KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

BEFORE: **KALIM ARSHAD KHAN ... CHAIRMAN**
ROZINA REHMAN ... MEMBER (Judicial)

Service Appeal No.774/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Reedad Khan, Ex-Chowkidar (BPS-03), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.775/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Samiullah, Ex-KPO (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.
.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.776/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Kafil Ahmad, Ex-Assistant (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.777/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Ikram Ullah, Ex-Naib Qasid(BPS-03), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.778/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Sadiq Shah, Ex-Driver (BPS-06), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.779/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Adnan, Ex-Assistant (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.780/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Asad Iqbal, Ex-Junior Clerk (BPS-11), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.781/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Shoaib, Ex-KPO(BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.782/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Adnan Khan, Ex-KPO (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.783/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Awais, Ex-Driver (BPS-06), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.784/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Nasir Gul, Ex-Naib Qasid(BPS-03), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.802/2022

Date of presentation of Appeal.....11.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Mohsin Nawaz, Ex-Stenographer (BPS-16), Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.811/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Tahir Khan, S/O Arsala Khan R/o Guldara Chowk, PO Namak Mandi Mohallah Tariq Abad No.2, Kakshal Peshawar, Assistnat/ Moharir, Ex-FATA Tribunal Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.812/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Ziafat Ullah Khan S/O Naimat Ullah Khan R/o presently Masjid Ibrahim Bara Gate, PO GPO, Nodhiya Payan Peshawar, Driver, Ex-FATA Tribunal, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

.....(***Respondents***)

Service Appeal No.813/2022

Date of presentation of appeal.....20.05.2022
Dates of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Faheem Shahzad S/O Hidayat Ullah R/O Kotla Mohsin Khan Landi Arbab Mohallah Kasaban Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

Service Appeal No.814/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Muhammad Shoaib S/O Arsala Khan, R/o Kakshal Pul P.O Kakshal, Mohallah Tariq Abad No.1, Peshawar, Naib Qasid, Ex-FATA Tribunal, Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.

3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

Service Appeal No.815/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Ikram Ullah S/O Rehmat Ali, Junior Clerk, Ex-FATA Tribunal Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

Service Appeal No.816/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Khair Ul Bashar S/O Sahib Din R/O PO Shah Qabool Awliya House No. 2938, Mohallah Dabgari Bazar Sakhwat Hussain Peshawar, Junior Clerk, Ex-FATA Tribunal Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

Service Appeal No.817/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Naveed Ahmad S/O Sami Ul Haq R/O Khat Gate, House No. 131, Mohallah Muhammad Khan Sadozai, Peshawar, Naib Qasid, Ex-FATA, Tribunal Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

Service Appeal No.818/2022

Date of presentation of Appeal.....20.05.2022
Date of Hearing.....03.03.2023
Date of Decision.....03.03.2023

Mr. Bahar Ali S/O Mehmood Khan R/O Guldara Chowk, PO Namak Mandi Mohallah Tariq Abad No.2, Kakshal Peshawar, Chowkidar, Ex-FATA Tribunal Peshawar.

.....***Appellant***

Versus

1. **The Chief Secretary,** Government Of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
2. **The Secretary** Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
3. **The Secretary Establishment Department,** Khyber Pakhtunkhwa, Peshawar.

Present:

Noor Muhammad Khattak,
Advocate.....For the appellants in Service Appeal No.774/2022, 775/2022, 776/2022, 777/2022, 778/2022, 779/2022, 780/2022, 781/2022, 782/2022, 783/2022, 784/2022, 802/2022,

Imran Khan,
Advocate.....For the appellants in Service appeal No.811/2022, 812/2022, 813/2022, 814/2022, 815/2022, 816/2022, 817/2022, 818/2022

Muhammad Riaz Khan Paindakhel,
Assistant Advocate General .....For respondents.

APPEALS UNDER SECTION 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERS DATED 17.01.2022, WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE IMPUGNED INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUARY PERIOD OF NINETY DAYS.

