

BEFORE THE K.P.K. SERVICE
TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 211

Appeal No. 349/2017

Dated 12-2-2019

Noor Khan.....Appellant

*put up to the court with
relevant app.*

Versus

12/2/19

Director Food KPK etc.....Respondents

Das

APPEAL

APPLICATION FOR EARLY HEARING IN
THE ABOVE TITLED APPEAL.

*shall remain on
the list for the
date already fixed.*

Respectfully sheweth!

12/2

- 1) That, the above titled appeal is fixed before this august Tribunal for 20.03.2019, in which the petitioner is arrayed in the panel of respondents as respondent No. 4.
- 2) That, the petitioner is going to be retired by 7th June, 2019 who is instantly serving as an Assistant Food Controller at District Food Controller Office, District Battagram.
- 3) That, the petitioner has given the golden period of his life in the service of department and by the stretch of time as the services of petitioner have matured so much

that now the petitioner is entitled in all respects to be promoted as District Food Controller.

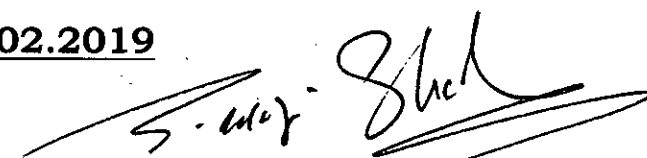
- 4) That, this would be a matter of dignity and satisfaction for the petitioner to get retire as a D.F.C as by the efflux of time and at the cost of services rendered by the petitioner throughout his career he has qualified for this post now which is his fundamental right.
- 5) That, due to the pendency of the above titled appeal, the Food Department is reluctant to promote the petitioner as D.F.C which is the fundamental right of the petitioner now.
- 6) That, the petitioner would suffer irreparable loss in case the promotion of the petitioner is halted as the petitioner will get retire by 7th June, 2019.
- 7) That, the above titled appeal is regarding pure question of law as per the spirit of remand order of august Supreme Court dated 29.06.2018 which can be determined upon within a short time.

- 8) That, in such like circumstances petitioner is left with no remedy but to file the instant application for early hearing.
- 9) That, the contention of early hearing is well supported by the glaring maxim of the equity is "JUSTICE, DELAYED, JUSTICE DENIED".

It is, therefore, most humbly submitted that the above titled appeal may kindly be fixed on some earliest possible date for the purpose of early decision.

Dated 07.02.2019

Through Counsel



Syed Wazir Shah
Office of the DFC Battagram
(Petitioner/respondent No. 4)

AFFIDAVIT

I, SYED WAZIR SHAH (RESPONDENT NO. 4) DO HEREBY SOLEMNLY AFFIRM AND DECLARE ON OATH THAT THE CONTENTS OF FORE-GOING APPLICATION ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND NOTHING HAS BEEN CONCEALED OR SUPPRESSED FROM THIS HONOURABLE TRIBUNAL.



SYED WAZIR SHAH
(DEPONENT)

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.349/2017

Noor Khan (AFC)

Versus


Director Food KPK & Others

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PESHAWAR

25-09-2018



Petitioners

Through


(ABDUL HAMEED)

Advocate Peshawar

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.349/2017

NOOR KHAN (AFC BPS-14)

.....PETITIONER

VERSUS

*DIRECTOR FOOD, KHYBER PAKHTUNKHWA, PESHAWAR AND
OTHERS*

.....RESPONDENTS

**APPLICATION FOR IMPEADING THE PETITIONERS AS
RESPONDENTS NO.4 TO 27 (LIST ATTACHED AS ANNEXURE
"A") IN THE ABOVE TITLED APPEAL IN COMPLIANCE WITH
THE ORDER DATED 29-06-2018 OF THE SUPREME COURT OF
PAKISTAN PASSED IN C.P NO.264-P AND 1676 OF 2018.**

Respectfully Sheweth:

The petitioners submit as under:

1. That the above titled appeal after remand by the Supreme Court of Pakistan is pending adjudication before this Hon'ble Tribunal and is fixed on 25-09-2018.
2. That the judgment dated 08-02-2018 of the KPK Service Tribunal, Peshawar passed in **Appeal No.349/2017** was challenged by the Food Department and the petitioners by filing the following CPLAs before Apex Court of Pakistan.
 - a). *KP Director Food (in C.P No.264-P/2018)*
 - b). *Syed Wazir Shah and 20 others (in C.P No.1676/2018)*

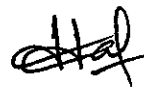
*(Copy of the grounds/concise statement of petitions are attached as
annexure "B,B/1")*

(2)

3. That the above Petitions were heard by the Hon'ble Supreme Court of Pakistan at Islamabad on 29-06-2018 and were converted into appeals and allowed, the impugned judgment dated 08-02-2018 in Appeal No.349/2017 of this Tribunal was set aside and the matter was remanded to this Tribunal directing it to implead all those employees who were affected by the decision of the Tribunal and a fresh decision be passed after giving them an opportunity of hearing.
(Copy of the order dated 29-06-2018 passed in C.P No.264-P and 1676 of 2018 is attached as annexure C)

4. That since the controversial issue involved in the above titled appeal relates to determination of seniority between the surplus pool employees and regular employees of KP Food Department, therefore the petitioners at Annexure "A" seek impleadment to be arrayed as Respondents No.4 to 27 in the above titled appeal.

It is, therefore, most humbly prayed that on acceptance of this application, the petitioners (AFCs) as mentioned at annexure "A" may kindly be allowed to be impleaded and be arrayed as respondents 4 to 27 in the instant appeal.



Petitioners

Dated 25-09-2018

Through


(Abdul Hameed)

Advocate, Peshawar.

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BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.349/2017

NOOR KHAN (AFC) VS DIRECTOR FOOD, KPK

AFFIDAVIT


I, Hafeez-ur-Rehman (AFC), office of District Food Controller, Peshawar, being one of the petitioner vide S.No.19, do hereby solemnly affirm and declare that the contents of the accompanied application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Identified by



(Abdul Hameed)

Advocate Peshawar



Deponent

17301-0744903-9

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Annex: "A"

BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

APPEAL NO.349/2017

Noor Khan (Afc) Vs Director Food, Kpk

**THE FOLLOWING PETITIONERS (AFCs) REQUEST TO BE
IMPLEADED AS RESPONDENTS NO.4 TO 27 IN ABOVE
TITLED APPEAL.**

Respected Sir

The names and addresses of the petitioners seek impleadment to be arrayed as Respondents No.4 to 27 in the above appeal are as under:

1. *Mr. SYED WAZIR SHAH, AFC, OFFICE OF DISTRICT
FOOD CONTROLLER, DISTRICT BATTAGRAM.*
2. *Mr. AFTAB UMAR KHAN, AFC, OFFICE OF RATIONING
CONTROLLER, DISTRICT PESHAWAR.*
3. *Mr. MUHAMMAD TARIQ, AFC, OFFICE OF DISTRICT
FOOD CONTROLLER, DISTRICT HARIPUR.*
4. *Mr. ANSAR QAYYUM, AFC, OFFICE OF DISTRICT FOOD
CONTROLLER, DISTRICT MANSEHRA.*
5. *Mr. ABDUL HAFEEZ, AFC, OFFICE OF DISTRICT FOOD
CONTROLLER, DISTRICT CHARSADDA.*
6. *Mr. ARSHAD HUSSAIN, AFC, OFFICE OF DISTRICT
FOOD CONTROLLER, DISTRICT CHITRAL.*

7. Mr. ALI ASGHAR KHAN, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT NOWSHERA.
8. Mr. SHABIR AHMAD KHAN, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT NOWSHERA.
9. Mr. SAID NAWAZ, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT CHITRAL.
10. Mr. JAMSHAD KHAN AFRIDI, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT PESHAWAR.
11. Mr. SOHAIL HABIB, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT SWABI.
12. Mr. SHERAZ ANWAR, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT SWAT.
13. Mr. MUHAMMAD AZAM, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT BUNER.
14. Mr. TAUSIF IQBAL, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT LAKKI MARWAT.
15. Mr. MUHAMMAD SHAKEEL, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT KOHISTAN.
16. MISS UZMA KANWAL, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT ABBOTTABAD.
17. Mr. ZAFAR ALAM RIZA, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT CHITRAL.
18. Mr. SHUJAAT HUSSAIN SHAH, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT BATTAGRAM.
19. Mr. HAFEEZ UR REHMAN, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT PESHAWAR.

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20. Mr. ADNAN KHAN, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT MARDAN.

21. Mr. AMAN KHAN, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT TANK.

22. Mr. MUHAMMAD AKBAR, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT MARDAN.

23. Mr. MUHAMMAD SALEEM IQBAL, AFC, OFFICE OF DISTRICT FOOD CONTROLLER, DISTRICT DIR. UPPER.

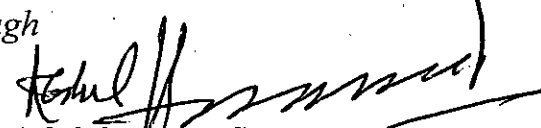
24. MR. MUHAMMAD NAVEED (NOW RETIRED) S/O FAZAL DAD, RESIDENT OF VILLAGE BAJNA, TEHSIL AND DISTRICT MANSEHRA.



For Petitioners

25-09-2018

Through


(Abdul Hameed)

Advocate, Peshawar.

