

31st Jan, 2023

Appellant in person present present. Mr. Muhammad Riaz Khan Paindakhel, Asst: AG for respondents present.

Appellant seeks adjournment on the ground that his counsel is not available today. Last chance is given. To come up for arguments on 20.3.2023 before the D.B. P.P. is given to the parties.

SCANNED
K.P&T
Peshawar



(Muhammad Akbar Khan)
Member(Executive)

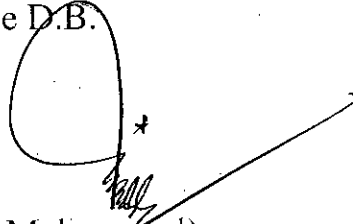


(Kalim Arshad Khan)
Chairman

13.10.2022

Learned counsel for the appellant present. Mr. Fazle Amin, Deputy Collector alongwith Mr. Muhammad Jan, Deputy District Attorney for the respondents present.

Learned counsel for the appellant sought time for preparation for arguments. Adjourned. To come up for arguments on 25.11.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

25.11.2022

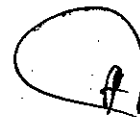
Counsel for the appellant present. Mr. Muhammad Jan, District Attorney for the respondents present.

Learned counsel for the appellant sought adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 31.01.2023 before the D.B.

SCANNED
KP 3T
Peshawar



(Fareeha Paul)
Member (E)



(Rozina Rehman)
Member (J)

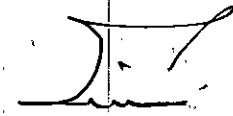
15.11.2021

Clerk of learned counsel for the appellant present. Mr. Amjid Khan, Zillydar alongwith Mr. Javed Ullah, Assistant Advocate General for the respondents present.

Comments on behalf of respondents have already been submitted and placed on file. Clerk of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is busy in the august Peshawar High Court, Peshawar. Adjourned. To come up for rejoinder, if any, as well as arguments on 02.03.2022 before the D.B.



(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)

02.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 07.06.2022 for the same as before.

7.6.22

Proper D.B is as per, therefore the case is adjourned to 24.8.22 for same.



Reader

24.08.2022

Junior of learned counsel for the appellant present. Mr. Fazal Amin Deputy Collector alongwith Mr. Naseer Ud Din Shah, Assistant Advocate General for the respondents present.

Junior of learned counsel for the appellant requested for adjournment on the ground that learned counsel for the appellant is out of station today. Adjourned. To come up for arguments on 13.10.2022 before the D.B.



(Rozina Rehman)
Member(J)

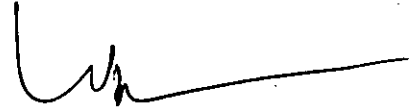


(Salah-Ud-Din)
Member(J)

29.03.2021

Appellant with counsel present. Mr. Kabirullah Khattak learned Addl. AG alongwith Mughal Amin Deputy Collector for respondents present.

Reply/comments on behalf of respondents not submitted. Representative of respondents requested for time to submit reply/comments. To come up for reply/comments on 01.07.2021 before S.B.



(Atiq Ur Rehman Wazir)
Member (E)

01.07.2021

Counsel for the appellant and Addl. AG for the respondents present.

Learned AAG seeks time to submit reply/comments. He is required to contact the respondents and submit written reply/comments within 10 days in office, positively. In case written reply/comments are not submitted within the stipulated time, office shall submit the file with a report of non-compliance. To come up for arguments on 15.11.2021 before the D.B.

Stipulated period has passed and reply has not been submitted.



Chairman

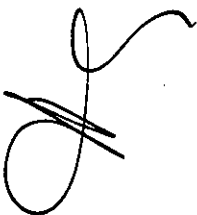
P.S

14.07.2021

Learned Addl. A.G be reminded about the omission and for submission of Reply/comments within extended time of 10 days.



Chairman



05.01.2021

Counsel for the appellant present.

Contends that before passing the impugned order dated 29.04.2020 no proper/regular enquiry was conducted against the appellant. Besides, any irregularity/illegality committed during selection process was the fault of respondents/appointing authority and not the appellant. Proper procedure for selection was followed before the appointment of appellant. Learned counsel referred to the contents of order dated 29.04.2020 and argued that the competent authority/respondent No. 3 was pleased to modify the order dated 04.11.2011 by replacing the words "withdrawn" into "termination of their services w.e.f. 31.10.2011", despite the fact that the said order was already set at naught by the Honourable Peshawar High Court Mingora Bench on 11.12.2018. The impugned order, for the said reason alone is not sustainable, it is added. Learned counsel also relied on judgment reported as PLJ 2005-TD(s)77.

