, from another point of view, had spent more than three years since taking of charge as a DDO (F) Bunir w.e.f 1/2/2010 before the transfer to local Govt which is self explanatory in the light of above paras for automatic seniority and promotion.
- The circular vide No SORV (E & AD 1-2/2003 Dated 05/07/2003 is self-explanatory regarding adjusted in the department under which an employee so adjusted should claim his posting/seniority and promotion from the date of regular appointment in that department.
- When the applicant was adjusted in the office of DCO office as per policy neither the Establishment Wing nor Regulation Wing of Establishment Department raised any objections.
- Submitted the judgment of the Supreme Court of Pakistan in Civil Appeal No.804 of 1996 wherein the Supreme Court of Pakistan was kind enough to grant seniority and pay protection to an employee of state Bank of Pakistan who had joined the Bureau of Statistic, Federal Government, through proper channel. The Judgment is available in the file.
- Other Appeals t the Supreme Court of Pakistan vide No.44 to 79 of to 2004 & Civil petition No 1409 of 2004 & 319/2005 wherein by single judgment these appeals upheld by the Supreme Court of Pakistan where contract employees who remained at the strength of the local Govt. and Rural Development Department Govt. of KPK for more than 12 years to serve the public without regularizing them for pay, pension, seniority and

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promotion. The Supreme Court of Pakistan granted them all such back benefits. Such Judgment is available in the file.

- That another judgment of the Supreme Court of Pakistan Civil Appeal No 345 of 1987 is reproduced with relevant portion wherein, though, the petitioner was on the seniority list, was denied promotion because he was not working in the Federal Secretariat but in the Province. Supreme Court of Pakistan set aside the judgment of the Federal Service Tribunal and directed the Tribunal to Re-examine the case. The Supreme Court of Pakistan was kind enough to lay down the principles that section 23 of the Act (CSA No VIII, 1973) can be pressed by the President (governor in this Representation) to oblivate the inequitable and unjust result arising out of the above re-organization in respect of seniority of any Civil Servants along with that if the Tribunal or the Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. Copies are available in the file.
- It is further submitted that the PMS rules are totally skewed in a favor of Section Officers of the Establishment Department and EACS of Revenue and Estate Department which is discriminatory and biased towards to other employees, therefore, against the articles 4, 25, 27 and 37 of the Constitution of Pakistan. The posting of Federal Government employees that is DMGs etc on Provincial funded post are against the Civil Servant Act, VIII, 1973 and CSR 77 however, the illegality has been covered with a word "Schedule Posts" in PMS rules.
- It is, therefore, requested that the appeals may kindly be accepted as per Laws/Policy and Judgment of the Supreme Court of Pakistan as detailed above by grating the Seniority/Promotion in the Civil Secretariat with effect from 01/07/1991 wherein the services of the Undersigned in autonomous bodies was accorded approval by the Establishment Department Govt. of KPK vide letter No.SOE-V(E&AD)/1-10/2011-VOL-V dated May 21<sup>st</sup>, 2013. Copies attached as Annex-B&C).

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Thanking You

Faithfully Yours'

*S. S. Shah*

(Syed Shahinshah)  
Accounts Officer  
Dte: Gen: LG&RDD

28-6-2013  
28-8-2013  
28/8/2013  
CSO No 9120-7-14  
28.08.13

GOVERNMENT OF N.W.F.P.  
ESTABLISHMENT & ADMINISTRATION DEPARTMENT  
(REGULATION WING)

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NO. SOR-I(E&AD)1-200/98,  
Dated Peshawar the 8<sup>TH</sup> June /2001

To

- 1) All Administrative Secretaries in NWFP.
- 2) The Secretary to Governor, N.W.F.P.
- 3) All Commissioners in N.W.F.P.
- 4) All Heads of Attached Department in N.W.F.P.
- 5) All Heads of Autonomous/Semi-Autonomous Bodies in NWFP.
- 6) The Registrar, Peshawar High Court, Peshawar.
- 7) All Districts & Session Judges in NWFP.
- 8) All Deputy Commissioners/Political Agents in NWFP.
- 9) The Secretary, NWFP Public Service Commission, Peshawar.
- 10) The Director, Anti-Corruption Establishment, Peshawar.
- 11) The Registrar, NWFP Service Tribunal, Peshawar.

**SUBJECT. POLICY FOR DECLARING GOVERNMENT SERVANTS AS SURPLUS AND THEIR SUBSEQUENT ABSORPTION/ADJUSTMENT**

Sir,

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc:

**1. POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS.**

The Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

**2. CREATION OF SURPLUS POOL.**

There will be a surplus pools cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

**3. IMPLEMENTATION/MONITORING CELL.**

For the purpose of coordination and to ensure proper and expeditious adjustment / absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:-

- |  |       |           |
|--|-------|-----------|
| a. Additional Secretary (Establishment) E&AD | ..... | Chairman. |
| b. Deputy Secretary LG& RD Department.       | ..... | Member.   |
| c. Deputy Secretary Finance Department.      | ..... | Member.   |
| d. Deputy Secretary (Establishment) E&AD.    | ..... | Secretary |

ATTESTED  
*[Signature]*

ATTESTED  
*[Signature]*

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4.

**CRITERIA FOR DECLARING A GOVERNMENT SERVANT AS SURPLUS RESULT OF ABOLITION OF POST.**

Consequent upon the abolition of a post in a particular cadre of a department, the junior most employee in that cadre would be declared as surplus. Such posts should be abolished in the respective departments and created in the surplus pool as indicated in para 2 above for the purpose of drawl of pay and allowances and also for consideration for subsequent adjustment

5.

**PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES.**

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:-

(a) Before transferring an employee to the surplus pool, he should be given option by the concerned department

(i) to proceed on retirement with normal retiring benefits under the existing rules;

OR

(ii) to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.

(b) Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise seniority list will be caused in the Surplus Pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustment shall be on seniority-cum-fitness basis. For this purpose the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.

(c) Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner: -

(i) In case of occurrence of vacancies in their corresponding posts in any Government Department/Organization, the senior most employee in the surplus pool should be adjusted first

(ii) In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.

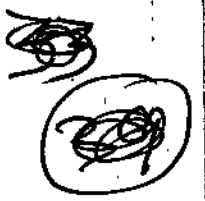
(iii) If an employee possess the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post subject to imparting the requisite training.

(iv) (a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.

OR

(b) Where no equivalent post is available the civil servant may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the post immediately proceeding his appointment to a lower post shall remain protected.

40



- (d) If no suitable person is available in the surplus pool to be adjusted against the vacant/revived post, such a post would be filled up by initial recruitment in the prescribed manner after getting clearance from the E&AD.
- (e) Surplus staff should be adjusted preferably in their home District(s). If not possible, then within the same Division, if staff is adjusted away from their District of Domicile in the first instance then on availability of post they should be considered for adjustment near to their home station.
- (f) To facilitate the adjustment of surplus staff, it will be incumbent upon the Administrative Department to take up the case with Finance Department for revival of the essential posts so retrenched as a result of general directive issued by Finance Department from time to time, giving cogent reasons/justification. Against the resultant revival/restoration of the post, the concerned Department will place a requisition on the E&AD for transferring of a suitable surplus employee against the said post.
- (g) Unless the surplus employees in Class-IV are fully adjusted/absorbed against their respective graded posts in various Government Department/Organizations, the general policy of the Finance Department regarding conversion of BPS-1 & 2 posts to posts in fixed salary @ Rs. 2000/- per month for contractual appointed should be restricted to the above extent.

6

#### FIXATION OF SENIORITY

The inter-se seniority of the surplus employees after their adjustment in various Department will be determined according to the following principles:-

- (a) In case a surplus employee could be adjusted in the respective cadre of his parent department he shall regain his original seniority in that cadre.
- (b) In case, however, he is adjusted in his respective cadre but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre.
- (c) In case of his adjustment against a post in a corresponding basic pay scale with different designation/nomenclature of the post, either in his parent department or in any other department, he will be placed at the bottom of seniority list.

#### NOTE:-

In case the officer/official declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall lose the facility/right of adjustment/absorption and would be required to opt for premature retirement from Government service.

Provided that if he does not fulfill the requisite qualifying service for premature retirement he may be compulsorily retired from service by the competent authority

7.

#### COMPETENT AUTHORITY TO NOTIFY/ORDER ADJUSTMENT/ ABSORPTION.

After the transfer of services of surplus employee to a Department for adjustment/absorption against a vacant/revived post, the Competent Authority to notify/order his absorption/adjustment, shall be the respective appointing authority under the relevant rules for the post.

Provided that the decision of adjustment/absorption of surplus employees by the E&AD shall be binding upon the respective appointing authorities.

Yours Obedient Servant

(MUI AMMAD HAMPUN)

ADDITIONAL SECRETARY (REGULATION)


ATTESTED

40

Endst even No. & date

Copy forwarded to the:-


1. COS HQ, 11 Corps, Peshawar Cantt.
2. HQ PMCS C/O HQ Engineer 11 Corps, Peshawar Cantt.
3. All Addl/Deputy Secy's in (Establishment) E&AD.
4. Deputy Secretary (Admn) E&AD.
5. Director, STI, Benevolent Fund Building, Peshawar.
6. The Accountant General, NWFP, Peshawar.
7. Deputy Secretary Benevolent Fund Cell, E&AD.
8. All District Accounts Officer in NWFP.

  
(GHULAM ZIA PASIF)  
DEPUTY SEC. E&AD (REG-1)

Endst: even No. & date

Copy forwarded to:-

1. All Section Officers in (Establishment) E&AD.
2. All Section Officer in General Administration E&AD.
3. The Estate Officer, E&AD.
4. PS to Chief Secretary NWFP.
5. PS to Secretary (Establishment) E&AD.
6. PS to Secretary (General Administration) E&AD.
7. Librarian, E&AD.

  
SECTION OFFICER (REG-1)

k-4

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42

# VAKALAT NAMA

NO. \_\_\_\_\_/20

IN THE COURT OF Service Tribunal Peshawar.

Syed Shahin Shah (Appellant)  
(Petitioner)  
(Plaintiff)

VERSUS

Govt. of KPK etc (Respondent)  
(Defendant)

I/We Syed Shahin Shah (Appellant)

Do hereby appoint and constitute **M.Asif Yousafzai, Advocate, Peshawar**, to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate/Counsel on my/our costs.

I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter. The Advocate/Counsel is also at liberty to leave my/our case at any stage of the proceedings, if his any fee left unpaid or is outstanding against me/us.

Dated 15-1 /20/14

S. Shahin  
(CLIENT)

ACCEPTED

M. Asif Yousafzai  
**M. ASIF YOUSAFZAI**  
Advocate

**M. ASIF YOUSAFZAI**  
Advocate High Court,  
Peshawar.

**OFFICE:**  
Room No.1, Upper Floor,  
Islamia Club Building,  
Khyber Bazar Peshawar.  
Ph.091-2211391-  
0333-9103240



GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT

Dated Peshawar, the December 31, 2012

**NOTIFICATION**

**NO.SOE-II(ED) 2(5)/2012:-** Consequent upon the enforcement of Khyber Pakhtunkhwa Local Government Act, 2012-w,e,f. 1<sup>st</sup> January, 2013 and abolition of the BS-17 posts of DDO(R), DDO(J), HRDOs and DDO(F), the Provincial Government is pleased to repatriate the following officers to their parent Departments as noted against each:-

S. N O	NAME OF OFFICER	FROM	TO
1.	Mr. Sher Rehman, Tehsildar (BS-16)	Former DDO(J), Charsadda	Board of Revenue, Khyber Pakhtunkhwa
2.	Mr. Lal Said, Tehsildar (BS-16)	Former DDO(J), Mardan	Board of Revenue, Khyber Pakhtunkhwa
3.	Syed Iftikhar Hussain Shah, PS (BS-16)	Former HRDO, D.I.Khan	Board of Revenue, Khyber Pakhtunkhwa
4.	S. Khalid Israr Shah (BS-17), Surplus employee of LG&RDD	Former HRDO, Lakki Marwat	LG&RD Deptt: / SO(E-V), Establishment Department.
5.	Mr. Sharafat Gul, Research Officer (BS-17)	Former HRDO, Nowshera	Agriculture Department
6.	Mr. Alamzeb, Asstt: Accounts Officer (BS-17)	Former DDO(F), Peshawar	Accountant General, Khyber Pakhtunkhwa.
7.	Mr. Khanwar Khan, Audit Officer (BS-18)	Former DDO(F), Charsadda	Director General (Audit), Distt: Govt. Khyber Pakhtunkhwa
8.	Syed Shahinshah, BS-17 Surplus employee of LG&RDD	Former DDO(F), Mardan	LG&RD Deptt: / E-V Section, Establishment Department
9.	Mr. Muhammad Ibrahim, Surplus EAC/Illaqqa Qazi (BS-17)	Former DDO(F), Malakand	Report to E-V Section, Establishment Department.
10.	Mr. Babar Bashir, Subject Specialist (BS-17)	Former DDO(F), Mansehra	Elementary & Secondary Education Department

CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA

P.T.O.