CONSOLIDATED JUDGMENT

KALIM ARSHAD KHAN CHAIRMAN: Through this single judgment all the above appeals are going to be decided as all are similar in nature and almost with the same contentions.

2. The appellants were appointed against different posts in the erstwhile FATA Tribunal and after merger of the Federally Administered Tribal Areas with the province of Khyber Pakhtunkhwa, the employees of the FATA Tribunal including the appellants were transferred to the Government of Khyber Pakhtunkhwa Home & Tribal Affairs Department and they were posted against different posts vide Notification No. E&A (HD)2-5/2021 dated 17.06.2021. Vide different covering letters all issued on 25.10.2021, the appellants were served with show cause notices by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, containing the following stereotyped allegations:

> *"That consequent upon the findings & recommendations of the Inquiry Committee it has been proved that the recruitment process for selection of 24 employees in EX-FATA Tribunal was unlawful and all 24 appointment orders were issued without l*
> *lawful Authority and liable to be cancelled"*

It was thus found by the Secretary to the Government of Khyber Pakhtunkhwa, Home Department, Peshawar, that the appellants had been guilty of **"Misconduct"** as specified in rule-3 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-2, Sub-Rule(I)(vi) "appointed in violation of law and rules".

It is pertinent to mention here that the Inquiry was dispensed with by the Secretary.

The appellants filed their respective replies and vide impugned orders, the Secretary to the Government of Khyber Pakhtunkhwa, Home

Department, Peshawar, removed all the appellants from service. The appellants filed departmental appeals, which were not responded within 90 days compelling the appellants to file these appeals.

3. On receipt of the appeals and their admission to full hearing, the respondents were summoned. Respondents put appearance and contested the appeals by filing written replies raising therein numerous legal and factual objections. The defense setup was a total denial of the claim of the appellants. It was mainly contended in the replies that the appellants were not aggrieved persons; that a full-fledged enquiry was conducted in the matter to check the credibility and authenticity of the process of advertisement and selection and it was held that the entire process of selection from top to bottom was "***coram non judice***"; that enquiry was conducted against Mr. Sajjad ur Rehman ex-Registrar, FATA Tribunal under rule 10 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 wherein the enquiry report held that the same selection committee was constituted without lawful authority; that the said committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates were/existed no attendance sheet, minutes of the meeting and even the appointment order were found ambiguous; that the said departmental committee unlawfully increased the number of posts from 23 to 24 illegally and issued 24 orders without any recommendations of the legitimate Departmental Selection Committee;

that the enquiry committee termed all the said appointments illegal and without lawful authority and recommended to cancel/withdraw.

4. We have heard learned counsel for the appellants and learned Assistant Advocate General for the respondents.

5. The Learned counsel for the appellants reiterated the facts and grounds detailed in the memo and grounds of the appeals while the learned Assistant Advocate General controverted the same by supporting the impugned orders.

6. It is undisputed that the appellants were appointed by the Ex-FATA Tribunal and they had been performing duties until their removal from service. The allegations against them are that the recruitment process was unlawful and the appointment orders were issued without lawful authority. Not a single document was produced by the respondents in support of these allegations before the Tribunal. All the appellants were the candidates in the process of selection initiated in response to the advertisement in two Urdu dailies "AAJ Peshawar" and "AAYEEN Peshawar". It is worth mentioning that all the appellantshad duly applied for the posts. The appointment orders show that each appointment had been made on the recommendation of the Departmental Selection Committee (DSC). The respondents though alleged that the DSC was unlawful but have not explained as to how that was so? The posts advertised were within the competence of the Registrar under rule 5 of the Federally Administered Tribal Areas Tribunal Administrative, Services, Financial, Account and Audit Rules,

