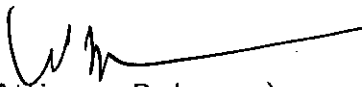


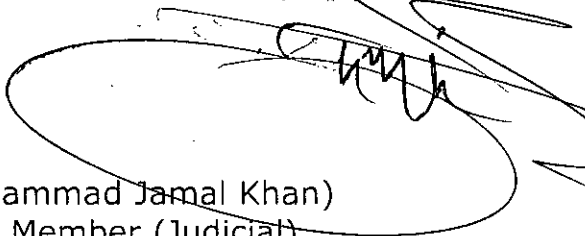
12(2) Application No. 305/2019

11.09.2020

Mr. Mir Zaman Safi, Advocate for appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents is also present.

Learned counsel for appellant submitted that he has been under instruction from this client to withdraw the instant appeal without any further proceedings. Accordingly, the appeal stands withdrawn as per request of the learned counsel representing appellant. File be consigned to the record room.


(Attiq-ur-Rehman)
Member (Executive)


(Muhammad Jamal Khan)
Member (Judicial)

ANNOUNCED
11.09.2020

Muhammad Ali

11.09.2020

Mr. Mir Zaman Safi, Advocate for appellant is present. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General for the respondents is also present.

Learned counsel for appellant submitted that he has been under instruction from this client to withdraw the instant appeal without any further proceedings. Accordingly, the appeal stands ~~dismissed as~~ withdrawn as per request of the learned counsel representing appellant. File be consigned to the record room.

(Attiq-ur-Rehman)
Member (Executive)

(Muhammad Jamal Khan)
Member (Judicial)

ANNOUNCED
11.09.2020

4

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

Service Appeal No. 268/2019

MUHAMMAD ARSHAD Hidayat Ullah.

R/O Mohallah Malika Khail Tehsil & District MardanAPPELLANT

VERSUS

1. Government of Khyber Pakhtunkhwa through Secretary Public Health
Engineering Department, Civil Secretariat, Peshawar.
2. The Superintending Engineer, Public Health Engg: Circle Mardan.
3. Executive Engineer, Public Health Engg: Division Mardan.
4. Executive Engineer, Public Health Engg: Division Charsadda.
5. Chief Engineer Public Health Engineering Department, Civil Secretariat,
Peshawar.
6. Secretary Finance Civil Secretariat, Govt. of Khyber Pakhtunkhwa,
Peshawar.Respondent

AFFIDAVIT.

I, Khurshid Khan Assistant Social Organizer of PHE Department R/O Main Road Gharib abad, do hereby solemnly affirm and declare that the joint Para wise comments with supporting documents filed by the Respondents are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.



DEPONENT


CNIC #: 17301-4045003-9

Cell No. 03449296964.

31.12.2019

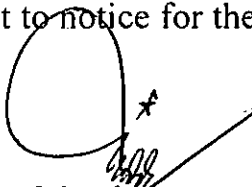
Counsel for the petitioner and Mr. Riaz Ahmad Paindakheil, Assistant AG for the respondents present. Learned counsel for the petitioner requested for adjournment. Adjourned to 20.02.2020 D.B.


(Hussain Shah)
Member


(M. Amin Khan Kundi)
Member


20.02.2020

Petitioner absent. Learned counsel for the petitioner absent. Adjourned to 20.04.2020 before D.B. Petitioner be put to notice for the date fixed.


Member



Member

Due to covid, 19 the case is adjourned. To come up for the same on 27-07-2020


Reader

27.07.2020

Due to COVID19, the case is adjourned to 11.09.2020 for the same as before.


Reader

FORM OF ORDERSHEET

Court of _____

Misc. Application No. 305/2019

S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	17/07/2019	<p>The application U/S 12(2) CPC submitted by Mr. Muhammad Ali through Mr. Noor Muhammad Khattak Advocate may be entered in the relevant Register and put up to the Court for proper order please.</p> <p style="text-align: right;"><i>[Signature]</i> REGISTRAR 17/2/19</p>
2-		<p>This application be put up before D. Bench on <u>31-10-19</u></p> <p style="text-align: right;"><i>[Signature]</i> CHAIRMAN</p>
31.10.2019		<p>Petitioner absent. Learned counsel for the petitioner absent. He be put to notice for 06.12.2019. To come up on 06.12.2019 before D.B.</p> <div style="display: flex; justify-content: space-around;"> <div style="text-align: center;"> <p><i>[Signature]</i> Member</p> </div> <div style="text-align: center;"> <p><i>[Signature]</i> Member</p> </div> </div> <p style="margin-top: 20px;">6-12-2019</p> <p style="margin-top: 10px;"><i>Disappears @ B on 6/12/19 at court bench, therefore the case is adjourned on 21-12-2019</i></p> <p style="text-align: right; margin-top: 10px;"><i>Reedon</i></p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

12(2) PETITION NO. 305 /2019
IN
APPEAL No.809/2017

MUHAMMAD ALI VS EDUCATION DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
1	Memo of petition	1- 2.
2	Stay application	3.
3.	Appeal & annexure	A	4- 42.
4.	Appointment order	B	43.
5.	Vakalat nama	44.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK,
ADVOCATE

Flat No. 3, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

12 (2) Petition No. 305 /2019

IN

SERVICE APPEAL NO. 809/2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1019

Dated 19/7/19

Mr. Muhammad Ali s/o Sher Zada, Chowkidar (BPS-01),
O/O Govt. Girls Primary School, Sher Afzal Ato Khel, Distt: Mohmand.

..... **PETITIONER**

VERSUS

- 1- The District Education Officer, District Mohmand at Ghallanai.
- 2- The Deputy Commissioner, District Mohmand at Ghallanai.
- 3- The Additional Assistant Commissioner, District Mohmand at Ghallanai.
- 4- Feroz Khan s/o Muhammad Hassan, Ex-Chowkidar, GGPS Ato Khel, District Mohmand.

..... **RESPONDENTS**

PETITIONER UNDER SECTION 12 (2) OF THE CIVIL
PROCEDURE CODE AGAINST THE JUDGMENT DATED
26.02.2019 PASSED BY THIS HONOURABLE TRIBUNAL IN
APPEAL NO. 809/2017

Filed to-day
[Signature]
Registrar
19/7/19

R/SHEWETH:
ON FACTS:

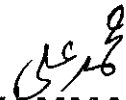
- 1- That respondent No. 4 namely Mr. Feroz Khan filed service appeal No. 809/2017 against the order dated 27.04.2016 whereby the respondent No. 4 has compulsorily been retired from service due to land dispute. Copies of the memo of service appeal along with annexure are attached as annexure **A.**
- 2- That, petitioner has been appointed as Chowkidar in the Education Department of District Mohmand by respondent no 1 vide order dated 25.07.2017 after fulfilling all the codal formalities required for the post. Copy of the order is attached as annexure **B.**
- 3- That, the respondent no. 4 while filing the service appeal no. 809/2017 before this Honourable Tribunal has made respondent no. 1 to 3 as necessary parties and has not included the instant petitioner in the penal of respondents.
- 4- That respondent no. 4 had filed the service appeal no. 809/2017 whereas the petitioner is appointed in July 2017 will before the filing of reply in the service appeal.

GROUND:

- A-** That the judgment dated 26.02.2019 is the result of the Misrepresentation and fraud on the part of the respondent No.4 (Feroz Khan respondent No.4) and official respondents.
- B-** That, the judgment dated 26.02.2019 is also a result of the misconception and misrepresentation which has been created by the respondent No. 4 as well as official respondents.
- C-** That, the respondent No.4 (Feroz Khan) in the main appeal has intentionally show his date of birth before the Tribunal as 01.06.1969 where as in the Service Card of the respondent no. 4 it is 01.06.1959 which mean that the respondent no. 4 has been retire from service on attaining the age of superannuation on 31.05.2019.
- D-** That, now the Department is pressing hard to remove the petitioner from service just to vacate the post of Chowkidar for the respondent no. 4.
- E-** That valuable rights of the petitioner is attached with the judgment passed by this august Tribunal.
- F-** That the petitioner/applicant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore most humbly prayed that on acceptance of this 12(2) petition/application the judgment dated 26.02.2019 may kindly be set aside being based on mis-representation and fraud on the part of the respondent No. 4 (Feroz Khan). That the respondents may further please be directed that not to remove the petitioner from the post of Chowkidar. Any other remedy which this august Tribunal deems fit that may also be awarded in favour of the petitioner/applicant.

