08.02.2021

Petitioner present through counsel. Mr. Kabirullah Khattak learned Addl. AG for respondents present.

At the very outset, it was brought in to the knowledge of Tribunal that petitioner has been reinstated in view of the order of this Tribunal, he, therefore, requested for filing of the instant execution petition. To this effect, statement of Zia-Ur-Rehman Tajik Advocate, learned counsel for petitioner was recorded and his signature was obtained thereon.

As the petitioner has been reinstated conditionally, therefore, the proceedings stand adjourned sine-die till the decision by the Apex Court.

(Rozina Rehman) Member (J) Statement of Zia ur Rehman Tajik Advocate, counsel for petitioner, on oath:

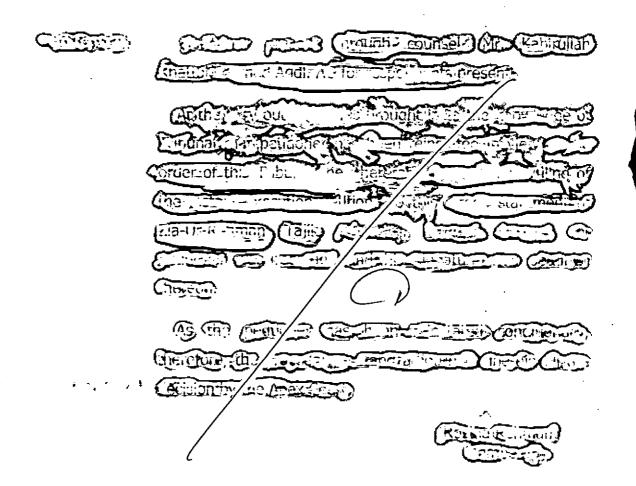
Stated that the petitioner is satisfied from the said order of reinstatement as per the order of this Hon'ble Tribunal, they are reinstated conditionally. Therefore, the instant proceedings may be adjourned sine die.

Zia ur Rehman Tajid Advocate

R.O & A.C

Dated: 08.02.2021

(Rozina Rehman) Member (J)



FORM OF ORDER SHEET

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Cou	41 L	v

Execution Petition No.

122/2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1.	2	3
1	24.08.2020	The Execution Petition submitted by Mr. Zahid Alam through Mr. Zia Ur Rahman Tajik Advocate may be entered in the relevant Register
		and put up to the Court for proper order please.
		REGISTRAR
2-		This Execution Petition be put up before S. Bench on 18)0912020.
· .		CHAIRMAN
	18.09.2020	Counsel for the petitioner.
		Notices be issued to the respondents for submission
		of implementation report on 03.11.2020 before S.B.
		Chairman
	· ·	
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	· .	
	·	

03.11.2020

Nemo for petitioner. Mr. Kabirullah Khattak, Additional Advocate General and Mr. Muhammad Arif Wazir, A.D (Litigation), are present.

Implementation report on behalf of respondents not submitted. Representative of the department requests for time. File to come up for implementation report on 24.12.2020 before S.B.

(Muhammad Jamal Khan) Member (Judicial)

24.12.2020

Counsel for the petitioner and Mr. Noor Zaman Khattak, District Attorney alongwith Muhammad Arif Khan Wazir, AD for the respondents present.

Representative of respondents states that a CPLA has been moved before the Apex Court against the order under execution. An application for its early fixation has also been submitted, however, no date of hearing is fixed in CPLA as yet.

The respondents are required to implement the judgment at the earliest and submit a report to that effect on next date of hearing in case the judgment under execution has not been suspended or set aside by the Apex Court till then.

Adjourned to 08.02.2021 before S.B.

Chairman

# BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

In Re: Execution Petition NO.\_\_\_\_\_/2020 In S.A No.1105/2019 decided on 22.06.2020

Zahid Alam

Vs.

Government of Khyber Pakhtunkhwa

### INDEX

S.No	Description of Documents	Annex	Pages
1.	Application		1-3
2.	Copies of Service appeal and Judgment/Order dated 22.06.2020	" <u>A</u> " & " <u>A/1</u> "	4-14
3.	Copy of the arrival report	" <u>B</u> "	15
4.	WakalatNama		16

**Applicant** 

through

Zia Ur Rehman Tajik

LLB, LL.M, Sharia Law,

Advocate,

Supreme Court of Pakistan.

# BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.



In Re: Execution Petition NO.\_\_\_\_\_/2020
In S.A No.1105/2019 decided on 22.06.2020

Zahid Alam s/o Muhammad Alam r/o Khawari District Mansehra.



---Appellant

### Versus

- Government of Khyber Pakhtunkhwa through Secretary Transport and Mass Transit Department, Civil Secretariat Peshawar.
- Director Transport and Mass Transit Department, Benevolent Fund Building, Peshawar Cantt.
- 3. Secretary,
  Regional Transport Authority,
  Head Division, Abbottabad

--<u>Respondents.</u>

APPLICATION UNDER SECTION 7(2)(e) OF KHYBER PAKHTUNKHWA SERVICES TRIBUNAL ACT, 1974 FOR/ON BEHALF OF APPLICANT FOR EXECUTION OF JUDGMENT/ORDER DATED 22.06.2020 PASSED IN SERVICE APPEAL NO.1105/2019 BY THIS HON'BLE TRIBUNAL WHEREBY THE RESPONDENTS ARE DIRECTED TO RE-INSTATE THE APPLICANT'S SERVICES WITH ALL BACK BENEFITS.

(2)

- 1. That the applicant was removed from service by the respondents vide order dated 29.04.2019 which order was assailed by the applicant in Service Appeal No.1105/2019. Furthermore, the said removal order was set aside by this Hon'ble Tribunal vide its Judgment/Order dated 22.06.2020. (Copies of Service appeal and Judgment/Order dated 22.06.2020 are enclosed as annexure "A" and "A/1".)
- That subsequently the applicant submitted his arrival report to the respondents but to his dismay the respondents neither re-instated the applicant nor accepted his arrival report what to say of extending all back benefits to applicant by the respondents. (Copy of the arrival report is enclosed as annexure "B".)

Now feeling aggrieved of the respondents' discriminate, illegal, unlawful treatment and willful/deliberate defiance of the Judgment/Order dated 22.06.2020 of this Hon'ble Tribunal the applicants approaches this Hon'ble Tribunal for his re-instatement in service with all back benefits in execution of the Judgment/Order dated 22.06.2020 passed by this Hon'ble Tribunal interalia amongst other:

### **GROUNDS:**

- A. That the respondents are bound to implement and execute the Judment/Order dated 22.06.2020 of this Hon'ble Tribunal.
- B. That non execution of the aforesaid Judgment/Order is not only illegal, incorrect, irrational but have committed the respondents to gross willful disobedience of the Judgment of this Hon'ble Tribunal also.
- C. That the respondents are bound by law to re-instate the applicant with all back benefits.
- D. That the respondents are also under an obligation as per Article 4 and 5 of the Constitution of Islamic Republic of Pakistan, 1973 to execute and implement Judgment/Order dated 22.06.2020 of this Hon'ble Tribunal. In addition to, non execution of the Judgment by the respondents and not treating the applicant in accordance with law is not supported by any provision of law and amounts to gross defiance of the Judgment of this Hon'ble Tribunal also.

It is, therefore, respectfully prayed that on acceptance of instant Application the Judgment/Order dated 22.06.2020 may kindly be implemented in letter and spirit and respondents may kindly be directed to re-instate the applicant with all back benefits.

**Applicant** 

through

Zia-Ur-Rehman Tajik

LLB, LL.M, Sharia Law,

Advocate,

Supreme Court of Pakistan.

### **AFFIDAVIT**

I, Zahid Alam s/o Muhammad Alam r/o Khawarai District Mansehra, do hereby solemnly affirm and declare on oath that the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'bleTribunal.

DEPONENT

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

S.A.No. 105 /2019

Zahid Alam S/o Muhammad Alam R/o Khawari District Mansehra



#### Versus

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

...... Respondents

Appeal u/s 4 of the KP Service Tribunal Act, 1974 against the termination order of removal from 29.04.2019 and service dated appellate order dated 01.08,2019 departmental upon appeal, wherein departmental appeal has been dismissed be declared as illegal, against the law and facts.

