

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESAHWAR.

Service Appeal; No. 576 / 2022

Shabab Hussain S/o Ikhtiar Ali

VERSUS

Director General, Soil & Water Conservation

& others

APPELLANT
Khyber Pakhtunkhwa
Service Tribunal

Case No. 4/68

Dated 2/3/2023

RESPONDENTS

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District Comptroller of Accounts
Kohat 7/1/23

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESAHWAR.

Service Appeal; No. 576 / 2022

Shabab Hussain S/o Ikhtiar Ali **APPELLANT**

VERSUS

Director General, Soil & Water Conservation

& others **RESPONDENTS****PARA WISE REPLY ON BEHALF OF RESPONDANT NO. 04 IS AS UNDER:****Preliminary Objection**

- 1) That the Appellant has no cause of action.
- 2) That the appellant has no locus standi.
- 3) That the appeal is time barred.
- 4) That the appellant has not come to the Tribunal with clean hands.
- 5) That the appeal in hand is not maintainable.
- 6) That the appellant has concealed material facts from the Tribunal.
- 7) That the appellant has joinder and misjoinder of the necessary parties.

RESPECTFULLY SHEWETH:**FACTS**

- 1) Yes , the father of the appellant was field watcher and retired at age of superannuation from the office of Respondent No. 03 vide EDO Agr: Deptt: Kohat No. 632 dated 07.04.2006 (**Annex-A**).
- 2) Yes, that the appellant was appointed as Field watcher BPS-1 in the office of the Respondent No. 03 vide EDO Agr: Kohat order No. 1221-22 dated 30.06.2006 against the quota for initial recruitment in BPS-1 to 4 reserved for the children of Class-IV, Govt: servants retired at the age of superannuation under rule 10 (4) of the Govt: of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) Rules 1989. (**Annex-B**)
- 3) Correct. The Appellant assumed the duty on 09.07.2006 as Field Watcher BPS-01 in the office of the Respondent No. 3. (**Annex-C**)
- 4) That appellant was again appointed on the post of junior clerk as fresh by respondent No. 02 vide office order no. 825-27 /DDSA Dated 30.06.2008 against the quota reserved for the children of retired Class-IV Govt: servant on superannuation under Rules 10 (4) of Khyber Pakhtunkhwa Civil Servant (Appointment, Promotion & Transfer) rules 1989 in the office of Respondent No. 3. The appointment of the appellant on the post of junior clerk under the said rules 10 (4) is illegal because the benefit has already been availed once in 2006. Quota reserved for initial appointment in BPS 1 to 4 and not above BPS-04 for the children of retiring class-IV Govt: servants. So the appellant order in BPS-07 as junior clerk was null and void. (**Annex-D & E**)
- 5) That the appointment order of the appellant was illegal and against the law / appointment policy which was returned with certain observations. No reply was submitted by the Respondent No. 3 in response to observations which shows that the appellant order was null & void, ab initio. (**Annex-F**)
- 6) As per Para 05.
- 7) As per Para 05.
- 8) Incorrect. The question of dissatisfaction and aggressiveness does not arise as the order was illegal, having no conformity under law and violation of the policy.

GROUNDS

- A) The father of the appellant retired from the respondent Deptt: No. 03 at the age of superannuation w.e.f 30.06.2006 (AN) Vide EDO Agr: Deptt: Kohat order No. 63/EDO/Agr/dated 07.04.2006. Under rules 10 (4) of Khyber Pakhtunkhwa Civil servants (Appointment, Promotion & transfer) Rules 1989, one of the children of retiring class-IV Govt: servant on superannuation/invalidation will be appointed in BPS-01 to BPS-4. The appellant was appointed against the quota reserved for the children of Retiring class-IV Govt: Servant as Field Watcher BPS-01 vide EDO Agr: Kohat No. 11221-22 dated 30.06.2008 as per entitlement in the policy.

Later on, the appellant was again appointed as junior clerk BPS-7 Vide Deputy Director Soil Conversion Khyber Pakhtunkhwa Peshawar order no. 825-27 dated 30.06.2008 under rules 10 (4) of Civil Servants (Appointment Promotion & Transfer) rules 1989 in the office of the Respondent No. 03 which was totally illegal, unlawful in violation of policy and have no conformity under the rules /law. Because the appellant had already availed the benefit /opportunity admissible under rules 10 (4) Khyber Pakhtunkhwa Civil servant (Appointment, Promotion & Transfer rules 1989) for the children of retiring class-IV Govt: Servant. Appointment in BPS-07 for the children of class-iv retiring Govt: Servant on superannuation was not permissible as per above rules.

The respondent No.04 is under obligation to implement the Govt: rules / policy, therefore the pay fixation as junior clerk BPS-7 was returned with certain observations to respondent No. 3 but no reply was received till now which show that the appointment was illegal, against the rules and policy, therefore deemed to be null and void.(Annex A, B, D, E & F).