**Endst. No. of even and date.**

*Copy forwarded to the:-*

1. Additional Chief Secretary, P&D, Khyber Pakhtunkhwa.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Additional Chief Secretary, FATA Secretariat.
4. Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Provincial Police Officer, Khyber Pakhtunkhwa.
9. Accountant General, Khyber Pakhtunkhwa.
10. All Deputy Commissioners in Khyber Pakhtunkhwa.
11. All Political Agents in FATA
12. Director (PD) Establishment Division, Islamabad.
13. Section Officer (E-5/PAS) Establishment Division, Islamabad.
14. Director, Information, Khyber Pakhtunkhwa.
15. Officers concerned.
16. Manager, Govt. Printing Press Peshawar.
17. SO(Secret) /SO(Admn)/ EO/Librarian, E&A Department.
18. PS to Chief Secretary, Khyber Pakhtunkhwa.
19. PS to Secretary Establishment.
20. PS to Special Secretary(Estt), Establishment Department.
21. PAs to AS(E)/AS(HRD)/DS(E) /DS(Admn), E&A Department.

  
SECTION OFFICER (E-II)

**\*\*IHSAN AFRIDI\*\***





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

**ORDER**

Dated Peshawar, the 29<sup>th</sup> July, 2013

**No.SO(LG-I)10-458/2008.-** Consequent upon his repatriation by the Government of Khyber Pakhtunkhwa, Establishment & Administration Department Notification No.SOE-II(ED)2(5)2012, dated 31-012-2012 and approval of the Competent Authority, Syed Shahin Shah, Accounts Officer (BS-17) is hereby adjusted against the vacant post of Accounts Officer (BS-17) in Directorate General, Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar from the date of his arrival i.e. with effect from 04-01-2013.

SECRETARY TO GOVT.OF KHYBER  
PAKHTUNKHWA, LG,E&RDD

Endst No.SO(LG-I)10-458/2008

Dated Peshawar, the 29<sup>th</sup> July, 2013

Copy is forwarded:-

1. The Secretary to Govt.of Khyber Pakhtukhwa, Establishment Department.
2. The Secretary to Govt.of Khyber Pakhtunkhwa, Finance Department.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The Director General, Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
5. The Director Information, Khyber Pakhtunkhwa, Peshawar.
6. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa.
7. Syed Shahinshah, Accounts Officer, Dte:General, LG&RDD, Peshawar.
8. The Section Officer (E-II), Government of Khyber Pakhtunkhwa, Establishment Department.
9. The PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
10. The PS to Secretary, LG,E&RDD.
11. The PS to Special Secretary, LG,E&RDD.
12. The office order file.

(IZAZ ULLAH)  
SECTION OFFICER (ESTAB)

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

**Service Appeal No.76 of 2014**

Syed Shahinshah,  
Accounts Officer, LG&RDD

... Appellant

**VERSUS**

1. The Government of Khyber Pakhtunkhwa  
Through Chief Secretary, KPK
2. Chief Secretary, Khyber Pakhtunkhwa
3. The Secretary, Establishment Department
4. Secretary, LG,E&RDD
5. Deputy Commissioner, Peshawar

... Respondents

**Joint Para-wise reply/comments on behalf of respondents**

**Respectfully Sheweth:-**

**Preliminary Objections:-**

- (i) That the appeal is time barred.
- (ii) That the appellant has got no cause of action and locus-standi to institute the instant appeal.
- (iii) That the appellant has not come to this Hon'ble Tribunal with clean hands.
- (iv) That the appellant has concealed material facts of the case from the Hon'ble Service Tribunal.
- (v) That the appeal is bad for non-joinder and mis-joinder of necessary parties.
- (vi) That this Hon'ble Tribunal has got no jurisdiction to entertain the appeal.

**ON FACTS:-**

Para-1 Correct to the extent that the petitioner was appointed as Accounts Officer (BS-17) in Directorate General, Local Government, Elections and Rural Development Department in 1996.

Para-2 Correct to the extent that as a result of restructuring of LG&RDD in devolution process during 2001, the appellant became surplus and as per the Provincial Government's Surplus Policy and with the approval of the competent authority, he was adjusted in the office of District Coordination Officer, City District Peshawar against the vacant post of Accounts Officer (BPS-17).

Para-3 Incorrect. In fact, the District Coordination Officer as well as District Nazim, Peshawar strongly complained against the poor performance of the appellant and his lack of interest in official duty and he was placed in the Surplus Pool for adjustment in any

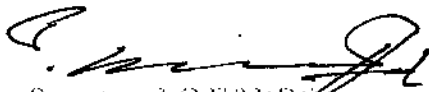
Government Department. Subsequently, from the Surplus Pool he was adjusted against the vacant post of Accounts Officer in Directorate of Information, Government of Khyber Pakhtunkhwa, Peshawar, by the Establishment Department Government of Khyber Pakhtunkhwa. However, again due to his in-efficiency and unsatisfactory performance, his services were surrendered by the Directorate of Information to LG&RDD and thus, he was again placed in the Surplus Pool. Keeping in view the complaints of District Coordination Officer as well as District Nazim, Peshawar and afterwards refusal of the appellant to take over charge as Account Officer when adjusted in Zakat, Ushr Department and later-on as Planning Officer in Planning and Development Department respectively and due to making direct correspondence with higher authorities i.e. the President of Pakistan, Prime Minister of Pakistan, Chief Minister, Khyber Pakhtunkhwa and Chief Secretary, Khyber Pakhtunkhwa, using abusive language and mis-conduct, he was proceeded against under the Khyber Pakhtunkhwa Removal from Service (Special Powers) Ordinance, 2000. After fulfillment of all codal formalities, Show Cause Notice was served upon him and resultantly a major penalty of "Dismissal from Service" was imposed by the Competent Authority. However, the appellant was re-instated in service in pursuance of the judgement of Khyber Pakhtunkhwa Service Tribunal after dismissal of the departmental appeal by the Supreme Court.


- Para-4 Correct to the extent that in implementation of the judgement of the Service Tribunal, the appellant was re-instated in service and was posted as Deputy District Officer (Finance) Buner by Establishment Department Government of Khyber Pakhtunkhwa and later-on as Deputy District Officer (Finance), Mardan.
- Para-5 Incorrect. In fact his repatriation to the LG,E&RDD was ordered by the Establishment Department. However, the same was not challenged. Therefore, the appellant was adjusted against the newly created post of Accounts Officer (BS-17) in Directorate General, Local Government and Rural Development Department, Khyber Pakhtunkhwa with the approval of Competent Authority. Repatriation order dated 31-12-2012 is annexed "A".
- Para-6 Incorrect. Representation/appeal of the appellant was considered and filed. The appellant has been apprised of the position accordingly (Annexure-B).


On Grounds:-

- A) Incorrect. The petitioner has been treated in accordance with the rules and policy instructions of the Provincial Government.
- B) Incorrect. Detail reply has been given in Para-3 of Facts.
- C) The petitioner was a surplus employee since 2001. However, on revival of Directorate General, LG,E&RDD, one post of Accounts Officer (BS-17) was created against which the appellant has been adjusted accordingly. The Respondents treated Appellant in accordance with law.
- D) Incorrect as per paras mentioned above.
- E) Incorrect. The respondents have acted strictly in accordance with law and the impugned order is in accordance with law.
- F) Incorrect. The appellant has been treated strictly in accordance with the law regulating his services.
- G) Respondents seek permission of this Hon'ble Tribunal to advance further grounds during course of arguments.

For the submission stated above appeal of the appellant being devoid of merits may graciously be dismissed with cost.

  
Secretary, L.G.E&RDD  
Khyber Pakhtunkhwa

  
Secretary, Establishment  
Khyber Pakhtunkhwa

  
Deputy Commissioner  
Peshawar

Ex ①

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Annex-A

**GOVERNMENT OF  
KHYBER PAKHTUNKHWA  
ESTABLISHMENT & ADMINISTRATION  
DEPARTMENT**

Dated Peshawar, the December 31, 2012

**NOTIFICATION**

**NO.SOE-II(ED) 2(5)/2012:-** Consequent upon the enforcement of Khyber Pakhtunkhwa Local Government Act, 2012w,e,f. 1<sup>st</sup> January, 2013 and abolition of the BS-17 posts of DDO(R), DDO(J), HRDOs and DDO(F), the Provincial Government is pleased to repatriate the following officers to their parent Departments as noted against each:-

S. N O	NAME OF OFFICER	FROM	TO
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2.	Mr. Lal Said, Tehsildar (BS-16)	Former DDO(J), Mardan	Board of Revenue, Khyber Pakhtunkhwa
3.	Syed Iftikhar Hussain Shah, PS (BS-16)	Former HRDO, D.I.Khan	Board of Revenue, Khyber Pakhtunkhwa
4.	S. Khalid Israr Shah (BS-17), Surplus employee of LG&RDD	Former HRDO, Lakki Marwat	LG&RD Deptt: / SO(E-V), Establishment Department.
5.	Mr. Sharafat Gul, Research Officer (BS-17)	Former HRDO, Nowshera	Agriculture Department
6.	Mr. Alamzeb, Asstt: Accounts Officer (BS-17)	Former DDO(F), Peshawar	Accountant General, Khyber Pakhtunkhwa.
7.	Mr. Khanwar Khan, Audit Officer (BS-18)	Former DDO(F), Charsadda	Director General (Audit), Dist: Govt. Khyber Pakhtunkhwa
8.	Syed Shahinshah, BS-17 Surplus employee of LG&RDD	Former DDO(F), Mardan	LG&RD Deptt: / E-V Section, Establishment Department
9.	Mr. Muhammad Ibrahim, Surplus EAC/Ilaqa Qazi (BS-17)	Former DDO(F), Malakand	Report to E-V Section, Establishment Department.
10.	Mr. Babar Bashir, Subject Specialist (BS-17)	Former DDO(F), Mansehra	Elementary & Secondary Education Department

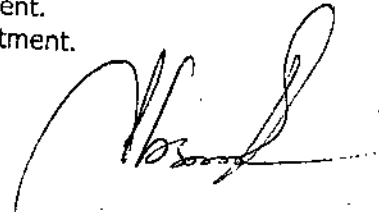
**CHIEF SECRETARY  
GOVERNMENT OF KHYBER PAKHTUNKHWA**

P.T.O.

**Endst. No. of even and date.**

*Copy forwarded to the:-*

1. Additional Chief Secretary, P&D, Khyber Pakhtunkhwa.
2. Senior Member Board of Revenue, Khyber Pakhtunkhwa.
3. Additional Chief Secretary, FATA Secretariat.
4. Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
7. All Divisional Commissioners in Khyber Pakhtunkhwa.
8. Provincial Police Officer, Khyber Pakhtunkhwa.
9. Accountant General, Khyber Pakhtunkhwa.
10. All Deputy Commissioners in Khyber Pakhtunkhwa.
11. All Political Agents in FATA
12. Director (PD) Establishment Division, Islamabad.
13. Section Officer (E-5/PAS) Establishment Division, Islamabad.
14. Director, Information, Khyber Pakhtunkhwa.
15. Officers concerned.
16. Manager, Govt. Printing Press Peshawar.
17. SO(Secret) /SO(Admn)/ EO/Librarian, E&A Department.
18. PS to Chief Secretary, Khyber Pakhtunkhwa.
19. PS to Secretary Establishment.
20. PS to Special Secretary(Estt), Establishment Department.
21. PAs to AS(E)/AS(HRD)/DS(E) /DS(Admn), E&A Department.



**SECTION OFFICER (E-II)**

**\*\*IHSAN AFRIDI\*\***

Sy: LG&RD

SYED SHAHINSHAH  
ACCOUNTS OFFICER  
DIRECTORATE GENERAL  
LG&RDD, GOVT. OF  
KHYBER PAKHTUNKHWA  
Dated Peshawar, 28/08/2013

P.S. to Chief Secretary  
Govt. of Khyber Pakhtunkhwa

To

Through: Proper Channel via Local Govt. Deptt: by Advance Copy.

**CHIEF SECRETARY TO GOVERNMENT OF KHYBER  
PAKHTUNKHWA.**

Subject: Appeal for Posting, Seniority, and Promotion as per Laws/Policy and  
Judgments of Supreme Court of Pakistan in Civil Secretariat Against the  
Order vide No.SO(LG-I)10-458/2008 dated 29<sup>th</sup> July, 2013 received on 20<sup>th</sup>  
August, 2013 (F.N).