PETITIONER



MUHAMMAD ALI

THROUGH:



NOOR MOHAMMAD KHATTAK

&



SHAHZULLAH YOUSAFZAI

ADVOCATES,

HIGH COURT, PESHAWAR

A-4

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR



Service Appeal No. 809 /2017

Khyber Pakhtunkhwa Service Tribunal

Diary No. 601

Dated 29-5-2017

Feroz Khan S/o Muhammad Hassan

Chowkidar GGPS Ato Khel, Mohmand Agency

.....Appellant


Versus

- 1) Agency Education Officer, Mohmand Agency at Ghallanai.
- 2) Political Agent Mohmand Agency.
- 3) Assistant Political Agent, Ghalani, Mohmand Agency

..... Respondents

**APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE IMPUGNED
ORDER DATED 27.04.2016**

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar


Sheweth;

- 1) That a money dispute arose between one Sher Afzal and Musarrat Shah, which was referred by the APA, Mohmand Agency to a local Jirga, and the letter gave verdict on 23.04.2014 (Annex "A")
- 2) That the decision returned by the Council of Elders was confirmed by the APA, Upper Mohmand Sub-Division vide order dated 28.04.2014 (Annex "B")

(5)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 809 /2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 601

Dated 29-5-2017

Feroz Khan S/o Muhammad Hassan
Chowkidar GGPS Ato Khel, Mohmand Agency

.....Appellant

Versus

- 1) Agency Education Officer, Mohmand Agency at Ghallanai.
- 2) Political Agent Mohmand Agency.
- 3) Assistant Political Agent, Ghalani, Mohmand Agency

..... Respondents

**APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
ACT, 1974 AGAINST THE IMPUGNED
ORDER DATED 27.04.2016**

Friday
29/5/17
Sheweth;

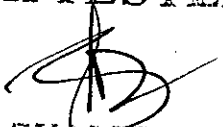
- 1) That a money dispute arose between one Sher Afzal and Musarrat Shah, which was referred by the APA, Mohmand Agency to a local Jirga, and the letter gave verdict on 23.04.2014 (Annex "A")
- 2) That the decision returned by the Council of Elders was confirmed by the APA, Upper Mohmand Sub-Division vide order dated 28.04.2014 (Annex "B")

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

- 3) That the above stated order of the APA was assailed in appeal by the aggrieved party, namely, Shari Afzal before the Commissioner FCR, Peshawar Division, Peshawar, but it met the same fate and was dismissed vide order dated 12.03.2015 (Annex "C")
- 4) That the order rendered in appeal was further challenged by Mr. Shair Afzal before the FATA Tribunal, Peshawar, but that, too, could not succeed and, by maintaining the orders of the two forums below, the revision petition was dismissed vide order dated 21.12.2015 (Annex "D")
- 5) That feeling dissatisfied with revisional order, the said Sahir Afzal filed a review petition, which, too, was dismissed vide order dated 21.03.2017 (Annex "E")
- 6) That appellant herein, viz Feroz Khan happens to be the real brother of Shair Afzal, who had litigated for the money dispute, referred to in the proceedings paras. It may be noted that present appellant was neither party to the money dispute at any stage, right from the Court of APA upto the FATA Tribunal (Annex "F") nor was associated with the proceedings in any forum.
- 7) That, however, the sky fell on the head of the appellant, when for no valid reason he was handed over a notification dated 27.04.2016 (Annex "G") thereby retiring him from service prematurely.

ATTESTED

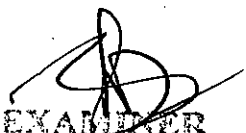

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

- 8) That the appellant preferred departmental appeal/ representation on 23.05.2017 simultaneously to the APA (Annex "H") and AEO, Ghalanai, Mohamand Agency (Annex "I")
- 9) That being a layman and ill-advised in law, obviously due to the reference of the order of FATA Tribunal in the impugned order, the appellant filed an application dated 04.05.2016 (Annex "J") to FATA Tribunal for cancellation of the impugned notification, which was clubbed with the review petition of Mr. Shair Afzal in the money dispute (order sheets are Annex "K"), however, no reference even in a single sentence, was made in the order in review dated 31.03.2016 and as such, the application of the appellant remained unattended and undecided.
- 10) That the representation made to the AEO, Ghalani was rejected, though in ambiguous terms on 08.05.2017 by stating, "***I have no objection if the appellant approaches to the Service Tribunal for justice***", hence, the instant appeal, inter alia, on the following grounds:-

GROUND

- a. That the impugned order of premature retirement is illegal on the face of it, because no such recommendation has been made in the order of the FATA Tribunal. So much so, nothing in this regard has been mentioned in the orders of either forum.


ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

- (8) (10)
- b. That the appellant was admittedly not a party to the litigation in the money dispute at any stage. This factum was categorically admitted by the APA in his comments to the FATA Tribunal (Annex "L"). Hence, he was condemned unheard, rendering the impugned order a nullity in the eyes of law.
 - c. That even before passing the impugned order, the appellant was neither issued any show cause notice nor afforded any hearing, whether personal or in writing, therefore, on this score alone, the impugned order is liable to be struck down.
 - d. That the order impugned herein carries no reason whatsoever.
 - e. That the law on the subject ordains a particular procedure before sending an employee on pre-mature retirement, which was never adverted to in the instant case.
 - f. That the impugned order is violative of Articles 4, 9 and 25 of the Constitution and it cannot sustain in law.

In view of the foregoing factual and legal position, it is prayed that the impugned order of appellant's pre-mature retirement dated 27.04.2016 may kindly be set-aside and the appellant be reinstated in service from the date of his pre-mature retirement with all back benefits, including arrears of pay and allowances.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(9) (B)

Any other remedy to which the appellant is found fit in law, justice and equity may also be allowed.



Appellant

Through

Muhammad Isa Khan Khalil
Advocate Supreme Court

&

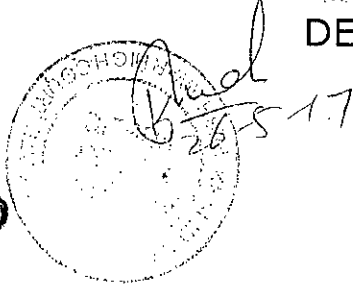
Akhter Ilyas
Advocate, High Court

AFFIDAVIT

I, Feroz Khan S/o Muhammad Hassan Chowkidar GGPS Ato Khel, Mohmand Agency do hereby solemnly affirm and declare on Oath that the contents of accompanying Appeal are true and correct to the best to my knowledge and belief and nothing has been concealed from this hon'ble court.



DEPONENT



ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

10

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2017.

Feroz KhanAppellant

Versus

Agency Education Officer and others.....Respondents

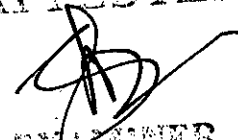
**APPLICATION FOR INTERIM
RELIEF**

Respectfully Sheweth;

- 1) That the above titled appeal is being filed before this hon'ble Court alongwith accompanying application.
- 2) That the grounds of main appeal may kindly be considered part and parcel of this application.
- 3) That applicant has a good case and is very sanguine about its success.
- 4) That the balance of convenience also leans in favour of the applicant.
- 5) That if the interim relief is not granted, the applicant will be exposed to irreparable loss.

It is, therefore, prayed that on acceptance of this application, the respondents may kindly be restrained from making any appointment on the

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,

11

post on which the appellant was/ is serving and the post of Chowkidar may be kept vacant till the disposal of the instant service appeal.



Appellant

Through

Muhammad Isa Khan Khalil

Muhammad Isa Khan Khalil
Advocate Supreme Court

&

Akhter Ilyas

Akhter Ilyas
Advocate, High Court

AFFIDAVIT

I, Feroz Khan S/o Muhammad Hassan Chowkidar GGPS Ato Khel, Mohmand Agency do hereby solemnly affirm and declare on Oath that the contents of accompanying Application are true and correct to the best to my knowledge and belief and nothing has been concealed from this hon'ble court.