- B) As per Para-A.
- C) As Per Para-A.
- D) As per Para-A.
- E) As per Para-A.
- F) As per Para-A.
- G) As per Para-A.
- H) As per Para-A.

Keeping in views of the above mentioned facts, it is therefore, humbly prayed that the appeal in hand being devoid the merits, null and void abnatio and against the law /policy may be dismissed please.


District Comptroller of Accounts
Kohat
(RESPONDANT No. 04)

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Anex-B

Office of the
Executive District Officer,
Agriculture, Kohat.

No. _____/EDO/Agri.

Dated _____/2006.

To,

Mrs. Shab Hussain S/o. Ikhtiar Ali,
Vill: and PO Ibrahimzai, Tehsil and
District Kohat.

Subject:- APPOINTMENT AGAINST THE VACANT POST OF FIELD WATCHER
(BPS-1) IN SOIL CONSERVATION DEPARTMENT, KOHAT.

Memo:

In pursuance of Establishment and Administration Department, N.W.P.P Letter No. SOR-VI(E&A)1-3/2003 dated 30.6.2003 and No. E&A(AD)4-(152)/2004 dated 13.4.2005, Administration Department No. E&A(AD)4(152)2006 dated 25.3.2006 and also on the recommendation of District Soil Conservationist, Kohat vide 187 dated 20.6.06. The undersigned is pleased to appoint you against the quota reserved for the children of retired/deceased of Class-IV Govt. Servant on superannuation under rule 10(4) of the NWFP Civil Services (Appointment, Promotion, and Transfer) Rules 1989 on contract basis against the vacant post of Field Watcher (BPS-1) in Soil Conservation department Kohat on the following terms and condition:-

- (i) You will be placed in minimum of BPS1(2150-65-4100) with usual allowances as permissible to Government Servant of the same pay scale.
- (ii) Your services will be governed under the Government of NWFP Contract Policy 2002.
- (iii) Either party can terminated the contract on one months notice or one month salary in lieu thereof.
- (iv). You will be provided equal opportunities for local training.
- (v). You will be provided same facilities under Benevolent Fund as admissible to Government Servant, at the rate to be prescribed by the government.
- (vi). You will avail the benefit of Contributory Provident Fund (CPF) through 5% contribution of minimum of your pay and 5% contribution to be made by the Government.
- (vii). You will not contribute to GPF and shall not be entitled for Pension and gratuity benefits.

If the above offer of appointment on contract basis is acceptable to you on the above terms and conditions, you are advised to report to District Soil Conservationist, Kohat for duty, after medical examination from the Medical Superintendent, Kohat.

[Signature]
District Comptroller of Accounts
Kohat

(Muhammad Yousef Bangash)
Executive District Officer,
Agriculture Deptt: Kohat.

Dated Kohat the 30/6/2006.

No. 122/22 /EDO/Agri.

Copy forwarded for information and necessary action to the:-
1. The District Soil Conservationist, Kohat.
2. The District Accounts Officer, Kohat.

[Signature]
Executive District Officer,
Agriculture Deptt: Kohat.

Anex C

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Attest

District Comptroller of Accounts,
Kohat

ATTEST

Anex

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Annex D

OFFICE OF THE DEPUTY DIRECTOR, SOIL CONSERVATION NWFP, TARNAB PESHAWAR

In pursuance of Establishment and administration Department, NWFP, Letter No. E&A(AD)1-3/2003 dated 30/6/2003 and No. E&A(AD)4(152) 2006 dated 25/3/2006 and also on the recommendation of District Officer Soil Conservation, Kohat Mr. Shabab Hussain is hereby appointed as Junior Clerk (BPS-7) (2940-160-7740), with usual allowance as admissible under the rules. Against the quota reserved for the children of retired/deceased of Class-IV, Government Servant on superannuation under rules 10(4) of the NWFP, Civil services (Appointment, Promotion and Transfer) Rules, 1989/regular basis against the vacant post in Soil Conservation Department, Kohat as per term and condition (vogue in the Government of N.W.F.P.

Sd/-
(MUHAMMAD YOUSAF BANGASH)
DEPUTY DIRECTOR
SOIL CONSERVATION
NWFP, TARNAB PESHAWAR.

E/No. 825-27 /DDSC,

Dated Pesh: the 30-6 /2008.

Copy forwarded to:-

1. The District Officer Soil Conservation Kohat.
2. The District Accounts Officer Kohat.
3. Mr. Shabab Hussain S/O Akhtiar Ali Ex: Field Watcher.

DEPUTY DIRECTOR,
SOIL CONSERVATION
N.W.F.P TARNAB PESH:

Ali

District Comptroller of Accounts
Kohat

RA

Amex. E/1

P.7

Reservation of quota for appointment of children of Retiring Class-IV Govt. Servants on superannuation.

