

BEFORE THE HONORABLE SERVICES TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

12(2) Petition No. 642/2022

Khyber Pakhtunkhwa  
Service Tribunal

Diary No. 4628

Dated 30/3/2023

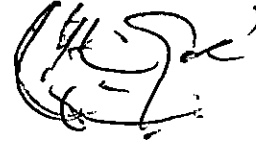
Muhammad Sadiq & others Vs. Hanif ur Rahman & others.

I N D E X

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Respondent No. 1

Through



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BEFORE THE HONORABLE SERVICES TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

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12(2) Petition No. 642/2022

Muhammad Sadiq & others Vs. Hanif ur Rahman & others.

Fixed for 31-03-2023

WRITTEN COMMENTS ON BEHALF OF RESPONDENT NO. 1

Respectfully Sheweth:-

That the respondent begs to submit the following:

**Preliminary Objections:**

- a. **Because** the Petitioners have not come with clean hands, and have approached this Hon'ble Tribunal with sheer malafide in order to frustrate the process of law, to run its course against the Respondent, and as such the 12 (2) Petition is not maintainable.
- b. **Because** the Petitioners have got no cause of action to file the instant petition.
- c. **Because** the Petitioners have not come to this Hon'ble Tribunal with clean hands and is estopped to institute the present petition. The instant petition is based on false fact and misstatement and the real and material facts have been concealed from this Hon'ble Tribunal.
- d. **Because** the petition is bad in its present shape and form and is clearly barred by law.

- (2)
- e. **Because** the petition being frivolous, false and vexatious is liable to be dismissed with special compensatory costs.
  - f. **Because** the instant petition is based on malafide and so are the acts of the Petitioners. The instant petition is nothing but wastage of precious time of this Honourable Tribunal, and has been filed with ulterior motives for annoying, disrupting and creating obstacles in the life of the Respondents therefore, warrants dismissal.
  - g. **Because** the petition is bad in both law and facts hence not maintainable and even otherwise the petition being untenable in law and on facts merits dismissal.
  - h. **Because** the Petitioners are estopped from filing the present petition by their own acts and admission.
  - i. **Because** the petition is bad for non-joinder and miss-joinder of necessary parties, hence the instant petition is liable to be dismissed.
  - j. **Because** the prayer so sought by the Petitioners is totally unwarranted and is unlawful, as the Petitioners have no standing, no cause of action to file the instant application.
  - k. **Because** the Petitioners cannot seek the relief sought in the petition as the same goes against the spirit of the law and the judgments on the subject matter. The petition is thus clearly barred by law.
  - l. **Because** other grounds may be raised with the permission of this Hon'ble Tribunal.

**ON FACTS:**

1. **Para 1** of the petition is admitted correct to the extent of service appeal.
2. **Para 2** of the petition is incorrect hence denied. The service appeal did not require the impleadment of the present petitioners. Moreover, the

(3)

usage of the term "obtained" is highly contemptuous and objectionable.

3. **Para 3** of the present petition is entirely misconceived and the grounds as laid are not tenable in the eyes of the law.

ON GROUNDS:-

- A. **Ground A** of the petition is incorrect, hence denied. The answering respondent is and was the regular employee of the Government of Khyber Pakhtunkhwa when the merger took place. There is no element of fraud as alleged. No determination of seniority has taken place, and the instant petition is not tenable.
- B. **Ground B** of the petition is misconceived hence denied. The Government of Khyber Pakhtunkhwa was a party and it contested the case. Moreover, the petitioner cannot step into the shoes of the respondent no. 04 to claim fraud on their part. It is imperative to note that in connected appeals the respondent no. 04 was a contesting party.
- C. **Ground C** of the petition is misconceived hence denied. It is again reiterated that the usage of the word "obtained" is highly contemptuous. The Appeal was positively argued by both sides and the judgement on merits was rendered thereon.
- D. **Ground D** of the petition is incorrect hence denied. The respondent no. 01 services were and are regulated by KPSCA 1973 and APT Rules 1989, the same lay bare the preposterous claim of the petitioners.
- E. **Ground E** of the petition is incorrect hence denied. The post-merger scenario rightly was adjudicated by this Honourable Tribunal and the decision given in favour of the answering respondent is purely on merits. The contention of the petitioners is denied.

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F. **Ground F** of the petition is denied. There is no illegality or fault fullness nor does it require rejection, what requires rejection is the present petition.

G. **Ground G** of the petition is incorrect hence denied. It is reiterated that there is no "obtaining" of judgement, it was passed purely on merits.

H. **Ground H** of the petition is misconceived hence denied. Detailed response has been given above.

I. **Ground I** of the petition is misconceived hence denied.

**Prayer:-**

It is, therefore, most humbly prayed that on acceptance of these comments, this Honorable Tribunal may so kindly be pleased to dismiss the 12 (2) petition, with orders as to costs.

Respondent No. 1

Through



**ALI GOHAR DURRANI**

Advocate High Court

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Fixed for 31-03-2023

BEFORE THE HONORABLE SERVICES TRIBUNAL KHYBER  
PAKHTUNKHWA, PESHAWAR

REPLY TO THE APPLICATION OF THE PETITIONER FOR THE GRANT  
OF ORDER OF SUSPENSION OF EXECUTION PETITION NO: 242/2022  
OF JUDGEMENT DATED: 14/01/2022 ON BEHALF OF RESPONDENT  
NO. 1

Respectfully Submitted:

The respondent most humbly submits as under,

It is requested that the contents of the accompanying written comments and preliminary objections raised therein may be read as part and parcel of this reply.

Para No. 1: Correct.

Para No. 2: No Comments.

Para No. 3: Incorrect hence denied. The case of the applicant/petitioner is weak on factual and legal footing.

Para No. 4: Incorrect hence denied. Whereas, balance of convenience lies in favour of the Respondent.

Para No. 5: Incorrect hence denied. The irreparable loss here would not be suffered by the applicant/petitioner.

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12(2) Petition No. 642/2022

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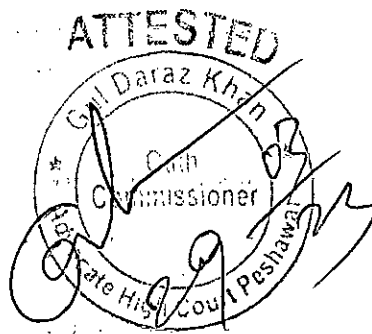
AFFIDAVIT

AFFIDAVIT Of

I, Hanif ur Rehman, Assistant (BPS-16), Government of Khyber  
Pakhtunkhwa

Respondent No. 01 in the petition, do hereby solemnly declare and  
affirm on oath:-

1. That the enclosed written comments have been drafted  
under my instructions.
2. That I am personally conversant with the facts and  
circumstances of the case as contained therein.
3. That the facts and circumstances mentioned in the enclosed  
written statement are true and correct to the best of my  
knowledge and belief.



*Hanif*

Deponent

CNIC#