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Annex B

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. 264-P /2018

1. Director Food, Khyber Pakhtunkhwa, Peshawar
2. Secretary to Government of Khyber Pakhtunkhwa, Food Department, Peshawar
3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar

-----PETITIONERS

VERSUS

Noor Khan (AFC BPS-14) S/o Gulfam Khan R/o Village Abdara, Ghari Taj Muhammad P/o University of Peshawar Tehsil & District Peshawar

RESPONDENT

CIVIL PETITION FOR LEAVE TO APPEAL UNDER ARTICLES 212(3) OF THE CONSTITUTION OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE IMPUGNED JUDGMENT/ ORDER OF LEARNED KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR DATED 08/02/2018 IN SERVICE APPEAL NO.349/2017

RESPECTFULLY SHEWETH

The substantial questions of law of general public importance and grounds, inter alia, which falls for determination of this august Court are as under:-

1. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar suffers from material illegality, factually incorrect and require interference by this august Court?
2. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly and legally exercised its jurisdiction in the matter in hand?

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3. Whether the impugned judgment and order of the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar is in utter violation of section 8 of the civil Servant act, ¹⁹⁷³ r/w rule 17 of Appointment, Promotion and Transfer Rules, 1989?
4. Whether the claim of respondent is in utter disregard of surplus pool policy as the respondent was adjusted under the surplus pool policy in the Food Department in 2004 wherein only protection was given to his salary and not to seniority?
5. Whether the respondent was much later on promoted to the post of AFC on the regular seniority list which was circulated properly among all the employees?
6. Whether the respondent had remained silent on his seniority since 2004 till 2016 and now legally debarred from agitating the cause of 2004 in 2016?
7. Whether the appeal of respondent regarding the seniority of 2004 is barred by time and not maintainable in the eyes of law?
8. Whether the respondent is entitled for the benefits of mentioned judgment as there are numerous employees who had not been impleaded in the case of Muhamamd Naveed Khan?
9. Whether the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar has properly construed the record and material in its true perspective?
10. Whether the impugned judgment and order is very much vague and does not disclose the actual dispute or having any discussion on the question / point involved in the matter?

FACTS

II- Facts relevant to the above points of law, inter alia, are as under:-

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That the respondent was initially the employee of Khyber Pakhtunkhwa Printing and Press Department in BPS-07 and was declared surplus.

2. That the respondent was adjusted in the Food Department as Food Grain Inspector in BPS-6 under the surplus pool policy wherein only protection has been given to his salary.
3. That the respondent post of Food Grain Inspector was up-graded from time to time and lastly the respondent was in BPS-09 as Food Grain Inspector.
4. That in the year 2015 some disciplinary proceedings were initiated against the respondent wherein the respondent was suspended and an enquiry was initiated against him and on the conclusion of enquiry and personal hearing the respondent was awarded minor penalty of censure on 22/8/2016 and later on was promoted to the post of AFC in BPS-14.
5. That the seniority from 2016 was challenged by one Muhammad Naveed whose appeal was accepted by the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar and ordered to revise the seniority from 2016.
6. That the respondent did not challenge the seniority of 2004 till the filing of the instant appeal and after the revision of seniority list from 2016 the respondent filed departmental appeal which was rejected.
7. That the respondent then filed service appeal No.349/2017 before the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar wherein comments was called from the petitioners which were filed accordingly.
8. That the Hon'ble Khyber Pakhtunkhwa Service Tribunal, Peshawar accepted and allowed the service appeal of respondent vide judgment and order dated 8/2/2017.

That the petitioners being aggrieved from the impugned judgment/order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 08/02/2018 in Service Appeal No.349/2017 prefer this CPLA before this august Court.

- 10. That the petitioners seek leave to appeal against the impugned judgment and order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 08/02/2018 in Service Appeal No.349/2017.

It is, therefore, prayed that on acceptance of this petition, leave to appeal against the impugned judgment and order of the Honble Khyber Pakhtunkhwa Service Tribunal, Peshawar dated 08/02/2018 in Service Appeal No.349/2017 may graciously be granted.

(Mian Saadullah Jandoli)
Advocate-on-Record
Supreme Court of Pakistan
For Government

NOTE:

Learned Advocate General, KPK/ Addl. AG /State Counsel shall appear at the time of hearing of this petition.

ADDRESS

Office of the Advocate General, KPK, High Court Building, Peshawar. (Telephone No.091-9210119, Fax No.091-9210270)

CERTIFICATE Certified that no such petition has earlier been filed by Petitioners/ Government against the impugned judgment mentioned above.

Advocate-On-Record



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Annex: B/1

IN THE SUPREME COURT OF PAKISTAN

(Appellate jurisdiction)

C.P.L.A. NO. 1676 /2018

1. Syed Wazir Shah, AFC, Office of District Food Controller, District Battagram 6-7-2010
2. Aftab Umar Khan, AFC, Office of Rationing Controller District Peshawar. 19-5-2010 selected
3. Mihaanmad Tariq AFC, Office of District Food Controller, District Haripur. 23-10-2011
4. Ansar Qayyum AFC, Office of District Food Controller, District Mansehra. 6-4-2010
5. Abdul Hafeez AFC, Office of District Food Controller, District Charsadda. 21-10-2010
6. Aman Khan, AFC, Office of District Food Controller, District Tank. -
7. Arshad Hussain AFC, Office of District Food Controller, District Chitral. 4-10-2011
8. Ali Asghar Khan AFC Office of District Food Controller, District Nowshera. 4-10-2011
9. Shabir Ahmad Khan AFC, Office of District Food Controller, District Nowshera. 18-2-2012
10. Said Nawaz AFC, Office of District Food Controller, District Chitral. 18-2-2012
11. Jamshed Khan Afridi AFC, Office of District Food Controller, District Peshawar. 18-2-2012



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12. Sohail Habib AFC, Office of District Food Controller, District Swabi. 21-5-2012
13. Sheraz Anwar AFC, Office of District Food Controller, District Swat. 21-5-2012
14. Muhammad Azam AFC, Office of District Food Controller, District Bunir. 7-8-2015 Select
15. Tausif Iqbal AFC Office of District Food Controller, District Lakki Marwat.. "
16. Muhammad Shakeel AFC, Office of District Food Controller, District Kohistan. "
17. Miss Uzma Kanwal AFC, Office of District Food Controller, District Abbottabad. "
18. Zafar Alam Riza AFC, Office of District Food Controller, District Chitral. "
19. Shujaat Hussain Shah. AFC, Office of District Food Controller, District Batagram. "
20. Hafeez-ur-Rehman AFC, Office of District Food Controller, District Peshawar. "
21. Adnan Khan, AFC, Office of District Food Controller, District Mardan..... (Petitioners)

VERSUS.

1. Noor Khan (AFC BPS-14) s/o Gulfam Khan R/o Village Abdara, Ghari Taj Muhammad P.O. University of Peshawar, Tehsil and District Peshawar. 28-11-2016
2. Muhammad Akbar AFC, Office of District Food Controller, District Mardan. 24-4-2016
3. Muhammad Saleem Iqbal AFC, Office of Rationing Controller, Peshawar. 24-4-2016

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- 24-4-2016
4. Muhammad Naveed (now Retired) AFC,
Office of Rationing Controller, Peshawar.
 5. Director Food, Khyber Pakhtunkhwa,
Peshawar.
 6. Secretary to Government of Khyber
Pakhtunkhwa, Food Department, Peshawar.
 7. Secretary to Government of Khyber
Pakhtunkhwa, Establishment Department,
Peshawar.....

.(Respondents)

CIVIL PETITION UNDER ARTICLE
212(3) OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN,
1973 AGAINST THE JUDGMENT DATED
08.02.2018 OF HON'BLE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR PASSED IN SERVICE
APPEAL NO.349 OF 2017

RESPECTFULLY SHEWETH

I The points of law which arises for determination
by this August Court are as under:-

- A. Whether the learned Khyber Pakhtunkhwa Service
Tribunal in his impugned judgment has laid down law
which is not in consonance with the known norms of
administration of civil justice especially in the matter
in hand?
- B. Whether the judgment dated 08.02.2018 of the
Hon'ble Khyber Pakhtunkhwa Service Tribunal

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Peshawar passed in Service Appeal No.349 of 2017 is not against law, facts and record of the case, hence untenable?

- C. Whether the views/findings of the Hon'ble Service Tribunal are not suffering from misconstruing the case in hand?
- D. Whether the impugned judgment of the Hon'ble Service Tribunal is not perverse, against the law and rules?
- E. Whether the Hon'ble Service Tribunal, while passing the judgment on 15.08.2016 in appeal No.831/2015 has not failed to apply its mind judicially and misinterpreted the Sub-para (d) added to Para-6 of Surplus Pool Policy 2001?
- F. Whether the basic surplus pool policy was not introduced in the year 2001, while the amendment made thereon, was in the year 2006, which cannot be applied with retrospective effect?
- G. Whether in all the appeals No.831/2015, 7/2017, 8/2017 and 349/2017, all the petitioners have not been impleaded and thus their seniority was affected and caused miscarriage of law?
- H. Whether the respondent No.1 an ex-cadre employee being employee of ministerial cadre in his department was not adjusted in Food Department in Executive



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Cadre, which is contrary to Sub-Para (c) to Para-6 of Surplus Pool Policy 2001?

- I. Whether Hon'ble Service Tribunal has miserably failed to apply its judicial mind with regard to the dictum already laid down in the judgment dated 24.11.2017 passed in Service Appeal No.7/2017 and 8/2017?
- J. Whether the petitioners have been condemned unheard by not impleading them in all the service appeals mentioned above and thus no opportunity to be heard in person has been provided?
- K. Whether the Hon'ble Service Tribunal while passing the judgment dated 08.02.2018 passed in Appeal No.349/2017 has ignored the settled principles of seniority between the promoted viz-a-viz direct recruits of the Public Service Commission?
- L. Whether errors of law and facts are not apparent on face of the record of the present case?
- M. Points raised are important law points of great public importance.

