

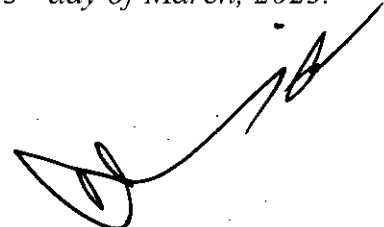
ORDER

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)

2023.03.03

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)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.778/2022

Sadiq Shah

(Appellant)

VS

Govt. of Khyber Pakhtunkhwa etc

(Respondents)

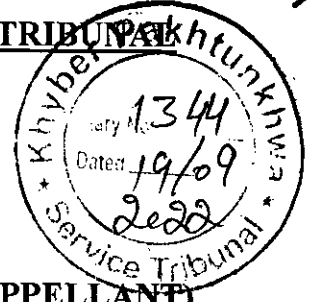
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Section Officer (Litigation-III)

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.778 /2022



1. Sadiq Shah

(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. The appellant may satisfy the Hon'ble Tribunal regarding the contents mentioned in Para 1.
2. That Para 2 needs no comments.
3. That Para 3 also needs no comments.
4. That Para 4 is correct.
5. Reference to Para 5, 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.*
6. That Para 6 pertains to the appellant.
7. That Para 7 is totally incorrect, misconceived and hence denied as there was sufficient material exists in shape of documentary proof and after issuance of show cause notice and fulfilling all legal and codal formalities, major penalty of removal from service was imposed upon the appellant under the relevant rules/law.
8. That Para 8 needs no comments.
9. That Para 9 also needs no comments.

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GROUNDS:-

- A. Ground A is incorrect. The appellant was treated according to law.
- B. That Para B is totally incorrect and hence denied as the respondents have treated the appellant in accordance with Article 4 of the Constitution of Islamic Republic of Pakistan, 1973.
- C. Detail reply furnished in Para 5 and 7 of the facts above.
- D. Same reply as offered in Para C.
- E. That Para E is incorrect and hence denied to the extent that no retrospective effect is given in the removal order. The Authority acted in accordance with the mandate of law and constitution.
- F. That Para F is also incorrect detail reply offered in Para C.
- G. That Para G is incorrect and denied. Detail reply given in facts.
- H. Same reply as furnished in Para C above.
- I. That Para I 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 5 and 7 of the facts.
- J. That the respondents may also seek permission to take some other additional grounds at the time of arguments 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.

UJ
5/8/2022

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

UJ
5/8/2022

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

UJ
5/8/2022

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

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 778/2022

Sadiq Shah

(APPELLANT)

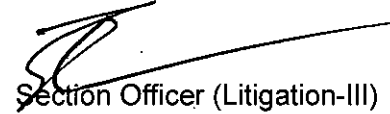
VERSUS

Govt: of Khyber Pakhtunkhwa etc.

(RESPONDENTS)

Affidavit

Mr. Shah Wali Khan Section Officer (Litigation-III) Home & T.As Department Peshawar do hereby solemnly affirm and declares on oath that the contents of reply Service appeal No. 778/2022 titled Sadiq Shah 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)



BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 778/2022

Sadiq Shah

(APPELLANT)

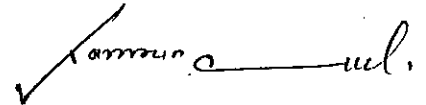
VERSUS

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. 778/2022 titled Sadiq Shah Versus Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa on behalf of respondent No. 2 in the Service Tribunal Peshawar.



Deputy Secretary (Litigation)