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 order of today placed in service appeal No. 774/2022 titled "Reedad Khan-vs-The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar and others" (copy placed in this file), this appeal is also accepted. Costs shall follow the events. 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)

21st Nov, 2022 Lawyers on general strike today.

To come up for arguments on 05.01.2023 before D.B. Office is directed to notify the next date on the notice board as well as the website of the Tribunal.

(Fareeha Paul)
Member (E)

(Kalim Arshad khan)
Chairman

05.01.2023 Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl. AG for the respondents present.

Learned counsel for the appellant requested for adjournment on the ground that he has not made preparation for arguments. Adjourned. To come up for arguments on 16.02.2023 before D.B.

(Mian Muhammad)
Member (E)

(Kalim Arshad Khan)
Chairman

28.10.2022 Learned counsel for the appellant present. Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Learned counsel for the appellant stated that similar nature service Appeal bearing No. 2567/2021 titled "Naveed-ur-Rehman Versus Government of Khyber Pakhtunkhwa etc," are fixed for arguments on 08.11.2022, therefore, the appeal in hand may also be fixed on the said date. Adjourned. To come up for arguments on 08.11.2022 before the D.B.

(Mian Muhammad)
Member (E)

(Salah-Ud-Din)
Member (J)

08.11.2022 Counsel for the appellant present.

Asif Masood Ali Shah learned Deputy District Attorney for the respondents present.

Learned counsel requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 21.11.2022 before D.B.

(Fareeha Paul)
Member (E)

(Rozina Rehman)
Member (J)

26th July, 2022

Learned counsel for the appellant present. Mr. Muhammad Adeel Butt, Addl: AG for respondents present.

Written reply not submitted. Learned AAG seeks time to contact the respondents for submission of written reply/comments on the next date. To come up for written reply/comments on 27.09.2022 before S.B.

(Kalim Arshad Khan)
Chairman

27.09.2022

Clerk of learned counsel for the appellant present. Mr. Naseer-Ud-Din Shah, Assistant Advocate General for the respondents present.

Reply/comments on behalf of respondents have already been submitted through office which are placed on file. Copy of the same is handed over to clerk of learned counsel for the appellant. Adjourned. To come up for rejoinder, if any, and arguments before the D.B on 28.10.2022.

(Mian Muhammad)
Member (E)

31.05.2022 Mr. Zartaj Anwar Advocate for the appellant present. Preliminary arguments heard.

Learned counsel for the appellant contended that the appellant is aggrieved of the impugned order dated 17.01.2022 whereby he was removed from service against which, the appellant preferred departmental appeal on 16.02.2022. His departmental appeal was not responded within the statutory period hence the instant service appeal was filed in the Service Tribunal on 20.05.2022. Learned counsel for the appellant further contended that before issuance of the impugned order, no regular enquiry has been conducted. The impugned order dated 17.01.2022 issued without having fulfilled the codal formalities as per requirement and provisions of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 is not only illegal but also violative of plethora of judgements of august Supreme Court of Pakistan as well as Article 10-A of the Constitution.

Rs-500/-
Appellant Deposited
Security & Process Fee
10/6/22

Points raised need consideration. The appeal is admitted to regular hearing, subject to all just and legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments. To come up for reply/comments before the S.B on 26.07.2022.

(Mian Muhammad)
Member (E)

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 817/2022

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	20/05/2022	The appeal of Mr. Naveed Ahmad presented today by Mr. Zartaj Anwar Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR
2-	23/5/22	This case is entrusted to Single Bench at Peshawar for preliminary hearing to be put there on 31-5-22. Notices be issued to appellant and his counsel for the date fixed. CHAIRMAN

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CHECK LIST

Case Title: Naveed Ahmad vs Govt of KPK & others

S.#	Contents	Yes	No
01	This petition has been presented by: **ZARTAJ ANWAR ADVOCATE**	✓	
02	Whether Counsel / Petitioner / Respondent / Deponent have signed the requisite documents?	✓	
03	Whether the enactment under which the case/petition is filed mentioned?	✓	
04	Whether the enactment under which the case/petition is filed is correct?	✓	
05	Whether affidavit is appended?	✓	
06	Whether affidavit is duly attested by competent oath commissioner?		✓
07	Whether petition/annexure are properly paged?	✓	
08	Whether annexures are certified?	✓	
09	Whether certificate regarding filling any earlier appeal/petition on the subject, furnished?	✓	
10	Whether annexures are legible?	✓	
11	Whether annexures are attested?	✓	
12	Whether Special Power of Attorney filed?	✓	
13	Whether Special Power of Attorney attested?	✓	
14	Whether copy of application is delivered to A.G/D.A.G?	✓	
15	Whether Appeal, Revision application is within time?	✓	
16	Whether value for the purpose of Court fee and jurisdiction given in the relevant column of the opening sheet is correct?	✓	
17	Whether Power of Attorney of the Counsel engaged is attested and signed by all petitioners/appellants/respondents?	✓	
18	Whether complete spare copy is filed in separate file cover?	✓	
19	Whether numbers of referred cases given/ are correct?	✓	
20	Whether petition being sent by post?	✓	
21	Whether appeal/petition contains cuttings/overwriting?		✓
22	Whether appeal/revision/ writ petition is competent?	✓	
23	Whether list of books has been provided at the end of the petition?	✓	
24	Whether case relate to this Court?	✓	
25	Whether case relate to this Bench?	✓	