Filedito-day

### PRAYER

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

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dated 01.08.2019 may please be set-aside and the appellant may may please be reinstated in to the service with all back benefits.

## RESPECTFULLY SHEWETH;

Appellant humbly submits as under:

- 1) That the appellant being eligible and highly qualified applied for the post of Assistant (BPS-14) and after fulfilling all the cordial formalities i.e. Test and Interview was appointed as Assistant (BPS-14) vide appointment order dated 04.05.2012. It may be mentioned here that the Assistant's post was later on upgraded to BPS-16. (Copies of educational documents, appointment order dated 04.05.2012, medical Certificate, and Arrival report are Annex "A")
- That the appellant is a permanent Civil Servant as the department is keeping/ maintaining the seniority list of the appellant and his other colleagues. (Copies of seniority lists and of pay roll are Annex "B")
- That in the year 2014, the respondent department issued charge sheet not only to the appellant, but other seven colleagues, wherein the allegations were that he was appointed by the department illegally and without fulfilling the appointment criteria. (Copy of charge sheet dated 09.05.2014 is Annex "C")

ATTESTED

Khyber Pakhtunkhwa Service Tribunal

- (b)
- 4) That the appellant duly replied to the above mentioned charge sheet dated 09.05.2014 vide reply dated 19.05.2014, which is hereby annexed as Annex "D".
- 5) That the department vide order dated 09.05.2014 appointed one Mr. Sami Ullah Section Officer (Dev) Transport & Mass Transit Department, Govt. of KPK as Inquiry Officer. (Copy of office order dated 09.05.2014 is Annex "E")
- That the appellant and others participated in the Inquiry proceedings and later on he alongwith other colleagues were informed by respondents verbally that the allegations against them were dropped and the case was filed.

It may be mentioned here that time and again the appellant requested the respondents to provide him the copies of proceedings conducted against him in 2014, but till date the respondents are turning deaf ear to the requests of appellant.

- 7) That the respondents conducted inquiry against the appellant again in 2018, the report of which is Annexed herewith as Annex "F".
- Phat the respondents started disciplinary proceedings by issuing charge sheet and statement of allegations to the appellant vide letter dated 21.01.2019, which was duly replied by the appellant. (Copy of charge sheet and statement of allegations alongwith reply are Annex "G")
- 9) That the respondents vide letter dated 22.01.2019 nominated inquiry penal to conduct an inquiry ATTESTED



about the allegations. (Copy of letter dated 22.01.2019 is Annex "H")

- 10) That the appellant appeared before the Inquiry Committee and thus after the inquiry proceedings the report was submitted wherein, imposition of major penalty was recommended. (Copy of inquiry report is Annex "I")
- 11) That astonishingly the appellant was again served with show cause notice dated 13.03.2019 on the same allegation, which were leveled against him in the year 2014, but this time only to 4 persons. (Copy of letter and show cause notice dated 13.03.2019 are Annex "J")
- 12) That the appellant submitted reply to the show cause notice dated 13.03.2019. (Copy of the reply to the show cause notice is Annex "K")
- 13) That vide impugned office order dated 29.04.2019 the competent authority imposed major penalty of removal from service on the appellant illegally and without lawful authority. (Copy of impugned office order dated 29.04.2019 is Annex "L")
- 14) That the appellant prefer departmental appeal against the above mentioned impugned office order of removed from service, which was dismissed vide order dated 01.08.2019. (Copy of departmental appeal alongwith its dismissal order dated 01.08.2019 are Annex "M")
- 15) That the appellant is aggrieved of the impugned termination order of removal from service and dismissal of departmental appeal and thus prefer this appeal for the following amongst other grounds:
  ATTESTED

Khyber Pakhtunkhwa Service Tribunal, Peshawar

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## (8)

### **GROUNDS:**

- a. That the appellant was duly appointed by respondents department after due process and thus the impugned dismissal order is against the law and facts.
- b. That since the appointment the appellant was receiving his salaries for more than six years and being permanent employees valuable rights accrued to him and thus the dismissal order is against the natural justice.
- c. That the superior Courts also held time and again that once an employee has been appointed after due process he cannot be removed from service rather actions must be initiated against the appointing authority and thus on this principle too the appellant is entitled to be reinstated into service with all back benefits.
- d. That the respondents in 2014 already conducted inquiry on the same allegations and the appellant was cleared from all the charges, but now again they conducted inquiry on the same allegations, which is against the law and thus the appellant deserve to be reinstated into service.
- e. That the appellant was never associated or given chance to properly participated in the inquiry ATTEST proceedings and thus he has been condemned unheard, which needs to be declared against the law by this Hon'ble Tribunal.