The facts of the case is as under:-

1. That the Respondent No.1 to 3 who were working as "Mono Operator" (BPS-07) in Govt. of NWFP (now Khyber Pakhtunkhwa), printing and stationary department were rendered surplus by the respective department and were adjusted as Food Grain



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Inspector (BPS-6 in the Food Department. Likewise respondent No.4 Ex-Senior Clerk (BPS-7) of the District Coordination Officer, Mansehra, was also rendered surplus, and was adjusted as Food Grain Inspector (BPS-6) in the Food Department NWFP (Now Khyber Pakhtunkhwa).

2. That the surplus pool policy for declaring Government Servants as surplus and their subsequent absorption/adjustment was introduced by the Govt. of NWFP (now Khyber Pakhtunkhwa), Establishment and Administration Department (Regulation Wing) Peshawar on 08.06.2001. This service surplus pool policy issued on 08.06.2001, was subsequently reviewed on 15.02.2006, with immediate effect, by the Provincial Government where under the following sub-paras were added to the relevant Paras No.5 and 6 of the policy, which are as under:-

- i) Sub-Para (C) (V) added to Para No.5.
C (v) In case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.
- ii) Sub-Para (D) added to Para No.6
(d) In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again and becoming junior to his juniors.



(17)



3. That according to Sub-Para (c) to Para 6 of surplus pool policy pertaining to fixation of seniority, respondents No.1 to 4 were adjusted and properly placed at the bottom of the final seniority list of the Food Grain Inspector BPS-6 in the Food Department as stood on 25.08.2004.
4. That the Service Rules prescribed for Recruitment and Appointment to various posts in food Deptt: are regulated under the North West Frontier Province (KPK) Food Deptt: (Recruitment and Appointment) Rules 1981. The method of recruitment for the post of Assistant Food Controller is as under:-
 - a) 75% by promotion on the basis of seniority cum fitness from amongst FGIs and Cane Inspector with at least 5 years service as such and
 - b) 25% by initial recruitment.
5. That on availability of Ten (10) posts on 01-09-2013, reserved for recruitment of Assistant Food controller (BS-14) against 25% Quota by initial recruitment, respondent No.5 sent requisition before the KPK Public Service Commission. On the recommendation of KPK Public Service commission respondent No.5 appointed ten (10) Assistant Food Controller (BS-14) on 26.02.2015 who were placed in seniority list before respondent No.1 to 4 as they were promoted later to direct selectees.

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6. That Respondent No.4 (Muhammad Naveed Surplus Employee) after exhausting departmental remedies, filed a Service Appeal No.831/2015 before Khyber Pakhtunkhwa Service Tribunal seeking seniority by placing him at Serial No.1 of the Seniority List maintained in the Food Department for BS-06. The Hon'ble Service Tribunal while accepting his appeal to this effect that respondent No.4 was entitled to be placed at the Top of Seniority List at the relevant time after the clarification of surplus pool policy as he was adjusted against a post lower than his original scale.

7. That likewise Respondent No.2 and 3 (Muhammad Akbar and Muhammad Saleem Iqbal both surplus Pool Employees), also filed Service Appeal bearing No.7/2017 and 8/2017 respectively before the KPK Service Tribunal for seeking relief. Both the appeals were accepted in terms of the judgment passed in the appeal bearing No.831/2015 (Muhammad Naveed case) and Hon'ble Tribunal further directed that respondent No.2 and 3 (appellants in service appeal No.7 & 8/2017), shall still stand junior to all those persons who have been inducted as Assistant Food Controller (BS-14) by initial recruitment prior to the promotion of respondent No.2 and 3 as Assistant Food Controller on regular basis and thus seniority of the direct recruits viz a viz respondent No.2 and 3 (promotes) in the impugned seniority list shall not be disturbed.

8. That Respondent No.1 (Noor Khan AFC BS-14) filed a Service Appeal No.349/2017 before the KPK Service Tribunal on 13.04.2017 for seeking seniority on the basis of Service Tribunal Judgment dated 15.04.2016 in Appeal No.831/2015 (Muhammad Naveed case). This appeal was disposed off in the terms as that of appeal of Muhammad Naveed dated 15.08.2016.
9. That in all the service appeals before the KPK Service Tribunal filed by the respondents No.1 to 4 bearing No.349/2017, 07/2017, 08/2017 and 931/2015 respectively, the petitioners have not been impleaded in all these appeals and the seniority between the promotes viz-a-viz selectees of Public Service Commission has drastically been violated and therefore, the fundamental rights of the petitioners have been snatched by not adopting the settled principles of seniority and caused miscarriage of law.
10. That the impugned orders passed in all the Service Appeals have been passed without adopting the due process of law and the petitioners were not afforded an opportunity of being heard in person and by this way their seniority rights have been adversely affected.
11. That the respondents surreptitiously for their ulterior motives violated the principles of *audi alteram partem*.
12. That the petitioners were not dealt with in accordance with law which is against the provisions of Article 4 of the constitution of Islamic Republic of Pakistan, 1973.

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13. That the petitioner seriously aggrieved against the judgments and orders of the Khyber Pakhtunkhwa Service Tribunal Peshawar dated 08.02.2018 passed in Service Appeal No.349/2017 respectfully pray for leave to appeal to this august Court on the grounds/law points mentioned in Part-I of this petition.

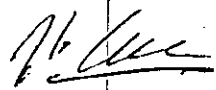
It is, therefore, prayed that leave to appeal may graciously be granted against the judgment and order of the learned Khyber Pakhtunkhwa Service Tribunal Peshawar dated 08.02.2018 passed in Service Appeal No.349 of 2017.

Drawn and Filed by


(HAJI MUHAMMAD ZAHIR SHAH)
ADVOCATE-ON-RECORD

CERTIFICATE

Certified that no such petition has earlier filed by the Petitioners in this August Court against the impugned judgment of the Khyber Pakhtunkhwa Service Tribunal Peshawar.


Advocate-on-Record.

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE MUNIB AKHTAR

CIVIL PETITIONS NO.264-P AND 1676 OF 2018
(Against the judgment dated 8.2.2018 of the KPK
Service Tribunal, Peshawar passed in
S.A.No.349/2017)

- 1. Director Food K.P. Peshawar and others Vs. Noor Khan In C.P.264-P/2018
- 2. Syed Wazir Shah etc. Vs. Noor Khan and others In C.P.1676/2018

For the petitioner(s): Barrister Qasim Wadood, Addl.A.G. KPK
(In C.P.264-P/2018)

Mr. Abdul Hameed, ASC
(In C.P.1676/2018)

For the respondent(s): Mr. M. Ijaz Khan Sabi, ASC
(In C.P.264-P/2018)


Mir Adam Khan, AOR
(In C.P.1676/2018)

Date of hearing: 29.6.2018

ORDER

MIAN SAQIB NISAR, CJ.- The petitioners were a necessary party because they would certainly be affected by the judgment of the learned Tribunal. The learned Tribunal was apprised that they should be made a party and given an opportunity of hearing but this request was unreasonably declined. Therefore, the impugned judgment cannot be sustained as they have been condemned unheard. Resultantly, these petitions are converted into appeals and allowed, the impugned judgment is set aside and the matter is remanded to the learned Tribunal to implead all those who would be affected by the decision of the Tribunal and pass a fresh decision after giving them an opportunity of hearing. As there is seemingly a conflict between two judgments of the learned

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

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Tribunal itself, therefore, the matter is referred to the Chairman of the learned Tribunal who shall constitute a larger Bench to resolve the conflict.

Sd/-,HCJ

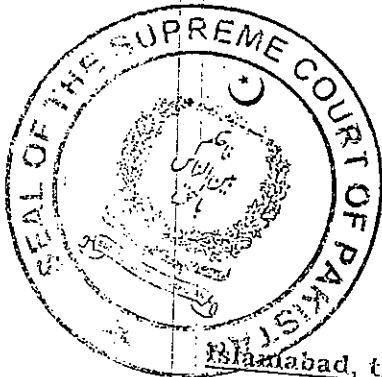
Sd/-,J

Sd/-,J

Certified to be True Copy

[Handwritten Signature]

Court Associate
Supreme Court of Pakistan
Islamabad



Islamabad, the
29th of June, 2018

Wahid Waheed

17716

405-P/18

CR No: _____ Civil/Criminal

Date of Presentation: 27.18

No of Words: _____

No of Folios: 2

Requisition Fee Rs: 500

Copy Fee in: 3.2

Court Fee Stamps: 8.2

Date of Completion of Copy: 11/7/18

Date of delivery of Copy: 17/7/18

Compared by/Prepared by: 6

Received by: _____



FOOD DIRECTORATE,
KHYBER PAKHTUNKHWA
PESHAWAR

No. 3936 /AC-240-PSC-AFC-2015

Dated 07/08/2015

54

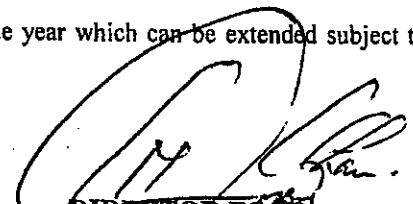
APPOINTMENT ORDER

Consequent upon the acceptance of appointment Offer bearing No. 3377/AC-240-PSC dated 26-06-2015, and in pursuance to the Government of Khyber Pakhtunkhwa, Establishment & Administration Department Circular letter bearing No. SOSR-III/FD/12-1/2005 dated 27-02-2013, on the recommendation of the Khyber Pakhtunkhwa Public Service Commission, the below mentioned recommendees are hereby appointed as Assistant Food Controller (BS-14) against temporary posts in Food Department Khyber Pakhtunkhwa on the terms and conditions laid down in their appointment offer referred to above..

