

BEFORE THE HONOURABLE PESHAWAR HIGH COURT

PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Case No. 3524

Dated 13/2/2023

WRIT PETITION No. 1414/2022

1. Yaseen Khan S/o Feroz Din R/o Mohallah Jamsaid Abad, Warsak Road Peshawar
(Ex-FATA Tribunal, Peshawar)

(APPELLANT)

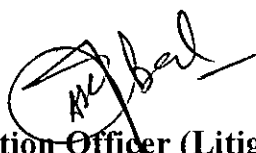
VERSUS

1. Government of Pakistan through Chief Sectary etc.

(RESPONDENTS)

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Section Officer (Litigation-III)
Home & TA's Department, Khyber
Pakhtunkhwa

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.1414 /2022

1. Yaseen Khan s/o Feroz Din r/o Mohallah Jamshaid Abad, Warsak Road, Peshawar, Driver (Ex-FATA Tribunal, Peshawar)

(APPELLANT)

VERSUS

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

(RESPONDENTS)

JOINT PARA-WISE COMMENTS ON BEHALF OF RESPONDENT NO. 1 (CHIEF SECRETARY, KHYBER PAKHTUNKHWA), RESPONDENT NO.2 (SECRETARY HOME & TRIBAL AFFAIRS DEPARTMENT, KHYBER PAKHTUNKHWA) AND RESPONDENT NO. 3 (SECRETARY ESTABLISHMENT DEPARTMENT, KHYBER PAKHTUNKHWA)

RESPECTFULLY SHEWETH:-**PRELIMINARY OBJECTIONS:-**

1. That this Hon'ble Tribunal with profound respect has got no jurisdiction to entertain and adjudicate the instant appeal.
2. That the appellant is estopped by his own words and conduct to file the instant service appeal before this Hon'ble Tribunal.
3. That the appellant has got no locus standi to invoke the jurisdiction of this Hon'ble Tribunal.
4. That the appellant has concealed the entire material facts from this Hon'ble Tribunal.
5. That the appellant has not come with clean hands. Therefore, he is not entitled for any relief by this Hon'ble Tribunal.
6. That the appellant has got no cause of action to file the instant service appeal before this Hon'ble Tribunal.
7. That the instant service appeal is not maintainable in its present form.
8. That the instant service appeal is based on surmises and conjectures.
9. That the appellant is not an aggrieved person within the meaning of Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Hence, the instant service appeal is liable to be dismissed on this score alone.

ON FACTS:

1. That Para No.1 needs no comments.
2. That Para 2 also needs no comments.
3. The Para 3 needs no comments.
4. That Para 4 also needs no comments.
5. That Para 5 needs no comments.
6. Reference to Para 6, a full fledged inquiry was conducted in the matter to check the credibility and authenticity of the process of advertisement and selection and it was held that the entire process of selection from top to bottom was "*Coram Non Judice*". Furthermore, inquiry was conducted against Mr. Sajjad ur Rehman ex-Registrar, FATA Tribunal under rule 10 of Khyber Pakhtunkhwa Govt. Servant (E&D), Rules, 2011 wherein the inquiry report held that the same selection Committee was constituted without any lawful authority. The said Committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates against these posts. The inquiry proceedings further revealed that there were no attendance sheet, minutes of the meeting and even the appointment orders were found ambiguous. The said Departmental Committee unlawfully increased the number of posts from 23 to 24 illegally and issued 24 orders without any recommendations of legitimate Departmental Selection Committee. Else then, the Inquiry Committee has termed all the said 24 appointments illegal and without lawful authority and recommended to be cancelled/withdrawn.

*(Inquiry report is appended
as Annex-A)*

7. That Para 7 needs no comments.
8. That Para 8 is incorrect, misconceived and denied as sufficient material was available in shape of documentary proof and after issuance of show cause notice and fulfilling all legal and codal formalities, major penalty of removal from service was imposed upon the appellant under the relevant rules/law.
9. That Para 9 needs no comments.
10. That Para 10 pertains to the judgment of this Hon'ble Tribunal.
11. That Para 11 needs no comments.