Dear Sir,

With due respect and to state that the Undersigned has been repatriated to Local Government, Elections & Rural Development Department. The above order is attached as Annex-A. The said order is against Laws/Policy and Judgments of Supreme Court of Pakistan. The details of the case are as:

- The Undersigned joined the Local Government on the recommendation of the Public Service Commission in 1996. During devolution, 2001 the Undersigned was adjusted in DCO office Peshawar by Chairman Devolution committee/ Secretary LG as per adjusted/ Absorption POLICY. However, due to illegal manners, the Undersigned was not allowed to work in DCO office Peshawar, compelling to Undersigned to file the following service Appeals. Copy of recommendations and adjustment are available in a file.
- The Undersigned preferred an Appeal No1530/2008 in service Tribunal which was converted into departmental Representation. Another appeal was preferred No.773/2009 in the service Tribunal. Meanwhile the Undersigned was transferred to Buner Compelling the Undersigned for another service appeal No. 1546/2009 in a service Tribunal. Both the appeals were clubbed together and decided that the Undersigned may be posted nearest to his home station subject to the availability of vacant posts, such vacant posts were shown/mentioned but the Undersigned was forcibly transferred to Buner. Latter on the Undersigned was posted in Mardan on temporary basis which lasted for 2 years and seven months ignoring the seniority/ promotion of the Undersigned as per adjusted/ absorption policy and a self explanatory letter vide No SORV (E & AD 1-2/2003 Dated 05/07/2003. Which further compelled Undersigned to file another Service Appeal in Service Tribunal. Copies are available in the file.
- Since the transfer and adjustment of Applicant in the attached Department of Local Govt. is not feasible as per law because there is no such devolution justifying the transfer on

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any ground as advised in above mentioned letter. On such status in Civil Service there is a **decision of the Supreme Court of Pakistan that any employee who had been posted in a Civil Department purely on temporary shall stand to regularize on permanent basis.** Such judgment of the Supreme Court of Pakistan shall be produced if asked.

- That an amendment was made in the Appointment, Promotion and Transfer Rules 1989, 17 (3), wherein in the event of merger/restructuring the inter-se Seniority of Civil Servant so affected by merger/restructuring shall be determined from the date of regular appointment. Copies are available in the file.
- The above amendment was made in 2002 overriding the seniority clause in adjustment/absorption policy issued in 2000 by Establishment Department. Since the adjustment policy is available with the department needs not to be annexed.
- That on seniority/ promotion the decision/authority of Finance Department, KPK vide U.O. No OP.6 (6)81/07 Dated Pesh: the 6/9/81 of employees of former States Dir/Swat. The principle laid down is that to correct wrong, if done to Civil servant, there should be no limitation or bar for Government. So service of employees of former State Dir/Swat was admitted. Seniority given. Promotion became due. It is vetted by Law Department too. This authority is available in the file.
- That the Applicant had already been adjusted by Chairman Devolution Committee/ Secretary Local Govt. in 2001. The Applicant, from another point of view, had spent more than three years since taking of charge as a DDO (F) Bunir w.e.f 1/2/2010 before the transfer to local Govt which is self explanatory in the light of above paras for automatic seniority and promotion.
- The circular vide No SORV (E & AD 1-2/2003 Dated 05/07/2003 is self-explanatory regarding adjusted in the department under which an employee so adjusted should claim his posting/seniority and promotion from the date of regular appointment in that department.
- When the applicant was adjusted in the office of DCO office as per policy neither the Establishment Wing nor Regulation Wing of Establishment Department raised any objections.
- Submitted the judgment of the Supreme Court of Pakistan in Civil Appeal No.804 of 1996 wherein the Supreme Court of Pakistan was kind enough to grant seniority and pay protection to an employee of state Bank of Pakistan who had joined the Bureau of Statistic, Federal Government, through proper channel. The Judgment is available in the file.
- Other Appeals t the Supreme Court of Pakistan vide No.44 to 79 of to 2004 & Civil petition No 1409 of 2004 & 319/2005 wherein by single judgment these appeals upheld by the Supreme Court of Pakistan where contract employees who remained at the strength of the local Govt. and Rural Development Department Govt. of KPK for more than 12 years to serve the public without regularizing them for pay, pension, seniority and

387

promotion. The Supreme Court of Pakistan, granted them all such back benefits. Such Judgment is available in the file.

- That another judgment of the Supreme Court of Pakistan Civil Appeal No 345 of 1987 is reproduced with relevant portion wherein, though, the petitioner was on the seniority list, was denied promotion because he was not working in the Federal Secretariat but in the Province. Supreme Court of Pakistan set aside the judgment of the Federal Service Tribunal and directed the Tribunal, to Re-examine the case. The Supreme Court of Pakistan was kind enough to lay down the principles that section 23 of the Act (CSA No VIII, 1973) can be pressed by the President (governor in this Representation) to oblivate the inequitable and unjust result arising out of the above re-organization in respect of seniority of any Civil Servants along with that if the Tribunal or the Court decides a point of law relating to the terms of service of a civil servant which covers not only the case of the civil servant who litigated, but also of other civil servants, who may have not taken any legal proceedings, in such a case the dictates of justice and rule of good governance demand that the benefit of the above judgment be extended to other civil servants, who may not be parties to the above litigation instead of compelling them to approach the Tribunal or any other legal forum. Copies are available in the file.
- It is further submitted that the PMS rules are totally skewed in a favor of Section Officers of the Establishment Department and EACS of Revenue and Estate Department which is discriminatory and biased towards to other employees, therefore, against the articles 4, 25, 27 and 37 of the Constitution of Pakistan. The posting of Federal Government employees that is DMGs etc on Provincial funded post are against the Civil Servant Act, VIII, 1973 and CSR 77 however, the illegality has been covered with a word "Schedule Posts" in PMS rules.
- It is, therefore, requested that the appeals may kindly be accepted as per Laws/Policy and Judgment of the Supreme Court of Pakistan as detailed above by grating the Seniority/Promotion in the Civil Secretariat with effect from 01/07/1991 wherein the services of the Undersigned in autonomous bodies was accorded approval by the Establishment Department Govt. of KPK vide letter No.SOE-V(E&AD)/1-10/2011-VOL-V dated May 21<sup>st</sup>, 2013. Copies attached as Annex-B&C).

Thanking You

Faithfully Yours'

  
(Syed Shahinshah  
Accounts Officer

Dte: Gen: LG&RDD

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

No. SO(LG-I)10-458/2008/Vol:III  
Dated Peshawar, the 11<sup>th</sup> Dec:2013

398

To

Syed Shahinshah,  
Accounts Officer, Dte:General,  
LG&RDD, Khyber Pakhtunkhwa,  
Peshawar

**SUBJECT:- APPEAL FOR POSTING, SENIORITY, AND PROMOTION AS PER  
LAW/POLICY AND JUDGEMENTS OF SUPREME COURT OF  
PAKISTAN IN CIVIL SECREARIAT AGAINST THE ORDER  
NO:SO(LG-I)10-458/2008 DAED 29-07-2013 RECEIVED ON 20-08-  
2013**

Memo:

I am directed to refer to your representation dated 28-08-2013 on the subject cited above and to say that you were basically appointed as Accounts Officer (BS-17) in the Directorate General, Local Government and Rural Development Department. When the Directorate General, LG&RDD was abolished in devolution process during 2001, you were posted in DCO Office, Peshawar and then transferred to District Government Mardan by the Establishment Department. When the Directorate General, LG&RDD revived, you were repatriated by the Establishment Department and resultantly, you were adjusted against the vacant post of Accounts Officer in Directorate General, LG&RDD with the approval of Competent Authority i.e. Chief Secretary, Khyber Pakhtunkhwa.

I am further directed to inform you that your adjustment against the vacant post of Accounts Officer in Directorate General, LG&RDD, Peshawar has been made in accordance with rules/policy, hence your representation being devoid of merits has been considered and filed.

*OJL*  
(IZAL ULLAH)  
SECTION OFFICER (ESTAB)

Endst. Even No. & Date.

Copy is forwarded to PS to Secretary, LG&RDD for information.

*OJL*  
SECTION OFFICER (ESTAB)

P.390-  
38  
/

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

Service Appeal No. 76/2014

Syed Shahinshah

VS

Govt of KPK.

**REJOINDER ON BEHALF OF APPELLANT**

**RESPECTFULLY SHEWETH:**

**Preliminary Objections:**

(i-vi) All objections raised by the respondents are incorrect and baseless. Rather the respondents are estopped to raise any objection due to their own conduct.

**FACTS:**

- 1 Admitted correct by the respondents. Hence no comments.
- 2 Admitted correct by the respondents. Hence no comments.
- 3 Incorrect. While para 3 of the appeal is correct.
- 4 Admitted correct. Hence no comments.
- 5 Incorrect. During the pendency of appeal No. 274/2011 the respondents again transferred the appellant to LG&RDD under the grab of repatriation & adjusted vide order dated 29.7.2013. therefore the appellant withdraw his previous appeal with the permission to file a fresh one.
- 6 Incorrect. Representation/appeal of the appellant was not responded within the statutory period of ninety days.


**GROUND:**

- A) Incorrect. The appellant was not treated according to law and policy instruction and has been deprived from his original post of Account Officer at DCO/DC Office Peshawar.
- B) Incorrect. While para B of the appeal is correct.
- C) Incorrect. While para C of the appeal is correct.
- D) Incorrect. The appellant has been made a rolling stone by the respondents by not letting him to serve the Govt: with the best of his ability.
- E) Incorrect. The respondents have not acted according to law and passed the order dated 27.9.2013 against the spirit of law Govt: instruction and amount to an arbitrary act on the part of the respondents.
- F) Incorrect. The appellant has not been treated according to law and rules and the respondents have also acted in excess of their authorities.
- G) Legal.

It is, therefore, most humbly prayed that the appeal of appellant may kindly be accepted as prayed for.

APPELLANT  
Syed Shahinshah

Through:

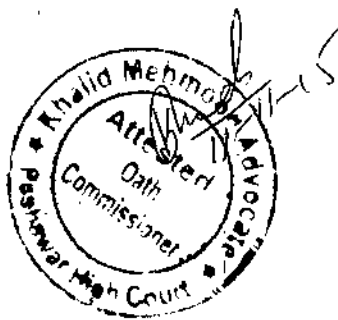
  
(M. ASIF YOUSAFZAI)  
&




(TAIMUR ALI KHAN)  
ADVOCATES PESHAWAR.

**AFFIDAVIT**

It is affirmed and declared that the contents of rejoinder & appeal are true and correct to the best of my knowledge and belief.

  
DEPONENT



قیمت 50 روپے	45592	  
ایڈوکیٹ: <u>B. D. Das</u> بار کونسل ایسوسی ایشن نمبر: <u>Bc-10-7992</u> رابطہ نمبر: <u>03339121558</u>		
<b>پشاور بار ایسوسی ایشن، خیبر پختونخواہ</b>		

بعدالت جناب:

منجانب: <u>سید شمشاد</u>	دعویٰ: <u>76/14</u>
<b>بنام</b> <b>صوبہ گل حرمیت لہندہ</b> <b>حیدر سید سید رضا</b>	علت نمبر:
	مورخص:
	جرم:
	تھانہ:

### باعت تحریر آنگہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی کاروائی متعلقہ

آن مقام پشاور کیلئے مدلل الین اینڈ ریسٹ 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 بر حلف 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 یکطرفہ 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 داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ 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

المقوم:

العبد سید شمشاد العبد سید شمشاد  
 مقام پشاور کے لیے منظور ہے۔

**BEFORE THE SERVICE TRIBUNAL, PESHAWAR, KP,**

**BRIEF IN THE MATTER OF S.A NO 76/14 TITLE: SYED SHAHINSHAH VS GOVERNMENT THROUGH CHIEF SECRETARY KHYBER PAKHTUNKHWA IN THE LIGHT OF ORDER OF SERVICE TRIBUNAL DATED 15-7-2021.**

1. The S.A No. 76/14 was fixed by 15-7-2021. The appellant in person argued the case with permission of learned Service Tribunal, KP.
2. The learned Service Tribunal, KP heard the appellant in person as well as the AAG in S.A No. 76/14.
3. The learned bench directed the appellant to prepare and present a brief by 27-07-2021.
4. The genesis of the case began when the appellant was appointed as Account Officer in BPS-17 in Directorate General LG KP, through the recommendation of PSC, KP-Annexure-I&II.
5. The Appellant joint the Local Government through proper channel from Workers Welfare Board, KP where he was Training Manager, BPS-17 of Training Center. The documents for regularization of service are attached as Annexure III, IV, V, VI, VII.
6. During the Devolution of Power Plan, 2001 the appellant was adjusted in office of District Coordination Office, Peshawar according to the adjustment and absorption Policy 2001. Notification is attached as Annexure-VIII.
7. The appellant was repatriated by the District Coordination Officer, Peshawar. The appellant forwarded his representation. The Establishment Department, KP wrote letters in favor of adjustment of the appellant. These are attached as Annexure- IX,X,XI.
8. Then the appellant was adjusted in the information Department, KP against the law and against his willingness and later on repatriated in its own. These are attached as Annexure-XII, XIII.
9. The appellant suffered greatly at the hands of respondents for his due and legal rights when show cause notice was issued to him. The controversy lasted up to the Apex Court.
10. Afterwards the appellant file S.A No 1530/2009 which was converted into the Departmental appeal. Then the appellant preferred another S.A 773/2009 against the surplus order and re-posting of his original post of Accounts Officer. Meanwhile the appellant was transferred to District Government Bunir which compelled the appellant to file another S.A. No 1546/2009. Bother service appeals was clubbed together with the direction that appellant would take charge if there is no vacant post in BPS-17 in whole of Peshawar. The appellant was compelled to take the charge in District Bunir.