26	Whether petition drafted by a competent person?	✓	
27	Whether name of Jail in which appellant/petitioner/respondent is confined given?		✓
28	Whether copies of annexures are readable/clear?	✓	
29	Whether Court Fee stamps affixed?	✓	
30	Whether Court Fee stamps annexed are sufficient?	✓	
31	Whether certified copies of impugned order/decree sheets before District Judge have been filed?		✓
32	Whether in view of Order 43 Rule 3 CPC/Rule 2(3) Chapter 4-J, Vol: V of High Court Rules & Orders, notice along with copy of appeal/petition and annexures has been sent to respondents?		✓
33	Whether Judicial Officer whose orders are challenged mentioned at the bottom of the panel of respondents?		✓
34	Whether index filed?	✓	
35	Whether index is correct?	✓	
36	Whether copies of comments/reply/rejoinder provided to opposite party?		✓
37	Whether addresses of parties given are complete?	✓	
38	Whether addresses of parties are complete?	✓	
39	Whether list of L.Rs of petitioner filed?		✓
40	Whether copy of list of L.Rs of respondents as filed before Courts below or, if not, a certificate to this effect attached?		✓
41	Whether opening sheet filed?	✓	
42	Whether opening sheet is correct / complete?	✓	
43	Whether approved file cover used?	✓	
44	Whether separate application filed for each prayer?		✓
45	Whether separate request has been made for interim relief in writ petition?	✓	
46	Whether security of Rs. 10,000/- deposited with review petition?		✓
47	Whether review petition filed and certified by the Advocate who had argued the case resulting into order review of which is sought?		✓
48	Whether purpose of the document filed explained?	✓	
49	Whether respondents sued by name in the CoC?		✓

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name: ZARTAJ ANWAR

Signature: _____

Dated: 19.05.2022

BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No. 817/2022

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

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar & Others.

(Respondents)

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S. NO	*Description of documents*	*Annexure*	*Page No*
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2	Copy of the advertisement	A	7
3	Copy of the appointment order	B	8
4	Copy of the show cause	C	9-10
5	Copy of the reply	D	11-14
6	Copy of the impugned order dated 17.01.2022	E	15
7	Copy of the departmental appeal	F	16-21
8	Copy of the appeal and judgment	G	22-27
9	[illegible]		
10	Vakalatnama		28

Appellant

Through

ZARTAJ ANWAR
Advocate High Court
Office FR , 3 Forth Floor
Bilour Plaza Peshawar Cantt.
Cell: 0331-9399185

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Appeal No. 817 /2022

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. Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs department Civil Secretariat Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat Peshawar

(Respondents)

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Order dated 17.01.2022 whereby the appellant has been awarded the major penalty of removal from service. and against which the departmental appeal dated 16.02.2022 was filed before the competent authority which is not yet responded even after the laps of statutory period of 90 days.

Prayer in Appeal: -

Filed to-day
Registrar
20/5/22

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 17.01.2022, MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS.

Respectfully Submitted:

1. That the appellant was initially appointed and serving the department in a capacity of Daily Wages, in the meanwhile various posts were advertised including the post of the appellant i.e. Naid Qasid. ***(Copy of the advertisement is attached as annexure A)***.

2. That the appellant having the requites qualification and fulfilling the eligibility criteria duly applied for the post of Chowkidar by fulfilling all the legal and codal formalities in the prescribed manner.

3. That the competent authority/Departmental Selection Committee duly constituted for the purpose of recruitment considered the appellant for the post of Chowkidar and when found eligible for the post recommended for appointment along with other 23 candidates.

4. That the competent authority on the recommendation of selection committee issued the appointment orders of 23 candidates for the post of Chowkidar in which the appellant was also appointed. ***(Copy of the appointment order is attached as annexure B).***

5. That the appellant takeover the charge of the post by submitting his arrival report along with medical fitness certificate and start performing his duties to the entire satisfactions of his superiors without any complaint whatsoever regarding his performance.

6. That while serving in the said capacity the appellant was served with a Show Cause Notice dated 25.10.2021, containing certain false and baseless 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 the 24 appointment orders were issued without authority and liable to be cancelled"*
> ***(Copy of the show cause is attached as annexure C)***

7. That the appellant has submitted the reply to show cause within time and denied all the allegation leveled against the appellant.***(Copy of the reply is attached as annexure D)***

8. That astonishingly the appellant was awarded major penalty "Removal from Service" vide office order dated 17.01.2022, with taking into consideration the reply of the show cause in whi appellant denied all the allegations leveled against the appellant ***of the impugned order dated 17.01.2022 is attached as annexur***

9. That the feeling aggrieved from the order dated 17.01.2 appellant filed a departmental appeal before the competent au 16.02.2022, which has not yet been responded by the respon after the laps of 90 days of statutory period. ***(Copy of the d appeal is attached as annexure F).***

10. That the appointment of the appellant in pursuance of the advertisement made by the respondent department also in question the authority i.e. Registrar of the Ex-FATA Tribunal that he cannot make appointment or not competent for such appointments conducted in inquiry and issued the removal order of the Registrar namely Sajjad ur Rehman, being aggrieved from the allegation or in questioning the authority under which he appointed the present appellant along with others and also alleged irregularities while appointing them, approached to the this Honourable Tribunal in Appeal which was allowed and declared the Registrar namely sajjad ur Rehman is competent to made such appointments and ordered his reinstatement into service but with minor penalty for the irregularities if so committed ***(Copy of the appeal and judgment is attached as annexure G).***

11. That being aggrieved from the illegal order dated 17.01.2022 the appellant has filed this appeal on the inter alia on following grounds

GROUNDS OF SERVICE APPEAL

A. That the appellant has not been treated in accordance with law hence the rights secured and guaranteed under the law and constitution is badly violated.

B. That no proper procedure has been followed before awarding the major penalty of Removal from service, the whole proceedings are thus nullity in the eyes of law.

C. That the appointment of the appellant in pursuance of the advertisement made by the respondent department also in question the authority i.e. Registrar of the Ex-FATA Tribunal that he cannot make appointment or not competent for such appointments conducted in inquiry and issued the removal order of the Registrar namely Sajjad ur Rehman, being aggrieved from the allegation or in questioning the authority under which he appointed the present appellant along with others and also alleged irregularities while appointing them, approached to the this Honourable Tribunal in Appeal which was allowed and declared the Registrar namely sajjad ur Rehman is competent to made such appointments and ordered his reinstatement into service but with minor penalty for the irregularities if so committed

D. That the appellant has not done any act or omission which can be termed as mis-conduct, thus the appellant cannot be punished for the irregularities if so occurred in the recruitment process.