DEPONENT

Certified to be true copy
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar



Bhels
026-517

Deponent

(12)

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2017

Feroz KhanAppellant

Versus

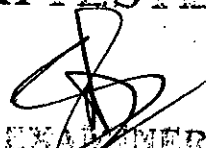
Agency Education Officer and others.....Respondents

**APPLICATION FOR CONDONATION
OF DELAY**

Respectfully Sheweth;

- 1) That the instant application is being filed with accompanying service appeal, the grounds of which may kindly be considered as integral part of the instant application.
- 2) That being a layman and ill-advised in law, the appellant filed an application dated 04.05.2016 to FATA Tribunal for cancellation of the impugned notification, which was entertained and comments were called from the respondents.
- 3) That however, the application of the applicant was not attended too and the same remained undecided.
- 4) That the filing of application before the FATA Tribunal was due to inadvertence because of the mention of "consequent upon recommendation of the Court of FATA Tribunal, Peshawar and Council for Elders" in the impugned order, though no such recommendation was either made or could be made by the FATA Tribunal.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

- 5) That the delay so caused in filing the instant appeal is due to presentation of matter in the FATA Tribunal, which squarely falls within the purview of section 14 of the Limitation Act 1908 and the time spent in the FATA Tribunal is liable to be excluded.
- 6) That otherwise, the impugned order is illegal and prima-facie void and it could be challenged anytime without being hit by limitation.
- 7) That the courts have continuously being asserting decision of the matter on merits and has been depicting technical knock down.

It is, therefore, prayed that on acceptance of this application, the delay so caused may kindly be condoned in the best interest of justice.



Appellant

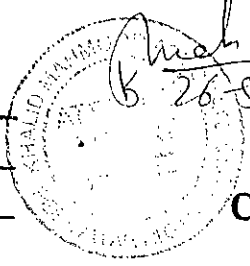
Through

Muhammad Isa Khan Khalil
 Advocate Supreme Court
 & *Ilyas*
Akhter Ilyas
 Advocate, High Court

AFFIDAVIT

I, Feroz Khan S/o Muhammad Hassan Chowkidar GGPS Ato Khel, Mohmand Agency do hereby solemnly affirm and declare on Oath that the contents of accompanying Application are true and correct to the best to my knowledge and belief and nothing has been concealed from this hon'ble court.

Date of Presentation of Application: 15-07-19
 Number of Words: 3600
 Copying Fee: 40-00
 Stamps: 40-00
 Name of Copyst: [Signature]
 Date of Completion of Copy: 17-7-19
 Date of Delivery of Copy: 17-7-19



DEPONENT

Certified to be true copy

EKAMBER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

R3-01-2014

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

TESTED

Amex

فیصلہ درمابین فریقین فریق اول شیخ افضل ولد محمد حسن ساکن آٹو ٹیبل کمانی علیہ السلام

فریق دوم سرت شاہ ولد محمد افضل ساکن آٹو ٹیبل کمانی علیہ السلام محمد الحسن

دونوں مذکورہ بالا فریقین نے ہجرتہ ثالثان مسیمان ملک عبد الرحمان - ایک امیر نواز خان

ملک مسیمان شاہ ملک دورانے باچہ حاجی رستم خان اینڈ محمد اللہ کو رہنا کا لائحہ طور پر

اختیار برائے ثالثی دیا اور فریقین کا آپس کھیلو لین دین کا تنازعہ تھا فریقین نے

ہجرتہ ثالثان کو اپنے بیانات پیش کئے تھے اور ہجرتہ ثالثان نے خوب تحقیق اور

تاکید کیو جب سے زبانی طور پر بھی بیانات لکھے تھے اور مطلقہ باخبر ذرائع سے معلومات

میں لگے اور خوب سوچ بچار کے بعد ہجرتہ ثالثان نے اپنے علاقے کے رسم و رواج کو

میں ملحوظ خاطر رکھ کر مندرجہ ذیل فیصلہ صادر کیا

فریقین کل غور و درائن میں اور ان میں سے (پن) برادران محمد الحسن آٹو ٹیبل میں رہائش پزیر

باقی ماندہ برادران محمد الحسن سے با حوص میں اور انکی ہو ابائی جائیداد سے

وہ علاقہ آٹو ٹیبل میں بسنے والوں کا حق ہوگا جو برادران یہاں آٹو ٹیبل میں رہتے ہو وہ کاشت

کر کے پیداوار اور حاصلات اُنکے ہونگے اور اپنے فوٹو چھٹے زمین کے علاوہ اپنی اپنے چھٹے

زمین کے علاوہ وہ یہ زمین فروخت لینی نہ کر سکتے گا اور کاشت کے علاوہ زمین نو برادران کی ملکیت ہوگی

آٹو ٹیبل محمد الحسن میں ایک گرنڈ پرائمری سکول فریقین کا ہے اسکی موجودہ وقت (دو)

کلاس غور نوکریاں ہو کیں اور کلاس میں ان دو نوکریوں میں سے ایک نوکری فریق اول

شیخ افضل فریق دوم سرت شاہ کو دے گا اور ایک نوکری فریق اول کی ہوگی اور دوسری نوکری

فریق دوم کی ہوگی اور اگر مذکورہ سکول کی آپ گرنڈ پٹیشن ہوگی اور نوکریاں پاد پٹر فریڈ

آتی تو وہ فریق اول اور فریق دوم برابر تقسیم کر کے میں سکرٹسرا بجائی اس میں حصہ ارنہ ہوگا

اور ٹیسرے بجائی کا اس بارے اٹھنے کی صورت میں دونوں فریقین متفقہ ہو جائے

بیلوں

2 کالہ
ٹیلہ سیرا
سائل

میر و زخان
جو تیار کرائی

بجائی لکھا کیوں
سال دیا

نو نیرد حال سے لے کر

Handwritten signature

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فریق اول شہزادہ عفتل کا فریق دوم مسرت شاہ پیرین دین اور نقد رقم کا دعویٰ تھا اور اس میں

دین کا ہم نے بخور حساب کتاب کرنے اور منموعات کرنے کے بعد مناسب سوچا جس سے

مردان قسم کیلئے اور کھانے کی باتیں ٹوک کر کے مبلغ پانچ لاکھ روپے پر فیصلہ کیا جو فریق دوم فریق اول

مندرجہ ذیل اوقات اور مندرجہ شرائط پر دیئے گئے

500000/ 250000/ 250000/ من کو روپے پانچ لاکھ روپے میں سے مبلغ دو لاکھ روپے سے مسرت شاہ پیرین شہزادہ عفتل کو یکم جون

2014 نہ کو روپے اور دوسری قسط مبلغ دو لاکھ روپے سے یکم جولائی 2014 نہ کو روپے کا

فیصلہ صادر ہوا جو فریق من کو روپے فیصلہ صادرہ ماننے سے انکار کرے وہ مبلغ پانچ لاکھ روپے

بغیر کسی چیز کا دے گا اور کوئی رعایت نہ برتی جائے گی اور منکر فریق پڑھے

موجودہ اور جو مانے بھی دے گا

ملک میریان شاہ
ملک میریان شاہ

TESTED
Amir Khan

کھیل لاکر
ملک عبدالاحد

Attest
25/4/14

ملک محمد انور

حاجی رستم خان

ATTESTED

ISSUE No

1552
1552

فیصلہ لاؤں گا
فیصلہ لاؤں گا
فیصلہ لاؤں گا

ادخل
مردان
میں
اداریہ
اور
پانچ
نہ
آں
یا
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بالکل

THE COURT OF ASSISTANT POLITICAL AGENT UPPER MOHMAND SUB DIVISION

1st Party: Sher Afzal s/o Mohammad Hassan, Abidullah s/o Sher Afzal resident of Ato Khel Halimzai Tehsil Halimzai. (Applicants)

2nd Party: Mohammad Afzal s/o Mohammad Hassan, Musarat Shah s/o Mohammad Afzal resident of Ato Khel Halimzai Tehsil Halimzai. (Respondents)

MONEY DISPUTE BETWEEN THE PARTIES UNDER SECTION 08 FCR AT TEHSIL HALIMZAI MOHMAND AGENCY ORDER:

Brief facts of the case are that Sher Afzal s/o Mohammad Hassan lodged a complaint in the court of the undersigned wherein he claimed Rs.2372900/- outstanding against Musarat Shah s/o Mohammad Afzal Ato Khel Kamali Halimzai. The respondents Mohammad Afzal s/o Mohammad Hassan and Musarat Shah s/o Mohammad Afzal states that they have spent a lot of money on the education of the applicant. The respondent further states that they jointly own GGPS at Ato Khel but the applicant is getting salaries of two Class IV of the GGPS and one Khassadar for the last 30/40 years and that he (applicant) is not paying them their shares. He (respondent) further asserts that the applicant also have received benefits, tribal commission etc for the school and water supply scheme. According to the respondent the matter was previously decided through private Jirga but the applicant is not willing to accept it. Beside the above respondent further claimed share in the house constructed by the applicant at Peshawar.