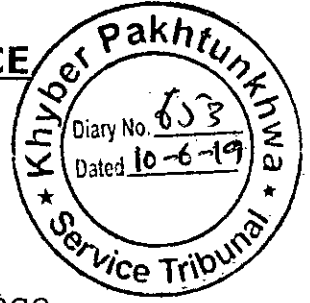
S.No	Name with Father, Name/ Permanent Home Address newly AFCs	On appointment as AFC posted as
1.	Miss Uzma Kanwal D/O Tasadduq Hussain Shah R/O Kaghan colony, Rehman Street Al-Imran Gate, Mandian, Abbottabad	On appointment as Assistant Food Controller (BS-14), she is posted in the Office of DFC Mansehra against the vacant post of AFC with immediate effect.
2.	Mr. Zafar Alam Riza S/O Noor Gulab R/O Village Kuejinali Booni Tehsil Mastuj District Chitral.	On appointment as Assistant Food Controller (BS-14), he is posted in the office of DFC Chitral against the vacant post of AFC with immediate effect.
3.	Mr. Tusif Iqbal S/O Khurshid Iqbal R/O House No.5 Street No.1 Faisal Town Nasir Bagh Road Peshawar.	On appointment as Assistant Food Controller (BS-14), he is posted in Food Directorate, Peshawar against the vacant post of AFC with immediate effect.
4.	Mr. Muhammad Shakeel S/O Muhammad Siddique R/O C.B-56 PMA Kakul Road Abbottabad.	On appointment as Assistant Food Controller (BS-14), he is posted in the office of DFC Kohistan against the vacant post of AFC with immediate effect.
5.	Mr. Muhammad Azam Khan S/O Saeedur Rehman R/O House No.F-25 FG Colony Shami Road Peshawar.	On appointment as Assistant Food Controller (BS-14), he is posted in Food Directorate, Peshawar against the vacant post of AFC with immediate effect.
6.	Mr. Adnan Khan S/O Muhammad Yunas R/O Street No.8-B Hazrat Ali Hujra Malik Ilyas Pahari Pura Haji Camp Peshawar.	On appointment as Assistant Food Controller (BS-14), he is posted in Food Directorate, Peshawar against the vacant post of AFC with immediate effect.
7.	Mr. Hafeez ur Rehman S/O Abdul Hameed R/O Village Laghari Union Council Beshigram Tehsil Lal Qilla, District Lower Dir	On appointment as Assistant Food Controller (BS-14), he is posted in the office of Storage & Enforcement Officer PRC Peshawar against the vacant post of AFC with immediate effect.
8.	Mr. Zeshan Ali Shah S/O Mirsar Ali Shah R/O Kotka Naimat Shah Post Office Koti Sadat Surani Bannu	On appointment as Assistant Food Controller (BS-14), he is posted in Food Directorate, Peshawar against the vacant post of AFC with immediate effect.
9.	Mr. Shujaat Hussain Shah S/O Syed Zia-ud Din Shah R/O Village Bai Bala Post Office Chattar Plain Tehsil & District Mansehra.	On appointment as Assistant Food Controller (BS-14), he is posted in the office of DFC Battagram with immediate effect.
10.	Mr. Kashif ur Reman S/O Dr. Mumtaz Khan R/O House No.487/C Collage Street Bannu	On appointment as Assistant Food Controller (BS-14), he is posted in the office of DFC Bannu against the vacant post of AFC with immediate effect.

(The Serial Chronological Appointment Order will not confer any right of seniority Inter se-merit etc)

2. They shall be on probation for a period of one year which can be extended subject to their performance as per rules.


DIRECTOR FOOD
KHYBER PAKHTUNKHWA,
PESHAWAR.

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



Appeal No.349/2017

Noor Khan (AFC BPS-14) S/o Gulfam Khan R/o village Abdara, Garhi Taj Muhammad, P/o Peshawar University, Tehsil and District, Peshawar.

..... Appellant

VS

The Director Food Khyber Pakhtunkhwa and others.

..... Respondents

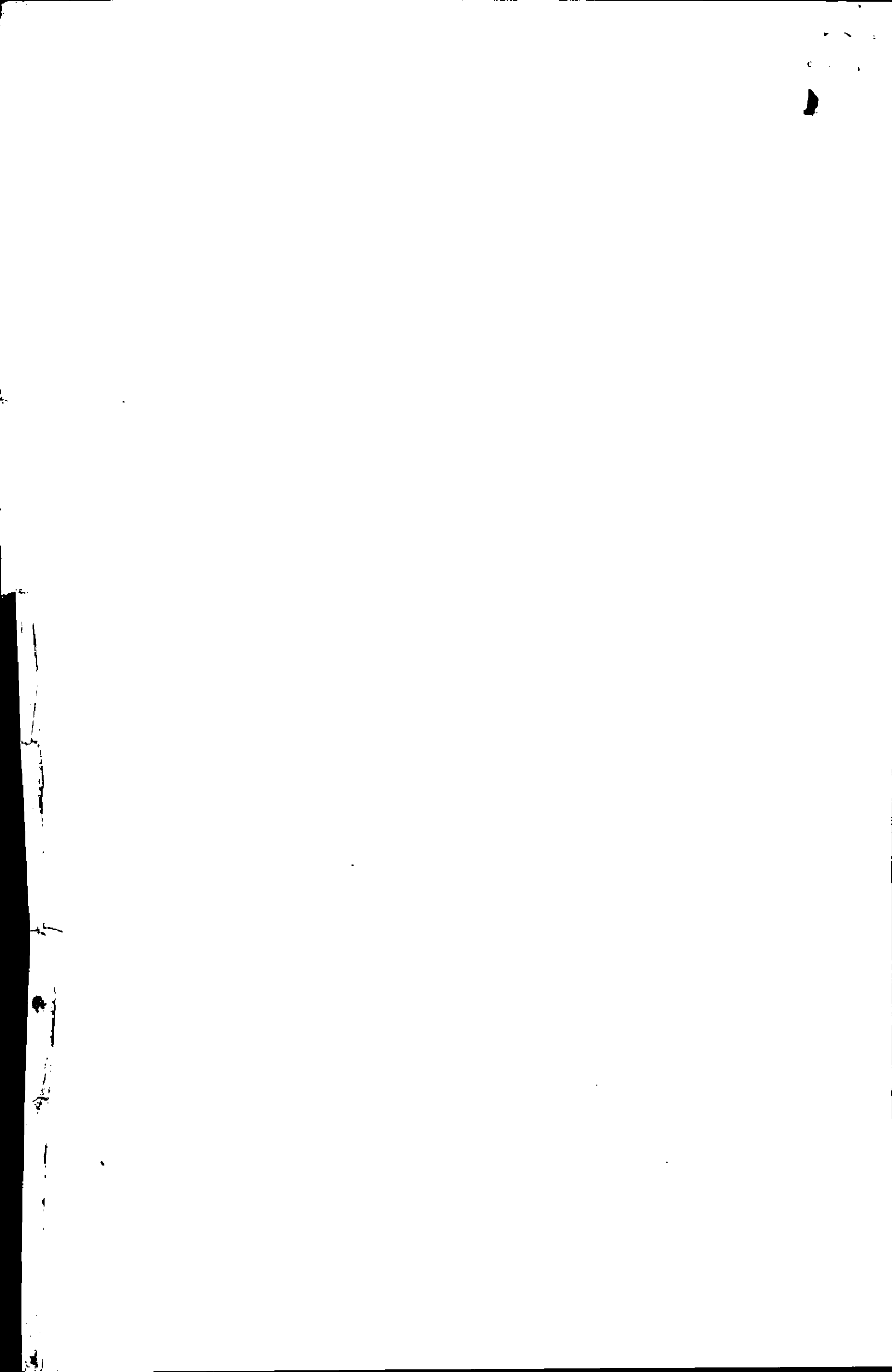
**APPLICATION IN RESPECT TO SUBMIT
THE CORRECT ADDRESS OF THE
RESPONDENT NO.25 TO 38 AS PER THE
DIRECTION OF THIS HONORABLE
TRIBUNAL.**

Respectfully Sheweth:

1. That as mentioned above, this Honorable court has been pleased to direct the appellant to submit the correct address of the respondents. *Next date 02-7-19.*

ADDRESSES OF RESPONDENT 25 TO 38

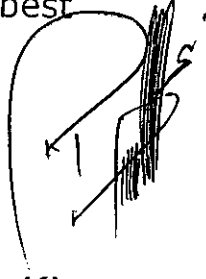
25. Muhammad Zubair, DFC, Employee of Food Department, District Swat.
26. Mehmood Ur Rehman, DFC, Employee of Food Department, District Dera Ismail Khan.
27. Fazli Bari, DFC, Employee of Food Department, District Chitral.
28. Salah ud Din, DFC, Employee of Food Department, District Hangu.



