

①

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No: 7602 / 2021

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 3466

Dated 8-2-2023

FAZLI AHMAD --- Versus --- Government of KP etc.

REJOINDER ON BEHALF OF APPELLANT

Respectfully Sheweth,

Rejoinder on behalf of Appellant is as under: -

REJOINDER ON PRELIMINARY OBJECTIONS:

1. Preliminary Objections No. 1 to 6, as raised, by the Respondents, in their Comments, are mostly routine objections having no nexus with the facts of the case moreover the same are not supported by any documentary evidence hence are refuted by the Appellant in Toto. It is submitted with respect that the Promotion Orders of other junior incumbents within the Department were issued which created a cause of action for the Appellant hence his Appeal is maintainable.

REJOINDER ON FACTS:

1. Para-1 needs no rejoinder.
2. Para 2 of the Comments is neither proper nor correct. Infact Appellant has not been confirmed against the post of Divisional Accounts Officer because he was posted as per rules in Emergency Cadre. As and when the Appellant is confirmed as Divisional Accounts Officer, his lien in his parent Department will be

terminated and in that very scenario he cannot claim his promotion from his Parent Department. Since the Appellant has only passed part one of the Examination hence he was posted in Emergency Cadre as Divisional Accounts Officer and his lien is neither terminated nor ceased to have any effect in his parent Department.

Moreover, the Respondents Department is purposely and knowingly misleading the Tribunal and has submitted shaky comments in which the true picture has not been portrayed. As per law 10% Vacancies of the Cadre of Divisional Accountant will be made according to the merit list based on the Departmental Examination mentioned in Para 257. The remaining vacancies will be filled from the Public Works Department and the Audit Department in equal proportion (50:50). However the regular posting / appointment is given to only those incumbents who have passed both the exams. Since the Appellant has only passed one Examination hence he was posted as Divisional Account Officer in Emergency Cadre. It is once again submitted that his lien is not terminated unless and until he has not been confirmed as Divisional Accounts Officer. Since he has an active lien in his parent Department hence he could not be ignored from consideration from promotion. Copies of Relevant Law / Rules and one example from other province are attached as Annexure R / 1.

Neither the Appellant was on deputation to any other Department nor he needs to be resigned in order to take the responsibility of Divisional Accounts Officer. The version mentioned in the Comments on behalf of the Department is totally illegal and unlawful.

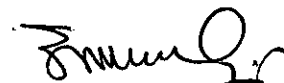
3. In response to Para 3 of the Comments, it is once again submitted that Appellant was posted in the Accountant General Office on the strength of Rules according to which the Appellant has passed part one of the Examination hence he was not on deputation to Accountant General Office. It is admitted as correct that while posted as Divisional Account Officer (Emergency Cadre), the Honorable Accountant General has sent the Appellant on Deputation to the Government of Gilgit Baltistan however still his lien is active and remained in intact in his Parent Department.

4. Para 4 of the Comments is not correct keeping in view the above Para(s).
5. Para 5 of the Comments is not correct. The Appellant has availed his Departmental Remedy and then has approached to this Honorable Court hence his Service Appeal is competent and maintainable.
6. Needs no Rejoinder keeping in view the above Para(s).

REJOINDER TO THE GROUNDS

Grounds as taken by the Appellant in its Appeal are just and proper while that of comments as filed by the Respondents are unjust, illegal, unlawful and mere repudiations without any proof hence same are denied in Toto.

It is, therefore, requested that Appeal of the Appellant be accepted as prayed for.


Appellant

Through:



BILAL AHMAD KAKAIZAI

(Advocate, Supreme Court of Pakistan)

213, Sunehri Masjid Road, Near HBL

Nothia Branch, Peshawar Cantt.

0300-9020098

(4)

BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No: 7602 / 2021

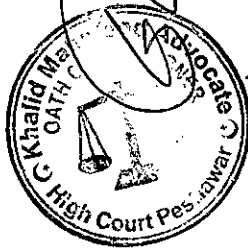
FAZLI AHMAD --- Versus --- Government of KP etc.