The following council of elders under section 08 FCR 1901 as amended in 2011, is constituted with the consent of both the parties to produce their findings and recommendations in the light of available record, independent witnesses and under the prevailing rewaj.

1. Malak Mehraban Shah Halimzai.
2. Malak Abdul Ahad Halimzai.
3. Haji Rustam Khan Halimzai.
4. Malak Mohammad Ullah Halimzai.
5. Malak Haji Ameer Nawaz Khan.
6. Malak Duran Bacha Halimzai.

The council of elders gave their recommendations/findings which are as under:

- i. The Parties are 09 brothers therefore the paternal land will be divided into 9 equal shares. 03 out of 09 brothers who are living at Ato Khel Tehsil Halimzai will cultivate the paternal land and will have its produce. However, no one will sell the land other than of his own share.
- ii. 02 Class IVs of GGPS Ato Khel (Sher Afzal) will be divided between the applicant and respondent and whenever the GGPS is upgraded then the privileges will be divided between the applicant and respondent only.
- iii. The respondent Musarat Shah s/o Mohammad Afzal will pay Rs. 500000/- (Five lacs only) to the plaintiff in two installments. He has to pay the 1st installment i.e Rs. 250000/- on 1st June 2014 similarly he has to pay the second installment on 1st July 2014.

Hence, the court of the undersigned (Assistant Political Agent Upper Mohmand) agrees with the recommendations of council of elders and pass orders that the Parties are 09 brothers therefore the paternal land will be divided into 9 equal shares. 03 out of 09 brothers who are living at Ato Khel Tehsil Halimzai will cultivate the paternal land any will have its produce. However, no one will sell the land other than of his own share.

(ii) 02 Class IVs of GGPS Ato Khel (Sher Afzal) will be divided between the applicant and respondent and whenever the GGPS is upgraded then the privileges will be divided between the applicant and respondent only.

(iii) The respondent Musarat Shah s/o Mohammad Afzal will pay Rs. 500000/- (Five lacs only) to plaintiff in two installments. One of the council of elders namely Malak Duran Bacha Halimzai has dissenting view. The case is thus decided on majority view basis.

Announced 28/4/14

Assistant Political Agent
Upper Mohmand Sub Division

ATTESTED



IN THE COURT OF
COMMISSIONER FCR PESHAWAR DIVISION
PESHAWAR

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DATE OF INSTITUTION 19.05.2014.
DATE OF DISPOSAL 12-03-2015
APPEAL No. 53/2014.

1. SHER AFZAL S/O MUHAMMAD HASAN.
2. ABID ULLAH S/O SHER AFZAL R/O ATO KHHEL, TEHSIL HALIMZAI,
MOHMAND AGENCY. (APPELLANTS)

VS

1. MUHAMMAD AFZAL S/O MUHAMMAD HASAN.
2. MUSARAT SHAH S/O MUHAMMAD AFZAL, R/O ATO KHHEL, TEHSIL
HALIMZAI, MOHMAND AGENCY. (RESPONDENTS)

CLAIM MONEY DISPUTE BETWEEN THE PARTIES UNDER SECTION 8 FCR

ORDER

This order will dispose off the appeal filed by the above named appellants challenging the order dated 28-04-2014 of the APA/ADM upper Mohmand, Mohmand agency whereby a decree was passed in favour of the present respondents.

Facts of the case are that the appellants filed a complaint in the court of APA/ADM upper Mohmand, Mohmand Agency and claimed Rs. 2372900/- outstanding against respondents. The lower court referred the case to the council of elders nominated with the consent of the parties under the provisions of FCR. The council of elders submitted its findings which were accepted by the APA/ADM upper Mohmand, Mohmand Agency.

Parties present with their counsels. Arguments heard and case record examined.

Counsel for the appellants argued that the appellant have outstanding amount against the respondents and several Jirgas were convened but in vain. The findings of the council of elders are not in line with the issues framed by the lower court. The appellate authority has the power to frame additional issues to the lower court. He requested that the appeal may be accepted and case be remanded to the lower court for trial afresh.

In rebuttal, counsel for the respondents argued that the Memo of appeal of the appellant does not contain the arguments advanced by the defence counsel. There is no law under the FCR to implement the findings of private council of elders. The lower court has followed proper procedure under section 8 FCR and no illegality/irregularity has been committed during the proceedings. He requested that the appeal may be dismissed.

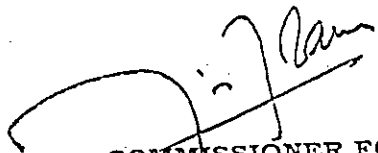
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Case record, perused. Perusal of the record reveals that the lower court referred the case to the council of elders nominated with the consent of the parties under the provisions of FCR. The council of elders submitted its findings which were accepted by the APA/ADM upper Mohmand, Mohmand Agency. The lower court has not committed any illegality/irregularity during the proceedings of the case and has followed the provisions of section 3 FCR. I see no reason to interfere with the impugned order. As such the appeal in hand stands rejected and the impugned order is upheld and maintained.

ANNOUNCED
12.03.2015


COMMISSIONER FCR
PESHAWAR DIVISION PESHAWAR



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Amir

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BEFORE THE FATA TRIBUNAL PESHAWAR

Civil Revision Petition No.-----CL.90/5/2015
Date of Institution-----12/05/2015
Date of Decision-----21/12/2015

1. Sher Afzal s/o Muhammad Hasan
2. AbdiUllah s/o Sher Afzal r/o Ato Khel, Tehsil Halimzai, Mohmand Agency

(Petitioners)

V/S

1. Muhammad Afzal s/o Muhammad Hassan
2. Musarat Shah s/o Muhammad Afzal r/o Ato Khel, Tehsil Halimzai, Mohmand Agency

(Respondents)

**REVISION PETITION AGAINST THE ORDER/JUDGMENT
OF LEARNED COMMISSIONER FCR PESHAWAR DATED
12/03/2015**

Order/Judgment:
21/12/2015

The instant revision petition is filed against the order of learned Commissioner FCR Peshawar dated 12/03/2015 whereby he has dismissed the appeal of the petitioners against the order/judgment of the APA/ADM Upper Mohmand Agency dated 28/04/2014.

The facts of the case in brief are that the petitioners filed a complaint in the court of APA/ADM Upper Mohmand Agency and claimed Rs. 2372900/- outstanding against respondents. The respondents Muhammad Afzal and others stated that they have spent a lot of money on the education of the petitioner Sher Afzal. The respondents

Attorney

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further stated that they jointly owned GGPS at Atokhel but the applicants are getting salaries of two class-IV employees of the GGPS and one khasadar salary for the last 30/40 years. According to the respondents the matter was previously decided through private jirga but the applicants are not willing to accept it.

The lower court summoned the parties and constituted a Jirga/council of elders with the consent of the parties. The case was referred thereto for submission of findings of Jirga on the issues involved. The council of elders submitted its majority findings which were accepted by the APA/ADM Upper Mohmand Agency and he passed order accordingly the operative portion whereof is:-

cc "That the Parties are 09 brothers therefore the paternal land will be divided into 09 equal shares. 03 out of 09 brothers who are living at Ato Khel Tehsil Halimzai will cultivate the paternal land any will have its produce. However, no one will sell the land other than of his own share.

(ii) 02 Class IVs of GGPS Ato Khel (Sher Afzal) will be divided between the applicant and respondent and whenever the GGPS is upgraded then the privileges will be divided between the applicant and respondent only.

(iii) The respondent Musarat Shah s/o Mohammad Afzal will pay Rs.500000/- (Five lacs only) to plaintiff in two installments. One of the council of elders namely Malak Duran Bacha Halimzai has dissenting view. The case is thus decided on majority view basis".

Being aggrieved from the said order of APA/ADM Upper Mohmand Agency dated 28/04/2014. The petitioners filed an appeal before the learned Commissioner FCR Peshawar who dismissed the appeal vide his order dated 12/03/2015. The said order is now assailed through the instant petition.

Learned counsel for the petitioners as well as for respondents put forth their arguments and record of the case was also perused.

Counsel for the petitioners contended that the order of the learned Commissioner FCR Peshawar, dated 12/03/2015 is against law, facts and material available on record, hence liable to be set aside. It is crystal clear from the statements of

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further stated that they jointly owned GGPS at Atokhel but the applicants are getting salaries of two class-IV employees of the GGPS and one khasadar salary for the last 30/40 years. According to the respondents the matter was previously decided through private jirga but the applicants are not willing to accept it.