E. That no proper procedure has been followed before awarding the major penalty of Removal from service to the appellant. No charge sheet, no statement of allegation and without any proper inquiry, the appellant was awarded major penalty, thus the whole proceedings are defective in the eyes of law.

F. That the appellant has not been given proper opportunity of personal hearing before awarding the penalty, hence the appellant have been condemned unheard.

G. That the appellant was candidate along with other candidates who applied for the post in question but astonishingly with ulterior motive the appellant was in the alleged show cause made as member of the scrutiny committee.

H. That the appellant was neither involved in corruption, nor embezzlement nor immoral turpitude. Therefore, such harsh and extreme penalty of Removal from service of appellant was not commensurate with the nature of his co-called misconduct to deprive his family from livelihood.

I. That the competent authority has passed the impugned order against the law and proper procedure provided under the law was not followed by the respondents before awarding the major penalty of Removal from service.

J. That the charges were denied by the appellant had never admitted, nor there sufficient evidence available to held the appellant guilty of the charges.

K. That the superior courts have a number of reported judgments held that in case of awarding major penalty of Removal from service regular procedure of holding inquiry cannot be dispensed with that too when the charges are denied by the employee.

L. That the appellant has never committed any act or omissi which could be termed as misconduct the charges leveled agai the appellant are false and baseless besides the same are ne probed nor proved albeit the appellant has illegally been rem from service.

M. That the appellant at his credit a long unblemished and spotless service career, the penalty imposed upon the appellant is too harsh and is liable to be set aside.

N. That the appellant is jobless since his Removal from service.

O. That the appellant also seeks permission of this honorable Tribunal to rely on additional grounds at the time of hearing of the appeal.

It is, therefore, humbly prayed that **on acceptance of this appeal the order dated 17.01.2022, may please be set aside and the appellant may kindly be reinstated into service with all back benefits.**

Appellant

Through

ZARTAJ ANWAR
Advocate Peshawar

&

IMRAN KHAN
Advocate Peshawar

CERTIFICATE:

It is certified that no such like Service Appeal has earlier been filed before this Hon'ble Tribunal in the subject matter.

DEPONENT

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BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL PESHAWAR

Appeal No._____/2022

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

Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar & Others.

(Respondents)

AFFIDAVIT

I, 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, do hereby solemnly affirm and declare on oath that the contents of the above noted appeal are true and correct to the best of my knowledge and belief and that nothing has been kept back or concealed from this Honourable Tribunal.

20-5-22

KHALID MAHMOOD ADVOCATE
ATTESTED
NOTARY PUBLIC
PESHAWAR HIGH COURT

DEPONENT

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Annexure A

"JOB OPPORTUNITIES"

Applications are invited from highly motivated candidates having Domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.

.No	Name of Post	BPS	No's of Post	Age	Qualification
1	Assistant Moharar/	14	04	18-32	BA/BSc/B.Com & Equivalent w 06 years experience.
2	Key Punch Operator	12	03	18-32	BA/BSc/B.Com & Equivalent
3	Stenographer	12	01	18-32	FA/FSc with Shorthand & typin Speed up to 40 WPM
4	Junior Clerk	07	04	18-32	FA/FSc or Equivalent with Typing Speed up to 40 WPM
5	Driver	04	04	18-40	Middle pass having "LTV" Drivin License
6	Naib Qasid	01	04	18-40	Middle Pass
7	Chowkidar	01	03	18-40	-

Term & Conditions:-

. Age relaxation in deserving cases can be considered as per Government rules. 2. Only shortlisted candidates will be called for test/interview. 3. No TA/DA will be admissible for test/interview. 4. Application form alongwith attested copies of Testimonials, Experience Certificates, CNIC, Domicile Certificate and a recent photograph should reach on PO Box No. 131 within 15 days of advertisement. 5. Incomplete or applications received after closing date will not be entertained. 6. Government employee should apply through proper channel. 7. The competent authority reserves the right to change the terms & condition, not to fill, increase/decrease vacancies or cancel recruitment process without any reason. 8. Errors/omissions are subject to rectification.

Registrar
FATA Tribunal

ATTESTED

8 Annexure B

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OFFICE OF THE
REGISTRAR FATA TRIBUNAL,
PESHAWAR

ORDER

No. R/11/2018-19/1108 dated: 08.03.2019 On Recommendation of the Departmental Selection Committee, the Competent Authority is pleased to appoint **Mr. Naveed Ahmad S/o Sami ul Haq** against the vacant post of Naib Qasid BPS-01 (9130-290-17830) in FATA Tribunal at Peshawar under rule 10 sub rule 2 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989 on the following terms and conditions:

Terms & conditions;

1. He will get pay at the minimum of BPS-01 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by Civil Servant Act 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards General Provident Fund (GPF) along with the contributions made by Govt: to his account in the said fund, in prescribed manner.
3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days pay will be forfeited.
4. He shall produce medical fitness certificate from Medical Superintendent/ Civil Surgeon before joining duties as required under the rule.
5. He has to join duties at his own expenses.
6. If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

REGISTRAR
FATA TRIBUNAL

Copy to;

01. **The Accountant General Pakistan Revenues Sub Office, Peshawar.**
02. **Ps to ACS FATA, Peshawar.**
03. **PS to Secretary Law & Order FATA, Peshawar.**
04. **PS to Secretary Finance FATA, Peshawar.**
05. **Personal File.**
06. **Official Concerned.**

REGISTRAR
FATA TRIBUNAL

ATTESTED

9 Annexure C

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
KHYBER ROAD PESHAWAR

HD/B&A/FATA Tribunal/55/2021/14184-89

Dated: 25-10-2021

To:

Mr. Naveed Ahmad
Naib Qasid (BPS-03),
Ex-FATA Tribunal.