I am directed to refer to the subject cited above and to state that in supersession of all instructions issued in this behalf, the competent authority has been pleased to direct that a quota of 25% falling to the share of initial recruitment in BPS-1 to BPS-4 shall be reserved for appointment of one of the children of a retiring civil servant on superannuation/invalidation; provided that:-

- 1) the appointment shall be made subject to the availability of vacancy.
 - 2) A waiting list showing the name, designation and date of retirement/ invalidation of retiring civil servant shall be maintained in the department/office. The merit shall be determined from the date of retirement/invalidation of the civil servant.
 - 3) The child possesses qualification prescribed for the post;
 - 4) In case, the date of retirement/invalidation of two civil servants is the same, the child of the civil servant older in age shall be considered first for appointment.
 - 5) Under age child of the said civil servant shall be included in the waiting list from the date of retirement/invalidation. However, he shall be considered for appointment after he attains the age prescribed for the posts.
2. The competent authority has further been pleased to authorize the Chief Secretary, NWFP to exercise the power of grant of relaxation of ban for initial appointment in cases of appointment of one of the children of retired/invalid civil servant and deceased civil servant died during the service as required in rule 10 (4) of the NWFP Civil Servant (Appointment, Promotion and Transfer) Rules, 1989.
3. I am, therefore, directed to request that the above policy instructions should be followed strictly in letter and spirit.

(Authority S&GAD letter No.SOR-I (S&GAD)4-1/80(vol-III) dated 23.5.2000)

Reservation of 25% quota for appointment of children of Retiring Class-IV Govt. Servants on superannuation.

In continuation of this department's circular letter of even number dated 23.5.2000, I am directed to refer to the subject cited above and to say that while submitting summary to the Competent Authority for the recruitment of a child of retiring civil servant in BPS-1 to BPS-4 on superannuation/invalidation, the Administrative Department shall certify that vacancy against which the child of the said civil servant was being recruited is within the prescribed quota.

(Authority S&GAD letter No.SOR-I (S&GAD)4-1/80(Vol-III), dated 1.7.2000)

Attest

[Signature]
District Comptroller of Accounts,
Kohat

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Amey. E/2 P(8)

**Lifting of ban on appointment against deceased/
Rtd. Government employees children quota**

In supersession of all previous orders in this behalf, the competent authority is pleased to order lifting of ban on appointment against the following quotas;

- i) Quota reserved for deceased employees children under Rule 10 (4) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules 1989.
- ii) Quota reserved for the children of Class-IV retired (on superannuation/invalidation) Govt. employees vide this Department's letter SOR.I(S&GAD)4-1/80 (Vol.III) dated 1.7.2000.

2. However, the above mentioned lifting of ban is subject to the following conditions:-

- i) Appointment against quota mentioned vide para No.1(i) above shall be given preference over Serial No.(ii).
- ii) For appointment against quota mentioned vide para No.1(ii) above, the following conditions must be fulfilled:
 - a) Appointments shall be made after the adjustment of employees placed in Surplus Pool.
 - b) Instructions contained in this Department letter No.SORI (S&GAD)4-1/80(Col.III) dated 23.5.2000, may be followed in letter and spirit.

(Authority; letter No.SOR.VI(E&AD)1-3/2003, dated 30th June, 2003)


~~_____~~
District Comptroller of Accounts,
Kohat

DCA/Kohat/PR-II/08-09 dated 26/7/08

The DSA, Officer
Soil Conservation Kohat.

Appointment of J/clude

Pr. refer + Deputy Director Soil Con-
servation Officer order no. 825-27/DDSC
dated 30/6/2008.

The Subject Officer order of Appointment has
examined and the following observation raised.

1. Reference is invited to Govt of NWFP
Local Govt Deptt No. 81 (LG-D) 3-195/E M/05
dated 7/10/2015, wherein EDO has been declared
as the appointing authority for B-01 & D-00 of the
concerned devolved deptt.
2. The Appointments made by the Dy. Director NWFP
instead of EDO is not in order. Furthermore
a copy of the order as
mentioned in the above office order may also
be supplied for perusal and examination.
Moreover the terms & conditions required in appointment
order has not been stated, which is mandatory
under Service Rules.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESAHWAR.

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Shabab Hussain S/o Ikhtiar Ali

.....

APPELLANT

VERSUS

Director General, Soil & Water Conservation

& others

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RESPONDENTS

AFFIDIVIT

I Sahibzada Qaim Noor, District Comptroller of Accounts Kohat, do hereby solemnly affirm & declare on oath that the contents of Para wise comments on behalf of Respondent No .04 are true an correct to the best of my knowledge and belief and that nothing has been concealed from this Hon'able Court.

DEPONENT

CNIC # 14101-4864774-3

ATTESTED