The lower court summoned the parties and constituted a Jirga/council of elders with the consent of the parties. The case was referred thereto for submission of findings of Jirga on the issues involved. The council of elders submitted its majority findings which were accepted by the APA/ADM Upper Mohmand Agency and he passed order accordingly the operative portion whereof is:-

cc "That the Parties are 09 brothers therefore the paternal land will be divided into 09 equal shares. 03 out of 09 brothers who are living at Ato Khel Tehsil Halimzai will cultivate the paternal land any will have its produce. However, no one will sell the land other than of his own share.

(ii) 02 Class IVs of GGPS Ato Khel (Sher Afzal) will be divided between the applicant and respondent and whenever the GGPS is upgraded then the privileges will be divided between the applicant and respondent only.

(iii) The respondent Musarat Shah s/o Mohammad Afzal will pay Rs.500000/- (Five lacs only) to plaintiff in two installments. One of the council of elders namely Malak Duran Bacha Halimzai has dissenting view. The case is thus decided on majority view basis".

Being aggrieved from the said order of APA/ADM Upper Mohmand Agency dated 28/04/2014. The petitioners filed an appeal before the learned Commissioner FCR Peshawar who dismissed the appeal vide his order dated 12/03/2015. The said order is now assailed through the instant petition.

Learned counsel for the petitioners as well as for respondents put forth their arguments and record of the case was also perused.

Counsel for the petitioners contended that the order of the learned Commissioner FCR Peshawar, dated 12/03/2015 is against law, facts and material available on record, hence liable to be set aside. It is crystal clear from the statements of

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the parties, order of reference of the APA dated 28/02/2013, findings of the council of elders and order passed by the APA dated 28/02/2014 that only petitioners and respondents were party to the proceedings at trial stage before the APA, but strange enough the council of elders have dragged and involved the entire family in litigation as evident from the findings of the council of elders on issue No. 1. Thus by doing so the council of elders have travelled beyond their jurisdiction which is an absolute violation of section 8 of the Frontier Crimes Regulation (amended) 2011. On issue No. 2 the findings of the council of elders is also not clear rather ambiguous one for the reason that both the persons (employees) mentioned in the findings of the council of elders are government servants. They were duly appointed by their respective department, therefore, legally they cannot be removed or replaced by another person as recommended by the council of elders. Therefore, findings given by the council of elders and order passed by the APA are not tenable under the law. (On issue No. 4 there is no findings of the council of elders at all, the APA under section 8 sub section 4 (b) was legally required to send back the case to the council of elders for clearcut opinion which was not done.) Thus the trial court has committed gross illegality in the proceedings which has resulted in miscarriage of justice. For the reason mentioned above the revision petition may be accepted and the impugned order of the Commissioner FCR Peshawar dated 12/03/2015 may kindly be set aside and the case may be remanded to the APA Upper Mohmand for fresh proceedings.

The learned counsel for the respondents in rebuttal argued that six Jirga members were nominated with the consent of the parties and five members submitted the award which was accepted by the APA/ADM Upper Mohmand Agency. The lower court has followed proper procedure under section 8 of the Frontier Crimes Regulation (amended) 2011. The counsel for respondent further contended that the Commissioner FCR also maintained the order of the trial court. The order/judgment of Commissioner FCR is based on valid and sound reasons, and is in accordance with the relevant customs and riwaj of the area.

Arguments of the learned counsel for the parties were heard at length and case file was perused thoroughly. The lower court has followed proper procedure under

Attorney
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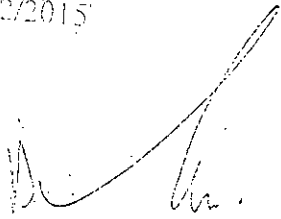
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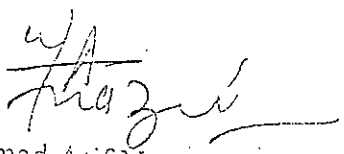
section 8 of Frontier Crimes Regulation (amended) 2011. The Order of APA/ADM is based on sound reasons and the relevant customs and riwaj of the area.

The proceedings of the trial court have been conducted in accordance with laid down procedure in section 8 of the Frontier Crimes Regulation (amended) 2011. The council of elders with 5/6 majority have given all details in their award with consent of the parties, This Tribunal did not find any legal or factual loophole in the impugned orders to warrant its recall. The impugned order/judgments of appellate court as well as that of trial court are well grounded. Accordingly the revision petition being devoid of merit is dismissed and order of learned Commissioner FCR is upheld.

Announced
21/12/2015



(Hussain Zada Khan)
Member FATA Tribunal


(Sang-e-Marjan)
Chairman FATA Tribunal


(Muhammad Atif Nazir)
Member FATA Tribunal

Certificate:

This order/judgment consist of four pages, each signed & stamped.


Chairman FATA Tribunal



ATTESTED

Office of the Registrar
FATA Tribunal Peshawar

Date of Application 26/12/2015

Date of Preparation

Date of Receiving 25/12/2015

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BEFORE THE FATA TRIBUNAL PESHAWAR

Civil Review Petition No.-----CL.05/02/2016
Date of Institution-----04/02/2016
Date of Decision-----21/03/2017

- 1. Sher Afzal s/o Muhammad Hassan
- 2. AbidUllah s/o Sher Afzal r/o Ato Khel, Tehsil Halimzai, Mohmand Agency

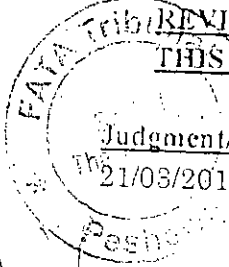
(Petitioners)

V/S

- 1. Muhammad Afzal s/o Muhammad Hassan
- 2. Musarat Shah s/o Muhammad Afzal r/o Ato Khel, Tehsil Halimzai, Mohmand Agency

(Respondents)

REVIEW PETITION AGAINST THE ORDER/JUDGMENT OF THIS TRIBUNAL DATED 21/12/2015



Judgment/Order
21/03/2017

Attorney
17.5.17

Through this order/judgment we want to dispose of the review petition filed against the impugned order/judgment dated 21/12/2015 of this Tribunal.

The details of the case have already been explained, elaborately in this Tribunal's order dated 21/12/2015, which needs no repetition.

Arguments of the learned counsel for both the parties were heard at length once again and record of the case was minutely scrutinized.

In accordance with the well settled principles of jurisprudence a review has a very limited scope. According to the said principles no rehearing is to be allowed upon the merits or even on the ground that new matter has been discovered which if it had been produced at hearing of revision might materially have affected the judgment of the court. Review cannot be allowed for merely re-examination of same arguments. Re-arguing a case on merit as well as additional ground is beyond the scope of review jurisdiction. It can

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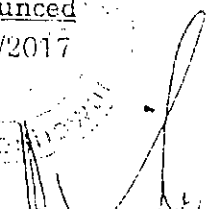
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only be allowed if there is apparent legal or factual error or mistake on the face of the impugned judgment which substantially affects the fate of the case and occasions perpetuation of injustice.

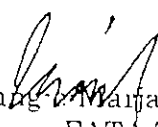
We have considered the submissions of learned counsel and re-perused the entire record. Arguments of the learned counsel mostly revolved around the points which have already been agitated before this Tribunal in the revision petition and have been duly considered. The nutshell of discussion is this Tribunal has upheld the impugned orders/judgments of learned trial court, and worthy Commissioner FCR, Peshawar passed the order on the basis of verdict of validly constituted council of elders under section 8 of FCR. As the subject matter of the case was appointment/distribution of emoluments of class-iv employees between the brothers, the council of elders gave its award on the basis of prevalent custom of the area. The residents of FATA have their well settled system/mechanism of distribution of profits and losses. It is due to their distribution system of profits and losses amongst themselves that they have willingly accepted the rigours of territorial, and collective responsibility enshrined in section 21, 22 of FCR despite the fact that the said sections are declared by human rights activists as highly obnoxious. The distributive system which has the sanction of customs/Rewaj of the area which is special law. The special law always prevail over ordinary law/rules.

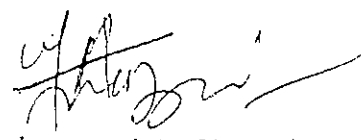
The learned counsel could not pinpoint any apparent, substantial, legal or factual error or mistake in the impugned order/judgment which has affected merits of the case. As such the review petition in hand being devoid of merit is dismissed.