The available record as well as the arguments of learned counsel prompt for admission of instant appeal for regular hearing. Admit. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 29.03.2021 before S.B.

Appellant Deposited
Security & Process Fee





Chairman

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- 10409 /2020

| S.No. | Date of order proceedings | Order or other proceedings with signature of judge |
|-------|---------------------------|--|
| 1 | 2 | 3 |
| 1- | 08/09/2020 | <p>The appeal of Mr. Kamaran Ali presented today by Mr. Noor Muhammad Khattak Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p> |
| 2- | 26.10.2020 | <p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>26/10/2020</u></p> <p style="text-align: right;"> CHAIRMAN</p> <p>Appellant in person present.</p> <p>Lawyers are on general strike, therefore, case is adjourned to 05.01.2021 for preliminary hearing, before S.B.</p> <p style="text-align: right;"> (Rozina Rehman) Member (J)</p> |

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 10409/2020

KAMRAN ALI

VS

EDUCATION DEPTT:

INDEX

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APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK
ADVOCATE

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

APPEAL NO. _____/2020

Mr. Kamran Ali, Ex-Beldar,
O/O the Executive Engineer, Malakand Irrigation Division, Malakand.
.....**APPELLANT**

VERSUS

- 1- The Secretary Irrigation Department, Khyber Pakhtunkhwa, Peshawar.
 - 2- The Chief Engineer (North), Irrigation Department, Peshawar.
 - 3- The Executive Engineer, Malakand Irrigation Division, Malakand.
-**RESPONDENTS**

APPEAL UNDER SECTION- 4 OF THE KHYBER
PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974
AGAINST THE IMPUGNED ORDER DATED 29.04.2020
WHEREBY THE SERVICES OF THE APPELLANT HAS BEEN
TERMINATED W-E-F 31-10-2011 AND AGAINST THE
INACTION OF THE RESPONDENTS BY NOT DECIDING
THE DEPARTMENTAL APPEAL OF THE APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this appeal the impugned order dated 29-04-2020 may very kindly be set aside and the appellant may be re-instated into service with all back benefits. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

Brief facts giving rise to the present appeal are as
under:-

- 1- That appellant was appointed as Beldar (BPS-01) in the Irrigation Division, Malakand through Employment Exchange Registration Card vide order dated 31.10.2011. After appointment the appellant submitted his arrival report and started performing his duty quite efficiently and up to the entire satisfaction of his superiors. Copy of the appointment order dated 31-10-2011 is attached as annexure.....**A.**

2- That astonishingly the respondent No. 3 issued the order dated 04.11.2011 whereby the appointment order issued in light of the DPC meeting dated 01-10-2011 of the appellant had been withdrawn without any justifiable reason and without speaking order. Copies of the order dated 04-11-2011 and minutes of the DPC meeting dated 01-10-2011 are attached as annexure.....**B&C.**

3- That feeling aggrieved from the order dated 04.11.2011 the appellant preferred Departmental appeal followed by writ petition No.767-M/2016 before the Peshawar High Court, Mingora Bench Dar-UI-Qaza, Swat which was decided along with other connected writ petitions vide consolidated judgment dated 11.12.2018 with the directions/ observation that:-

"In this view of the matter, all these connected writ petitions are allowed, thereby the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be re-instated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondents are at liberty to initiate departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct". Copy of the judgment dated 11-12-2018 is attached as annexure.....**D.**

4- That appellant after obtaining the aforementioned judgment submitted the same before concerned authority for implementation but the authority filed CPLA No.1993 to 1996 of 2019 before the Honorable Supreme Court of Pakistan which was disposed of with the view that:-

"We note that within two months from today the appellant shall initiate the departmental proceedings and conclude the same and during this period the appellant will not be required to re-instate the respondents. However, after two months, it may re-instate them, if the proceedings are not concluded". Copy of the judgment of the apex court dated 10-03-2020 is attached as annexure.....**E.**

5- That it is pertinent to mention here that after the judgment of Honorable Supreme Court of Pakistan a show cause notice dated 02-04-2020 has been issued to the appellant and the same has been replied by the appellant. but the concerned authority has not taken

of the show cause notice and replay are attached as annexure.....**F&G.**

6- That it is worth to mention here that the respondents without fulfilling the codal formalities and rules, straight away issued the impugned order dated 29.04.2020 whereby the appellant has been terminated from service. Copy of the impugned order dated 29-04-2020 is attached as annexure.....**H.**

7- That appellant feeling aggrieved from the impugned order dated 29-04-2020 preferred departmental appeal before the respondent No. 2 but the same has not been responded within the statutory period of ninety days. Copy of the departmental appeal is attached as annexure.....**I.**

8- That having no other remedy the appellant preferred the instant appeal on the following grounds amongst others.