29. Muhammad Arshad, DFC, Employee of Food Department, District Mardan.
30. Kifayat Khan, DFC, Employee of Food Department, Food Directorate, Peshawar.
31. Hasham Khan, DFC, Employee of Food Department, S & E O, Peshawar.
32. Sher Fayaz Khan, DFC, Employee of Food Department, District Swabi.
33. Adil Badshah, DFC, Employee of Food Department, District Bannu.
34. Shad Muhammad, DFC, Employee of Food Department, District Mansehra.
35. Shewaz Tariq, DFC, Employee of Food Department, District Batagram.
36. Muhammad Nawab, DFC, Employee of Food Department, District Khattako Pul, Peshawar.
37. Muhammad Hayat Khan, DFC, Employee of Food Department, District Lakki Marwat.
38. Kashif Ihsan, DFC, Employee of Food Department, District Nowshera.

Prayer: It is therefore, humbly prayed that the instant application via correct address of the party may kindly be processed as per law for the best administration of justice and fair play.

Appellant
Through



Taimur Haider Khan
Advocate High Court
Taimur Law Associates
Off: 37th, 2nd Floor, Malik
Tower, Peshawar
Cell No.0346-9192561

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR.
Amended Appeal No.349/2017

Noor Khan, (AFC) (BPs-14)Appellant
Versus
Director Food, KP, Peshawar & othersRespondents

**APPLICATION FOR PLACING ON FILE THE JUDGMENTS
MENTIONED BELOW FOR JUST ADJUDICATION OF THE
SUBJECT CASE.**

- I. Judgment dated 13.06.2007 passed in Service Appeal No.858/2006 titled "Muhammad Zafraullah khan vs Secretary Food, Peshawar".
- II. Judgment dated 24.09.2014 passed in WP No.23A of 2014 titled "Muhammad Naveed vs Director Food".
- III. Judgment dated 15.08.2016 passed in Service Appeal No.831/2015 titled "Muhammad Naveed vs Govt of KP through Secretary Establishment etc".
- IV. Judgment dated 24.11.2017 passed in Service Appeal No. 7 & 8 of 2017 titled "Muhammad Akbar (AFC) vs Director Food KPK etc" & "Muhammad Saleem Iqbal (AFC) vs Director Food KPK etc".

Respectfully Sheweth;

The Respondents submit as under:

1. That the above titled appeal is pending before this Hon'ble tribunal and is fixed for 20.11.2019.
2. That on 25.9.2018, this Hon'ble tribunal has directed the appellant to implead the Surplus pool employees namely Muhammad Naveed, Muhammad Akbar & Muhammad Saleem Iqbal respectively, however the appellant did not comply with and ignored the order of this Hon'ble tribunal by not impleading of the said surplus pool employees who filed

Service Appeals No.831/2017, Service Appeal No.7 & 8 of 2017
challenging the seniority list of AFCs.

3. The Respondents desire that the Judgments mentioned as subject are necessary to be brought on file for just adjudication of the case.

It is therefore most humbly prayed that the Respondents may kindly be allowed to bring on file the above mentioned judgments pertaining to surplus pool employees in the interest of justice.

H/Rahman.

Respondents

Through

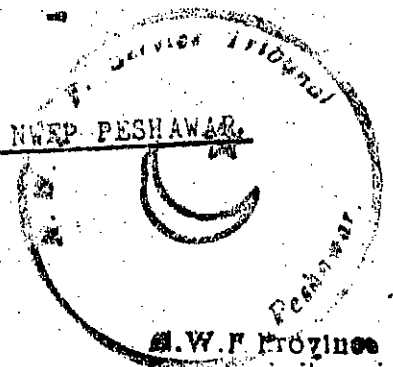
Abdul Hameed

(Abdul Hameed)

Advocate Supreme Court Pakistan

BEFORE THE HON'BLE SERVICE TRIBUNAL NWFP PESHAWAR.

S.T.A No. 858 2006.



N.W.F. Province
Service Tribunal

Diary No. 926

Dated 21-9-06

Muhammad Zafrullah Khan,
Assistant Feed Controller,
Distt: Feed Office,
D. I. Khan.

APPELLANT.

V E R S U S .

1. Secretary Food, Peshawar.
2. Director, Food NWFP Peshawar.
3. Deputy Director Accounts Feed Directorate Peshawar.
4. Assistant Director, Food Co-Ordination, Food Directorate Peshawar.
5. Regional Audit Officer, Feed Directorate Peshawar.

RESPONDENTS.

re-submitted to-day
and filed.

M. A. J.
Registrar
12/10/06

APPEAL AGAINST THE SENIORITY OF THE PETITIONER ISSUED
BY RESPONDENT NO.2 VIDE HIS LETTER NO.1866-85-ET/716
DATED.6.9.2006

PRAYER.

ON ACCEPTANCE OF THE INSTANT APPEAL RESPONDENTS MAY
BE DIRECTED/ORDERED TO PLACE THE APPELLANT ON THE TOP
OF THE SENIORITY LIST AS PER DIRECTIVES OF THE GOVERNMENT
OF NWFP.

NWFP SERVICE TRIBUNAL
PESHAWAR
ATTESTED
REGISTRAR

Serial No. of Order or Proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
	2	3
7.	13.6.2007	<p>Counsel for the appellant and AGF for respondent department present. Replication not filed. Arguments heard & record perused.</p> <p>This appeal arises against the seniority of the appellant issued by respondent No.2 vide letter No. 1866-85-ET/716 dated 6.9.2006, with the prayer that on acceptance of this appeal the respondents be directed to place the appellant on the top of the seniority list as per directives of the Government of NWFP.</p> <p>It appears that the appellant was serving as Hostel Supdt (BS-9) initially. On being declared as surplus, he was adjusted in the Food Department as Assistant Food-Controller (BS-8) w.e.f 29.4.05 and assigned S.No. 29 in the joint seniority list. Now, he claims that according to amendment in the surplus ^{pool} policy he should be placed at the top of the seniority list as he was holding the post of BS-9 and was adjusted against the post of AFC (BS-8).</p> <p>The plea of the respondent department is that the appellant was previously serving as Hostel Supdt (BS-9) and had furnished his willingness for adjustment as Assistant Food-Controller (BS-8). Accordingly the official detailed by surplus pool was adjusted in Food-Department. as AFC (BS-8). Soon after his adjustment in the NWFP Food Department, he was placed at S.No. 29 of the joint seniority</p>

*From
13-6-07*

NWFP EXAMINER
 ATTESTED
 (Signature)

Serial No. of Order or Proceeding	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties of counsel where necessary
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list issued vide Food Directorate circular letter No. 14577-95/ED-716, dated 15.9.05, which was not objected by the appellant.

The Tribunal holds that the claim of the appellant is not bonafide. He was adjusted way-back on 29.4.05 as Assistant Food Controller (BS-8). Amendment in the surplus pool policy was made on 15.2.06 which has no retrospective application. As such the appellant cannot claim the benefit of the said amendment in the surplus pool on which his claim is based. The instant appeal being merit-less is dismissed, with no order as to costs. File be consigned to the record.

ANNOUNCED

13.6.2007

13/6/07
 (ABDUL SATTAR KHAN)
 CHAIRMAN
 NWFP SERVICE TRIBUNAL
 CAMP COURT D.I.KHAN.

(Signature)
 (ADALAT KHAN)
 MEMBER

(Signature)
 Certified to the Govt. Secy.
 NWFP Service Tribunal
 Peshawar.

8 18

PESHAWAR HIGH COURT ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

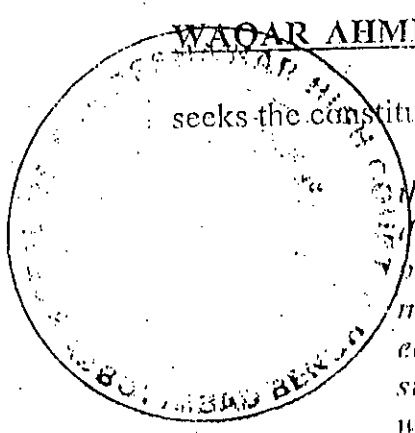
JUDGMENT SHEET

W.P.No.23-A of 2014

Date of hearing 24.09.2014

Petitioner Muhammad Naveed by Syed Sajja
Haleem Chah, Adv.

Respondents _____



WAOAR AHMED SETH, J. Muhammad Naveed petitioner seeks the constitutional jurisdiction of this Court praying for :-

That on acceptance of this writ petition to direct respondents to act in the manner as provided under the law, that the subject notification being issued in continuity of earlier notification dated 8.6.2001, the subsequently issued notification 15.2.2006 would take effect from the date of original notification being its part and parcel and extending benefit to the employees rather having retrospective effect than prospectively".

2- The brief facts, as per contents of writ petition, are that on the enforcement of devolution plan, 2001 the services of petitioners, who was serving in BPS-7 in the parent department, were placed in surplus pool of District Administration but on enforcement of absorption / adjustment policy dated 8.6.2001 adjusted in BPS-6 in the Food Department KPK vide order dated 26.01.2006. It is also averred in the petition that Surplus

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Examiner
Peshawar High Court
Abbottabad Bench
Authorized Under Sec 75 of the Ordinance

Pool Policy circulated through letter dated 8.1.2001 has been reviewed. The petitioner preferred appeals and ultimately filed writ petition No.493-A, which was disposed of by this Court on 17.01.2013. The petitioner submitted order of this Court to the respondents but to no avail, hence, the instant petition.

3- Arguments heard and record perused.

4- Admittedly, the petitioner after rendering surplus was adjusted in the Food Department as Food Grain Inspector (BPS-6) on 26.01.2006 under the prevailing policy No.SOR-I(E&AD/1-200/98 dated 8.6.2001 to which the petitioner never objected. Subsequently, the above referred policy was reviewed and the adjusted employees against a post lower than the original scale were to be placed at the top of seniority list of that cadre. Although nothing is mentioned in the amended / reviewed policy dated 15.2.2006 regarding its applicability either prospective or retrospective in nature.