Afterwards the appellant was posted in District Government Mardan in temporary basis which lasted for 2 months and 8 months. Against posting in District Mardan. The appellant preferred another service appeal No.274/2010 for reposting on his original post and grant of seniority for promotion. During the pendency of this S.A 274/2010. The appellant was transferred back to the Local Government Department in the grab of "Repatriation". The appellant communicated his appeal/representation to Competent Authority. The S.A No 274/2011 was withdrawn from the Service Tribunal with permission of bench. On the completion of statutory period of 90 days the instants appeal No. 76/14 was file for grant of seniority and promotion. All the documents and judgments are appended with the S.A No 74/14.

In this regard the judgment of the larger bench of the service tribunal in the S. A No. 868/2019 decided 14-01-2021 wherein the larger bench settle the issue of the seniority of the appellant to remove the grievance and anomaly in the rules to avoid the controversy in the field in the true spirit of the law of Civil Servant Act, 1973. It is attached.

Also is appended the judgment of the Supreme Court of Pakistan in a Civil appeal No. 345 of 1987 decided on 24<sup>th</sup> April, 1996 wherein the Apex Courts ruled out that the seniority of an officer of an officer cannot be disturbed/distorted to his detriment. The Apex Court also ruled out that section 23 of the Civil Servant Act, can be press into service by the **Governor (President)** oblivate the inequitable and unjust result in respect of seniority of the Civil Servants. The Apex Court also held that if the Tribunal may exam the case and if the Tribunal are discount decide the point of law relating to the terms of Service of Civil Servant which covers not only the case of Civil Servants who litigated but also of other Civil Servants so the benefit be extended to other Civil Servants\_\_ Para-14&16.

The brief is place for due legal and constitutional consideration.

  
(Syed shahinshah)  
Appellant in Person

26-7-21.

Annex A

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

DATED PESHAWAR THE 22ND APRIL, 1996

NOTIFICATION

NO. SO(LG-I)2-204/96.- In pursuance of this Department Notification No. SO(LG-I)2-204/96, dated the 7th April, 1996, the Provincial Government in the Local Government, Elections and Rural Development Department are pleased to post Syed Shahin Shah S/O Aftinosh of District Peshawar as Accounts Officer in Basic Pay Scale No. 17 (3880-290-7360) in the Directorate General, Local Govt. and Rural Development Department, NWFP Peshawar against a vacant post.

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

Encl. NO. SO(LG-I)2-204/96 Dated Pesh: the 22nd April, 1996

A copy forwarded to:-

1. The Accountant General, N.W.F.P., Peshawar.
2. The Director General, LG&RDD, NWFP, Peshawar.
3. Syed Shahin Shah S/O Aftinosh, Jamal-ud-Din Afghani Road University Town Peshawar.
4. The Manager Govt, Printing Press Peshawar.
5. Personal file of the officer concerned.

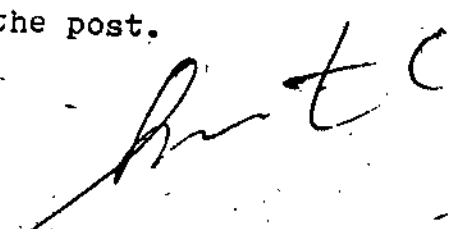
ALAM ZEE MALIK  
SECTION OFFICER-I

H.M/

70  
Dated Peshawar the 30-10-1999.

SERVICE CERTIFICATE.

This is to certify that Syed Shahin Shah joined the Department of Local Government and Rural Development Govt: of NWFP Peshawar as Accounts Officer(BPS-17) on the recommendation of NWFP Public Service Commission on 6th May 1996 and is still holding the post.

  
(Cap(R) Sarfaraz Khan)

DIRECTOR(HQ/ADMN)  
LOCAL GOVT: & RURAL DEV:DEPTT:  
NWFP Peshawar  
Director (HQ/ADMN)  
Local Govt: & Rural Dev  
NWFP, Peshawar.

Tele :




GOVERNMENT OF N.-W.F.P.  
INDUSTRIES, COMMERCE, MINERAL DEVELOPMENT,  
LABOUR AND TRANSPORT DEPARTMENT.

Dated Peshawar the .....

EXPERIENCE CERTIFICATE.

It is certified that Syed Shahinshah son of Aftimosh has worked from 1st July, 1991 to 5th May, 1996 as Manager Training of Vocational Training Centre under NWFP, Workers Welfare Board which is under the administrative control of Government of N.W.F.P. Labour and Industries Department. The nature of his job was Administrative and Ministerial. He has been imparting the knowledge of accounting as well.

He has also served this organization as Senior Instructor of Accounts In (BPS-16) from December 1st, 1990 upto June 30, 1991.

  
( PRINCE ABBAS KHAN )  
ADDL: SECRETARY IND: /  
SECRETARY NWFP, WORKERS  
WELFARE BOARD PESHAWAR.



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

NO.SOE-V (E&AD)/1-10/2009  
Dated Peshawar, the 16<sup>th</sup> March, 2012

Annex-IV

36

To

District Coordination Officer,  
Mardan,

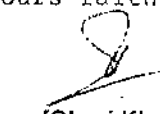
Subject: REGULARIZATION OF SERVICE THROUGH PROPER CHANNEL VIA PUBLIC SERVICE COMMISSION

Dear Sir,

I am directed to refer to your letter No.8791-92/DCO(M)/EA-01-A dated 03-08-2011 on the subject and to enclose herewith copy of Finance Department letter No.K/F(SR-I)12-1/2011 dated 29-11-2011 with its enclosures and to request to process the case of pay protection of Syed Shahinshah, Deputy District Officer (Finance & Planning) Mardan, in consultation with Local Govt. & Rural Development Department (parent department of applicant) and Labour Department (Administrative Department of Workers Welfare Board) in light of the following provision contained in Finance Department letter referred to above.

*However, the benefit of Pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic Pay Scale in to-to, on their appointment in Govt. offices, provided they have applied for the post through proper channel."*

Yours faithfully,

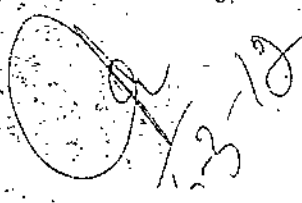
  
[Ghazi Khan]  
SECTION OFFICER (E-V)

Endst: No. & Date Even:-

Copy forwarded for information to:-

1. Section Officer (SR-I) Finance Department w/r to his letter quoted above.
2. Section Officer (Estt) Local Govt. & Rural Dev. Department w/r to this letter No.SO(LG-I)10-458/2008 dated 05-03-3012.
3. Syed Shahinshah; Deputy District Officer (Finance & Planning) Mardan.

  
SECTION OFFICER (E-V)





GOVERNMENT OF KHYBER PAKHTUNKHWA  
FINANCE DEPARTMENT  
(REGULATION WING)

Annex V  
130

NO. FD (SR-1) 12-1/2011

Dated Peshawar the: 4<sup>th</sup> June, 2011

TO:

1. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
2. The Senior Member, Board of Revenue, Khyber Pakhtunkhwa.
3. The Secretary to Governor, Khyber Pakhtunkhwa.
4. The Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. The Secretary, Provincial Assembly, Khyber Pakhtunkhwa.
6. The Secretary Finance FATA, FATA Secretariat, Peshawar.
7. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
8. All Heads of Attached Departments in Khyber Pakhtunkhwa.
9. All District Coordination Officers in Khyber Pakhtunkhwa.
10. All Political Agents / District & Sessions Judges in Khyber Pakhtunkhwa.
11. The Registrar, Peshawar High Court, Peshawar.
12. The Chairman, Public Service Commission, Khyber Pakhtunkhwa.
13. The Chairman, Services Tribunal, Khyber Pakhtunkhwa.

Subject: FIXATION / PROTECTION OF PAY ON APPOINTMENT FROM ONE POST TO ANOTHER.

Dear Sir,

I am directed to refer to the Government of Pakistan, Finance Division, Islamabad letter No.FNo.4(2)R-II/1996-235/2010, dated 08-06-2010 and Judgment dated 01-08-2009 of Federal Service Tribunal, Islamabad in appeal No.1921(R) CS/2005 in respect of *Mr. Sajjad.Rashid* and others on the subject noted above and to state that in pursuance of the above quoted letter, the Government of Khyber Pakhtunkhwa has decided that the benefit of protection of pay to the employees of autonomous bodies on their subsequent appointment in Government Service is not admissible as the employees of autonomous bodies are not civil servants within the meaning of Civil Servant Act 1973. However, the benefit of pay protection will be admissible to employees of such autonomous organizations who have adopted scheme of basic pay scales in to-to on their appointment in government offices, provided they have applied for the post through proper channel.

sd -

(MASOOD KHAN)  
Deputy Secretary (Reg-II)

Endst:of even:No. & date.

Copy forwarded for information to:

1. All the Heads of Autonomous / Semi Autonomous Bodies of Khyber Pakhtunkhwa.
2. Director, Local Fund Audit, Khyber Pakhtunkhwa, Peshawar.
3. Director, Treasuries and Accounts, Khyber Pakhtunkhwa, Peshawar.
4. All District Comptrollers of Accounts, Senior District Accounts Officers and District/Agency Accounts Officer in Khyber Pakhtunkhwa / FATA.
5. Director, FMIU, Finance Department
6. PS to Minister Finance, Khyber Pakhtunkhwa.
7. P.S to Secretary Finance.
8. PA to Spl: Secretary Finance.

sd

(KHURSHID ALAM)  
Section Officer (SR-I)

12/6/11



GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

NO.SOE-V (E&AD)/1-10/2011-Vol-V  
Dated Peshawar, the May 21, 2013

To

Government of K.P.K	
Dairy No	2705
Date	23-5-13
Local Govt: & R.D.D.	

The Deputy Commissioner,  
Mardan.

Subject: REGULARIZATION OF SERVICES THROUGH PROPER CHANNEL VIA  
PUBLIC SERVICE COMMISSION

Dear Sir,

I am directed to refer to your letter No.233-34/DC(M)EA-14 dated 19-01-2013 on the subject cited above and to enclose herewith copy of Finance Department, Govt. of Khyber Pakhtunkhwa letter No.FD(SOSR-1)12-1/2013 dated 25-04-2013 & its enclosures with the request to process the case in light of the same.

2. This Department letter of even number dated 16-03-2012 is hereby recalled. Inconvenience so caused is highly regretted, please.

Yours faithfully,

Encls: As Above.

(IFFAT AMBREEN)  
Section Officer (E-V)

Endst: No. & Date Even:-

Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa, Local Govt. Elections & Rural Dev: Department w/r to this Department Endst: of even number dated 17-04-2013.
2. Section Officer (SR-I), Finance Department, Govt. of Khyber Pakhtunkhwa w/r to his letter No.FD(SOSR-1)12-1/2013 dated 25-04-2013.
3. PS to Secretary to Govt. of Khyber Pakhtunkhwa, Establishment Department.

*at*  
21-5-13  
Section Officer (E-V)

Tele: \_\_\_\_\_



GOVERNMENT OF N.-W. F. P.  
WORKERS' WELFARE BOARD, PESHAWAR.

Dated Peshawar, the \_\_\_\_\_ 19\_\_

CHARGE RELINQUISHMENT CERTIFICATE

Consequent upon his appointment as Account Officer (B-17) in the Directorate General of Local Government and Rural Development vide Notification No. SO(LG-I)2-204/96 dated 22-4-1996, Syed Shahin Shah Manager Training (BPS-17) Secretarial Training Centre NWFP Workers Welfare Board Peshawar relinquished the charge of the post of Manager Training (B-17) in the Workers Welfare Board on May 5, 1996 (AN).

Sd/ x x x  
SECRETARY  
NWFP, WORKERS' WELFARE BOARD  
PESHAWAR

Edst No. WFB. 1-1/VIII/772-72 Dated 11-3-1997

Copy to:

1. Secretary to Govt. of NWFP Local Govt. and Rural Development Department Peshawar.
2. Director General to Govt. of NWFP Local Govt. and Rural Development Department Peshawar.
3. Secretary Local Council Board, NWFP Peshawar
4. Secretary NWFP, Workers Welfare Board Peshawar
5. Accountant General, NWFP, Peshawar
6. ✓ Syed Shahin Shah, Account Officer, Directorate General of Local Govt. and Rural Development Department, NWFP Peshawar.
7. Personal file.
8. Office copy.

(MUNSIF KHAN)  
Assistant Secretary  
NWFP, Workers Welfare Board






Annex -IX

CITY DISTRICT GOVERNMENT  
DIST: COORDINATION OFFICE  
PESHAWAR.