GROUND:-

- A. That Para A is incorrect and denied as the respondents have treated the appellant in accordance with the mandate of Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.
- B. That Para B is also incorrect. Detail reply offered in Para 8 of the facts.
- C. Detail reply furnished in Para 6 of the facts.
- D. Same reply as offered in Para 6 and 8 of the facts.
- E. That Para E also needs no comments.
- F. That Para F is also incorrect detail reply offered in Para C.
- G. That the respondents may also seek kind permission of this Hon'ble Tribunal to take some other additional grounds at the time of arguments where necessary.

PRAYER:-

In view of the above narrated facts and grounds, it is, therefore, most humbly prayed that the instant service appeal may very graciously be dismissed with special cost been devoid of merits and substances.

JM
2/2/2023
Home Secretary,
Secretary, Home & TA's Department
Govt. of Khyber Pakhtunkhwa
(Respondent No.2)

[Signature]
Secretary, Establishment Department
Govt. of Khyber Pakhtunkhwa
(Respondent No.3)

JM
2/2/2023
Chief Secretary,
Govt. of Khyber Pakhtunkhwa
(Respondent No.1)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

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1. Yaseen Khan s/o Feroz Din r/o Mohallah Jamshaid Abad, Warsak Road, Peshawar, Driver (Ex-FATA Tribunal, Peshawar)

(APPELLANT)**VERSUS**

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

(RESPONDENTS)**AFFIDAVIT**

I, Asif Iqbal, Section Officer (Litigation-III) Home & TA's Department, Peshawar do hereby solemnly affirms and declared that the Parawise Comments duly signed by the respondent No.1,2 & 3 are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


(ASIF IQBAL)

Section Officer (Litigation-III)
Govt. of Khyber Pakhtunkhwa
Home & TA's Department
CNIC # 17101-1694802-7
Mobile # 0313-9813317





Home & Tribal Affairs Department,
Khyber Pakhtunkhwa
(Levy & Khassadars Wing)
Merged Areas Secretariat, Warsak Road

P#5

PESHAWAR

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No. CS(F)/L&K/2-General/ 1093

Dated: August 06, 2019

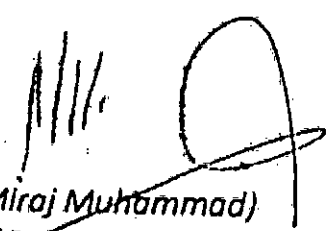
Secretary,
Home & Tribal Affairs Department,
Government of Khyber Pakhtunkhwa.


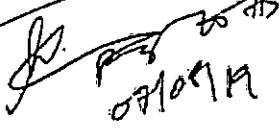
D: No - 2954

Subject: ENQUIRY

07/8/19

In compliance with order No.FS/L&O/40-FATA Trib/994-98 dated 26.06.2019,
the requisite Enquiry Report containing 07 pages along with its enclosures of 132 pages is
submitted for perusal and further orders, please.


(Miraj Muhammad)
Enquiry Officer/Deputy Secretary
(Levy & Khassadars)



07/08/19

ENQUIRY REPORT
REGARDING ILLEGAL APPOINTMENT IN FATA TRIBUNAL

Secretary Home & TAs Department, Government of Khyber Pakhtunkhwa vide order No.FS/L&O/40-FATA Trib/994-98 dated 26.06.2019 (Annex-A), constituted an Enquiry Committee to probe into the matter regarding illegal appointments in ex-FATA Tribunal and fix responsibility upon the delinquent officers/ officials with the following TORs:

1. Whether these posts were advertised in the print media, if yes, approval of the Competent Authority.
2. Notification of the Departmental Selection Committee and approval of the Competent Authority.
3. Whether FATA Tribunal is competent to make appointment after expiry of the contract period i.e. 23rd November, 2018 as the Governor, Khyber Pakhtunkhwa had granted extension in the service period of Chairman and Members of FATA Tribunal for a period of six months only w.e.f 23rd May 2018.
4. Whether these appointments were necessary after expiry of the contractual period of FATA Tribunal and Chairman and Members of FATA Tribunal.
5. Any other issue raised by the Inquiry Officer.