2015. Therefore, the allegation that the appointment orders were issued by unlawful authority is also not finding favour with us. Regarding the bald allegation that the selection process was also unlawful, there is nothing more said as to how the process was unlawful except that the said committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates, there were/existed no attendance sheet, minutes of the meeting and even the appointment orders were found ambiguous. We find that there are no details of any such employees had been produced before us, nor any order of constitution of the selection committee alleged to be against the law was produced, similarly no details regarding number of posts so much so who was appointed against the 24thpost alleged to be in excess of the sanctioned posts, nothing is known nor anything in support of the above was placed on the record despite sufficient time given on the request of the Assistant Advocate General. Even today we waited for four long hours but nobody from respondent/department bothered to appear before the Tribunal. It is also undisputed that the appellants were not associated with the enquiry proceedings on the basis of which they were penalized. In the show cause notices, the appellants were also said to be guilty under rule 2, Sub-Rule(I)(vi) of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, the said provision is reproduced as under:

> *"Rule 2 sub-rule (I) clause (vi) "making appointment or promotion or having been appointed or promoted on extraneous grounds in violation of any law or rules".*

7. Nothing has been said or explained in the replies of the respondents or during the arguments regarding the alleged violation of law and rules in the appointments of the appellants. It is also to be observed that if at all there was any illegality, irregularity or wrongdoing found in the appointments of the appellants, which have nowhere been explained nor, as aforesaid, any document produced in that regard, the appointment orders of the appellants have not been cancelled rather the appellants were removed from service.

8. The Registrar (Sajjad-ur-Rehman), of the EX-FATA Tribunal, who had made the appointments of the appellants as competent authority under rule 5 of the Federally Administered Tribal Areas Tribunal Administrative, Services, Financial, Account and Audit Rules, 2015, was removed from service on the basis of the said enquiry. He filed Service Appeal No.2770/2021 before this Tribunal, which was partially accepted on 01.02.2022 and the major penalty of removal from service awarded to him was converted into minor penalty of stoppage of increment for one year. We deem appropriate to reproduce paragraphs 5, 6 & 7 of the said judgment.

> *"5. Record reveals that the appellant while serving as Registrar Ex-FATA Tribunal was proceeded against on the charges of advertisement of 23 number posts without approval of the competent authority and subsequent selection of candidates in an unlawful manner. Record would suggest that the Ex-FATA Tribunal had its own rules specifically made for Ex-FATA Tribunal, i.e. FATA TRIBUNAL ADMINISTRATIVE, SERVICES, FINANCIAL, ACCOUNTS AND AUDIT RULES, 2015, where appointment authority for making appointments in Ex-FATA Tribunal from BPS-1 to*

14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal.

"6. On the other hand, the inquiry report placed on record would suggest that before merger of Ex-FATA with the provincial government, Additional Chief Secretary FATA was the appointment authority in respect of Ex-FATA Tribunal and after merger, Home Secretary was the appointing authority for Ex-FATA Tribunal, but such stance of the inquiry officer is neither supported by any documentary proof nor anything is available on record to substantiate the stance of the inquiry officer. The inquiry officer only supported his stance with the contention that earlier process of recruitment was started in April 2015 by the ACS FATA, which could not be completed due to reckless approach of the FATA Secretariat towards the issue. In view of the situation and in presence of the Tribunal Rules, 2015, the Chairman and Registrar were the competent authority for filling in the vacant posts in Ex-FATA Tribunal, hence the first and main allegation regarding appointments made without approval for the competent authority has vanished away and it can be safely inferred that neither ACS FATA nor Home Secretary were competent authority for filling in vacant posts in Ex-FATA Tribunal was either ACS FATA or Home Secretary, but they were unable to produce such documentary proof. The inquiry officer mainly focused on the recruitment process and did not bother to prove that who was appointment authority for Ex-FATA Tribunal, rather the inquiry officer relied upon the practice in vogue in Ex-FATA Secretariat. Subsequent allegations leveled against the appellant are offshoot of the first allegation and once the first allegation was not proved, the subsequent allegation does not hold ground.