DATED PESHAWAR THE 8/11/2001

OFFICE ORDER

No. 2498 /DCO/EA. Consequent upon the posting of Mr. Mutahir Rehman as  
Accounts Officer in the office of DCO Peshawar by the Controller General of Accounts,  
Government of Pakistan, Islamabad vide letter No. 267 Estt-AO/17-C/2001 dated  
2.11.2001 read with Accountant General NWFP's office order bearing endst. No. Admn-1-  
3 (6-42)/147 dated 5.11.2001, Mr. Shahin Shah, Accounts Officer DCO's office  
Peshawar is hereby declared surplus and directed to report to the surplus Pool for further  
adjustment.

  
DIST: COORDINATION OFFICER  
PESHAWAR

No. 2497-2504 /DCO/EA

Copy forwarded to the:-

1. Secretary to Govt. of NWFP, Establishment Department, Peshawar.
2. Secretary to Govt. of NWFP, Finance Department, Peshawar.
3. Secretary to Govt. of NWFP, LG&RDD Peshawar.
4. Accountant General, NWFP, Peshawar.
5. Mr. Shahin Shah Accounts Officer DCO's office - Peshawar with the  
directions to hand over the charge to Mr. Mutahir Rehman Accounts Officer  
and report to the surplus pool for further adjustment.
6. Mr. Mutahir Rehman Accounts Officer with the direction to immediately  
take over the charge of the post of Accounts Officer DCO's office  
Peshawar.

  
HUMAN RESOURCES DEVELOPMENT  
OFFICER, DCO'S OFFICE PESHAWAR

GOVERNMENT OF W.P.  
ESTABLISHMENT DEPARTMENT

No. Sc(Sp) S&D/2-14/2001  
Dated 23/11/2001

To

The District Coordination Officer,  
Peshawar.

SUBJECT: DECLARATION IN SURPLUS POOL DUE TO THE INDUCTION  
OF ILLEGAL DEPUTATION OF THE EMPLOYEE OF  
ACCOUNTANT GENERAL OFFICE

Sir

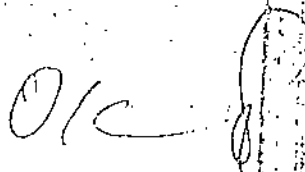
I am directed to enclose a copy of petition of Syed Shahinshah,  
Accounts Officer, DCO Office Peshawar

2- The case has been examined and the following points have been  
observed:-

i) The declaration of surplus staff has been undertaken as a result of  
restructuring exercise and the post to be so declared have been  
reflected in the current year budget. No subsequent surplus  
declaration can be made by field offices.

ii) The posting of employees of Accountant General's Office was  
meant to fill the vacant position of Accounts Offices in District  
Government and were not supposed to be adjusted where the  
Accounts Officers were already available.

3- I have been directed to request that the above points may kindly be  
immediately clarified.

  
( SHARAFAT RABBANI )  
SECTION OFFICER(S.P.)

24/11/2001  
S.P.

Time 10:55 AM

4994/2001

Annex - XIII

GOVERNMENT OF NWFP  
ESTABLISHMENT DEPARTMENT

NOTIFICATION

Dated Peshawar the 4.11.2004.

NO. SOE-II (ED) 1-6 / 2001 / AOs: The Competent Authority is pleased to order the repatriation of Mr. Shahinshah, Accounts Officer No-17 (an employee of defunct Directorate General of Local Government & Rural Development) presently working as Accounts Officer in the Directorate of Information, NWFP, to his parent Department i.e. Local Government & Rural Development Deptt. with immediate effect.

SECRETARY  
ESTABLISHMENT

ENCLIST: NO. & DATE EVEN.

A Copy is forwarded to:-

1. Secretary to Govt. of NWFP, Information & Public Relation Department, Pesh.
2. Secretary to Govt. of NWFP, Local Govt. & Rural Dev. Department, Pesh.
3. Accountant General, NWFP, Peshawar.
4. Director, Information NWFP, Peshawar.
5. Officer Concerned.
6. PS to Chief Secretary, NWFP.
7. PS to Secretary Establishment.
8. PA to AS(E)/DS(E) Estab: Deptt.
9. Office order file.
10. Personal file of the officer.

*Al-Asad*  
*S S*  
Director & Accounts Officer  
15/11/2004 NWFP

*Rashid Khan*  
( RASHID KHAN )  
Section Officer(E-II)

S.A No 1530/08

BEFORE THE LEARNED SERVICE TRIBUNAL, NWFP THROUGH ITS CHAIRMAN.

SYED SHAHINSHAH  
Budget & Accounts Officer,  
Local Government / Establishment Department, NWFP

Appeal No. 1530/08  
APPELLANT

El. W. P. Provincial  
Service Tribunal  
Diary No. 2060  
Dated 30/10/08

VERSUS

1. The Government of NWFP Through Chief Secretary
2. The Government of NWFP Through Secretary Establishment  
*Secretary*
3. The Government of NWFP Through Local Government & Rural  
Development, *Civil Secretariat, Pesh.*
4. The Controller General of Accounts, Pakistan Blue Area, Islamabad.
5. District Coordination Officer Peshawar.  
(On Behalf of Prov. Govt. Being Funded By Prov. Exchequer and Not by Local Fund)

APPEAL UNDER SECTION 4 (A) OF NWFP SERVICE TRIBUNAL ACT, 1974 AGAINST THE ILLEGAL TRANSFER / REPATRIATION FROM THE DISTRICT COORDINATION OFFICER, PESHAWAR TO ADMINISTRATIVE DEPARTMENT OF LOCAL GOVERNMENT, ELECTIONS & RURAL DEVELOPMENT, NWFP.

4.	22.11.2008	<p>Appellant in person. He contends that he has submitted departmental representation in 2002 which has not yet been decided, that his services were terminated but he was reinstated into service in August, 2008. But he is still not declared entitled to regain his original post. The departmental appeal of 2002 has become old, and the appellant did not come to this Tribunal within the prescribed</p>
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ATTESTED  
EXAMINER  
NWFP Service Tribunal  
Peshawar

*Handwritten signatures and initials*

Serial No. of Order or Proceedings

Date of Order or Proceedings

Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary

1

2

3

period. No final order has yet been issued on the said representation. In the meanwhile the services of the appellant were terminated but he was reinstated into service.

In the light of the above, the present appeal is considered as departmental representation. The office is directed to urgently send the same to the competent authority for consideration and disposal within the prescribed period. The appellant shall have all the rights available to him under the law, including Section 4 of the NWFP Service Tribunals Act, 1974.

ANNOUNCED.

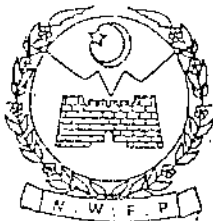
22.11.2008

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*[Handwritten signature]*

*[Handwritten signature]*

Date of presentation of copy	17-11-09
Number of marks	800
Copying fee	600
Excess	200
Total	1600
Mode of payment	By cash
Date of completion of copy	17-11-09
Signature of delivery of copy	17-11-09



GOVERNMENT OF NWFP  
ESTABLISHMENT DEPARTMENT

Dated Peshawar the 08.06.2009

NOTIFICATION

NO.SOE-II(ED)2(5)2009:- The Provincial Govt is pleased to order postings / transfers of the following officers, in the public interest, with immediate effect:-

S. No	Names of officers	From	To
1.	Mr. Barkatullah, PCS (SG) BS-18.	OSD in Establishment Department.	EDO (F & P) Dir Lower, in his own pay & scale, against the vacant post.
2.	Mr. Sareer-ud-Din, (Commerce & Trade) BS-18.	District Officer (Finance) Peshawar.	District Officer (Finance) Buner, against the vacant post.
3.	Mr. Shafirullah, PCS (EG) BS-18.	OSD in Establishment Department.	District Officer (R & E) Swat, relieving Mr. Niaz Khan, Tehsildar, of the additional charge of the post.
4.	Mr. Hameed-ur- Rehman (Income Tax) BS-17.	District Support Manager, Malakand, PPHI	District Officer (Finance) Malakand, in his own pay & scale, against the vacant post.
5.	Syed Shahenshah, BS-17.	Surplus employee of LGE&RD Department.	Deputy District Officer (F) Buner, against the vacant post.
6.	Mr. Fazalullah Khan, BS-16.	Surplus employee of LGE&RD Department.	Deputy District Officer (F) Malakand, in his own pay & scale, against the vacant post.
7.	Mr. Sheraz Ahmad, BS-16.	Surplus employee of LGE&RD Department.	Human Resource Dev. Officer, Buner, in his own pay & scale, against the vacant post.
8.	Mr. Shah Nadir, PMS BS-17.	Awaiting posting in Establishment Department.	Deputy District Officer (Rev) Lal Qilla, Dir Lower, against the vacant post.
9.	Mr. Rehmatullah Khan Wazir, PMS BS-17.	Awaiting posting in Establishment Department.	Deputy District Officer (Rev) Adenzai, Chakdara, Dir Lower, against the vacant post.
10.	Mr. Maqsood Hassan, PMS BS-17.	Section Officer, FATA Secretariat.	Deputy District Officer (Rev) Munda, Dir Lower, against the vacant post.
11.	Mr. Subhanullah, PMS BS-17.	District Officer (R & E) Nowshera.	Deputy District Officer (Rev) Malakand, against the vacant post. He will also hold the additional charge of the post of DDO(J) Malakand, in addition to his own duties.

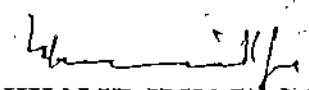
2- Consequent upon the above, Mr. Perhezgar Khan, PMS BS-17, Deputy District Officer (Rev) Dir Lower, is also entrusted charge of the post of Deputy District Officer (Judicial) Dir Lower, in addition to his own duties.

CHIEF SECRETARY NWFP

ENDST: NO. & DATE EVEN.

A Copy is forwarded to:-

1. Commissioner, Malakand Division.
2. Incharge, Emergency Response Unit, NWFP.
3. Secretary (Administration & Coordination) FATA Secretariat.
4. District Coordination Officers, Buner, Dir Lower, Malakand, Swat & Nowshera.
5. Focal Person, Internally Displaced Persons, Establishment Department.
6. AGPR, Peshawar.
7. Accountant General, NWFP.
8. Programme Director, PPHCI, NWFP/FATA.
9. District Accounts Officers, Buner, Dir Lower, Malakand, Swat & Nowshera..
10. PS to Chief Secretary, NWFP.
11. PS to Secretary Establishment.
12. SO(Secret) /SO(Admn)/SO (E-I) / SO (E-V) E & A Department.
13. PA to AS (E)/ DS (E) Establishment Department.
14. Office order file.
15. Personal file of the officer.
16. Officers concerned.

  
(KHALID ILYAS) 8609  
Section Officer (E-II)

5





GOVERNMENT OF KHYBER PAKHTUNKHWA  
ESTABLISHMENT DEPARTMENT

Dated Peshawar the 24.05.2010

NOTIFICATION


NO.SO.E-II (ED)1-6/2001/AOS:- The Provincial Government is pleased to transfer Syed Shahinshah, BS-17(surplus employee of LG&RDD), presently working as DDO(F), Buner and to post him as DDO(F), Mardan, purely on temporary basis; against the vacant post; with immediate effect, in the public interest.

CHIEF SECRETARY  
KHYBER PAKHTUNKHWA

ENDST NO. AND DATE EVEN.

A Copy is forwarded to:-

1. Secretary to Govt. of Khyber Pakhtunkhwa, LG&RDD.
2. Commissioner, Mardan Division, Mardan.
3. Commissioner, Malakand Division, Swat.
4. District Coordination Officer, Mardan.
5. District Coordination Officer, Buner.
6. District Accounts Officer, Mardan.
7. District Accounts Officer, Buner
8. SO(Secret)/EO/Librarian, E&AD
9. PS to Chief Secretary, K.PK.
10. PS to Secretary Establishment Department.
11. Officer concerned.
12. PA to AS(E)/DS(E)Estt:Dept.
13. Office order file.

  
(KALIMULLAH)  
Section Officer(E-II)



Impugned order in S.A 76/14



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

**ORDER**

Dated Peshawar, the 29<sup>th</sup> July, 2013

No.SO(LG-I)10-458/2008:- Consequent upon his repatriation by the Government of Khyber Pakhtunkhwa, Establishment & Administration Department Notification No.SOE-II(ED)2(5)2012, dated 31-012-2012 and approval of the Competent Authority, Syed Shahin Shah, Accounts Officer (BS-17) is hereby adjusted against the vacant post of Accounts Officer (BS-17) in Directorate General, Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar from the date of his arrival i.e. with effect from 04-01-2013.

SECRETARY TO GOVT.OF KHYBER  
PAKHTUNKHWA, LG,E&RDD

Endst No.SO(LG-I)10-458/2008

Dated Peshawar, the 29<sup>th</sup> July, 2013

Copy is forwarded:-

1. The Secretary to Govt.of Khyber Pakhtukhwa, Establishment Department.
2. The Secretary to Govt.of Khyber Pakhtunkhwa, Finance Department.
3. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. The Director General, Local Government and Rural Development Department, Khyber Pakhtunkhwa, Peshawar.
5. The Director Information, Khyber Pakhtunkhwa, Peshawar.
6. All Assistant Directors, LG&RDD in Khyber Pakhtunkhwa.
7. Syed Shahinshah, Accounts Officer, Dte:General, LG&RDD, Peshawar.
8. The Section Officer (E-II), Government of Khyber Pakhtunkhwa, Establishment Department.
9. The PS to Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
10. The PS to Secretary, LG,E&RDD.
11. The PS to Special Secretary, LG,E&RDD.
12. The office order file.