COUNTER AFFIDAVIT

I, FAZLI AHMAD, Senior Clerk / Divisional Accounts Officer (Emergency Cadre), Communication & Works Department, Government of Khyber Pakhtunkhwa, Appellant, do hereby on oath affirm and declare that the contents of the Rejoinder are true and correct to the best of my knowledge and belief and nothing has been kept secret from this Honourable Tribunal.

Identified by:

BILAL AHMAD KAKAIZAI
(Advocate, Supreme Court of Pakistan)




Deponent

23-11-22

Annex R/1 (5) LK

OFFICE OF THE
EXECUTIVE ENGINEER,
BUILDING DIVISION-I, PESHAWAR
No. 11/37/14
Dated Peshawar (11.05.2013)

Chief Engineer (Civil)
CSW Department
Khyber Pakhtunkhwa Peshawar

Subject DEPARTURE REPORT

Mr Fazli Ahmad Senior Clerk BPS-08 of this office has been appointed/posted as Divisional Accounts Officer (Emergency cadre) F.R D.I.Khan vide Accountant General Khyber Pakhtunkhwa Peshawar office order No.AC(5)351 dated 2008/2013 on passing the requisite examination for Divisional Accountant. The departure report of official is submitted with request to please transfer the substitute official.

DA/As above



EXECUTIVE ENGINEER
Building Division-I
Peshawar

Fazli
11/37/14

To

The Chief Engineer (Centre)
Communication & Works Deptt.
Peshawar.

6

Through: **Proper Channel**

Subject: **DEPARTURE REPORT.**

Respected Sir,

In compliance with the Accountant General Khyber Pakhtunkhwa, Peshawar Office Order No.AC(5)351 dated 20.8.2013, I.(Fazli Ahmad) Senior Clerk / SDA appointed as Divisional Accounts Officer (Emergency Cadre) and posted in Office of the Executive Engineer C&W FATA Division FR- D.I.Khan, therefore reported Departure today on 23.8.2013(AN)

Yours obediently

Dubai
23/8/2013

[Signature]
(FAZLI AHMAD)

Senior Clerk / SDA

O/O the Executive Engineer
Building Division No.1, Peshawar.

E/Clerk
for n/a
to CE (Case)
29/8/13

✓

(5)/351

The Accountant General Khyber Pakhtunkhwa has been pleased to appoint the named officials as Divisional Accounts Officers (Emergency Cadre) in the division noted their name with immediate effect in the public interest.

7

Name of DAO (EC) M/S	From	To	Remarks
Tariq Jamel	PBMC C&W Peshawar	PHE Division Abbottabad	Against vacant post
Fayyaz Ali Shah	C&W FATA Division FR Bannu	PHE Division Bannu	Against vacant post
Aziz-ur-Rehman	Highway FATA Division Bajaur	PHE Division Dera Ismael Khan	Against vacant post
Shakeel Ahmad	Agency Accounts Office Khyber Pakhtunkhwa Main Office	Small Sams Construction Kohat	Against vacant post
Asim Khan		PHE Division Mardan	Against vacant post
Rafiqullah Jan	Bannu Canal Div Bannu	Irrigation & Hydle Power Miranshah	Against vacant post
Mursaleen	Main Office	Flood Division Peshawar	Against vacant post
Muhammad Hamayun	Agency Accounts Office Khyber Pakhtunkhwa	PHE FATA Peshawar	Against vacant post
Gohar Ali	Irrigation Division Malakand	Irrigation Division Malakand	Against vacant post
Fuzal Ahmad	Building Div. No-11 Peshawar	C&W FATA Division FR D.I-Khan	Against vacant post

(Accountant General Orders dated: 20/08/2013)

sd/-
ACCOUNTS OFFICER (ADMIN)

WAR
2013

LAST PAY CERTIFICATE

Last Pay Certificate of Mr. Fazle Ahmad

- 1- Of the O/O Executive Engineer Building Division No. I Peshawar.
Proceeding on (Transferred) as Divisional Accounts Officer to C&W Division F.R. D.I.Khan
He has been paid upto 31/08/2013
2. As the following rates:- P.No.93414

Particulars:- GPF A/C No. IV-IRR KT 01195/C.S.S
Substantive Pay: -
Officiating Pay: -
Exchange Compensation Allowance:-

Detail of Pay & Allowance.