5- The petitioner was adjusted on 26.1.2006 whereas the amendment has been brought about on 15.02.2006 and the order dated 26.1.2006 has been implemented and seniority list has been prepared, thus, if the amendment policy dated 15.2.2006 is given retrospective effect then the same would adversely effect other employees, not before us, and pendor box would open and that too after more than eight years. The case law cited by the learned counsel for the petitioner either

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 Deshwar
 Abbottabad Bench
 Authorized Under Sec 75 Act 1973

pertains to fiscal matter or to individual grievance not affecting the rights of others in service matters.

11

6- Since the amended policy dated 15.2.2006 is having no retrospective effect nor it was the intention of the legislation otherwise it would have mentioned the same. Moreover, the post against which the petitioner was appointed was upgraded to BPS-7 w.e.f. February, 2008 and subsequently upgraded to BPS-9 w.e.f. 31.12.2013 alongwith pay protection in BPS-7 at the time of adjustment.

7- In view of the above, the writ petition is dismissed in limine.

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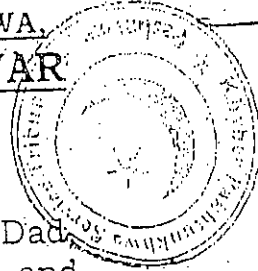
*Announced.
24.09.2014.*

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24/9/14
E. Jinnah
Peshawar High Court
Abbottabad Bench
Authorized Under Section 25 of the Ordinance

D. M. D. M

BEFORE THE KHYBER PAKHTUNKHWA,
SERVICE TRIBUNAL PESHAWAR

Appeal no. 831/2015



50

Muhammad Naveed son of Fazal Dad,
resident of Village Bajna, Tehsil and
District Mansehra.....Appellant

N.W.F. Province
Service Tribunal
Diary No. 772
Dated 06-7-2015

Versus

- 1) Government of Khyber Pakhtunkhwa through Secretary Establishment and Administration Department, Peshawar
- 2) Director Food, Khyber Pakhtunkhwa Peshawar..... Respondents

APPEAL UNDER SECTION 4 OF NWFP
(NOW KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974) QUA
NOT DECIDING DEPARTMENTAL APPEAL
NO. 1253/ET DATED 14.04.2015 AND
INSTEAD OF DECIDING THE
DEPARTMENTAL APPEAL LETTER NO.
2468/PF-1125 DATED 13.05.2015 WAS
SENT TO APPELLANT WITH REFERENCE
TO PREVIOUS DECISION DATED
05.05.2010.

Recd. 6/7/15

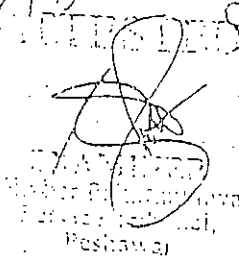
Respected Sir,

Re-submitted in- Day and filed.

- 1) That, petitioner was appointed in District Administration and was serving in BPS-7 in Deputy Commissioner, Office Mansehra.

Signature

23/7/15



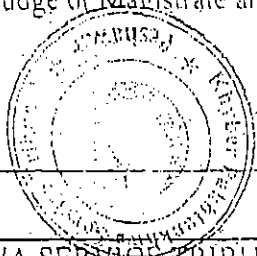
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Date of Order or proceedings.	Order or other proceedings with signature of Judge or Magistrate and that of parties where necessary.
2	3



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

CAMP COURT ABBOTTABAD

APPEAL NO. 831/2015

Mr. Muhammad Naveed Versus Government of Khyber Pakhtunkhwa through Secretary Establishment & Administration Department, Peshawar and another.

JUDGMENT

MUHAMMAD AZIM KHAN AFRIDI, CHAIRMAN:-

15.08.2016

Appellant with counsel and Mr. Muhammad Siddique, Senior Government Pleader for respondents present.

2. Mr. Muhammad Naveed son of Fazal Dad hereinafter referred to as the appellant has preferred the instant service appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 for seeking seniority by placing him at S.No. 1 of the seniority list maintained by the Food Department for BPS-06.

3. Brief facts giving rise to the present appeal are that the appellant was serving as Senior Clerk (BPS-07) in the office of Deputy Commissioner, Mansehra and was declared surplus in the year, 2001 and later-on adjusted in Food Department in BPS-06 vide office order dated 26.01.2006. That the appellant was to be placed at the top of the seniority list in BPS-06 but he was placed at the bottom of the same constraining the appellant to institute Writ Petition No. 494-A/2012

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Khyber Pakhtunkhwa
Service Tribunal
Peshawar

(46) (52)

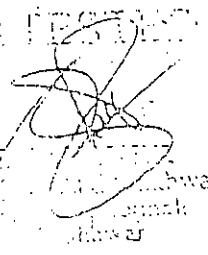
(6)

which was disposed of vide judgment dated 17.01.2013 with the directions to respondent No. 1 to decide the grievances of the appellant within a period of 60 days. That the department did not acceded to the request of the appellant constraining the appellant to prefer another Writ Petition No. 23-A/2014 which was dismissed by the hon'ble High Court, Abbottabad Bench vide judgment dated 24.09.2014 where-against the appellant preferred Civil Petition No. 2336/2014 before the august Supreme Court of Pakistan which was disposed of on 25.3.2015 with the direction to the respondents to decide the departmental appeal/representation of the appellant by the departmental authority. That vide order dated 13.05.2015 the departmental appeal of the appellant was turned down and hence the instant service appeal.

4. Learned counsel for the appellant argued that as per policy of the provincial government issued vide notification dated 08.06.2001 read with amended policy issued vide notification dated 15.02.2006 the appellant was entitled to enlistment at S.No. 1 of the seniority list as he was serving in BPS-07 while he was adjusted as Food Grain Inspector in BPS-06.

5. Learned Senior Government Pleader argued that the appellant was adjusted as Food Grain Inspector BPS-06 on 26.01.2006 in the light of notification dated 08.06.2001 while the amended policy was issued on 15.02.2006 and as such the appellant was not entitled to claim seniority on the strength of the said notification with retrospective effect. That the appeal is therefore liable to dismissal.

6. We have heard arguments of learned counsel for the parties and


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11/05/15

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perused the record.

7. According to notification dated 08.06.2001 issued by Establishment and Administration Department of the provincial government policy for declaring government servants as surplus and their subsequent absorption/adjustment was laid down which was further amended vide circular letter dated 15.02.2006 wherein the following sub-para (d) added to para-(6) of the original policy issued vide notification dated 08.06.2001.

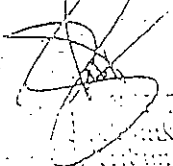
"Sub para-(d) added to para (6).

(d) *In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again and becoming junior to his juniors."*

8. A careful perusal of para-6 of the policy letter dated 08.06.2001 would suggest that in case of adjustment of a surplus employee against a post in corresponding basic pay scale with different designation/nomenclature of the post, was to be placed at the bottom of the seniority. It is nowhere mentioned in the said circular that an employee is to be placed at the bottom of the seniority list even if he is adjusted against a post lower than his original scale. The subsequent circular dated 15.02.2006 is in fact a clarification of the policy earlier issued by the provincial government vide letter dated 08.06.2001 with an object to remove the anomaly and as such the appellant cannot be deprived of his right to claim senior position at the top of the seniority list of the cadre in which he was adjusted against a post lower than his original scale. It is note worthy that an employee otherwise junior to appellant but if adjusted against a lower post after the amended policy

(53)

ATTESTED


[Signature]
[Name]
[Designation]

(48)

(808)

(8)

letter dated 15.2.2006 at the top of seniority list would rank senior to appellant. Therefore depriving the appellant from seniority may not be in accordance with mandate of service structure/laws. We therefore hold that the appellant was entitled to be placed at the top of seniority list at the relevant time after the clarification of policy as he was adjusted against a post lower than his original scale. The appeal is accepted in the above terms. Parties are left to bear their own costs.

5611

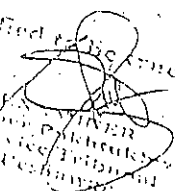
File be consigned to the record room.

Amruneed

15-08-2016

sd/-
(ABDUL LATIF)
MEMBER

sd/-
(MUHAMMAD AZIM KHAN AFRIDI)
CHAIRMAN
Camp Court A. Abad

Certified to be a true copy

 MEMBER
 Camp Court A. Abad

Date of Receipt: 29-12-16

No. of Pages: 2000

Cost: 12

Time: 2

Time: 19

Date of Issue: 29-12-16

Date of Delivery: 29-12-16

67

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR



Khyber Pakhtunkhwa
Service Tribunal
Duty No. 06
Dated 03-01-2017

Service Appeal No. 7 /2017

Muhammad Akbar (Assistant Food Controller, Mardan)
S/o Muhammad ismail R/o G.T Road, Chamkani,
Tehsil & District, Peshawar

....Appellant

VERSUS

- 1) Director Food, Khyber Pakhtunkhwa, Peshawar.
- 2) Secretary to Government of Khyber Pakhtunkhwa,
Food Department, Peshawar.
- 3) Secretary to Government of Khyber Pakhtunkhwa,
Establishment Department, Peshawar.