(IZAZ UJLAH)  
SECTION OFFICER (ESTAB)

16. **Confirmation:**-After satisfactory completion of the probationary period, a civil servant shall be confirmed; provided that he holds a substantive post, provided further that a civil servant shall not be deemed to have satisfactorily completed his period of probation, if he has failed to pass an examination, test or course or has failed to complete successfully a training prescribed within the meaning of sub-section(3) of Section 6 of the North West Frontier Province Civil Servants Act, 1973.

## PART-VI

### SENIORITY

17. **Seniority :-** (1) the seniority inter se of civil servants <sup>1</sup>(appointed to a service cadre or post) shall be determined:-

- (a) in the case of persons appointed by initial recruitment, in accordance with the order of merit assigned by the Commission <sup>2</sup>(or as the case may be, the Departmental Selection Committee;) provided that persons selected for appointment to post in an earlier selection shall rank senior to the persons selected in a later selection; and
- (b) in the case of civil servants appointed otherwise, with reference to the date of their continuous regular appointment in the post; provided that civil servants selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter se seniority as in the lower post.

**Explanation-I:-** If a junior person in a lower post is promoted to a higher post temporarily in the public interest, even though continuing later permanently in the higher post, it would not adversely effect the interest of his seniors in fixation of his seniority in the higher post.

**Explanation-II:-** If a junior person in a lower post is promoted to a higher post by superseding a senior person and subsequently that senior person is also promoted the person promoted first shall rank senior to the person promoted subsequently: provided that junior person shall not be deemed to have superseded a senior person if the case of the senior person is deferred for the time being for want of certain information or for incompleteness of record or for any other reason not attributing to his fault or demerit.

**Explanation-III:-** A junior person shall be deemed to have superseded a senior person only if both the junior and the senior persons were considered for the higher post and the junior person was appointed in preference to the senior person.

(2) Seniority in various cadres of civil servants appointed by initial recruitment vis-à-vis those appointed otherwise shall be determined with reference to the dates of their regular appointment to a post in that cadre; provided that if two dates are the same, the person appointed otherwise shall rank senior to the person appointed by initial recruitment.

<sup>3</sup>(3) ~~In the event of merger/restructuring of the Departments, Attach~~  
Departments or Subordinate Offices, the inter se seniority of civil servants affected by the merger/restructuring as aforesaid shall be determined in accordance with the date of their regular appointment to a cadre or post.

18. **General Rules:** - In all matters not expressly provided for in these rules, civil servants shall be governed by such rules as have been or may hereafter be prescribed by the Government and made applicable to them.

19. **Repeal:** - The North-West Frontier Province Civil Servants (Appointment, Promotion and Transfer) Rules, 1975, are hereby repealed.

<sup>1</sup> Substituted for the words appointment to a post in the same basic pay scale in a cadre by Notification No. SOR-I(S&GAD)4-1/80, dated 17-05-1989.  
<sup>2</sup> The words inserted by Notification No. SOR-I(S&GAD)4-1/80/II, dated 04-02-1996.  
<sup>3</sup> Sub rule (3) of Rule-17 added vide Notification No. SOR-I(E&AD)4-1/80/IV, dt 28-5-2002.

GOVERNMENT OF NWFP  
ESTABLISHMENT DEPARTMENT

NO. SOE.II/ED/1-6/2001  
Dated February 6, 2002

TO

The Controller General of Accounts,  
Islamabad.

Subject: POSTING OF ACCOUNTS OFFICERS IN DISTRICT  
GOVERNMENTS.

I am directed to refer to your letter no. Estt:AO/17-C/2001, dated 02-11-2001 and to request that the order in relation to S.No.17, Mr. Mutahir Rehman, Accounts Officer, AG, NWFP, Peshawar, may kindly be withdrawn as Mr. Shahin Shah, Accounts Officer (B-17) already stands transferred to Peshawar District in August, 2001 and has been serving there since then.

Yours obediently,

*Rashid Khan*  
(RASHID KHAN)  
SECTION OFFICER (E-II)

Copy to:-

- 1- The Accountant General, NWFP, Peshawar with reference to his No. Admn-1-33(6-42)/147, dated 5-11-2001.
- 2- The District Coordination Officer, Peshawar with reference to his No. 2499-3504/DCO/EA, dated 8-11-2001.

It is requested that the order in question regarding Mr. Shahin Shah may kindly be withdrawn as employees can only be placed in Surplus Pool under the Provincial Government policy. He should be allowed to continue working till the expiry of his term is completed.

*Rashid Khan*  
SECTION OFFICER (E-II)

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Annex-XI-A

GOVERNMENT OF NWFP  
ESTABLISHMENT DEPARTMENT.

NO. SOE.II(ED)/1-6/2002  
Dated Peshawar the 22-5-2002.

To

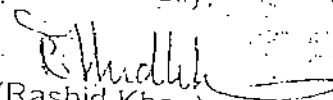
The Controller General  
of Accounts, Government of Pakistan,  
Islamabad.

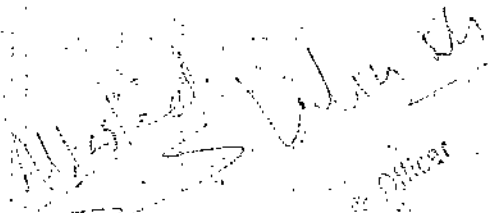
SUBJECT: POSTING OF ACCOUNTS OFFICER IN THE DISTRICT  
GOVERNMENT.

Dear Sir,

I am directed to refer to the subject noted above and to say that the competent authority has decided that Mr. Shahin Shah, Accounts Officer (Surplus Pool) may be adjusted as Accounts Officer in the office of District Coordination Officer. Thus the services of Mr. Mullahir Rehman, Accounts Officer, AG, NWFP, Peshawar presently working as Accounts Officer in the office of DCO Peshawar are not required any more. It would be appreciated if he is repatriated to his parent department at an early date.

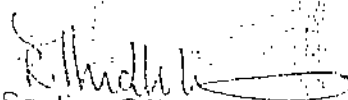
Yours faithfully,

  
(Rashid Khan)  
Section Officer(E-II)

  
Encl: No. & Date even

Copy to:-

- 1- The Accountant General, NWFP, Peshawar.
- 2- The District Coordination Officer, Peshawar with reference to his No. 2499-3504/DCO/EA, dated 8-11-2001. It is requested, that the order in question regarding Mr. Shahin Shah may kindly be withdrawn as employees can only be placed in Surplus Pool under the Provincial Government policy. He should be allowed to continue as Accounts Officer in the office of DCO, Peshawar.

  
Section Officer(E-II)

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

Annex - XII

O R D E R

Dated Peshawar, the 23<sup>rd</sup> Oct. 2003


No. SO(LG-I)10-458/96/Vol:II. - Pursuant to the Government of NWFP, Establishment Department's letter No. SOE-II(ED)1-6/2001, dated 09-10-2003, the Provincial Government in the Local Government, Elections and Rural Development Department are pleased to place the services of Syed Shahinshah, Accounts Officer (BPS-17), Surplus Pool, LG & RDD at the disposal of Information Department, Government of NWFP, for adjustment against the vacant post of Accounts Officer in the Directorate of Information NWFP, Peshawar.

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

Endst. No. SO(LG-I)10-458/94 Dated Pesh: the 23<sup>rd</sup> Oct. 2003

Copy is forwarded to:-

1. The Secretary to Government of NWFP, Establishment Department, Peshawar with reference to his Department letter referred to above.
2. The Secretary to Government of NWFP, Finance Department.
3. The Secretary to Government of NWFP, Information Department, Peshawar.
4. The Accountant General, NWFP, Peshawar.
5. The Director of Information, NWFP, Peshawar.
6. The Section Officer (General) LG & RDD.
7. The Section Officer (Estt:II), Govt. of NWFP, Establishment Department.
8. The Section Officer (Surplus Pool), Establishment Department.
9. ~~Syed Shahinshah, Accounts Officer, Surplus Pool, LG & RDD. He is directed to report to the Information Department for his adjustment against the vacant post of Accounts Officer in the Directorate of Information, NWFP, Peshawar.~~
10. PS to Secretary LG & RDD.
11. Master File.

  
(MUHAMMAD DAUD SHAH)  
SECTION OFFICER (ESTAB:)

GOVERNMENT OF NWFP  
ESTABLISHMENT & ADMN. DEPARTMENT  
(REGULATION WING)

15-7-03

No. SO(RV(E&AD)1-2/2003  
Dated. 05.07.2003

*Handwritten notes:*  
Chow  
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again

- To
1. All Administrative Secretaries to Govt. of NWFP.
  2. All District Coordination Officers in NWFP.

Subject: CLARIFICATION WITH REGARDS TO ADMINISTRATIVE DEPARTMENT FOR STAFF POSTED IN OFFICES OF DCOS, ACOS, EDCOS (E&P) & DROs

Dear Sir,

I am directed to refer to the subject noted above and to say that there is a general misconception about the Administrative Department of the staff of the offices of the defunct commissioners, Deputy Commissioners & Magistracy etc. The correct position is that once a Government Servant is declared surplus, he severs all his links with the Department in which he was working before his becoming surplus. On re-adjustment he becomes member of the new Department.

2. The Establishment Department Circular No. SO(O&M)(E&AD)3-3/2002, dated 11.01.2003 is not being interpreted properly. The above cited circular clearly states that BOR will be the Administrative Department for those employees of the offices of the Commissioners, Deputy Commissioners, Additional Deputy Commissioners and Assistant Commissioners etc in BS-15 and below who became surplus and were subsequently adjusted in the offices of the DCOs, ACOs, EDCOs and DROs in the District Government. Those employees of the defunct Commissioners, Deputy Commissioners, Additional Deputy Commissioners, Assistant Commissioners and Magistracy who have been adjusted by the Revenue & Establishment Department. Their Administrative Department will be the department in which they stood adjusted. For example a surplus Junior Clerk of the defunct Magistracy/D.C office, on adjustment in the Agriculture Department will cease his links with the Revenue &

*Handwritten notes:*  
HCO  
12/7



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Establishment Department as Administrative Department and his new Administrative Department will be the Agriculture Department. Likewise a surplus government servant of the Agriculture Department absorbed in the office of DCO/ACO etc will become member of the Revenue & Establishment Department and his service matters will be controlled by the Revenue & Establishment Department and not the Agriculture Department. Seniority of these employees shall be fixed in accordance with para-6 of the absorption/adjustment policy circulated vide letter No.SORI(E&AD)1-200/98 dated 8<sup>th</sup> June, 2001.

3. This clarification may kindly be brought to the notice of all concerned for future guidance.

Yours sincerely,

(Sardar Ali Shah)  
Section Officer (Reg-V)

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR.

Service Appeal No. 868/2019

Date of Institution ... 20.08.2018

Date of Decision ... 14.01.2021



Iftikhar Khan, Assistant (BPS-16),  
Khyber Pakhtunkhwa, Service Tribunal, Peshawar.

... (Appellant)

VERSUS

The Government of Khyber Pakhtunkhwa through Chief Secretary,  
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and three other  
respondents.

... (Respondents)

Mr. IFTIKHAR KHAN,  
Appellant

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In person.

MR. RIAZ AHMAD PAINDAKHEIL,  
Assistant Advocate General

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For respondents.

MUHAMMAD JAMAL KHAN  
MIAN MUHAMMAD  
ATIQU-UR-REHMAN WAZIR

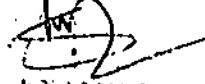
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MEMBER (Judicial)  
MEMBER (Executive)  
MEMBER (Executive)

ATTESTED

  
EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

JUDGEMENT:

MUHAMMAD JAMAL KHAN, MEMBER:- By virtue of the instant service appeal submitted under Section-4 of the Khyber Pakhtunkhwa Services Tribunal Act, 1974, the vires of notification/rules dated 03.04.2018 have been challenged.

2. That on establishment of the Khyber Pakhtunkhwa Services Tribunal, while adhering to the provisions contained in Article 212 of the Constitution of Islamic Republic of Pakistan the Service Tribunal has been conferred exclusive jurisdiction in the matter pertaining to terms and conditions of civil servants of the Province, Appellant being a civil servant is also rendering duties as Office Assistant in BPS-16 in this

Tribunal since 25.08.2017 and he is acting as such to the entire satisfaction of his higher-ups. On 03.04.2018, the Secretary Establishment Department Khyber Pakhtunkhwa Civil Secretariat, Peshawar, notified Service Rules which are not only irrational but also disadvantageous to the service career of appellant as the number of officials working in each cadres and their prospects of promotion have not been brought under consideration. For bringing the matter into the notice of competent authority, departmental appeal was moved on 24.04.2018 waiting for the expiry of the statutory period but without having any response, therefore having no other adequate remedy the instant service appeal was instituted.