"7. We have observed certain irregularities in the recruitment process, which were not so grave to propose major penalty of dismissal from service. Careless portrayed by the appellant was not intentional, hence cannot be considered as an act of negligence which might not strictly fall within the ambit of misconduct but it was only a ground based on which the appellant was awarded major punishment. Element of bad faith and willfulness might bring an act of negligence within the purview of misconduct but lack of proper care and

> *vigilance might not always be willful to make the same as a case of grave negligence inviting severe punishment. Philosophy of punishment was based on the concept of retribution, which might be either through the method of deterrence or reformation. Reliance is placed on 2006 SCMR 60."*

In the judgment it was found that there were some irregularities in the appointments made by the Registrar, that were not so grave rather lack of proper care and vigilance was there which might not be willful to make the same as a case of grave negligence inviting severe punishment. It is nowhere alleged by the respondents in the show cause notices, impugned orders or even in the replies that the appellants were either not qualified or were ineligible for the post against which they had been appointed. There might be irregularities in the process, though not brought on surface by the respondents in any shape, yet for the said alleged irregularities, the appellants could not be made to suffer. Reliance is placed on1996 SCMR 413 titled "*Secretary to Government of NWFP Zakat/Social Welfare Department Peshawar and another versus Sadullah Khan*", wherein the august Supreme Court of Pakistan held as under:

> *"6. It is disturbing to note that in this case petitioner No.2 had himself been guilty of making irregular appointment on what has been described "purely temporary basis". The petitioners have now turned around and terminated his services due to irregularity and violation of rule 10(2) ibid. The premise, to say the least, is utterly untenable. The case of the petitioners was not that the respondent lacked requisite qualification. The petitioners themselves appointed him on temporary basis in violation of the rules for reasons best known to them. Now they cannot be allowed to take benefit of their lapses in order to terminate*

> *the services of the respondent merely, because they have themselves committed irregularity in violating the procedure governing the, appointment. In the peculiar circumstances of the case, the learned Tribunal is not shown to have committed any illegality or irregularity in re instating the respondent.*"

9. Wisdom is also derived from 2009 SCMR 412 titled *"Faud Asadullah Khan versus Federation of Pakistan through Secretary Establishment and others*", wherein the august Court found that:

> *"8. In the present case, petitioner was never promoted but was directly appointed as Director (B-19) after fulfilling the prescribed procedure, therefore, petitioner's reversion to the post of Deputy Director (B-18) is not sustainable. Learned Tribunal dismissed the appeal of petitioner on the ground that his appointment/selection as Director (B-19) was made with legal/procedural infirmities of substantial nature. While mentioning procedural infirmities in petitioner's appointment, learned Tribunal has nowhere pointed out that petitioner was, in any way, at fault, or involved in getting the said appointment or was promoted as Director (B-19). The reversion has been made only after the change in the Government and the departmental head. Prior to it, there is no material on record to substantiate that petitioner was lacking any qualification, experience or was found inefficient or unsuitable. Even in the summary moved by the incumbent Director-General of respondent Bureau he had nowhere mentioned that petitioner was inefficient or unsuitable to the post of Director (B-19) or lacked in qualification, and experience, except pointing out the departmental lapses in said appointment.*
>
> *9. Admittedly, rules for appointment to the post of Director (B-19) in the respondent Bureau were duly approved by the competent authority; petitioner was called for interview and was selected on the recommendation of Selection Board, which recommendation was approved by the competent authority.*
>
> *10. In such-like a situation this Court in the case of*

Federation of Pakistan through Secretary, Establishment Division Islamabad and another v. Gohar Riaz 2004 SCMR 1662 with specific reference of Secretary to the Government of N.-W.F. Zakat/Social Welfare Department Peshawar and another v. Saadulalh Khan 1996 SCMR 413 and Water and Power Development Authority through Chairman WAPDA House, Lahore v. Abbas Ali Malano and another 2004 SCMR 630 held:---

"Even otherwise respondent (employee) could not be punished for any action or omission of petitioners (department). They cannot be allowed to take benefits of their lapses in order to terminate the service of respondent merely because they had themselves committed irregularity by violating the procedure governing the appointment. On this aspect, it would be relevant to refer the case of Secretary to Government of N.-W.F.P. Zakat/Ushr, Social Welfare Department 1996 SCMR 413 wherein this Court has candidly held that department having itself appointed civil servant on temporary basis in violation of rules could not be allowed to take benefit of its lapses in order to terminate services of civil servants merely because it had itself committed irregularity in violating procedure governing such appointment. Similarly in the case of Water Development Authority referred (supra), it has been held by this Court that where authority itself was responsible for making, such appointment, but subsequently took a turn and terminated their services on ground of same having been made in violation of the rules, this Court did not appreciate such conduct, particularly when the appointees fulfilled requisite qualifications."