1-B.Pay	Rs.	16080/-
2-H.Subsidy	Rs	5035/-
3-C.A	Rs	1840 /-
4-M.A.	Rs	1000/-
5-ARA-10	Rs	4670/-
6-ARA-11	Rs	1401/-
7-ARA-12	Rs	3216/-
8-ARA-13	Rs	2412/-

TOTAL Rs **35654/-**

at/Bejaur.
K
D

Deduction:- 1-GPF - Rs 595/
1-B.Fund- Rs 180/-
2-G.Insu;- Rs 67/-
3- Addl: G.Insu: Rs 07/-
4-Income Tax Rs 000/-
5. GPF Loan Rs 000/-
Total:- Rs 849/-

- 1- He made over charge of the Office of O/O. Executive Engineer Building Division No. I Peshawar
A/- on the 31/08/2013 A/N

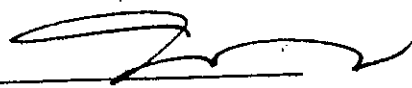
- 2- Recoveries are to be made from the pay of the Government servant as detailed on the reverse.
- 3- He has been paid leave salary as detailed below. Deductions have been made as noted on the reverse.

From 1/1/13 to 31/8/13 at Rs. 1000/- a month
From 1/1/13 to 31/8/13 at Rs. 1000/- a month
From 1/1/13 to 31/8/13 at Rs. 1000/- a month

- 3- He is entitled to draw the following:-

- 4- He is also entitled to joining time for Admissible day:-

- 5- The details to the Income Tax recovered from him up to the date from the beginning of the current year are on the reverse.

Signature: 

Date at _____

Designation: EXECUTIVE ENGINEER,
BUILDING DIVISION NO.1
PESHAWAR 

Copy to Executive Engineer C&W Division F.R. D.I.Khan for information please.

✓



**OFFICE OF THE SUPERINTENDING ENGINEER,
BUILDINGS CIRCLE NO.2 LAHORE.**

Office Order No: 95/E

Dated Lahore the 09/09/2020

In the Performa Promotion policy issued by the Services and General Administration Department No: SOR-II(S&GAD) 2-59/78 dated: 04.04.2005. Mr. Shahid Khan Zafar working as Divisional Accounts Officer (Emergency Cadre) presently working at Irrigation workshop Division Bhalwal District Sargodha under Rule (9) of Punjab Civil Servant Act 1974 is hereby granted Performa Promotion as Accounts Clerk BPS-15 w.e.f. 31.08.2017 due to not being regularized in the higher post and still having his lien stand in parent Department mentioned in the Financial Rule #12-15 However fixing of pay and withdrawal his arrear of pay against the post of Divisional Accounts Officer will be ascertained by District Account Officer Sargodha.

(MUHAMMAD AMJAD)
Superintending Engineer
Buildings Circle No.2
LAHORE

Endst: No. 866-71/E

Dated Lahore the 09-09-2020

A copy is forwarded for information to the:-

1. Accountant General Punjab, Lahore.
2. Director General Account Works Lahore with reference to the letter No. DAO/PF/SK-01-1110 dated: 24.08.2020.
3. District Account Officer Sargodha.
4. Executive Engineer M&R Division Highway Lahore.
5. Executive Engineer Irrigation workshop Division Bhalwal District Sargodha.
6. Official concerned.

(MUHAMMAD AMJAD)
Superintending Engineer
Buildings Circle No.2
LAHORE

10



Office Of The
Accountant General Punjab

A.G. Office Complex, Turner Road, Lahore
Ph: 042-99210177-79 Fax: 042-99210172

Dated: - 21.10.2020

No. TM-I/6-33/2019-20/1288

To

The District Accounts Officer,
Sargodha.


Subject:

PROMOTION DURING DEPUTATION PAY FIXATION IN R/O
SHAHID KHAN ZAFAR

Please refer to your letter No.DAO/SGD. Fix/HM/128, dated 22.09.2020,
on the subject cited above.