3. Respondents were summoned, in compliance thereof they attended the Tribunal through their authorized representative thereby controverting the claim of appellant by submitting reply/comments by raising legal and factual objections.

4. We have heard arguments of the appellant as well as learned Assistant Advocate General and were able to go through the record on file with their valuable assistance in view of which our findings are recorded in the following paras.

5. Here it is deemed appropriate to mention that in the past due to split judgment, pro and contra of the Divisional Bench of this Tribunal one Hon'ble Member declared and accepted the appeal whereas the other Hon'ble Member dismissed the same, therefore, the instant appeal was referred to Larger Bench for the decision.

6. Before embarkation on adjudicating the issue involved in the instant case it is appropriate to have a look at the arguments advanced by the appellant himself. According to appellant in the service structure there are three contestants/aspirants for a single post of Registrar in BPS-18, that are, Additional Registrar, Superintendent and Budget & Accounts Officer all holding posts in BPS-17, according to the rules notified for the Ministerial Establishment of the Service Tribunal separate rather distinct seniority lists have been provided for all cadres. For Law Drafter and Assistant Registrar both falling in BPS-16 each cadre having one post has to be promoted to the post of Additional Registrar. As regard Office Assistants holding nine posts in BPS-16 have

ATTESTED

Khyber Pakhtunkhwa  
Service Tribunal  
Peshawar

to be promoted to the post of Superintendent (BPS-17) and still further a Cashier-cum-Assistant holding BPS-16 having one post has to be promoted as Budget & Accounts Officer in BPS-17. It is worth to be noted that seniority list of all the three cadres have been merged when the official of each cadre attains BPS-17 where-after a common seniority list have to be maintained. Appellant opined that while keeping in view the number of posts available for Office Assistant holding BPS-16 which are nine in numbers whereas other cadres of Additional Registrar and Budget & Accounts Officer having two and one post respectively would be promoted to higher grade with accelerated pace as compared to the chances of promotion available to the Office Assistants when he is promoted to BPS-17 on his turn thus having dismal chances of promotion and at the same time lagging behind by remaining junior to the lateral entrants in service. That except the post of Law Drafter qualification for all the remaining posts is a Bachelor Degree and B.Com. While keeping in view the principles of parity and maintaining equilibrium such scheme of things as provided in the rules would not uphold the cardinal principles of justice, therefore, he submitted that each official having different cadre but having the same grade should have equal chances of promotion, he placed reliance on **PLD 1980 S C 153**, wherein it has been held that Article 212 read with Civil Servants Act, 1973, Section-25 of the Act ibid vires of rules competency to determine-Rules having altered terms and conditions of service, bar of Article 212 applicable with full force- question of vires of rules vis-à-vis with section-25 of Civil Servants Act, 1973, in such exercise to be necessarily considered vide citation (e) and last two paras of the aforesaid judgement. He referred to **1991 SCMR 1041**, wherein it has been held that if a statutory rule or a notification adversely affects the terms and conditions of a civil servant, the same can be treated as an order in terms of Section-4 (1) of the Service Tribunal Act (LXX of 1973) and can file an appeal in the Service Tribunal, even if the fundamental rights of a civil servant are bypassed or violated, it has been further provided in the aforesaid dictum that all citizens are equal before law and entitled to equal protection of law, state nowever is not prohibited to treat its citizens on the basis of reasonable qualification vide citations (d), (e), (l) of the referred to dictum. He referred to **PLD 2004 S C 317**, wherein it has been held if

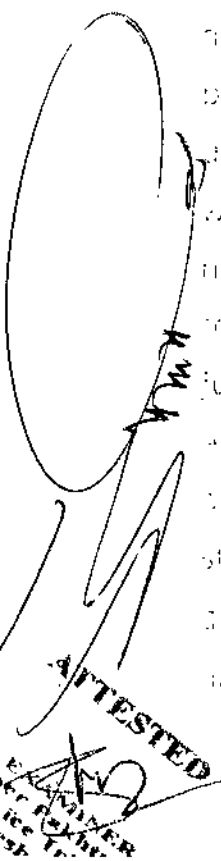
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EXAMINER  
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an objection is raised qua the validity of amendment in the rules by a civil servant on the ground that the same had adversely affected his right in the service as to promotion, jurisdiction of the High Court was barred by virtue of Article 212 of the Constitution. It was ordained that the civil servant should approach the Services Tribunal for redressal of his grievance, which was vested with the jurisdiction not only to go in to the question of validity or vires of the rules qua right of such a civil servant but also the question of mala-fides if raised in the appeal vide citation (b) and para-5 of the referred to judgement. While making reference to **2002 PLC (C.S) 94**, vide discussing the vires of Section-4 of the Services Tribunal Act (LXX of 1973) vis-à-vis the Constitution of Pakistan 1973 Articles 199 & 212 it has been held that the matter relating to the terms and conditions of service would not come within the jurisdiction of the High Court- even if a statutory rule was ultra vires, the Services Tribunal would have the jurisdiction to strike down the same vide para-8 of the referred to judgement. He referred to **2012 PLC (C.S) 142**, while discussing the scope of Section-4 (1) of the Balochistan Services Tribunal Act, 1974, that appeal challenging the vires of law, statutory service rules or notification adversely affecting terms and conditions of civil servants such law/rules/notification could be in turn an order in term of Section 4 (1) of Balochistan Services Tribunal Act, 1974, and could be challenged in an appeal before Services Tribunal. It has further been provided that the jurisdiction conferred upon Services Tribunal is not limited and all service matters including vires of service laws can be challenged before it vide citation c of the referred to judgement. Similar question of jurisdiction has also been tackled in **2012 PLC (C.S) 1211**. He made reference to **2015 PLC (C.S) 215**, it has been held categorically that the Services Tribunal has got exclusive jurisdiction to entertain and adjudicate upon the matters relating to the right to be considered for promotion to a higher grade vested in the Khyber Pakhtunkhwa Services Tribunal Act, 1974, vide citation-a read with para-12 of the referred to judgement. He referred to **2018 PLC (C.S) 40**, Wherein it has been held unequivocally that the Service Tribunal was fully competent to entertain and decide the cases wherein vires of Service Rules or notification had been challenged on the touch stone of being violative of Fundamental Rights and to direct the authority for framing such rules beneficial to the

ATTESTED  
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 Peshawar

prospect of promotion of civil servants and was held that the claim of petitioner/employees would fall in terms and conditions of service vide citation (a) and paras-10 & 11 of the referred to judgment. He referred to **2019 PLC (C.S) 995**, wherein it has been held that the vires of rules could be challenged before Service Tribunal vide summarized para at the inception of judgement read with para-7 ibid of the referred to dictum. He made reference to Services Appeal No. 231/2011 Captioned **Bhian Farooq Iqbal Versus Mines and Minerals Department Khyber Pakhtunkhwa** decided on 19.01.2013, the rules in vogue in the Mines and Minerals Department till 16.10.2010 were revoked and new rules were notified where clause-b of the rule was replaced on mala-fide intention which notification was set-aside by dent of which rules were notified on 17.10.2010 by restoring clause-b of notification No. **EO1(IND)1-688-Vol-V** dated 10.12.2003 and furthermore that promotion to be made strictly keeping in view section-9 (2)(a)(b) of Civil Servants Act, 1973, and Esta Code directions. He placed reliance on Service Appeal No. 1218/2011 titled **Fozia Shehzadi Versus Education Department Government of Khyber Pakhtunkhwa** decided on 19.12.2017, wherein the department of Elementary & Secondary Education Government of Khyber Pakhtunkhwa amended method of recruitment in exercise of the powers under sub-rule 2 of Rule-3 of the **Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989** which changed the qualification for promotion, was challenged to be ultra vires of the Fundamental Rights and it was held by this Tribunal that it is now a settled position of law that vires of any rules or law touching the terms and conditions of civil servants can be decided by this Tribunal and reference was made to the dictums laid down in **PLD 1980 Supreme Court 153** and **1991 SCMR 1041** which were stated to be much clear, therefore, it was held that this Tribunal has the jurisdiction to look into the vires of law and rules touching the terms and conditions of the Civil Servants vide para-6 of the referred to judgement. He placed reliance on **PLD 1990 SC 1092**, while elaborating discretion, it has been held that where ever wide worded powers conferring discretion exist, there remains always the need to structure the discretion and courts when can interfere with the discretion vide citation (s) of the judgement. In **1997 SCMR 1804**, it has been held that the general principles that discretionary decision


  
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should be made according to rational reasons needs (a) that there be findings of primary fact based on good evidence and (b) that decision about the fact be made for reasons which serve the purpose of the statute in an intelligible and reasonable manner. The actions which do not meet these threshold requirements are arbitrary and may be considered a misuse of powers vide citation (c) of the referred to dictum. In **1999 SCMR 467**, while elaborating Article 25 of the Constitution of Pakistan wherein the principles of equality of citizens has been enunciated, it has been held that Government is not supposed to discriminate between the citizens and its functionaries cannot be allowed to exercise discretion at their whims, sweet will or as they please rather they are bound to act fairly, evenly and justly vide citation (a) of the referred to dictum. He made reference to **2005 SCMR 25**, wherein distinction has been drawn in discretionary decision and arbitrary decision it was held that discretionary decisions should be made according to rational reasons. In discretionary decision there must be findings of primary facts based on good evidence and the decision about the fact be made for reasons which serve the purpose of statute in intelligible and reasonable manner and the actions which do not meet the threshold requirements are arbitrary and may be considered as misuse of powers. It has further been held that discretion powers have certain pre-conditions and that are seven instruments useful in structuring of discretionary powers, are open plans, open policy statement, open rules, open findings, open reasons, open precedents and fair informal procedure. Still further it has been held that functionaries of any organization or establishment cannot be allowed to exercise discretion at their whims, sweet will or in arbitrary manner, rather they are bound to act fairly, evenly and justly vide citation (c) (d) (e) para-15 of the referred to judgement. He placed reliance on **2015 SCMR 630**, while discussing Section-24-A of the General Clauses Act, (X of 1897) wherein it has been held that the executive authority having discretionary powers, its exercise and scope---when legislature conferred a wide range of power it must be deemed to have assumed that the powers would be firstly, exercised in good faith, secondly, for the advancement of the objects of the legislation, and, thirdly, in a reasonable manner--- where the authorities failed to regulate their discretion by the framing of rules, or policy statements or



ATTESTED

precedents it became mandatory for the courts to intervene in order to maintain the requisite balance for the exercise of statutory powers vide citation (e) and para-10 of the referred to dictum. He made reference to **2015 SCMR 1257**, wherein it has been held that every public functionary is supposed to function in good faith, honestly and within the precincts of his powers so that person concerned should be treated in accordance with law as guaranteed by Article-4 of the Constitution. It has also been held that the objects of good governance cannot be achieved by exercising discretionary powers unreasonably or arbitrarily and without application of mind but the objective can be achieved by following the rules of justness, fairness, and openness, in consonance with the command of the Constitution enshrined in different Articles including Articles 4 & 25 vide paras-11 & 12 of the referred to judgement. He made reference to **PLD 2017 Sindh High Court 690**, wherein it has been held that when legislature confer powers on the government to frame rules, it is expected that such powers have been used only bonafide, in a responsible spirit and true interest of public and in furtherance of the object for attainment of which such powers have been conferred---powers conferred upon government to frame rules is not unlimited but subject to certain per-requisites and pre-conditions---unlimited right of delegation is not inherent in legislative power itself---court may reject a regulation as invalid and ultra vires if it fails to comply with statutory essential. It has also been held that where authority failed to regulate their discretions by framing of rules, policy statements or precedents, it becomes mandatory for courts to intervene in order to maintain requisite balance for exercise of statutory powers vide citations (c) & (d) and para-15 (a) (b) (c) (f) (g) (h) (i) of the judgement.