Subject: **SHOW CAUSE NOTICE.**

I am directed to refer to the subject noted above and to enclose herewith Show Cause Notice (in original) duly signed by the Competent Authority for your compliance within stipulated time period and further necessary action.

Section Officer (B & A)

Encl: As above

Copy to:

1. PS to Secretary Home & TAs Department Khyber Pakhtunkhwa.
2. PS to Special Secretary Home & TAs Department Khyber Pakhtunkhwa.
3. PS to Additional Secretary (L & O) Home & TAs Department NMAs.
4. PA to Deputy Secretary (L & O) Home & TAs Department NMAs.
5. Section Officer (E-II) Government of Khyber Pakhtunkhwa Establishment Department with reference to his letter No. SOE-II(ED)2(9)2010 dated: 13.09.2021.

Section Officer (B & A)

ATTESTED

SHOW CAUSE NOTICE

I **Mr. Ikram Ullah Khan** Deputy Secretary (Law & Order) Home & Tribal Affairs Department as Competent Authority, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve upon you, Mr. Naveed Ahmad, Naib Qasid employees of Ex-FATA Tribunal as follows:-

> **"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 lawful Authority and liable to be cancelled".**

I am, therefore, satisfied that you have been found guilty of **"Misconduct"** as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-2, Sub-Rule (I) (vi) "appointed in violation of law and rules".

2. To, dispense with the Inquiry and serve you with a show cause notice under Rule-7 of the ibid Rules.

3. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the following penalty under the Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule, 2011:-

i. Removal from service

4. you are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven days or not more than of fifteen days of this delivery, it shall be presumed that you have no defense to put in, and in that case ex-parte action shall be taken against you.

(IKRAM ULLAH KHAN)
HOME SECRETARY
(Competent Authority)

ATTESTED

Mr. Naveed Ahmad,
Naib Qasid
Ex-FATA Tribunal

11 ANNEX. D

To,

Home Secretary,
Khyber Pakhtunkhwa,
Peshawar,

Subject: **Reply to the show cause notice dated 25.10.2021.**

Respected Sir,

I very humbly submit the following few lines for your kind and sympathetic consideration:

1. That 23 posts including the post of the undersigned i.e. Naib Qasid, were advertised in daily AJJ and Aeen newspaper dated 09.02.2019 for open competition, being fit and eligible in all respect the undersigned applied for the post of Naib Qasid.

2. That after gone all the rigors and selection process i.e interview, the undersigned was duly recommended for the post of Naib Qasid and was appointed on the said post vide office order dated 08.03.2019.

3. That since my appointment I performed my duties with great zeal and devotion to the entire satisfaction of my superiors without any complaint whatsoever regarding my performance.

4. That while serving in the said capacity, the undersigned received a show Cause Notice dated 25.10.2021 by leveling false and baseless allegation which was never committed by the undersigned by any malafide intention nor any connection or relation with authority issued my appointment order and even have no relation with the recruitment process, the allegations are the following

"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 lawful authority and liable to be cancelled'

I am therefore satisfied that you have been found guilty of **"Misconduct"** as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.

ATTESTED

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5. That proper procedure was adopted in the process of recruitment i.e. advertisement, test and interview and the undersigned was appointed on the post after gone all the rigors and selection process provided under the law.

6. That the allegation so leveled against me regarding the misconduct is false and baseless in have never committed any act or omission which could be term as misconduct and the allegations leveled against me does not come in the orbit of misconduct.

7. That there is nothing on the part of undersigned which term as misconduct as undersigned applied for the advertised post while having all the request eligibility criteria and also compete along with all other candidates who applied for the post and when found fit and eligible for the post declare recommended for the post of Naib Qasid

8. That the members of Tribunal attended the test and interview on the said date and all the committee members were agreed principally on the selection and recommendation of the selection committee and on such principle on the same date issued the appointment orders and the copy of the recommendation of selection committee was handed over to section officer and further process, and on the same issued when the inquiry officer called upon the selected candidates they given on Oath the statement that they duly appeared before the selection committee.

9. That the so-called inquiry committee called upon all the selected candidate and given Oath regarding the favoritism an nepotism if so made in favor of any of the candidate which they duly replied on oath that no such act of favoritism and nepotism were exist in the present selection process, furthermore none of the member of the selection committee were duly inquired in the matter as all the process was taken place in their presence nor any sort of evidence was taken on record which can proof any of the allegation.

ATTESTED

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10. That the inquiry committee did not associate me with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine any of the evidence which show my involvement in any malafide action or my eligibility for the post in question.

11. That the undersigned was not even served with a charge sheet and statement of allegation, neither any fact finding nor regular inquiry was conducting which can show any sort of involvement of the undersigned in the requirement process, which is mandatory provision under the law.

12. That the undersigned is a responsible, cautious citizen and cannot even think of the display of the charges leveled against me.

13. That the inquiry committee did not associate me properly with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine those who may have deposed anything against me during the inquiry.

14. That the undersigned has never committed any act or omission which could be termed as misconduct, I duly performed my duties as assigned with full devotion, zeal and loyalty albeit I have been roped in the instant false and baseless charges.

15. That the charges leveled against me were neither proved during the inquiry proceedings, nor any independent and convincing proof/ evidence has been brought against me in the inquiry that could even remotely associate me with the charges, as such the charges remained unproved during the inquiry and the inquiry officer has thus rendered his findings on mere surmises and conjunctures regarding charges, further to add that the so called inquiry was conducted in sajjad ur Rehman registrar case.

16. That the undersigned has at his credit an unblemished and spotless service career, during entire service career, I have never given any chance of complaint whatsoever regarding my performance. I always preferred the interests of the department over and above my personal interests. The proposed penalty if imposed upon me, it would be too harsh and would stigmatized the bright and spotless service record of the undersigned.