Background

Mr. Sohail Driver of Law & Order Department, Merged Area Secretariat submitted an application addressed to Secretary Home & TAs Department, Khyber Pakhtunkhwa (Annex-B) stating therein that he is working as driver for the last 10 years on contract basis and not regularized, however, the Ex-FATA Tribunal has appointed various employees who are neither medically fit as driver nor they have any experience. In support of his plea, he submitted appointment order of Mr. Redad s/o Gul Dad Khan appointed as Chowkidar in Ex-FATA Tribunal on

permanent basis. On receiving the above application, the subject enquiry was ordered.

PROCEEDINGS OF ENQUIRY

The Registrar of the Ex-FATA Tribunal was requested to attend the office of the undersigned on 02.07.2019, followed by reminders dated 03.07.2019 to assist the Enquiry Committee (Annex-C). On 17.07.2019 he was lastly warned to cooperate with the committee otherwise the matter will be reported to the authority regarding your non-cooperation (Annex-D). He attended the office of the undersigned on next date but could not produce the requisite record in the subject matter to the Enquiry Committee. He requested for extension of time. On 30.07.2019, he visited the office of the undersigned, recorded his statement (Annex-E). During discussion, he opened some secrets verbally regarding appointments of the relatives of some of the employees of the FATA Tribunal, ex-FATA Secretariat and some Politicians. On the basis of his statement and verbal discussion it revealed that 24 persons were appointed in ex-FATA Tribunal. These 24 employees were called to record their statements (Annex-F). Only 21 out of 24 newly recruited employees recorded their statements (Annex-G containing 21 pages). The remaining 03 employees, intentionally avoided the proceedings and did not come for recording their statement are Mr. Muhammad Yaseen driver, Mr. Faheem Shehzad Naib Qasid and Mr. Ikramullah Naib Qasid, all of them including Arif Jan Junior Clerk are the relatives of FATA Secretariat employees. Now, as per TORs, the position of the subject case is reflected as under:

TOR No.1 Whether these posts were advertised in the print media, if yes, approval of the Competent Authority.

The Registrar of the FATA Tribunal produced the advertisement posted in Daily Aeen and Daily Aaj dated 9th February, 2019 (Annex-H containing 02 pages). The same was checked with the concerned website of Daily Aaj and found correct. Total 23 posts of different categories from BPS-1 to 14 were advertised. The officer was asked to submit approval of the Competent Authority of the subject advertisement.

In response, he produced letters of FATA Secretariat addressed to the Chairman FATA Tribunal dated 13.10.2014 and 24.06.2014 along with annexures (Annex-I containing 02 pages).

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FINDINGS

The posts were advertised in press. There is no order/ notification of any authority, which authorized an officer of the Tribunal for appointment against the vacant posts in the Tribunal. This fact is cleared from the letter dated 19th January, 2014 of the Registrar addressed to Additional Chief Secretary (FATA) wherein he requested for constituting a Selection Committee for appointment against certain posts (Annex-J). As FATA Tribunal has no service rules thus FATA Secretariat was authorized as appointing authority for the posts in BPS-1 to 15 on the analogy of other offices in FATA (Annex-K). The then Secretary (Law & Order) constituted a Selection Committee for appointment against certain posts which were advertised in press in the year 2014 but he could appoint only class-IV on the recommendation of Selection Committee while for the appointment on the posts from PBS-5 to 14, the matter was taken up with the Provincial Government (Annex-L) but the Provincial Government did not approve the proposal (Annex-M) and thus no appointment made in the Tribunal against the posts in BPS-5 to 15 and the Registrar now filled these posts. From the above discussion it is clear that the posts were advertised without approval of the competent authority i.e. Secretary Law & Order (Now Secretary Home & TAs Khyber Pakhtunkhwa). The Registrar was not competent/ authorized to accord approval to such advertisement.

TOR No.2 Notification of the Departmental Selection Committee and approval of the Competent Authority.