11. In Muhammad Zahid Iqbal and others v. D.E.O. Mardan and others 2006 SCMR 285 this Court observed that "principle in nutshell and consistently declared by this Court is that once the appointees are qualified to be appointed their services cannot subsequently be terminated on the basis of lapses and irregularities committed by the department itself. Such laxities and irregularities committed by the Government can be ignored by the Courts only, when the appointees lacked the basic eligibilities otherwise not".

12. On numerous occasions this Court has held that for the irregularities committed by the department itself qua the appointments of the candidate, the appointees cannot be condemned subsequently with the change of Heads of the Department or at other level. Government is an institution in perpetuity and its orders cannot be reversed simply because the Heads have changed. Such act of the departmental authority is all the more unjustified when the candidate is otherwise fully eligible and qualified to hold the job. Abdul Salim v. Government of N.-W.F.P. through Secretary, Department of Education, Secondary, N.-W.F.P. Peshawar and others 2007 PLC (C.S.) 179.

13. It is well-settled principle of law that in case of awarding major penalty, a proper inquiry is to be conducted in accordance with law, where a full opportunity of defence is to be provided to the delinquent officer. Efficiency and Discipline Rules, 1973 clearly stipulate that in case of charge of misconduct, a full-fledged inquiry is to be conducted. This Court in the case of Pakistan International Airlines Corporation through Managing Director, PIAC Head Office, Karachi Airport, Karachi v. Ms. Shaista Naheed 2004 SCMR 316 has held that "in case of award of major penalty, a full-fledged inquiry is to be conducted in terms of Rule 5 of E&D Rules, 1973 and an opportunity of defence and personal hearing is to be provided". Specific reference is made to latest decisions of this Court in cases of Secretary, Kashmir Affairs and Northern Areas Division, Islamabad v. Saeed Akhtar and another PLD 2008 SC 392 and Fazal Ahmad Naseem Gondal v. Registrar, Lahore High Court 2008 SCMR 114.

14. In the facts and circumstances, we find that in this case, neither petitioner was found to be lacking in qualification, experience or in any ineligibility in any manner, nor any fault has been attributed to petitioner, therefore, he cannot be reverted from the post of Director (B-19). Act of sending summary by the Establishment Secretary to the Prime Minister was not in accordance with Rule 6(2) of the Civil Servants (Appointment,

Promotion and Transfer) Rules, 1973 as the Establishment Secretary was himself the appointing authority. The departmental authorities at the time of appointment of the petitioner as Director (B-19) did not commit any irregularity or illegality as has been affirmed by the Establishment Secretary in the summary to the Prime Minister. The power vested in the competent authority should have been exercised by the competent authority itself, fairly and justly. Decision has to be made in the public interest based on policy. It must be exercised by the proper authority and not by some agent or delegatee. It must be exercised without restraint as the public interest may, from time to time require. It must not be fettered or hampered by contracts or other bargains or by self-imposed rules of thumb. So a distinction must be made between following a consistent policy and blindly applying some rigid rule. Secondly discretion must not be abused. In the case of Zahid Akhtar v. Government of Punjab PLD 1995 SC 530 this Court observed that "we need not stress here that a tamed and subservient bureaucracy can neither be helpful to government nor it is expected to inspire public confidence in administration. Good governance is largely dependent on an upright, honest and strong bureaucracy. Therefore, mere submission to the will of superior is not a commendable trait of a bureaucrat. It hardly need to be mention that a Government servant is expected to comply only those orders/directions of superior which are legal and within his competence".