GROUND:

A- That the impugned orders dated 29-04-2020 is against the law, facts, norms of natural justice and material on the record hence not tenable and liable to be set aside.

B- That appellant has not been treated by the respondent department in accordance with law and rules on the subject noted above and as such the respondent violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

C- That the respondent acted in arbitrary and mala fide manner while issuing the impugned termination order dated 29-04-2020.

D- That the respondent terminated the appellant in a hasty manner without following the codal formalities.

E- That no charge sheet and statement of allegation has been issued to the appellant before issuance of the impugned termination order dated 29-04-2020.


F- That no chance of Personal Hearing / Defense been provided to the appellant before issuance of the impugned termination order dated 29-04-2020. /

G- That no regular inquiry has been conducted against the appellant which is as per Supreme Court judgments is necessary in punitive

H- That appellant has been discriminated on the subject noted above and as such the impugned termination order dated 29-04-2020 is not tenable in the eye of law.

I- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

APPELLANT



KAMRAN ALI

THROUGH:



NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

UMER FAROOQ

&



**MIR ZAMAN SAFI
ADVOCATES**



**OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION MALAKAND.**

A-5

Ancp
B-1

No. 2404 /17-E(Sub),
To

Dated Malakand the 31 /10/2011.

Mr. Kamran Ali
S/O Sher Dil Khan vill: & P.O. Sher Garh
Tehsil Takht Bhai District Mardan.

fp
2:

Subject APPOINTMENT AS BELDAR BPS-01

You are hereby offered the Post of Beldar BPS-01 (4800-150-9300) plus usual allowances on Contract basis subject to the following conditions:-

Your services will be governed under the Government Khyber Pukhtoonkhwa Policy 2002 issued vide Secretary to Government of Khyber Pukhtoonkhwa Finance department No. FD(SOSR-II)12-1/2002 dated 26/10/2002 and Establishment and Administration department letter No. SOR-NI(E&AD)1-13/2001, dated 10-08-2005.

TERMS & CONDITIONS

1. You will be granted the minimum of BPS-01 with usual allowances as admissible under the contract policy.
2. The Appointing Authority can terminate the contract on one month notice of one month salary in lieu thereof.
3. You will be provided facilities of contribution of Provident fund as admissible under the contract policy.
4. You will not contribute G.P.Fund and shall not be entitled for pension and gratuity.
5. Any Terms and condition issued by the Government hereafter in this regard will also be binding upon you.

If this offer of appointment on contract basis on the above terms and condition is acceptable to you, you should report arrival for duty to the undersigned within one month of the receipt of this letter and produce the following original documents.

- i. Domicile.
- ii. Medical Fitness Certificate.
- iii. That you are not a dismissed Government Servant.
- iv. Character Certificate.
- v. Copy of National Identity Card.

In case the above documents and your reply to the acceptance of this offer is not received within the stipulated period of one month, the offer of appointment shall stand automatically null and void.

EXECUTIVE ENGINEER
Ph: No. 8932-410492

Copy to the:-

1. Agency Comptroller of Accounts, Malakand Agency for information.
2. Sub Divisional Officer, Head Works Irrigation Sub Division, Malakand / Dargai for information.
3. D.A.O(Local)/ Head Clerk/Service Book.

ATTESTED

To be true copy

EXECUTIVE ENGINEER

Muhammad Ali Khan Khalil
Advocate

High Court Peshawar

ATTESTED



**OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION MALAKAND.**

B-6

No. 2454 /7-E(Sub).

Dated Malakand the 04 /11/2011.

OFFICE ORDER

The appointment order of various posts issued in light of D.P.C meeting called vide this office letter No: 2187/7-E(Sub), dated 01/10/2011 held on 03/10/2011 is hereby withdrawn.

EXECUTIVE ENGINEER
Ph. No. 0932-410492

Copy to the

1. Agency Accounts Officer, Malakand for information.
2. All Officials concerned.

EXECUTIVE ENGINEER



C-7

**OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION MALAKAND.**

No. 2187 /7-E(Sub),

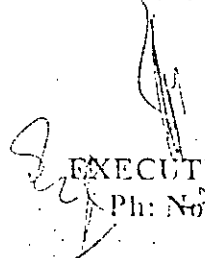
Dated Malakand the 01 / 10 / 2011.