.....Respondents

APPEAL U/S 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT,
1974, AGAINST THE IMPUGNED ORDER
DATED 07.11.2016 VIDE NO.5578/ET-
716, WHEREIN THE APPELLANT HAS NOT
BEEN PLACED IN THE TOP THREE (03) OF
THE REVISED SENIORITY LIST OF
ASSISTANT FOOD CONTROLLERS STOOD
ON 31.10.2016 AS FOR THE NEEDFUL THE
APPELLANT'S DEPARTMENT APPEAL VIDE
IMPUGNED OFFICE LETTER NO.7051-
52/PF-1053 DATED 26.12.2016 OF THE
RESPONDENT ALSO HAS BEEN

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Attest

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Filed to-day
Registrar
3/1/2017

submitted to-day
filed.
Registrar
5/1/2017

68

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR



Khyber Pakhtunkhwa
Service Tribunal

Distt. No. 07

Dated: 03-07-2017

Service Appeal No. 8 /2017

Muhammad Saleem Iqbal (Assistant Food Controller,
Azakhel, Nowshera) S/o Jan Muhammad
R/o Saeedabad No.1, Street No.1, Near Noor Mosque,
Pajagi Road, Tehsil & District, Peshawar

....Appellant

VERSUS

- 1) Director Food, Khyber Pakhtunkhwa, Peshawar.
 - 2) Secretary to Government of Khyber Pakhtunkhwa,
Food Department, Peshawar.
 - 3) Secretary to Government of Khyber Pakhtunkhwa,
Establishment Department, Peshawar.
-Respondents

ATTESTED

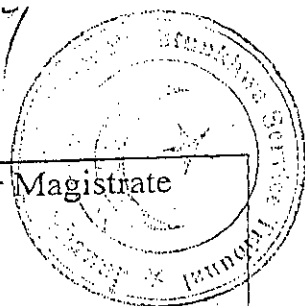
[Signature]
 EXAMINER
 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar.
 Filed to-day
[Signature]
 Registrar
 3/11/2017.

APPEAL U/S 4 OF THE KHYBER
 PAKHTUNKHWA SERVICE TRIBUNAL ACT,
 1974, AGAINST THE IMPUGNED ORDER
 DATED 07.11.2016 VIDE NO.5578/ET-
 716, WHEREIN THE APPELLANT HAS NOT
 BEEN PLACED IN THE TOP THREE (03) OF
 THE REVISED SENIORITY LIST OF
 ASSISTANT FOOD CONTROLLERS STOOD
 ON 31.10.2016 AS FOR THE NEEDFUL THE
 APPELLANT'S DEPARTMENT APPEAL VIDE
 IMPUGNED OFFICE LETTER NO.7051-
 52/PF-1053 DATED 26.12.2016 OF THE

[Signature]
[Signature]

Re-submitted to -day
 and filed.
[Signature]
 Registrar
 5/11/2017.

07



Sr. No/	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
1	24.11.2017	<p style="text-align: center;">3</p> <p style="text-align: center;"><u>BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL</u></p> <p style="text-align: center;">Service Appeal No. 07/2017</p> <p style="text-align: center;">Date of Institution ----03.01.2017 Date of Decision ----24.11.2017</p> <p>Muhammad Akbar (Assistant Food Controller, Mardan) S/O Muhammad Ismail R/O G.T Road, Chamkani, Tehsil & District, Peshawar. Appellant</p> <p style="text-align: center;">VERSUS</p> <ol style="list-style-type: none"> 1. Director Food, Khyber Pakhtunkhwa, Peshawar. 2. Secretary to Government of Khyber Pakhtunkhwa, Peshawar. 3. Secretary to Government of Khyber Pakhtunkhwa, Establishment Department, Peshawar... Respondents <p style="text-align: center;"><u>JUDGMENT</u></p> <p style="text-align: center;"><u>MUHAMMAD HAMID MUGHAL, MEMBER:</u> - Learned counsel for the appellant present. Learned District Attorney for the respondents present.</p> <p>2. This single/common judgment shall also dispose of appeal bearing No. 08/2017 entitled Muhammad Saleem Iqbal versus Director Food Khyber Pakhtunkhwa and others being identical in nature having arisen out from the same law and facts.</p> <p>3. Appellants have filed the appeals under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the respondents and made impugned the seniority list of Assistant Food Controllers as it stood on 31.10.2016.</p> <p>4. Learned counsel for the appellants argued that the appellants were servants in the Government of Khyber Pakhtunkhwa Printing</p>

ATTESTED

MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

& Stationary Department in BS-07 and in the year 2004 the appellants were adjusted in the food department as Food Grain Inspectors (BS-06) vide Surplus Pool Letter dated 25.08.2004. Further argued that in pursuance of the amendment in the Surplus Pool Policy circulated by letter No. SOR.VI (E&AD)/5-1/2005 dated 15.02.2006, the appellants became entitled to be placed at the top of seniority list of cadre of Food Grain Inspectors but they were deprived from their right of seniority and in the impugned seniority list the appellants have not been placed at the top three (3) positions. Learned counsel for the appellants argued that this Tribunal has already accepted the identical nature service appeal bearing No. 831/2015 filed by Mr. Muhammad Naveed who was also adjusted as Food Grain Inspector as a result of Surplus Pool Policy. Learned counsel for the appellants while relying upon the judgment of august Supreme Court titled Government of Punjab, through Secretary Education, Civil Secretariat, Lahore and others (Petitioners) Versus Sameen Parveen and others (Respondents) 2009 SMCR 1, stressed that the appellant is also entitled to the same relief granted to Mr. Muhammad Naveed in appeal No. 831/2015.

5. As against that learned District Attorney while opposing the present appeals argued that revised Surplus Pool Policy was notified on 15.02.2006 much after the adjustment of appellant as Food Grain Inspector in the year 2004.

6. Arguments heard. File perused.

7. Law and facts of the present appeals as well as service appeal No. 831/2015 entitled Muhammad Naveed Versus Government of

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

7/

Khyber Pakhtunkhwa through Secretary Establishment and Administration Department Peshawar & another are, the same. It is settled proposition of law that if a Tribunal decides a point of law relating to the terms and conditions of a civil servant who litigated, the benefits of said decision would be extended to other similarly placed civil servants who may not be parties to that litigation. Hence the appellant is also entitled to the same relief granted to the appellant Muhammad Naveed by this Tribunal in service appeal No 831/2015. Learned counsel for the appellants however remained unable to demonstrate that the appellant should also have been placed senior to those Assistant Food Controllers who were appointed as such by initial recruitment prior to the promotion of the appellants from the post of Food Grain Inspector to the post of Assistant Food Controller. Consequently the present appeals are also accepted in terms of the judgment passed in the said appeal bearing No. 831/2015. However the appellants shall still stand junior to all those persons who have been inducted as Assistant Food Controllers (BS-14) by initial recruitment prior to the promotion of appellants as Assistant Food Controllers on regular basis and thus seniority of the direct recruits vis a vis appellants (Promotees) in the impugned seniority list shall not be disturbed. Parties are left to bear their own costs. File be consigned to the record room.

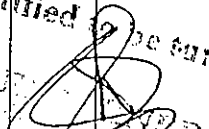

 (MUHAMMAD HAMID MUGHAL)
 MEMBER


 (GUL ZEB KHAN)
 MEMBER

ANNOUNCED

24.11.2017

Certified to be true copy

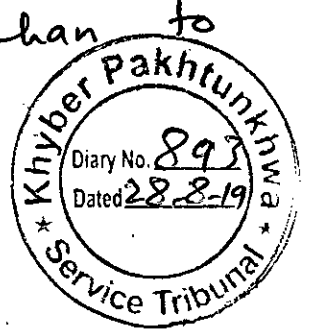

 Khyber Pakhtunkhwa
 Service Tribunal,
 Peshawar

Before the Khyber Pakhtunkhwa Service Tribunal, Peshawar

Amended Appeal No. 349/2017

Noor Khan Versus Director Food, KP, Peshawar etc

Subject:- Address of DFC Nawab Khan to
serve Summons.



Respectfully Sheweth;

The applicant submit as under.

- 1) That the above titled Appeal is pending adjudication before this tribunal.
- 2) That the present address of the DFC Muhammad Nawab Khan as infra.
Banda Kachore, P.O. Urmar Payan,
Mohallah Gari Naubat Khan, Peshawar.
(copy of CNIC of Nawab Khan is attached)
- 3) That the next date in the above titled Service Appeal is 25-09-2019.

Appellant

Noor Khan (AFC)

Dated:- 28-8-2019

حکومت پاکستان

قلمی شناختی کارڈ

17301-6088994-5



ولد کا نام: باؤشلہ علی

پیدائش کی تاریخ: 16/10/1958

آرشد حکیم

16/10/1958

دستخط حامل کارڈ

Before the Khyber Pakhtunkhwa Service Tribunal, Peshawar

Amended Appeal No. 349/2017

Noor Khan Versus Director Food, KP, Peshawar etc

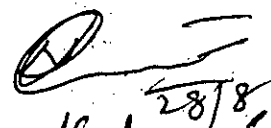
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(copy of CNIC of Nawab Khan is attached)
- 3) That the next date in the above titled Service Appeal is 25-09-2019.