ATTESTED

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17. That I also desire to be heard in person.

It is, therefore, humbly prayed that on the acceptance of this reply the subject Show cause may kindly be dropped and I may be exonerated of the charges leveled against me.

Yours Faithfully,

Naveed Ahmad
09-11-2021
Naib Qasid (BPS-03)
Ex-FATA Tribunal

Received
09/11/21

ATTESTED

Annex-E

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
KHYBER ROAD PESHAWAR

15

Dated Peshawar 17th January, 2022

ORDER

HD/FATA Tribunal/B&A/55/2022/~~272~~227-37 **WHEREAS,** Mr. Naveed Ahmad, Naib Qasid (BPS-03) of Ex-FATA Tribunal was proceeded against under the Rule-4 of Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011, for the charges mentioned in the statement of show cause notice served upon him.

2. **AND WHEREAS,** the Department gave opportunity of personal hearing to Mr. Naveed Ahmad, Naib Qasid (BPS-03), Ex-FATA Tribunal as required under the rules 7(d) of Government Servant (Efficiency & Disciplinary) Rules, 2011, **AND WHEREAS,** Mr. Naveed Ahmad, Naib Qasid (BPS-03), Ex-FATA Tribunal was not able to produce any favorable record.

3. **NOW, THEREFORE,** the Competent Authority has been pleased to impose major penalty of **"Removal from Service"** on Mr. Naveed Ahmad, Naib Qasid (BPS-03), Ex- FATA Tribunal under Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011, with effect from 11-01-2022.

-Sd-
Secretary to Govt. Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Endst No & Date even

Copy for information forwarded to:

1. The Accountant General Govt. of Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Home & Tribal Affairs Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
4. Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department.
5. Special Secretary-II Home & Tribal Affairs Department Khyber Pakhtunkhwa.
6. Additional Secretary (Judicial) Home & TA's Deptt: Khyber Pakhtunkhwa.
7. PSO to Chief Secretary Khyber Pakhtunkhwa.
8. PS to Chief Minister Khyber Pakhtunkhwa.
9. Account Section Home & TAs Department (NMAs).
10. Official concerned.

ATTESTED

Section Officer (B & A)

To,

The Chief Secretary,
Khyber Pakhtunkhwa, Peshawar.

16/2/22 Appeal F

ISSUE BRANCH
CHIEF SECRETARY
Govt: of Khyber Pakhtunkhwa
Peshawar

16

Subject: **DEPARTMENTAL APPEAL, AGAINST THE ORDER DATED 17.01.2022, WHEREBY THE UNDERSIGNED HAS BEEN AWARDED THE MAJOR PENALTY OF <u>REMOVAL FROM SERVICE.</u>**

Prayer in departmental appeal:

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 17.01.2022, MAY PLEASE BE SET ASIDE AND THE UNDERSIGNED MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS.

Respected Sir,

The undersigned very humbly submits the following few lines for your kind and sympathetic consideration:

1. That 23 posts including the post of the undersigned i.e. Naib qasid were advertised in daily AJJ and Aeen newspaper dated 09.02.2019 for open competition, being fit and eligible in all respect the undersigned applied for the post of Naib Qasid.

2. That after gone all the rigors and selection process i.e interview, the undersigned was duly recommended for the post of Naib Qasid and was appointed on the said post vide office order dated 08.03.2019.

3. That since my appointment I performed my duties with great zeal and devotion to the entire satisfaction of my superiors without any complaint whatsoever regarding my performance.

4. That while serving in the said capacity, the undersigned received a show Cause Notice dated 25.10.2021 by leveling

ATTESTED

false and baseless allegation which was never committed by the undersigned by any malafide intention nor any connection or relation with authority issued my appointment order and even have no relation with the recruitment process, the allegations are the following

"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 lawful authority and liable to be cancelled'

I am therefore satisfied that you have been found guilty of **"Misconduct"** as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.

5. That the undersigned duly submitted reply to the show cause by denying all the false and baseless allegation leveled against the undersigned.

6. That proper procedure was adopted in the process of recruitment i.e. advertisement, test and interview and the undersigned was appointed on the post after gone all the rigors and selection process provided under the law.

7. That the allegation so leveled against me regarding the misconduct is false and baseless and have never committed any act or omission which could be term as misconduct and the allegations leveled against me does not come in the orbit of misconduct.

8. That there is nothing on the part of undersigned which term as misconduct as undersigned applied for the advertised post while having all the request eligibility criteria and also compete along with all other candidates who applied for the post and when found fit and eligible for the post declare recommended for the post of Naib Qasid.

9. That the members of Tribunal attended the test and interview on the said date and all the committee members were agreed principally on the selection and recommendation of the selection committee and on such principle on the same date issued the appointment orders

ATTESTED

and the copy of the recommendation of selection committee was handed over to section officer and further process, and on the same issued when the inquiry officer called upon the selected candidates they given on Oath the statement that they duly appeared before the selection committee. 18

10. That the so-called inquiry committee called upon all the selected candidate and given Oath regarding the favoritism an nepotism if so made in favor of any of the candidate which they duly replied on oath that no such act of favoritism and nepotism were exist in the present selection process, furthermore none of the member of the selection committee were duly inquired in the matter as all the process was taken place in their presence nor any sort of evidence was taken on record which can proof any of the allegation.

11. That the inquiry committee did not associate me with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine any of the evidence which show my involvement in any malafide action or my eligibility for the post in question.

12. That the undersigned was not even served with a charge sheet and statement of allegation, neither any fact finding nor regular inquiry was conducting which can show any sort of involvement of the undersigned in the requirement process, which is mandatory provision under the law.

13. That the undersigned is a responsible, cautious citizen and cannot even think of the display of the charges leveled against me.

14. That the inquiry committee did not associate me properly with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine those who may have deposed anything against me during the inquiry.