Peshat are Tribunal That in 2014 the respondents conducted inquiry against eight persons, which culminated into filing

the inquiry, but now the respondents singled out four persons including the appellant and removed them from service, which shows the malafide of respondents to condemned the appellant for no fault on his part and thus all the proceedings including inquiry process needs to be declared null and void.

g. That the malafide of the respondents can be seen from the fact that in 2014 inquiry was initiated against eight persons, but the recent proceedings were initiated against four persons and the rest of four persons were given promotion being blue eyed persons of respondents. (Copy of promotion orders are Annex "N")

It is, therefore, prayed by accepting the instant appeal, the impugned termination order of removal from service dated 29.04.2019 and the appellate order dated 01.08.2019 may please be set-aside and the appellant may please be reinstated in to service with all back benefits.

Dated: 21-8-2019

Appellant

Through

Barrister Kamran Qaisar Advocate High Court,

### <u>VERIFICATION</u>

It is verified that, the contents of the appeal are true and correct to the best of my knowledge and belief and nothing material has been concealed from this hon'ble Tribunal.

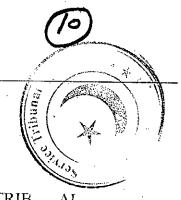
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Khyber a him bwa Service Tribunal, Peshawar

(9/A)

## 1105/2019

	Date of	Order or other proceedings with signature of Judge or Magistrate
S.No.	order/	and that of parties where necessary.
	proceedings	Lita Maria
1	.2	3
		Present
		Present.
	22.06.2020	Mr. Zia-ur-Rehman Tajik, For appellant
		Mr. Riaz Paindakhel, Assistant Advocate General, For respondents
		Vide our detailed/ common judgment of today, in Service
		Appeal No. 1102/2019, we allow this appeal as prayed for.
		Parties are left to bear their respective costs. File be
	-	consigned to the record room.
		(Hamid Farooq Durrani) Chairman (Mian Muhamihad) Member (E)
		ANNOUNCED Date of Preventation of Americanian 236/22
		22.06.2020
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### BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIB

**-1**.

Service appeal No. 1102/2019

Date of institution ...

`23.08.2019

Date of decision ....

- 22.06.2020

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

#### Versus

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

(Respondents)

### Present

Mr. Zia-ur – Rehman Tajik,

Advocate

For appellant.

Mr. Riaz Paindakhel, Assistant Advocate General

For respondents.

MR. HAMID FAROOQ DURRANI, MR. MIAN MUHAMMAD.

CHAIRMAN MEMBER(E).

**JUDGMENT** 

### HAMID FAROOQ DURRANI, CHAIRMAN:-

Service Tribunal, Peshawar

Instant judgment is proposed to decide also Service Appeal No. 1103/2019 (Adnan Naz Vs Government of Khyber Pakhtunkhwa Peshawar & others), Service appeal No. 1104/2019 (Bilal Vs Government of Khyber Pakhtunkhwa Peshawar & others) and Service appeal No. 1105/2019 (Zahid Alam Vs Government of Khyber Pakhtunkhwa Peshawar & others), as similar proposition is involved in all the appeals. Besides, all the appellants are aggrieved of Office Orders issued on 29.04.2019 by Director Transport & Mass Transit Department Peshawar/respondent No.2. The appellants were proceeded against





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

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

4. Learned counsel for the appellants vehemently argued that the appellants were awarded major penalty and were deprived of the service for no fault on their part. He emphatically relied on judgments reported as 1996 SCMR 8413, 2006 SCMR 678, 2004 SCMR 1077, 2009 SCMR 663 and 2004 SCMR 203 and contended that, if at all, any irregularity was committed during the process of appointment/promotion of appellants, it