Appellant



Noor Khan (AFC)

Dated:- 28-8-2019

شناختی نمبر: 5-6088994-17301 خاندان نمبر: TP7798



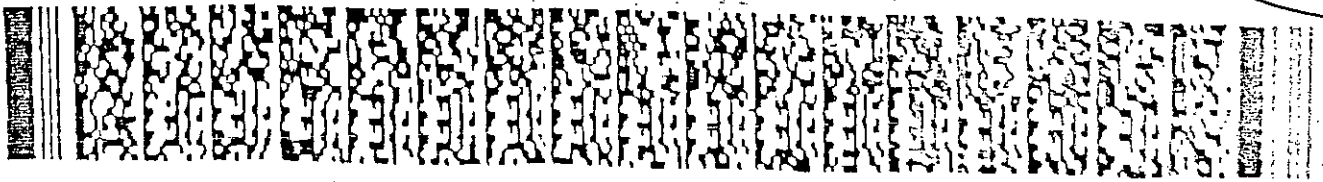
موجودہ پتہ: باندو کھوری ٹاکنہ امرت پالہ محلہ لاجی نوبت خان، پشاور

گھنٹہ: محلہ کدوال جہانگیر تحصیل و ضلع قسالک علاقہ ملتان پشاور

تاریخ: 26/10/2009 تاریخ: 30/09/2018

فستوہ کارڈ کے پر مزید لیٹر بکس میں ڈال دیں

45858003075 شناختی نمبر



BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR

Appeal No.349/2017

Noor Khan (AFC)

Versus

Director Food KPK & Others

INDEX

<u>S.No.</u>	<u>Description of Documents</u>	<u>Annexure</u>	<u>Pages</u>
1.	Application with affidavit		1-3
2.	Copy of order dated 29-06-2018 of Supreme Court of Pakistan	A	4-5
3.	Copy of order dated 25-09-2018 of Hon,ble Service Tribunal	B	6
4.	Wakalatnama	Already filed	—

PESHAWAR

28-01-2019

H/Rahman

Applicant/Respondents No.4 to 24.

Through

(Signature)

(ABDUL HAMEED)

Advocate Peshawar

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

Amended Service Appeal No. 349/2017

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 137

Dated 28/1/2019

**NOOR KHAN, AFC (BS-14), OFFICE OF THE DFC,
KOHAT.....APPELLANT**

Versus

**THE DIRECTOR FOOD, KHYBER PAKHTUNKHWA AND
OTHERS.....RESPONDENTS**

Applicants/Respondents No.4 to 24

Next date fixed: 20-03-2019

An application for striking out the amendments in above appeal, which are contrary to the remand order of Supreme Court of Pakistan dated 29-06-2018 passed in C.P No.1676 of 2018, and is also in violation of this Hon'ble Tribunal order dated 25-09-2018.

Respectfully Sheweth;

The applicants/Respondents No.4 to 24 submit as under;

1. That the judgment dated 08-02-2018, passed by this Hon'ble Tribunal in Appeal No.349/2017, titled "Noor Khan vs Food Department" was challenged by the applicants/Respondents No.4 to 24 before the Supreme Court of Pakistan through CPLA No.1676/2018. This CPLA was heard on 29-06-2018 and Supreme Court of Pakistan converted it into an appeal and was allowed. The impugned judgment of this Hon,ble Tribunal was set aside and the matter was remanded to this Hon,ble Tribunal with the directions to implead all those who have been affected by the decision of this Hon,ble Tribunal.

(Copy of order dated 29-06-2018 of SC is attached as Annexure A)

Put up to the court with relevant appeal.

28/1/19

To come up w
appeal on 20/3/19

3/1

2. That on 25-09-2018, by an application filed by the applicants/Respondents No.4 to 24 for impleadment of Respondents No.4 to 27 was allowed by this Hon,ble Tribunal and after impleadment of the newly Respondents, the appellant was directed to amend his appeal to the extent of the newly impleaded Respondents i.e No.4 to 27.

(Copy of the order dated 25-09-2018 of Tribunal is attached as

Annexure B)

3. That on 23-01-2019, an amended appeal was presented to this Hon,ble Tribunal by the appellant. However, the amendments made by appellant were not upto the extent as allowed by this Hon,ble Tribunal. As evident from the amended appeal, the appellant has apparently altered the fundamental character of the appeal and also changed the subject matter as well as cause of action of his appeal, and this act on the part of appellant is illegal and unlawful in the eyes of law.
4. That since the character of this appeal has been totally changed because unnecessary parties have been impleaded in the Amended appeal along with new cause of action contained thereon and also the orders of this Tribunal have not been complied with, therefore the applicants/Respondents No.4 to 24 are not in a position to submit proper replies in the presence of such a disputed appeal.

It is, therefore, most humbly prayed that on acceptance of this application, the amendments made by the appellant in the amended appeal may not be allowed & be struck down and appellant be directed to comply with strictly the orders of this Hon,ble Tribunal dated 25-09-2018 in its true letter and spirit.

H/Rahman

Applicants/Respondents No.4 to 24

Through

Kudal
(Abdul Hameed)

28/01/2019

Advocate Peshawar

AFFIDAVIT:

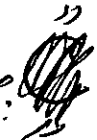
I Hafeez ur Rehman AFC, (Applicant/Respondent No. 22) do hereby declare & affirm on oath that the contents of accompanied application are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon,ble Tribunal.

ATTESTED



H/Rahman

Deponent
(17301-0744903-9)

(14) MAV
Annex: 

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE FAISAL ARAB
MR. JUSTICE MUNIB AKHTAR

CIVIL PETITIONS NO.264-P AND 1676 OF 2018
(Against the judgment dated 8.2.2018 of the KPK
Service Tribunal, Peshawar passed in
S.A.No.349/2017)

1. Director Food K.P. Peshawar and others Vs. Noor Khan In C.P.264-P/2018
2. Syed Wazir Shah etc. Vs. Noor Khan and others In C.P.1676/2018

For the petitioner(s): Barrister Qasim Wadood, Addl.A.G. KPK
(In C.P.264-P/2018)

Mr. Abdul Hameed, ASC
(In C.P.1676/2018)

For the respondent(s): Mr. M. Ijaz Khan Sabi, ASC
(In C.P.264-P/2018)


Mir Adam Khan, AOR
(In C.P.1676/2018)

Date of hearing: 29.6.2018

ORDER

MIAN SAQIB NISAR, CJ.- The petitioners were a necessary party because they would certainly be affected by the judgment of the learned Tribunal. The learned Tribunal was apprised that they should be made a party and given an opportunity of hearing but this request was unreasonably declined. Therefore, the impugned judgment cannot be sustained as they have been condemned unheard. Resultantly, these petitions are converted into appeals and allowed, the impugned judgment is set aside and the matter is remanded to the learned Tribunal to implead all those who would be affected by the decision of the Tribunal and pass a fresh decision after giving them an opportunity of hearing. As there is seemingly a conflict between two judgments of the learned

ATTESTED


Court Associate
Supreme Court of Pakistan
Islamabad

15

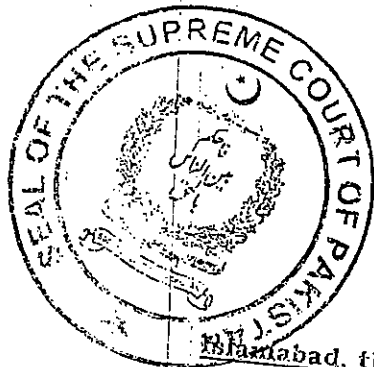
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Tribunal itself, therefore, the matter is referred to the Chairman of the learned Tribunal who shall constitute a larger Bench to resolve the conflict.

Sd/-,HCJ.
Sd/-,J
Sd/-,J

Certified to be True Copy

Court Associate
Supreme Court of Pakistan
Islamabad



Islamabad, the
29th of June, 2018

WATCEN/MS/CC

17/11/18

405-P/18

GR No: _____ Civil/Criminal

Date of Presentation: 2.7.18

No of Words: _____

No of Folios: 3

Requisition Fee Rs: 500

Copy Fee in: 3.2

Court Fee Stamps: 8.7

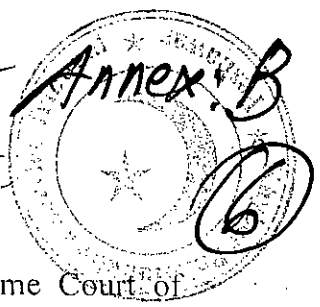
Date of Completion of Copy: 11/7/18

Date of delivery of Copy: 17/7/18

Compared by/Prepared by: 6

Received by: _____

Appeal No. 349/2017 Annex B
Noor Khan vs Govt



26.07.2018

Appeal received from august Supreme Court of Pakistan vide order dated 29.06.2018 in civil petition Nos. 949 and 950 of 2018. Be checked and entered against its old number.

Notice be issued to the parties for 25.09.2018 before the Larger Bench comprising of the undersigned.

Chairman

25.09.2018

Mr. Noor Khan, appellant alongwith his counsel Mr. Taimur Haidar Khan, Advocate present. Mr. Muhammad Mahir, Assistant alongwith Mr. Kabirullah Khattak, Addl. AG for the respondents present.

Mr. Abdul Hameed Advocate for applicants present and submitted an application for impleadment of applicants as respondents. In view of the judgment of august Supreme Court the application is allowed and applicants are impleaded as respondents No. 4 to 27. After impleadment of the newly respondents, the appellant is directed to amend the appeal to the extent of newly impleaded respondents and submit the same within 15 days with further direction to the newly impleaded respondents to submit their written reply on the next date. Respondent No. 2 is directed to depute a well conversant officer not below BPS-17 to assist the Tribunal in future. To come up for written reply/comments of respondents No. 4 to 27 on 18.10.2018.

Chairman

Certified to be true copy

Date of Presentation of Appeal 25-9-18
Number of Copies 800
Copying Fee 6-00
Urgent
Total 6-00
Name of Clerk [Signature]
Date of Completion 27-9-18
Date of Delivery of Copy 27-9-18