Announced
21/03/2017


(Hussain Zada Khan)
Member FATA Tribunal




(Sang Waijan)
Chairman FATA Tribunal



(Muhammad Atif Nazir)
Member FATA Tribunal

Certificate:

This judgment/order consists of two pages, each signed & stamped..

17/05/17

17/05/17


Chairman
FATA Tribunal

~~Amir Gul~~

(5)

OFFICE OF THE AGENCY EDUCATION OFFICER
MOHMAND AGENCY AT GHALLANAI
P.N.O. 0124290180 FAX: 0924290180

(25)

NO. 104/15/16

Consequent upon recommendation of the Court of FATA Tribunal
and Council of elders vide Political Agent Mohmand Agency letter No. 1911-12/M
dated 18/04/2016, retirement of Mr. Feroz Khan S/O Muhammad Hassan Chowkidar GGPS
etc Khodiy (I) (Shir Atzai) is hereby ordered w.e.f 01/05/2016 (F/N) after completion of
17 years 3 months & 26 days qualifying service.

His date of birth & 1st appointment dates as per record of this office are as
under:-

Date of Birth = 06/01/1969.

Date of 1st appointment = 06/01/1989.

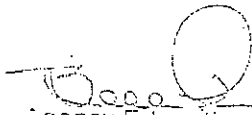
Encashment of LPR for the period w.e.f 01/05/2015 to 30/04/2016 (366 days)
on full pay is allowed to him as available at his credit.

(SAEED GUL)
Agency Education Officer,
Mohmand Agency at Ghallanai.

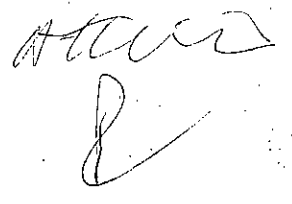
By S.O. No. Estab/Ret/ 24064-70 /dated Ghallanai the 27/04/2016.

Copy to:-

- 1. Political Agent Mohmand Agency w/r to his No & dated quoted above.
- 2. Agency Account's Officer Mohmand at Ghallanai.
- 3. AAO concerned in the local office.
- 4. Assistant pay clerk in the local office.
- 5. Official concerned.


Agency Education Officer,
Mohmand Agency at Ghallanai.





پہلے ایجنسی کے سربراہ کو پیش کیا گیا ہے۔
فروز خان چوکیدار، گگپس، خدیوہ (1) (شیر اتزائی)
27/04/2016

محضور صاحب اسٹیٹ پولیٹیکل ایڈیٹور صاحب ایمر ایجنڈے علیہ اکتفا
 درخواست میرے ریسٹائرڈ جرنل جو کلبھار 1995ء (میرا پتلا)

عبدالغنی
 عبدالغنی
 عبدالغنی

صاحب عالی!

خود نامہ گزارش ہے کہ بہت سال قبل میرے بڑے بھائی شیر افضل اور کھتیجے

کے دو بیٹے رستم کا تنازعہ چل رہا تھا۔ آٹکے دو بیٹے سرکاری جرنل نے منسلک کیا اور
 اور APA صاحب نے منظور کیا۔ ہمارے گاؤں آلوٹھیل میں ایک ٹرولر ٹریڈنگ
 سکول ہے جس کی دو ٹولریاں ہیں سکول کی چوکھار کی پوسٹ میرے نام
 ہے۔ ان ٹولریوں میں سے ایک ٹولری جرنل مجبران نے مسرت شاہ کو دی ہے۔

تقریباً ایک سال قبل مجھے بغیر کسی وجہ قبل از وقت جبراً ریٹائرڈ کر دیا
 گیا۔ اور اب اس پوسٹ پر مسرت شاہ کو بھرتی کرنے کی محوشش کی جارہی ہے
 یہ ٹولری تقریباً 27 سے میرے نام ہے اور میں اپنی ڈیوٹی ٹریڈنگ اسٹیبلشمنٹ سے
 انجام دے رہا تھا۔ اور اب بھی میں سال ٹولری بائی ہے۔

صاحب والد! تنازعہ تو شیر افضل اور مسرت شاہ کے درمیان تھا۔ اور کسی بھی
 لحاظ سے فریقین کے ساتھ میرا کوئی تنازعہ نہیں تھا۔ اور نہ کوئی شرارت تھی
 میرا فریقین کے ساتھ کوئی تنازعہ نہیں ہے۔ اور نہ آٹکے تنازعہ میں میرا کہیں
 کبھی نام تھیں ہے۔ تو مجھے کیوں جبراً ریٹائرڈ کر دیا گیا۔ مجھے کیوں
 قریبی کا ٹیکر بنا دیا گیا۔

میں ایک غریب آدمی ہوں، اور میرا دوسرا کوئی ذریعہ معاش نہیں ہے
 اس لیے میرے ساری نطلیم اور نا انصافی کا سکون نہ کیا جائے اور میری
 ٹولری کو بحال کیا جائے۔

نصیحت دے دو رہوں گا۔

فریڈمان جو کلبھار 1995ء آلوٹھیل ایڈیٹور
 ATG

~~Annex 1~~

گورنمنٹ آف سندھ

دہلی

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...

I have no objection if the applicant approaches the services tribunal for justice

May 2017

08.05.017

Agency Administration Officer

~~Amir~~ 28
22

BEFORE THE FATA TRIBUNAL, PESHAWAR

1. FERROZ KHAN SON OF MUHAMMAD HASSAN RESIDENT OF MOHMAND AGENCY.

PETITIONER

VERSUS

1. AGENCY EDUCATION OFFICER, MOHMAND AGENCY.
2. POLITICAL AGENT, MOHMAND AGENCY.

RESPONDENTS

APPLICATION FOR CANCELLATION OF THE NOTIFICATION DATED 27.04.2016 ISSUED BY THE RESPONDENT NO.1, WHEREBY THE PETITIONER HAS BEEN RETIRED FROM SERVICE W.E.F 01.05.2016.

Respectfully Sheweth:

1. That review petition titled Sher Afzal & another versus Muhammd Afzal & another is pending adjudication before this honourable tribunal and is fixed for hearing on 12.05.2016.
2. That in connection with execution of the order of this honourable tribunal in the above mentioned case the respondent No.1 in light of letter No.1911-12/Mdated 19.04.2016 issued by the respondent No.2, the respondent No.1 issued notification Endst.No: Estab:II/Ret:/24064-70/dated Ghallani the 27/04.2016 and vide the aforementioned notification the petitioner was retired from his service Chowkidar GGPS Ato Khel. (Copy of notification dated 27.04.2016 is Annex-A)
3. That it is most pertinent to mention here that neither the petitioner was party to the proceedings in the said cases (title mentioned above) nor have any concern or connection with the said case nor any order was passed against the petitioner in the said case. Therefore the adverse order issued by the respondent No.1 against the petitioner is illegal and void. (Copy of the verdict of Counsel of elders Annex-B, Copies of order of the learned APA, Commissioner (FCR) Peshawar & Order dated 21.12.2015 of this honorable tribunal are Annex- C,D&E respectively)
4. That the notification dated 27.04.2016 has been issued in the absence of the petitioner/ without hearing the petitioner, thus

29

~~29~~

the petitioner has been condemned unheard and therefore the said notification is void and liable to be set-aside.

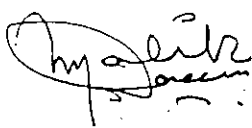
It is therefore prayed that the notification dated 27.04.2016 issued by the respondent No.1 against the petitioner may kindly be set-aside and services of the petitioner may kindly be reinstated/restored.

Date: 04.05.2016

Through

Petitioner
Feroz Khan

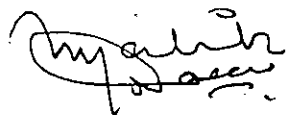
Pir Fida Muhammad Khan
&



Malik Naeem Khalid
Advocates

INTERIM RELIEF:

That by way of interim relief, notification dated 27.04.2016 may kindly be suspended till final disposal of the petition in hand.



Advocate

[Faint handwritten notes and signatures at the bottom of the page]

FATA Tribunal Peshawar

Annex - K

Criminal/ Civil/ Revision/ Review Petition No. J/2016/9/2016

Date of Institution. 04/05/2016

Counsel for the Petitioner (s)
Counsel for the Respondent (s)

Misc, application

Petitioner (s)
Respondent (s)

1/2 2/2 3/2 4/2 5/2



Order Sheet No.