2. No doubt that the Divisional Accounts Officers (DAOs) are the employees of Director General Accounts Works. However, it seems that the above named officer is working as Divisional Accounts Officer (emergency Cadre) which means that he is working temporarily and not promoted as DAO on regular basis. So the temporary DAOs are under the strength of their parent department until and unless promoted/absorbed on regular basis in the Director General Accounts Works.

3. You are informed to confirm the status of the officer from the concerned parent department of the officer or Director General Accounts Works, Lahore to reach at a final decision.


DEPUTY ACCOUNTANT GENERAL
(TM)

11

Note.2. The term "Accountant-General" used in this Chapter and Annex-G, means the head of an Audit and Accounts Office which is responsible for audit of accounts of works expenditure incurred in Public Works Divisions and Sub Divisions. It includes Director of Accounts (Works) etc.

Note.3. It is not necessary that the persons desirous of appearing in the examination for recruitment as Divisional Accountants must be serving on accounts duties in Divisional and Sub-Divisional Offices of the Public Works Department or on Public Works Audit in an Audit & Accounts Office at the time of submitting the application. Such persons, even if they are performing duties other than those mentioned above at the time application or are on deputation or foreign service, will be eligible to apply, provided they have at their credit the length of experience in audit & accounts office or in the Public Works Department as prescribed in paragraph 1 of Annex-G. Further, the experience need not consist of continuous service on audit & accounts duties provided the total experience in various spells adds upto not less than the prescribed period.

RECRUITMENT IN THE CADRE

250. Appointments on 10% vacancies of the cadre of Divisional Accountants will be made according to the merit list based on the departmental examination mentioned in Para 257. The remaining vacancies will be filled in from the Public Works Department and the Audit Department in equal proportion. This should, however, be reviewed whenever necessary, and the proposal for change in the proportion be referred to the office of the Auditor-General with full justification for the approval of the Auditor-General.

251. Appointment to the cadre of Divisional Accountants shall be treated as direct recruitment for the purposes of regional distribution orders issued from time to time by the Federal Government and the Auditor-General.

Note:- For the purpose of application of regional distribution orders, recruitment to the cadre of Divisional Accountants from all sources shall be considered together. In other words Regional Distribution Orders will be applied to the total number recruited at a time from whatever source.

252. Divisional Accountants shall be liable to serve any where within the audit jurisdiction of the Director Accounts (Works)/Accountant General including their own offices, and the office of the Auditor-General.

253. Appointments as regular Divisional Accountants shall be subject to the availability of vacancies. For this purpose separate waiting lists of those who qualify Part.II of the examination shall be maintained in the Audit & Accounts

12

offices concerned. In these lists the qualified persons shall be arranged according to the aggregate of the marks obtained in both the parts of the examination. If more than one candidate have obtained equal marks they will take their position in the relevant list according to their seniority in the lower grade, and if their entry into the lower grade happens to be on the same day, then according to age - the older being the senior.

Authority: Ar.Gl's order dated 17.7.1977 in para 225/N of file No.Pro/20-69 Vol.I

254. Every person appointed to the cadre of Divisional Accountants will be given seniority from the date of continuous appointment in an officiating capacity as Divisional Accountant in accordance with orders of the Government.

CONFIRMATION IN THE CADRE

255. Persons who qualify in the examination prescribed in paragraph-257 will, subject to the provisions of paragraphs-250 and 253 officiate against vacant posts of Divisional Accountants and be confirmed as and when vacant permanent posts become available.

255(a) APPOINTMENT OF DIVISIONAL ACCOUNTANTS (EMERGENCY CADRE)

In case of shortage of qualified Divisional Accountants in the Pakistan Audit Department, it has been decided that the Divisional Accountants (Emergency Cadre) may be appointed against the existing vacancies of Divisional Accountants, after holding meeting of the Departmental Promotion Committee. The following criteria has been prescribed for such appointments:-

- (i) Senior Auditors of Pakistan Audit Department and Public Works Department clerks who have already qualified Divisional Accountant Part.I Examination should be given first preference.
- (ii) Graduate Senior Auditors of Pakistan Audit Department who have worked for 5 years in WAD Section and remained one year on Public Works Inspection should then be selected on seniority-cum- fitness basis.