15. That the undersigned has never committed any act or omission which could be termed as misconduct, I duly performed my duties as assigned with full devotion, zeal

ATTESTED

and loyalty albeit I have been roped in the instant false and baseless charges.

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16. That the charges leveled against me were neither proved during the inquiry proceedings, nor any independent and convincing proof/ evidence has been brought against me in the inquiry that could even remotely associate me with the charges, as such the charges remained unproved during the inquiry and the inquiry officer has thus rendered his findings on mere surmises and conjunctures regarding charges, further to add that the so called inquiry was conducted in sajjad ur Rehman registrar case.

17. That it is pertinent to mentioned here that one Sajjad ur Rehman who was also removed from his service with the allegation that he has no authority/power of appointment, against which he filed service appeal before the honourable Service Tribunal Khyber Pakhtunkhwa Peshawar, which was allowed in favor of sajjad ur Rehman.

18. That the undersigned has at his credit an unblemished and spotless service career, during entire service career, I have never given any chance of complaint whatsoever regarding my performance. I always preferred the interests of the department over and above my personal interests. The penalty of Removal from Service imposed upon me, is too harsh and stigmatized the bright and spotless service record of the undersigned.

19. That the penalty so imposed upon the undersign is illegal unlawful against the law and facts hence liable to be set aside inter alia on the following grounds:

GROUNDS OF DEPARTMENTAL APPEAL

A. That the undersigned has not been treated in accordance with law hence the rights secured and guaranteed under the law and constitution is badly violated.

B. That no proper procedure has been followed before awarding the major penalty of Removal from service,

ATTESTED

the whole proceedings are thus nullity in the eyes of law.

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C. That it is pertinent to mentioned here that one Sajjad ur Rehman who was also removed from his service with the allegation that he has no authority/Power of appointment, against which he filed service appeal before the honourable Service Tribunal Khyber Pakhtunkhwa Peshawar, which was allowed in favor of sajjad ur Rehman and he was reinstated into service.

D. That the undersign has not done any act or omission which can be turned as mis-conduct, thus the undersign cannot be punished for the irregularities if so occurred in the recruitment process.

E. That the undersign has not been given proper opportunity of personal hearing before awarding the penalty, hence the undersign have been condemned unheard.

F. That the charges were denied by the undersigned had never admitted, nor there was sufficient evidence available to held the undersigned guilty of the charges.

G. That the superior courts have in a number of reported judgments held that in case of awarding major penalty of Removal from service regular procedure of holding inquiry cannot be dispensed with that too when the charges are denied by the employee.

H. That the undersign has never committed any act or omission which could be termed as misconduct the charges leveled against the undersign are false and baseless besides the same are neither probed nor proved albeit the undersign has illegally been removed from service.

I. That the undersign at his credit unblemished and spotless service career, the penalty imposed upon the undersign is too harsh and is liable to be set aside.

ATTESTED

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J. That the reply of show cause submitted may also be consider as integral part of the undersign departmental appeal as each and every alleged allegation was rebutted in detail as to probe the matter in question.

K. That the undersign is jobless since his Removal from service.

It is, therefore, humbly prayed that on acceptance of this appeal the order dated 17.01.2022, May please be set aside and the undersigned may kindly be reinstated into service with all back benefits.

Yours Obediently,

Naveed

Naveed Ahmad
Naib Qasid **(BPS-03)**
Ex-FATA Tribunal
Peshawar.
14-02-2022

ATTESTED

22 ANNEX. G

Khyber Pakhtunkhwa Service Tribunal Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Khyber Pakhtunkhwa Service Tribunal
Diary No. 6006
Dated 22/11/2021

2770
Appeal No. _____/2021

Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No 973, Street No 28, Sector E-5, Phase 7 Hayatabad Peshawar.

(Appellant)

VERSUS

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar.
2. Govt. of Khyber Pakhtunkhwa through Secretary Home & Tribal Affairs department Civil Secretariat Peshawar.
3. Govt. of Khyber Pakhtunkhwa through Secretary Establishment Civil Secretariat Peshawar

(Respondents)

Filed to-day
Registrar
22/11/2021

Appeal under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974, against the impugned Order dated 10.09.2020 whereby the appellant has been awarded the major penalty of removal from service. and against which the departmental appeal dated 25.09.2020 was filed before the competent authority which is still not responded after laps of statutory period on 90 days.

Re-submitted to-day and filed.
Registrar
12/2/2021

Prayer in Appeal: -

ON ACCEPTANCE OF THIS APPEAL THE ORDER DATED 10.09.2020, MAY PLEASE BE SET ASIDE AND THE APPELLANT MAY KINDLY BE REINSTATED INTO SERVICE WITH ALL BACK BENEFITS.

ATTESTED

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 2770/2021

Date of Institution ... 22.11.2021

Date of Decision ... 01.02.2022

Sajjad ur Rehman S/O Haji Yaqoob Jan R/O House No. 973, Street No. 28, Sector E-5, Phase 7 Hayatabad Peshawar.

... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary Civil Secretariat Peshawar and others. ... (Respondents)

Zartaj Anwar,
Advocate ... For Appellant

Noor Zaman Khattak,
District Attorney ... For respondents

AHMAD SULTAN TAREEN ... CHAIRMAN
ATIQ-UR-REHMAN WAZIR ... MEMBER (EXECUTIVE)

JUDGMENT

ATIQ-UR-REHMAN WAZIR MEMBER (E):- Brief facts of the case are that the appellant, while serving as Registrar in Ex-FATA Tribunal, was proceeded against on the charges of misconduct and was ultimately dismissed from service vide order dated 10-09-2020. Feeling aggrieved, the appellant filed departmental appeal dated 25-09-2020, which was not responded within the statutory period, hence the instant service appeal with prayers that the impugned order dated 10-09-2020 may be set aside and the appellant may be re-instated in service with all back benefits.