Date

Proceedings

pp/2016

4/5/2016

This Misc, application is presented by Far Fida Khan schedule for the consideration of notification issued by Resptt. I dated 27.4.16 to come up before the Tribunal today to argue the case.

Order

4.5.2016

4/5/2016

Registered

17.5.12

Petitioner, along with the counsel present. A copy of the petition be sent to the respondents for filing comments within a week. The respondents be directed to maintain status-quo till date to come up for 12.5.16

Registrar FATA Peshawar

Signature

Sang-e-Marjan
Chairman FATA

Muhammad Ali Noor

FATA Tribunal Peshawar

(31)

Original/ Civil/ Revision/ Review Petition No. C-8/01/05/2016

Date of Institution. 04/05/2016

Counsel for the Petitioner (s)
Counsel for the Respondent (s)

Petitioner (s)
Respondent (s)

Feroz Khan

P A

Order Sheet
No.

Date

Proceedings

Order

12.5.2016

Petitioner along with
counsel present. The
respondents be directed
to file comments in
the light of petition. Also
the maintain status-quo
be maintained. So come
up for 1.6.2016.

W/A
Feroz Khan

Justice
Feroz Khan

FATA Tribunal Peshawar

32

Original / Civil / Revision / Review Petition No. Cr/01/05/2016

Date of Institution. 4/5/16

Counsel for the Petitioner (s)
Counsel for the Respondent (s)

Petitioner (s)
Respondent (s)

Feroz Khan
PA/AEO
Mohammad

Order Sheet No.	Date	Proceedings
-----------------	------	-------------

Order	1.06.2016.	Petitioner through counsel present. The respondents be again directed to file comments. In the meantime status-quo be maintained till 20-6-2016 Hussain Member Tribunal Muhammad Member FATA Tribunal
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Order	20.6.16.	Petitioner through counsel present. The respondents did not file comments. The petitioner stressed to respondents be directed to file comment. In the meantime status-quo be maintained. Hussain Member FATA Tribunal Muhammad Member FATA Tribunal
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APA/AEO
Comments
Received

FATA Tribunal Peshawar

33
27

Criminal / Civil / Revision / Review Petition No. Cr/105/2016

Date of institution. 4/5/2016

Attorney for the Petitioner (s)
Counsel for the Respondent (s)

Petitioner (s)
Respondent (s)

Feroz Khan

P.A / AEG Mohammad

Order Sheet No.	Date	Proceedings
Order	3.8.16.	Petitioner along with Counsel present. Comments not received, despite repeated reminders. The Registrar of this tribunal is directed to ensure comments positively in the meantime status - to be maintained till 19/09/16. Comments → Record has already been received on 4/11/16. 03.8.16. [Signature]
Order	19.09.16.	Petitioner along with Counsel present. Comments not received. SPA/District Education officer be directed to file the ^{the} comments in the meantime status - to be maintained.

FATA Tribunal Peshawar

(34)

~~(34)~~

Civil/ Criminal/ Revision/ Review Petition No. C-2/101/05/2016

Date of Institution. 4/5/2016

Counsel for the Petitioner (s)
Counsel for the Respondent (s)

Petitioner (s) Farooz Khan
Respondent (s)

PA / A / F / M / H / M / A / S / I

Order Sheet No.

Date

Proceedings

To come up for 05/10/2016

[Handwritten signature] *[Handwritten signature]*

Order

5.x.2016

Petitioner along with Counsel present. The Counsel for petitioner seeks time for arguments, after examining the comments received from the A.P.A. To come up for arguments on 31.x.16. Respondent no 2 present. *[Handwritten signature]*

[Handwritten signature]

[Handwritten signature]

FATA Tribunal Peshawar

35

~~35~~

Criminal/Civil/Revision/Review Petition No. C-2 (01/03/2016)

Date of Institution. 01/03/2016

Counsel for the Petitioner (s)
Counsel for the Respondent (s)

Petitioner (s)
Respondent (s)

Feza Khan
PAI AEO Mohammad

Order Sheet No.	Date	Proceedings
-----------------	------	-------------

Order	31.10.16.	Parties present. Petitioner's counsel admitted application for adjournment. Hence adjourned for 1.12.16
-------	-----------	---

Y A
Pur

Order	1.12.16.	Parties along with counsel present. Comments received. Case to come up on 7.12.2016 further proceedings.
-------	----------	--

Y A
Muhammad Atif Nazki
Member FATA
Tribunal

Order	25.12.16	Parties present. The counsel for petitioner seeks adjournment hence adjourned for 4.1.17
-------	----------	--

Y A
Pur

FATA Tribunal Peshawar

Criminal/Civil/Revision/Review Petition No. cd/01/05/2016

Date of Institution.

Counsel for the Petitioner (s)
Counsel for the Respondent (s)

Petitioner (s)
Respondent (s)

Order Sheet No.	Date	Proceedings
Order	22.17	Petitioner through counsel present. One case is adjourned due to absence of one member of tribunal. Hence adjourned for 27.2.
Order	01.03.2017	Parties through counsel present. As this petition was clubbed with revision petition. So this application was adjourned on the order sheets of revision petition. Counsel for the party argued. Arguments heard. Come up for order on 21.3.

[Signature]
Muhammad Atif Nazir
Member FATA Tribunal

[Signature]
Muhammad Atif Nazir
Member FATA Tribunal
Government of Pakistan

[Signature]

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OFFICE OF THE ASSISTANT POLITICAL AGENT
UPPER MOHMAND SUB-DIVISION

Ref No. (0924-2016) Email: uppermohm.ind@gmail.com

~~Amir~~

Case 15

No. 1170-71/1/PA (UM)
Dated 27 June, 2016

37

Registrar,
FATA Tribunal, Peshawar

Feroz Khan s/o Muhammad Hassan r/o Mohmand Agency

: Petitioner

Versus

Agency Education Officer Mohmand Agency
Political Agent Mohmand Agency

: Respondents

Memorandum:

Kindly refer to your Honorable Tribunal (FATA Tribunal Peshawar) Order Sheet Dated 01-06-2016 in Civil Revision Petition Cr/01/05/2016.

Para wise comments are offered as below:

1. No Comments.
2. No Comments.

3. Correct to the extent that the petitioner Feroz Khan was not a party in the trial Court (Court of APA Upper Mohmand) and the subject 02 Class-IVs were the Privileges of Mr. Sher Afzal, (however the decision was taken by the Council of elders the 02 out of 02 services of Class IVs of GGPS Ato Khel would be divided equally between the parties (Sher Afzal and Musarat Shah) and that other brothers of the parties will have no right to claim the ownership of the subject Class IVs, which has been clearly mentioned in the Urdu recommendation of the council of elders on Para 2 (Copy enclosed). This Court vide order dated 28-04-2014 passed an order on the recommendation of council of elders accordingly wherein 01 Class IV was the lawful right of Mr. Musarat Shah (Copy enclosed). Approved from the Court Order dated 28-04-2014 (Copy enclosed). Sher Afzal etc filed an appeal in the Court of Commissioner Peshawar Division Peshawar which was dismissed. Later on Sher Afzal etc filed an appeal in FATA Tribunal which was also dismissed vide order dated 21-12-2015 of the Honorable FATA Tribunal and directed this Court to implement Court Order dated 28-04-2014. Therefore this Office recommended that services of 01 Class IV of GGPS Ato Khel Halimzai may please be transferred to Musarat Shah s/o Muhammad Afzal r/o Ato Khel Halimzai. On the recommendation of this Office Worthy Political Agent Mohmand Agency directed Agency Education Officer vide letter No. 1911-12/M, dated 19-04-2015 for the subject transfer of Class IV Services to Musarat Shah wherein Class IV named Feroz Khan (the Petitioner) s/o Muhammad Hassan of GGPS Ato Khel Halimzai was terminated vide order No. Estab/Rev/2406-17 dated Ghallanai the 27-04-2016. (Copy enclosed)

No Comments.

Submitted for your kind perusal please.

Assistant Political Agent
Upper Mohmand Sub-Division

Dated Ghallanai the 27/06/2016

No. 1170-71/1/PA (UM)

Copy forwarded to Political Agent Mohmand Agency for information please.

Place on file
file

Ass

Attn

Handwritten notes in Urdu at the bottom of the page.