The appellant pointed out that the Khyber Pakhtunkhwa Services Tribunal had submitted draft rules and dispatched it to SSRC but the same have not been brought under consideration by the forum concerned without assigning any reason. Appellant referred to Section-14-A of the General Clauses Act, 1897, elaborating that when powers are conferred on the authority, it has to be exercised reasonably and also referred to **Sections 21 and 23 of the Act *ibid***. Registrar of the Khyber Pakhtunkhwa Services Tribunal represented the institution at

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Tribunal



the SSRC but was not able to emphatically forward the stance of the Institution thus remaining just a signatory to the same. He further placed reliance on **2018 SCMR 598** wherein it was held that the terms and conditions of service cannot be unilaterally altered by the employer to the disadvantage of the employees vide citation (a) and para-6 of the judgement. The office of Registrar Khyber Pakhtunkhwa Services Tribunal has to perform functions of Trio nature i.e scrutiny of record, judicial and accounts. A person rich in experience in manifold fields and spheres would contribute to proper functioning of the office of Registrar and such a scheme of things could not be ensured when seniority of different cadres have been split. He submitted that when they are on better footing or in a position of advantage, reference is being made to the issue of specialization but when they have no such advantage no reference to it at all is being given. He referred to Article 25 & 38E of the Constitution of Islamic Republic of Pakistan wherein it has been held that all citizens are to be treated equally ruling out possibilities of discrimination. He further placed reliance on **2003 PLC (C.S) 965**, wherein it has been held that state subjects are equal before law and are entitled to equal protection of law---state subject could not be discriminated or refused their rights of services---rights of service would mean and include appointment, promotion and all other ancillary matters attached to the service of a citizen. It has further been held that rules prescribed being subservient to the original Act---any rule enacted in derogation of original Act or defeating the spirit of the constitution could not be allowed to prevail vide citations (c) (d) of the referred to dictum. In **2015 PLC (C.S) 1495**, similar principle has been laid down while making reference to Article 25 of the Constitution of Pakistan vide citation (b) and para 12 of the judgement appended. He placed reliance on **2004 CLD 260**, while discussing mala fides it was held that an action taken with mala fides is an action taken maliciously for personal motives whether to hurt the person against whom action is taken or to benefit oneself. The term mala fides is equated with bad faith. Some of the instances of mala-fides are evasion of the spirit of bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms and interference with or failure to cooperate in the other party's performance vide citation (c). He placed reliance on **2010 SCMR 511**,

**ATTESTED**

  
EXAMINER

Khyber Pakhtunkhwa

wherein it has been held that no employee had vested right in promotion but where rules, regulation and policy had been framed for appointment or promotion for mala-fide reason or due to arbitrary act of the competent authority, aggrieved person was entitled to challenge the same vide citation (e) of the referred to judgement. He further submitted that in other departments such as Education, Agriculture, Live Stock and C&W similar principles have been adopted by maintaining common seniority list of the officials having the same grades but holding different cadres. He submitted that adoption of the rules in other departments in the circumstances is indispensable, for full delivery of services by each and every official of the Services Tribunal, therefore, providing for efficient service structure is need of the hour and norm of the day. He placed reliance on **2010 SCMR 511** and submitted that the acts done in the promulgation and adoption of rules suffers from elements of mala-fide.

On the contrary, the learned Assistant Advocate General contended that the notion regarding the lesser chances of promotion is just a misnomer having no nexus with ground reality. The present appeal is not competent due to conduct of appellant who is estopped to have recourse to this Tribunal. In fact the Registrar of this Tribunal has attended the meeting of SSRC and has participated in the rules framing process, the rules are based on sound reasons and are consensus oriented which are not just whimsical rather having a pragmatic approach to the actual realities. As regard the assertion of appellant regarding mala-fide the learned Assistant Advocate General submitted that it is in fact an abstract concept carrying broad implications, no mala-fide could be attributed to the rules framing bodies. Whether there was any mala-fide on the part of rule framing body with the rest of officials who have greater chances of promotion while exemplifying that a Primary School Teacher is required Bachelor of Science qualification whereas at the eve of his retirement he would reach Grade-16 although channel of promotion are open to him or he can become District Education Officer or even a Director of the institution. For Senior English Teacher the criteria of qualification is the same. While making reference to the post of Law Drafter he submitted that the holder of the same post in the High Court is having grade 17 whereas the appointment of

ATTESTED

EXAMINED  
Khyber

the Civil Judge is made in BPS-18. As regard the job descriptions of various posts of distinct cadres the appellant remained mum. The appellant has not made recourse to this Tribunal with clean hands as he has instituted the present case on petty grounds with mala-fide intention and intends to infringe upon the rights of other employees of the Tribunal. However, the prospects of promotion is just like pyramid which narrows down in every department in higher scale. The Service Rules were notified after thorough deliberation by the SSRC Committee in which the representative of Services Tribunal was also present and all the stake holders have developed consensus while finalizing the service rules. He placed reliance on **2015 SCMR 269** (citation d) that under Article 212 of the Constitution of Islamic Republic of Pakistan, 1973, a criteria has been laid down and domain has been provided which falls exclusively within the ambit of the concerned department/legislature, therefore, extinguishing right of appellant. He placed reliance on **2019 PLC (C.S) 995** and submitted that the government has prerogative to frame rules which fall within its exclusive domain. He placed reliance on **2019 PLC (C.S) 282, 2018 PLC (C.S) 1135** that every legislation is subject to judicial review. It is not a vested right of a civil servant to seek amendment in the rules.

5. The perusal of record clarifies the fact that there are four different cadres working in this Tribunal i.e the Law Drafter (BPS-16) one post, Assistant Registrar (BPS-16), Cashier-cum-Assistant (BPS-16) and Office Assistant (BPS-16). Out of the four cadres, the officials of former three cadres are having one post each whereas the cadre of Office Assistant have nine posts. The academic qualification for initial recruitment to the post of Law Drafter (BPS-16) is L.L.B, for Assistant Registrar and for the Office Assistant a Bachelor Degree is required whereas for Cashier-cum-Assistant qualification is D.Com. According to the rules notified, there are just two posts of Grade-16 to be promoted to the post of Additional Registrar (BPS-17) i.e Law Drafter and Assistant Registrar, a Cashier-cum-Assistant is having a single post to be promoted as Budget & Accounts Officer (BPS-17) whereas the Office Assistants (BPS-16) have nine posts to be promoted to a single post of Superintendent (BPS-17). On attainment of promotion in BPS-17 a common seniority list has to be maintained who in turn would get promotion to the single post of

ATTESTED

EXAMINER  
Khyber Pakhtunkhwa  
Service Commission

Registrar (BPS-18) on the principle of seniority-cum-fitness. Thus while looking at the scenario in this context, the Law Drafter and Assistant Registrar as well as Cashier-cum-Assistant would have rapid chances of promotion as compared to the promotion chances of Office Assistants (BPS-16). The question arises that when the holders of all the three posts sans Law Drafter having more or less the same academic qualification whether they should not have equal chances of promotion? For best delivery of services and for amelioration of the lot of the public at large, each cadre should have equal chances of promotion so that no official of any cadre have a feeling of discrimination. How an official can render duties to the best of his abilities in the public interest when he is not provided equal chances of promotion and are thus discriminated. The officials of each cadre would have a bright career when the channel of promotion is open to all equally so that the possibility of deprivation of one cadre at the cost of other is ruled out subject to an exception of Law Drafter who stands on a high pedestal as far as his respective qualification is concerned, therefore, a mechanism can be set making of his adjustment in the seniority list at appropriate place, however, maintaining of equilibrium for the entire set of the officials by maintaining a common seniority list would be the only solution for addressing the problem. When the seniority of the officials have later on being merged when they get promotion in BPS-17 whether it cannot be equated at initial stage. The guiding principles for formulation of rules should be devised in a manner to safeguard the rights of all and similarly placed employees who are to be treated across the board. A single institution having different categories of services must have rules devised in such manner to provide equal opportunity of promotion. Since all the employees are part of the same institution, therefore, employees of one set of cadre can conveniently get adequate knowledge of other cadres and in this regard appropriate opportunities can be provided by making internal arrangements. While giving effect to the rules the case of Office Assistants have not been taken care of or taken into account vis-a-vis other office holder resulted into infringements of their rights. The rules must not have a negative impact on employees of one cadre at the cost of other employees serving in other cadres. Such a scheme of thing shall definitely distort and malign the whole atmosphere and a workable peaceful environment and a

ATTESTED

EXAMINER  
 Chyber Pakhtunkhwa  
 Service

smooth working with cohesion would be an impossible phenomenon having a negative impact on the overall performance of the institution the ultimate sufferer of which would be civil servants and their dependents. Injustice or discrimination of course begets a sense of deprivation leading to distortion in thoughts entailing on the mental cognitive faculties, which play havoc by creating chaos which are elements detrimental to the public serenity which unbalances the whole fabric of society. It destroys career, to handicap families which results in financial problems. Discrimination which leads to a sense of deprivation rather consternation foreclosing the doors of creative mind the beginning of this sort of tension results into the end of talent. Accordingly, healthy mental activities abates. When there are no creative minds or there is dearth of creative minds the progress of institution stops and its down fall commences which have a far reaching repercussions on other institution and the society at large, therefore assurance of complete justice can be ensured only when similarly placed employees are treated at par without an iota of discrimination.

19. The reasons assigned in the preceding paras are to be converged on a single principle to give effect to the rules in a concrete form by devising of a mechanism so that the issue is addressed in a manner to give everyone his due otherwise the action so taken would have momentous consequences. The SSRC which seized with the matter must have acted in perspicacity by encompassing all aspects and facets so that the accomplishment so made should have not resulted into deprivation of one cadre. Formulation of rules for promotion must be in a way to have equal avenues of promotion for each cadre which is not possible without merger of seniority list by maintaining common seniority list at all levels indiscriminately. Similar principles of maintaining a common seniority list of officials having different cadres but the same grade and working in the same institution/department have been provided such as C&W Department, Agriculture Department, Mines and Minerals Department and Irrigation Department etc. Such actions, acts are explicitly in contravention of **Section-24-A** of the **General Clauses Act, 1897** and violative of **Articles 25 & 38-E** of **Constitution of Islamic Republic of Pakistan** wherein it has been provided that all citizens are to be treated equally ruling out possibility

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EXAMINER

Khuzdar (K) Khtukhwa  
Service Test

Discrimination. The authorities referred to by appellant clearly enunciate when service rules are based on discrimination the Services Tribunal is conferred with jurisdiction to take cognizance of the matter and in this regard reliance is placed on the entire set of precedents produced by appellant in support thereof.

11. As regard conferment of discretionary powers on the competent authority/forum it has been provided in a number of precedents of the Hon'ble Supreme Court of Pakistan that it should always be exercised judiciously in a reasonable way without any sort of discrimination and to the prejudice of none. Certain principles of lofty nature have been laid down by the august Supreme Court of Pakistan adherence to which is a pre-requisite for exercising discretionary powers when it has been vested in the authority. The matter regarding exercise of discretionary powers is not paltry in nature and utmost care and caution is required, it must be for the betterment and good of all. The principles so laid down are seven instruments i.e useful in structuring of discretionary powers that are open plans, open policy statements, open rules, open findings, open reasons, open precedents and fair informal procedure, reliance in this regard is placed on PLD 1990 Supreme Court 1092, 1997 SCMR 1804, 1999 SCMR 467, 2005 SCMR 25, 2015 SCMR 630, 2015 SCMR 1257, PLD 2017 Sindh 690. The jurisdiction of the Services Tribunal is not limited and all service matters falling within the ambit of service rules can be challenged before it when statutory rules or a notification adversely affecting the terms and conditions of a civil servant and the same can be treated an order passed under the provision of the Service Laws.

12. No evidence has just emanated that prior to the promulgation of the subject rules, the Draft rules were circulated to obtain opinion of the employees who are to be regulated under those rules by providing a service structure whether the rights of the civil servants have not be infringed when the modalities required were not set in motion? The consultative process must have preceded before finalizing and giving effect to the rules as it has put some of the employees at disadvantageous position as compared to the case of others, thus violation of **Section-23 of General Clauses Act, 1897**, therefore, the recording of the rules in the circumstances becomes essential,

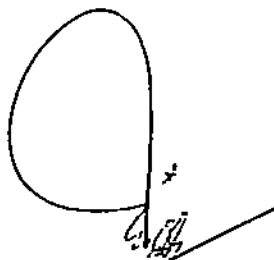
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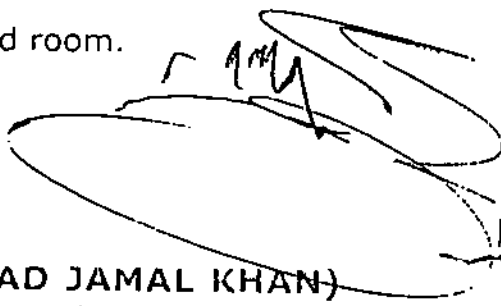
Therefore, unless and until the issue involved is tackled and necessary, appropriate modification and amendments in the rules are made for the purpose of maintaining the joint seniority list of the officials the anomaly and grievance shall remain in the field unresolved and unsettled.

As regard the dictums relied upon by the learned Assistant Advocate General appearing on behalf of respondents in utmost reference and regard thereto the principles laid down in the precedents relied upon by appellant viably resolve the controversy vis-à-vis the precedents relied upon by the learned Assistant Advocate General. While looking at the human conduct the chances of errors and mistakes are there and a forum must be there to have jurisdiction in the matter to address the issue otherwise the inevitable result would be perpetuating the anomaly to the entire prejudice of the sufferers. Needless to mention here that government has been invested with powers to frame rules but in accordance with the true spirit of the law and precedents referred to above.


14. The upshot of what has been discussed above is that on the acceptance of the instant appeal respondents are directed to give effect to the rules in the light of observations made above. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED  
14.01.2021

  
(MIAN MUHAMMAD)  
Member (Executive)

  
(MUHAMMAD JAMAL KHAN)  
Member (Judicial)

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

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