02. Learned counsel for the appellant has contended that the appellant has not been treated in accordance with law, hence his rights secured under the

ATTESTED

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Constitution has badly been violated; that no proper procedure has been followed before awarding the major penalty of dismissal from service, the whole proceedings are thus nullity in the eye of law; that the appellant has not done any act or omission which can be termed as misconduct, thus the appellant cannot be punished for the irregularities, if so occurred in the recruitment process; that the allegation so leveled against the appellant regarding the non-production of recruitment record is baseless; that no proper inquiry has been conducted against the appellant, hence the appellant was deprived of the opportunity to defend his cause; that neither statement of any witnesses were recorded in presence of the appellant nor the appellant was afforded opportunity to cross-examine such witnesses; that the appellant has not been served with any showcause notice, thus the whole proceedings are defective in the eye of law; that the inquiry committee was under statutory obligation to highlight such evidence in the inquiry report on the basis of which the appellant was found guilty of allegations, moreover, there was not a single evidence to connect the appellant with the commission of allegation of misconduct; that mere verbal assertion without any cogent and reliable evidence is not sufficient to justify the stance of the department in respect of the so called allegations leveled against the appellant in the charge sheet/statement of allegation, hence the impugned order passed by the competent authority on the basis of such inquiry is against the spirit of law; that the competent authority was bound under the law to examine the record of inquiry in its true perspective and in accordance with law and then to apply his independent mind to the merit of the case, but he failed to do so and awarded major punishment of dismissal from service upon the appellant despite the fact that the allegations as contained in the charge sheet/statement of allegation has not been proved in the so called inquiry; that the appellant is neither involved in corruption nor embezzlement nor moral turpitude, therefore such harsh and extreme penalty of dismissal from service of the appellant does not commensurate with the nature of the guilt to deprive his family from livelihood;

ATTESTED

Khyber Pakhtunkhwa Service Tribunal Peshawar

ATTESTED

that the competent authority has passed the impugned order in mechanical manner and the same is perfunctory as well as non-speaking and also against the basic principle of administration of justice, therefore the impugned order is not tenable under the law; that the appellant has not been afforded proper opportunity of personal hearing and was condemned unheard.

03. Learned District Attorney for the respondents has contended that the appellant while serving as registrar in Ex-FATA Tribunal, has been proceeded against on account of advertizing 23 posts without approval of the competent authority and appointed 24 candidates against these posts without recommendation of the departmental selection committee; that a proper inquiry was conducted and during the course of inquiry, all the allegations leveled against the appellant stood proved, consequently, after fulfillment of all the codal formalities and affording chance of personal hearing to the appellant, the penalty of removal from service was imposed upon the appellant vide order dated 10-09-2020; that proper charge sheet/statement of allegation was served upon the appellant as well as proper showcause notice was also served upon the appellant, but inspite of availing all such chances, the appellant failed to prove his innocence.

04. We have heard learned counsel for the parties and have perused the record.

05. 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, ACCOUTS AND AUDIT RULES, 2015, where appointing authority for making appointments in Ex-FATA

ATTESTED

ATTESTED
EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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Tribunal from BPS-1 to 14 is registrar, whereas for the posts from BPS-15 to 17 is Chairman of the Tribunal.

06. 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 appointing 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 of 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. We have repeatedly asked the respondents to produce any such order/notification, which could show that appointing authority in respect of filling in post 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 appointing 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 allegations does not hold ground.

07. We have observed certain irregularities in the recruitment process, which were not so grave to propose major penalty of dismissal from service. Careless portrayed

ATTESTED

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal

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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.

08. We have observed that charge against the appellant was not so grave as to propose penalty of removal from service, such penalty appears to be harsh, which does not commensurate with nature of the charge. As a sequel to the above, the instant appeal is partially accepted. The appellant is re-instated into service and the impugned order is set aside to the extent that major penalty of dismissal from service is converted into minor penalty of stoppage of increment for one year. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
01.02.2022

(AHMAD SULTAN TAREEN)
CHAIRMAN

(ATIQ-UR-REHMAN WAZIR)
MEMBER (E)

Certified to be ture copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Date of Presentation of Application 22/3/22
Number of Words 240
Copying Fee 26/-
Urgent 4/-
Total 30/-
Name of Copyist
Date of Completion of Copy 22/3/22
Date of Delivery of Copy 22/3/22

ATTESTED

POWER OF ATTORNEY

In the Court of KPK Service Tribunal Peshawar

Naveed Ahmad } For
} Plaintiff
} Appellant
} Petitioner
} Complainant

VERSUS

Govt of KPK etc } **Defendant**
} Respondent
} Accused
}

Appeal/Revision/Suit/Application/Petition/Case No. _____ of _____

Fixed for _____

I/W. the undersigned, do hereby nominate and appoint

ZARTAJ ANWAR & IMRAN KHAN ADVOCATES, my true and lawful attorney, for me in my same and on my behalf to appear at Peshawar to appear, plead, act and answer in the above Court or any Court to which the business is transferred in the above matter and is agreed to sign and file petitions. An appeal, statements, accounts, exhibits. Compromisesor other documents whatsoever, in connection with the said matter or any matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc, and to apply for and issue summons and other writs or subpoena and to apply for and get issued and arrest, attachment or other executions, warrants or order and to conduct any proceeding that may arise there out; and to apply for and receive payment of any or all sums or submit for the above matter to arbitration, and to employee any other Legal Practitioner authorizing him to exercise the power and authorizes hereby conferred on the Advocate wherever he may think fit to do so, any other lawyer may be appointed by my said counsel to conduct the case who shall have the same powers.

AND to all acts legally necessary to manage and conduct the said case in all respects, whether herein specified or not, as may be proper and expedient.

AND I/we hereby agree to ratify and confirm all lawful acts done on my/our behalf under or by virtue of this power or of the usual practice in such matter.