The officer was asked to provide the category wise list of the candidates who applied for the said posts. In response, he produced the category-wise lists of all the posts (Annex-N) except the list for the post of Stenographer as no one applied. He produced notification of the Shortlisting Committee (Annex-O) and also

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Handwritten signature and date '9/11/14'.

category-wise lists of the shortlisted candidates/ minutes (Annex-P). He also produced the Notification of the Departmental Selection Committee (Annex-Q) but the test papers, their result and recommendation of the Selection Committee were not produced. The appointments orders of 24 employees were provided (Annex-R containing 24 pages).

FINDINGS

The shortlisting committee notification is unlawful on one side the Registrar is not empowered to notify/ order/ constitute such Committee and on the other side two of the members of the committee are daily wages clerks of the ex-FATA Tribunal and one is a project employee of "Establishment of Levy Training Center at Shahkass, Jamrud, Khyber Agency". Furthermore, all the notified members of the Shortlisting Committee are themselves candidates. The Registrar also failed to produce any documents which show that the Departmental Selection Committee recommended the said 24 persons for appointment against various posts as advertised by the ex-FATA Tribunal. ~~Though the list has been provided but there is no official record of the file in the Tribunal. This is only computer-generated document not signed by any authorized officer.~~ Similarly, the so-called Departmental Selection Committee notification is not available on record only a letter which shows that certain offices of FATA Secretariat were requested to attend the meeting of Selection Committee but they did not attend the meeting and even the date on the letter has been recorded as 04.12.2019 which has not yet come. It is clear that meeting was never held and the letter at Annex-Q is bogus. All the documents i.e. (a) lists of the candidates applied for different posts, (b) notification of shortlisting committee, (c) their minutes/ lists of the shortlisted candidates, (d) notification of selection committee and even (e) appointment orders are freshly printed computer-generated documents signed afresh by the Registrar FATA Tribunal. ~~There is not a single paper on office record of the Tribunal which could prove that above process was ever held in black & white nor approval of the Competent Authority is available on record.~~

TOR No.3 Whether FATA Tribunal is competent to make appointment after expiry of the contract period i.e. 23rd November, 2018 as the Governor, Khyber Pakhtunkhwa had granted extension in the service period of Chairman and Members of FATA Tribunal for a period of six months only w.e.f 23rd May 2018.

The officer provided the Notification in which the Chairman and Members of the Tribunal were appointed on May 22, 2015 for a period of 03 years (Annex-S). The contractual period was further renewed on May 22, 2018 and extended for a period of 06 months i.e. 23rd November 2018 (Annex-T).

FINDINGS

The Tribunal though special institute (Annex-U) has yet to frame its Service Rules for employees etc and after 25th Constitutional Amendment, when the chapter of FCR is closed and the Tribunal is not functional then there is no need to fill up such vacant posts. There is no Notification and approval of the competent authority which authorize the Registrar for appointments in FATA Tribunal.

TOR No.4 Whether these appointments were necessary after expiry of the contractual period of FATA Tribunal and Chairman and Members of FATA Tribunal.

When the contract period of the Chairman and member were not extended then there was no need to fill up the posts.

TOR No.5. Any other issue raised by the Inquiry Officer.

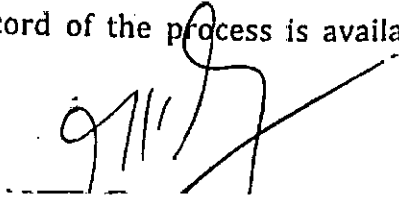
During discussion with the Registrar FATA Tribunal, he disclosed that Mr. Hakeem Jan a Senior Scale Stenographer of FATA DC working as Section Officer (B&A) has motivated him and promised to get the signatures of the Selection Committee members on the minutes in turn of appointing two of his relatives. Accordingly, the Registrar appointed two persons for him while 01 each for Finance and P&D Departments of Merged Area Secretariat, besides, recruiting relatives of the Ministers of the present Government but no written proof was provided to the

enquiry committee by the Registrar. The newly appointed employees of FATA Tribunal while recording their statements, mentioned three officers who conducted interviews/ tests. Astonishingly, only Registrar of FATA Tribunal was identified by the employees but none identified the other two members of the committee and the Registrar himself is concealing the names/ departments/ designations of the other two Selection Committee members. Exchange of harsh words took place between the Registrar and Mr. Hakeem Jan in my office regarding signing of minutes of the so-called Selection Committee.