Tribunal



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

- 5. Learned Asst. AG, on the other hand, argued that the appointment/promotion of appellants was void abinitio, therefore, there accrued no right in their favor to have prayed for their reinstatement in service. He also referred to the inquiry report dated 20.02.2019 and contended that all the charges were duly proved against the appellants.
- 6. Before proceeding further, it is useful to provide here-under the gist of allegations against the appellants;
  - a) As per law (BS-14) were required to be recruited on the recommendation of Khyber Pakhtunkhwa Public Service Commission.
  - b) Recruitment record/documents i.e. Advertisement, short listing procedure, call letters to the candidate for interview, interview papers, merit lists, requisition to the Public Service Commission and recommendation by the PSC are not available in the Department.

Since no prescribed procedure was followed therefore, the appointment of appellants was illegal/fake and void-abinitio.

ATTESTED

Expoer Farmunkhwa
Service Tribunal,
Peshawar

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

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

- From the record, it also appears that in the year 2014 an inquiry was initiated against the appellants on the grounds similar to the inquiry in 2018. The claim of appellants is that they were exonerated and the previous inquiry was filed, on the other hand the respondents could not deny the exoneration of appellants and in the relevant Para of their replies provided evasive contents. In the circumstances, the vexing of appellants twice for the same alleged act could not be ruled out.
- 8. It is evident from the record that each of the appellant had put in more than five (05) years of service as Assistant (BS-16) after his appointment/promotion. It is also not denied that any of the appellants lacked qualification for disputed appointment. In the circumstances, initiation of departmental proceedings against them and passing of order of removal from service at such belated stage would not be justifiable. In other words, instead of taking action against the appellants it was more appropriate to have taken the appointing authorities to task who, prima facie, committed the act of misconduct.
- For what has been discussed above we are of the firm view that the 9 impugned orders dated 29.04.2019 as well as dated 01.08.2019 are not legally sustainable. Resultantly, the appeals are hereby allowed as prayed

for.

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

(Mian Muhammad) Member (E) (Hamid Farooq Durrani) Chairman

ANNOUNCED 22.06.2020

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The Worthy Secretary.

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## JUBIECT: ARRIVAL REPORT

'se prected Sir

Please refer to the judgment of Hon'ble Service Tribunal Khyber Paklatunkhwa Peshawar dated 22 to 2020, (copy enclosed) 1. Zahid Alam, Office 1 dant Regional Transport Authority Hazara Division do hereby submit my arrival port for duty on 13.08.2020 fin

The stand

Zahid Alam
Office Assistant
Regional Transport Authority
Hazara Division

SECRETARY

April 18/8/2000

to ton Transport & Mass Transit Khyber Pakhtunkhwa Peshawar.

.: ir Regional Transport Authority Hazara Division.

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## WAKALAT NAMA

IN THE COURT OF <u>Services Tribunal</u> Peshawar
ZAHID Alam (Petitioner) (Plaintiff), (Appellant), (Complainant)
VERSUS
Gov-t and olhuz (Respondent), (Defendant), (Accused)
Case FIR No Dated / / Police Station
Charge u/s
I/We,APPlant
The above noted Zahid Alam do hereby appoint
and Authorize Zia-ur-Rehman Tajik Advocate, Supreme Court of Pakistan to
compromise, withdraw or refer to arbitration for me/us as my/our counsel in the above
noted matter, I/we also authorized the said Counsel to file appeal, revision, review
application for restoration, compromise, withdraw, refer the matter for arbitration. And
make any miscellancous application in the matter or arising out of matter and to withdraw
and receive in my/our behalf all sums and amount deposited in my/our account in the
above noted matter.
ACCEPTED CLIENT
Zia-ur-Rehman Tajik L.L.B, L.L.M, Diploma in Sharia Law  4  Malik Intishom-Ul-Hag/klan  Advocate High Court(s)
L.L.B, L.L.M, Diploma in Sharia Law Advocate Supreme Court of Pakistan
Office: 26-A, Nasir Mansion
2-Railway Road, Peshawar.
Phone:091-2564272

Cell: 0300-9357932