Comments APA page correct for me was not

9 was not party party to
but men the two brother only put
Shen + Muheed Afzal

Let the case go to the trial
Court. For fresh proceedings
with proper issues

Total 9 brothers in Section 9
9 was not called by the CE
Now any recommendation against
me now any order passed
against me - Then how 9 can
be punished. Then the case
may be remanded to the
trial court. For fresh
proceedings 4/13/84

Section 9
4/13/84
How
Can be enforced
against me

Annex A - Page 3

Section 8 FCR
Violation
my case was referred to
the CE for his report

Notification consequent upon the
recommendation of the Comr of FATA
Tribunal /

execution proceeded only to the
extent of the part

Since my appointment no claim
against me.

بابت تعین و ملازمت کے لیے

میں نے اس کی تصدیق کی ہے
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میں نے اس کی تصدیق کی ہے



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
- PESHAWAR

Appeal No. 809/2017

Date of Institution ... 29.05.2017

Date of Decision ... 26.02.2019



Feroz Khan son of Muhammad Hassan Chowkidar, GGPS Ato Khel,
Mohmand Agency. ... (Appellant)

VERSUS

Agency Education Officer, Mohmand Agency at Ghallanai and two others.
... (Respondents)

Present.

Mr. Muhammad Esa Khan,
Advocate.

... For appellant

Mr. Ziaullah,
Deputy District Attorney

... For respondents.

MR. HAMID FAROOQ DURRANI,
MR. AHMAD HASSAN,

... CHAIRMAN
... MEMBER

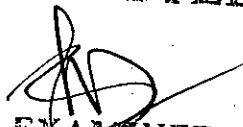
JUDGMENT

HAMID FAROOQ DURRANI, CHAIRMAN:-

"That the parties are 09 brothers therefore the paternal land will be divided into 09 equal share. 03 out of 09 brothers who are living at Ato Khel Tehsil Halimzai will cultivate the paternal land any will have its produce. However, no one will sell the land other than of his own share.

(ii) 02 Class IVs of GGPS Ato Khel (Sher Afzal) will be divided between the applicant and respondent and whenever the GGPS is upgraded then the privileges will be divided between the applicant and respondent only.

ATTESTED


EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

(40)

(iii) The respondent Musarat Shah s/o Muhammad Afzal will pay Rs. 500000/- (Five lacs only) to plaintiff in two installments. One of the council of elders namely Malak Duran Bacha Halimzai has dissenting view. The case is thus decided on majority view basis."

The above reproduction is from the order passed by Assistant Political Agent Mohmand Sub Division against which ultimately a Revision Petition was dismissed by FATA Tribunal Peshawar on 21.12.2015. In pursuance, the impugned order dated 27.4.2016 was passed by Agency Education Officer Mohmand Agency (Respondent No. 1), whereby, the retirement of appellant was effectuated. Pertinently, the appellant having been born on 01.06.1969, is yet to attain the age of superannuation.

2. We have heard learned counsel for the appellant as well as learned District Attorney on behalf of the respondents and have also examined the available record.

It is a matter of record that the dispute culminating into above reproduced order of Political Agent was between Sher Afzal son of Muhammad Hassan and Abidullah son of Sher Afzal, on the one hand, while Muhammad Afzal son of Muhammad Hassan and Musarat Shah son of Muhammad Afzal were the other party. Throughout the record pertaining to proceedings before the Political Agent, Mohmand Agency, the Commissioner FCR Peshawar or the FATA Tribunal Peshawar the appellant did not find any mention. There was a money dispute between the parties before the P.A and cognizance, thereof, was taken under Section-8 of FCR at Tehsil Halimzai.

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

[Handwritten signature]

(3) (4) (4)

Mohmand Agency. After the issuance of impugned order the appellant preferred applications before different forums including the office of APA Mohmand Agency but to no avail. Ultimately, a representation/application was preferred before Agency Education Officer Mohmand Agency/respondent No. 1. It was clearly noted in the representation that the appellant was compulsorily retired without any rhyme or reason. The respondent No. 1 endorsed upon the application that he had no objection in case the applicant approached this Tribunal for justice. The said endorsement was made on 5.5.2017 while the service appeal in hand was preferred on 29.07.2017.

3. The record is admittedly silent about the fact that before passing the impugned order any departmental proceedings were undertaken against the appellant. The contents of impugned order clearly suggest that the same was passed upon recommendation of the court of FATA Tribunal Peshawar and council of elders. Besides the said mention, no fault on the part of appellant warranting issuance of impugned order, was ever noted.

It appears that in a dispute involving payment of money between relatives of the appellant the draconian provisions of Frontier Crimes Regulation were invoked and the appellant was made a scapegoat in order to resolve the contention. It is also a fact that the order of APA and that of the FATA Tribunal never required the dislodging of appellant from his service which he was, under the law, entitled to continue till the date of his superannuation in the ordinary course. The impugned order was, therefore,

ATTESTED

EXAMINER
Cyber Pakhtunkhwa
Service Tribunal,
Peshawar

(Signature)

(Handwritten marks and circled numbers)
42

without any legal mandate and in utter disregard to the provisions of law regulating the service of a civil servant. We are not in agreement with the arguments of learned Deputy District Attorney regarding the incompetency of appeal in hand on the count of delay. As stated above the appellant, in his bewilderment, kept running from pillar to post in the given circumstances and had knocked the door of different authorities under F.C.R.

4. As a sequel to the foregoing, we allow the appeal in hand and reinstate the appellant into service alongwith back benefits from the date of passing of impugned order of retirement dated 27.04.2016. Parties are left to bear their respective costs. File be consigned to the record room.

(Handwritten signature of Ahmad Hassan)

(AHMAD HASSAN)
MEMBER

(Handwritten signature of Hamid Farooq Durrani)

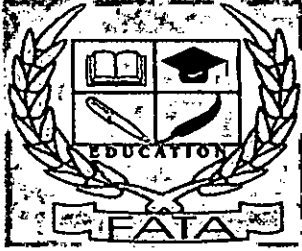
(HAMID FAROOQ DURRANI)
CHAIRMAN

ANNOUNCED
26.02.2019

Certified to be true copy

(Handwritten signature)
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 15-07-19
Number of Words 2000
Copying Fee 24-00
Urgent -
Total 24-00
Name of Copyist *(Signature)*
Date of Completion of Copy 17-07-19
Date of Delivery of Copy 17-07-19



OFFICE OF THE AGENCY EDUCATION OFFICER,

MOHMAND AGENCY AT GHALLANAI.

Phone: No. 0924290180

Fax No. 0924290100

APPOINTMENT ORDER.

Consequent upon the decision by the Court of FATA Tribunal Peshawar and Council of the elders as well as the recommendation of Assistant Political Upper Mohmand vide his letter No. 1966/APA (UM) dated 8.6.2017, and nomination of the Political Agent Mohmand Agency vide his letter No. 6005-06/M dated 12.7.2017, Mr. Muhammad Ali S/O Sher Zada is hereby appointed as Chawkidar at GGPS Sher Afzal Ato Khel Mohmand Agency against the vacant post in BPS No.01 @ (7640-240-14840) plus usual allowances admissible under the rules, in the interest of public services.

TERMS AND COMDITIONS:

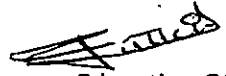
1. The appointment of the candidate is being made purely on temporary basis and is liable to termination at any time without assigning any reason.
2. Charge should be submitted to all concerned.
3. Health and age certificate obtained from the Agency Surgeon should be provided to this office.
4. His age should be with accordance to the Govt: policy.
5. If he failed to report his arrival within 15 days from his appointment, order will be considered as cancelled.

(FARID ULLAH)
Agency Education Officer,
Mohmand Agency.

Endst: No. 32319-26 Dated 25/7 /2017.

Copy to the:-

- 1.. Director of Education (FATA) KPK, Peshawar for information please.
2. Political Agent Mohmand Agency w/r to his No.& dated cited above.
3. Agency Surgeon Mohmand Agency.
4. Agency Accounts Officer Mohmand Agency.
5. AAEO concerned.
6. Pay Clerk local office.
7. Candidate concerned.


Agency Education Officer,
Mohmand Agency

VAKALATNAMA

Before the KP Service Tribunal Peshawar

OF 2019

Muhammad Ali

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Education Deptt.

(RESPONDENT)
(DEFENDANT)

I/We *Muhammad Ali*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, 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 cost. 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.

Dated. ___/___/2019



CLIENT


ACCEPTED
NOOR MOHAMMAD KHATTAK

SHAHZULLAH YOUSAFZAI

&


MIR ZAMAN SAFI
ADVOCATES

OFFICE:
Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.
Mobile No.0345-9383141