It was reported that Mr. Hakeem Jan is involved in financial embezzlement/ irregularity. He was posted in Law & Order Department as Senior Scale Stenographer. In Law & Order Department, the authority constrained him to the post of Stenographer but subsequently he managed and posted himself as Section Officer (Budget & Accounts) of Law & Order Department (Annex-V) on January 8, 2019. In February 2019. He received Rs.299148/- House Subsidy in December 2018 and June 2019 he again draw Rs.510928 on DDO Code (Annex-W) including Rs.299148/- House Subsidy instead of vender No. and for that very bill he did not get approval of the authority. Thus, he received the house subsidy twice in Financial Year 2019, which is against the Rules. He also received double honoraria while his service in Law & Order Department as Section Officer is less than 06 months while others received only one. It is not known that what kind of services he delivered that he got double honoraria while other officers of Law & Order Department received a single-honoraria. Thus, the record of B&A Section for the period he served as Section Officer needs thorough investigation for which a committee (expert in financial matters) may be constituted.

CONCLUSION

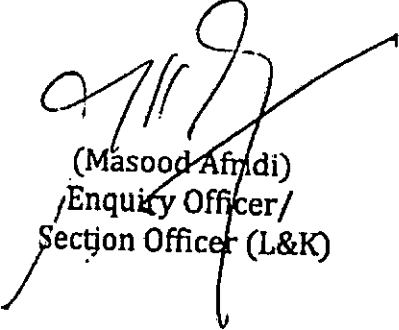
All the orders for appointments against the posts of Moharrar/ Assistant (4 in No.), KPO (3 in No.), Junior Clerk (4 in No.), Drivers (4 in No.), Naib Qasid (6 in No.) and Chowkidar (3 in No.), issued by the Registrar FATA Tribunal are illegal. There is no official record of the process is available in the FATA Tribunal except the

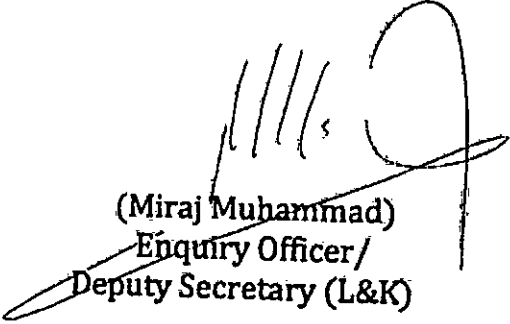


advertisement. All the record provided to the Enquiry Committee is freshly printed and signed by the Registrar. No office copy maintained.

RECOMMENDATIONS

1. Twenty-four number appointment orders at (Annex-R) should be cancelled Ab-initio.
2. Disciplinary action under E&D Rules be initiated against Mr. Sajjad-ur-Rehman Registrar FATA Tribunal.
3. A committee comprising of financial experts may be constituted for thorough investigation of B&A Section of Law & Order Department for the period from 08.01.2019 to 30.06.2019.


(Masood Afandi)
Enquiry Officer/
Section Officer (L&K)


(Miraj Muhammad)
Enquiry Officer/
Deputy Secretary (L&K)

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1. Yaseen Khan s/o Feroz Din r/o Mohallah Jamshaid Abad, Warsak Road, Peshawar, Driver (Ex-FATA Tribunal, Peshawar)

(APPELLANT)

VERSUS

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

(RESPONDENTS)

AUTHORITY LETTER

Mr. Asif Iqbal, Section Officer (Litigation-III), Home & Tribal Affairs Department, Khyber Pakhtunkhwa is hereby authorized to submit reply in "*Service Appeal No. 1414/2020 titled Yaseen Khan s/o Feroz Din Versus Government of Khyber Pakhtunkhwa through Chief Secretary etc*" on behalf of respondent No.1,2 & 3 before this Hon'ble Tribunal.



KAMRAN ULLAH
Deputy Secretary Litigation-III
Home & TA's Department, Peshawar
Deputy Secretary (Litigation)
Home & TA's Deptt:
Khyber Pakhtunkhwa