10. In a recent judgment in the case titled *"Inspector General of Police, Quetta and another versus Fida Muhammad and others"* reported as 2022 SCMR 1583, the honourable Court observed that:

"11. The doctrine of vested right upholds and preserves that once a right is coined in one locale, its existence should be recognized everywhere and claims based on vested rights are enforceable under the law for its protection. A vested right by and large is a right that is unqualifiedly secured and does not rest on any particular event or set of circumstances. In fact, it is a right independent of any contingency or

eventuality which may arise from a contract, statute or by operation of law. The doctrine of locus poenitentiae sheds light on the power of receding till a decisive step is taken but it is not a principle of law that an order once passed becomes irrevocable and a past and closed transaction. If the order is illegal then perpetual rights cannot be gained on the basis of such an illegal order but in this case, nothing was articulated to allege that the respondents by hook and crook managed their appointments or committed any misrepresentation or fraud or their appointments were made on political consideration or motivation or they were not eligible or not local residents of the district advertised for inviting applications for job. On the contrary, their cases were properly considered and after burdensome exercise, their names were recommended by the Departmental Selection Committee, hence the appointment orders could not be withdrawn or rescinded once it had taken legal effect and created certain rights in favour of the respondents.

12. The learned Additional Advocate General failed to convince us that if the appointments were made on the recommendations of Departmental Selection Committee then how the respondents can be held responsible or accountable. Neither any action was shown to have been taken against any member of the Departmental Selection Committee, nor against the person who signed and issued the appointment letters on approval of the competent authority. As a matter of fact, some strenuous action should have been taken against such persons first who allegedly violated the rules rather than accusing or blaming the low paid poor employees of downtrodden areas who were appointed after due process in BPS-1 for their livelihood and to support their families. It is really a sorry state of affairs and plight that no action was taken against the top brass who was engaged in the recruitment process but the poor respondents were made the scapegoats. We have already held that the respondents were appointed after fulfilling codal formalities which created vested rights in their favour that could not have

been withdrawn or cancelled in a perfunctory manner on mere presupposition and or conjecture which is clearly hit by the doctrine of locus poenitentiae that is well acknowledged and embedded in our judicial system."

11. For what has been discussed above, we hold that the appellants have not been treated in accordance with law and thus the impugned orders are not sustainable. On acceptance of all these appeals we set aside the impugned orders and direct reinstatement of all the appellants with back benefits. Costs shall follow the event. Consign.

12. ***Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 3rd day of March, 2023.***

KALIM ARSHAD KHAN
Chairman

ROZINA REHMAN
Member (Judicial)

ORDER

3rd Mar, 2023

1. Appellant alongwith his counsel present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for respondents present.

2. Vide our detailed judgement of today placed on file, we hold that the appellants have not been treated in accordance with law and thus the impugned orders are not sustainable. On acceptance of all these appeals we set aside the impugned orders and direct reinstatement of all the appellants with back benefits. Costs shall follow the event. Consign.

3. *Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal on this 3rd day of March, 2023.*

(Kalim Arshad Khan)
Chairman

(Rozina Rehman)
Member(Judicial)

16th Feb, 2023

Learned counsel for the appellant present. Mr. Umair Azam Khan, Additional Advocate General for the respondents present.

Although similar matters are fixed for tomorrow, therefore, this appeal is also adjourned for tomorrow i.e 17.02.2023 before the D.B.

(Salah-ud-Din)
Member (J)

(Kalim Arshad Khan)
Chairman

17.02.2023

Learned counsel for the appellant present. Mr. Muhammad Yousaf, Section Officer alongwith Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant requested that similar nature Service Appeal bearing No. 2567/2021 titled Naveed-ur-Rehman Afridi Versus Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and 02 others", has been adjourned to 03.03.2023 for arguments, therefore, the appeal in hand may also be fixed on the said date. Adjourned. To come up for arguments on 03.03.2023 before the D.B.

(Fareeha Paul)
Member (E)

(Salah-ud-Din)
Member (J)