The officials so selected should be appointed as Divisional Accountants (Emergency Cadre), they will be liable to be reverted to their posts held by them before such appointment as soon as a qualified Divisional Accountant becomes available. The officials selected for appointment as Divisional Accountant (Emergency Cadre) will be given training in the Audit and Accounts Training Institute.

Authority: No.1477/Estt.IV/C/79-95 dated: 31-10-1981.

APPENDIX 1.

(See Note 1 below paragraph 19.)

DIVISIONAL ACCOUNTANTS.

The following extracts from Chapter VII of the Auditor General Manual of Standing Orders are reproduced for general information

Organisation.

247. The Divisional Accountants are constituted in a separate cadre with its own leave and training reserve under the administrative control of the Accountant General. This cadre is intended to provide one trained Accountant for each public works division or other independent executive charge and one for each of certain appointments in the Audit Office.

248. Proposal affecting the strength, etc., of the cadre require to be submitted to the Auditor General or the Central Government for requisite sanction.

Provided that an Accountant General may make consequential increase or re-adjustment including the leave reserve if a new public works division is created or an existing one abolished.

Source of Recruitment.

249. Subject to such exceptions as may have been authorised by the Auditor General, candidates for appointment as Divisional Accountants must have passed the admission examination prescribed in Annexure to this Chapter, and may, subject to the conditions laid down in the paragraph succeeding, be recruited from one of the following sources by the Accountant General:—

- (1) Clerks employed in Divisional and Sub-divisional offices of the Public Works Department, who are recommended by the authorities of that department as suitable for appointment as Divisional Accountants.
- (2) Clerks employed in the Audit Office.
- (3) Graduates of the Pakistani Indian Universities and other persons considered suitable on account of their special qualifications.

Conditions of Recruitment and Confirmation.

250. Except for appointment in leave vacancies and subject to the power of the Accountant General to waive the conditions in very exceptional cases, recruits from sources (1) and (2) above should not have attained 30 years of age on the date of their first appointment in the cadre of Divisional Accounts.

251. Appointments from source (3) shall ordinarily be limited to one-third of the vacancies in the permanent cadre of Divisional Accountants; the distribution of the remaining vacancies between the other two sources being made at the discretion of the Accountant General.

APPENDICES.

252. Appointment to the cadre of Divisional Accountants from whatever source is treated as direct recruitment for the purposes of the communal proportion orders issued by the Central Government and the Auditor General from time to time, and the Accountant General is personally responsible for seeing that these appointments conform to the relative orders.

253. It is a specific condition of the appointment that Divisional Accountants are liable for service anywhere within the audit jurisdiction of the Accountant General including his own office, and, on their qualifying for appointment to the Subordinate Accounts Service, are liable for transfers to the offices of the Auditor General and the Ministry of Finance of the Central Government.

254. Every person appointed to the cadre of Divisional Accountants is initially treated as on probation, his confirmation being governed by the provisions in paragraph 255. Clerks recruited from sources (1) and (2) (Paragraph 249) and who pass the Divisional Test examination (Paragraph 257) are kept in a waiting list but allowed to retain their lien in their substantive appointment till they are confirmed in the Divisional Accountants cadre.

The relative priority of clerks from sources (1) and (2) is determined with reference to the dates of their passing the examination. For a person appointed from source (3) his position on appointment will be at the bottom of the list of permanent Divisional Accountants. But those recruited from either of the other two sources, will be placed below all those who are officiating or temporary at the time.

Explanation.—The waiting list includes not only those men who have already passed the Divisional Test before appointment but all men who have passed the Saidpur Test irrespective of whether they have passed the Divisional Test or not.

Confirmation in the Cadre. ✓✓

255. All appointments to the Divisional Accountants cadre are made by selection and confirmation in it is subject to a candidate fulfilling the following conditions:—

(a) That he has at his credit—

- (i) 18 months' experience in the accounts work of Divisional or Sub-divisional offices.
- (ii) 6 months' experience in the Works Audit Department of the Audit Office.
- (iii) 12 months' continuous service on probation as Divisional Accountant, provided the Accountant General may, for special reasons, relax any of these conditions:

(b) that he has passed the Divisional Test prescribed in paragraph 258.

(c) that the Accountant General is satisfied that the probationer