PROVIDED always, that I/we undertake at time of calling of the case by, the Court/my authorized agent shall inform the Advocate and make him appear in Court, if the case may be dismissed in default, if it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us

IN WITNESS whereof I/we have hereto signed at _____ the _____ day to _____ the year _____

Executant/Executants _____

Accepted subject to the terms regarding fee _____

IMRAN KHAN
Advocate High Court
Mob 0345-9090648

ZARTAJ ANWAR
Advocate High Courts
ADVOCATES, LEGAL ADVISORS, SERVICE & LABOUR LAW CONSULTANT
FR-3, Fourth Floor, Bilour Plaza, Saddar Road, Peshawar Cantt
Mobile-0331-9399185
BC-10-9851
CNIC: 17301-1610154-5

BEFORETHE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO.817/2022

Naveed Ahmad

(APPELLANT)

VERSUS

Govt: of Khyber Pakhtunkhwa etc.

(RESPONDENTS)

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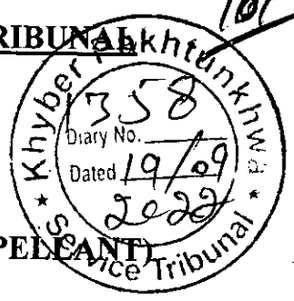
Section Officer (Litigation-III)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.817 /2022



1. Naveed Ahmad

(APPELLANT)

VERSUS

1. Govt. of Khyber Pakhtunkhwa etc.

(RESPONDENTS)

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

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTIONS:-

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

ON FACTS:

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1. That Para 1 pertains to the appellant.
2. The Para 2 also pertains to the appellant.
3. Reference to Para 3, a full fledged inquiry was conducted in the matter to check the credibility and authenticity of the process of advertisement and selection and it was held that the entire process of selection from top to bottom was ***"Coram Non Judice"***. Furthermore, inquiry was conducted against Mr. Sajjad ur Rehman ex-Registrar, FATA Tribunal under rule 10 of Khyber Pakhtunkhwa Govt. Servant (E&D), Rules, 2011 wherein the inquiry report held that the same selection Committee was constituted without any lawful authority. The said Committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates against these posts. The inquiry proceedings further revealed that there were exists no attendance sheet, minutes of the meeting and even the appointment orders were found ambiguous. The said Departmental Committee unlawfully increased the number of posts from 23 to 24 illegally and issued 24 orders without any recommendations of legitimate Departmental Selection Committee. Else then, the Inquiry Committee has termed all the said 24 appointments illegal and without lawful authority and recommended to be cancelled/withdrawn.
4. Detail reply furnished in Para 3 above.
5. That Para 5 pertains to the appellant.
6. That Para 6 is totally incorrect, misconceived and hence denied as there was sufficient material exits in shape of documentary proof and after issuance of show cause notice and fulfilling all legal and codal formalties, major penalty of removal from service was imposed upon the appellant under the relevant rules/law.
7. Reply to the show cause notice was considered and found unsatisfactory.
8. Same reply as offered in Para 6 above.
9. That Para 9 needs no comments.
10. That Para 10 needs consideration of this Hon'ble Tribunal that the Provincial Government has submitted reply in the ***Execution Petition No. 300/2022*** titled ***"Sajjad ur Rehman VS Chief Secretary etc"*** requesting therein that the Hon'ble Service Tribunal in exercise of power invested in it under the Supreme Court Rules, 1980 can withhold/stay the execution of the judgment under appeal. Thus, the compelling

reasons recorded about make it imperative that the Hon'ble Service Tribunal consider them and regret the petition under execution or withhold the proceedings till the final outcome of the CPLA.

11. That Para 11 needs no comments.

GROUNDS:-

A. That Para A is incorrect and hence denied as the respondents have treated the appellant in accordance with the mandate of **Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.**

B. That Para B is also incorrect as all the legal and codal formalities were observed.

C. Detail reply furnished in Para 3 and 6 of the facts above.

D. That Para D needs no comments.

E. That Para E is totally incorrect and hence denied. Detail reply is already furnished in Para 6 of the facts.

F. Same reply as offered in Para 3 and 6 of the facts.

G. Same reply as furnished in Para C.

H. That Para H needs no comments.

I. That Para I is totally denied in toto. Detail reply offered in Para 3 of the facts.

J. Same reply as furnished in Para C above.

K. That Para K is incorrect as no law, rules and judgments of the apex court has been violated. The appellant was treated in accordance with law, rules and constitution. Furthermore, detail reply already offered in Para 3 and 6 of the facts.

L. Same reply as furnished in Para C above.

M. That Para M needs no comments.

N. That Para N also needs no comments.

O. That the respondents may also seek kind permission of this Hon'ble Tribunal to take some other additional grounds at the time of hearing/arguments of the appeal where necessary.

PRAYER:-

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

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

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

Chief Secretary,
Govt. of Khyber Pakhtunkhwa
(Respondent No.1)

BEFORETHE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO.817/2022

Naveed Ahmad

(APPELLANT)

VERSUS

Govt: of Khyber Pakhtunkhwa etc.

(RESPONDENTS)

AUTHORITY

Mr. Shah Wali Khan Section Officer (Litigation) Home & T.As Department Peshawar do hereby authorized to submit reply in Service appeal No. 817/2022 titled Naveed Ahmad Versus Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa on behalf of respondent No. 2 in the Service Tribunal Peshawar.

Deputy Secretary (Litigation)

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VERSUS

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(RESPONDENTS)

Affidavit

Mr. Shah Wali Khan Section Officer (Litigation-III) Home & T.As Department Peshawar do hereby solemnly affirm an declares on oath that the contents of reply Service appeal No. 817/2022 titled Naveed Ahmad Versus Government of Khyber Pakhtunkhwa and others on behalf of respondent No. 2 in the Service Tribunal Peshawar are true and correct as per record and nothing has been concealed from the Honorable Court .

Section Officer (Litigation-III)