OFFICE ORDER

A committee comprising of the following is hereby constituted to consider the appointment/Promotion/Re-designation Cases of Class-IV employees in Malakand Irrigation Division Malakand.

1. Engr. Ghulam Ishaq Khan
Executive Engineer
Malakand Irrigation Division
Malakand. Chairman
2. Mr. Muhammad Sajjad
Sub Divisional Officer
Head Works Irrigation Sub Division,
Malakand Member
3. Mr. Misal Khan
Section Officer (E) office of the
Secretary Irrigation Department
Khyber Pukhtoonkhwa Peshawar Member
4. Mr. Jamal Shah
Head Clerk
Malakand Irrigation Division Malakand. Secretary


The committee will meet on 08/10/2011 at 10.00 A.M at Divisional office Malakand.


EXECUTIVE ENGINEER
Ph: No: 0932-410492

Copy to the

1. Section Officer (Establishment) office of the Secretary Irrigation Government of Khyber Pukhtoonkhwa Peshawar.
2. Sub Divisional Officer, Head Works Irrigation Sub Division, Malakand.
3. Head Clerk (Local)

They are requested to attend the meeting on due date & time fixed above.


EXECUTIVE ENGINEER

Minutes of the Departmental Promotion Committee meeting held on 08/10/2011 under
Chairmanship of Engr: Ghulam Ishaq Khan Executive Engineer, Malakand Irrigation
Division Malakand

8

A meeting of departmental promotion/Selection committee was held on 08/10/2011 at 10.00 A.M under the Chairmanship of Engr: Ghulam Ishaq Khan Executive Engineer, Malakand Irrigation Division, Malakand to consider the promotion and appointment cases in Malakand Irrigation Division Malakand.

The following participated in the meeting:-

1. Eng: Ghulam Ishaq Khan
Executive Engineer
Malakand Irrigation Division Malakand
Chairman
2. Mr. Muhammad Sajjad
Sub Divisional Officer,
Head Works Irr: Sub Divn: Mkd:
Member
3. Mr. Mijal Khan
Section Officer (E) office of the
Secretary Irrigation Department
Khyber Pakhtoonkhwa Peshawar
Member
4. Mr. Jamal Shah
Head Clerk Irrigation Division Malakand.
Secretary

After recitation from the Holy Quran, the Chairman welcomed all the parties and asked the Secretary of the committee to highlight the position for promotion / re-designation and appointment cases. He informed the committee that the following posts are required to be filled up through promotion /re-designation:-

- I. 3-Nos: Posts of Mate one each at Amandara, Harichand and Katlang Section.
 - II. One No. Post of Road Roller Cleaner.
1. The Case of Munir Khan for promotion as Mate in Amandara Section against vacancy created due to retirement of Mr. Zarif Khan Mate was discussed. His performance as Beldar during the past has been found satisfactory and being the Senior most was found eligible for promotion as Mate by the committee unanimously.
 2. The Post of mate in Harichand Section lying vacant due to retirement of Mr. K. Wadan Mate was also discussed. In this regard the case of Mr. Alamzeb Beldar was examined in light of the recommendations made by Sub Divisional Officer, Irrigation Sub Division, District Malakand. Vide his letter No. 849/2-E, dated 08/08/2011, the committee unanimously recommended his promotion as Mate in Harichand Section.



3. The post of Mate in Katlang Section due to retirement of Mr. Azizullah Mate vacant was also examined. Amongst the Senior most Beldars in Katlang Section the case of Farid Khan and Mehboob-ur-Rehman Beldars was considered out of which Mr. Farid Khan to forgo his promotion. The next Senior most Beldar Mr. Mehboob-ur-Rehman was recommended by the Committee to be promoted as Mate.

4. The request of Mr. Ashfaq Ahmad presently employed as Sweeper was considered. Being Muslim his case for re-designation as Road Roller Cleaner was also examined. The official having relevant experience with driving and cleaning of Vehicles was found fit for the job and the committee unanimously recommended him for re-designation as Road Roller Cleaner. With regard to above, the following decision was made.

1. Mr. Munir Khan Beldar was promoted as Mate in Amardara Section.
2. Mr. Alamzeb Beldar was Promoted as Mate in Harichand Section.
3. Mr. Mehboob-ur-Rehman Beldar was promoted as Mate in Katlang Section.
4. Mr. Ashfaq Ahmad was re-designated as Road Roller Cleaner.

Besides other vacant posts the appointment cases against vacancies set out above were also discussed. The Committee was informed that as a result of above, 3-Nos. posts of Beldars and one number post of Sweeper has become vacant, whereas the following posts are now lying vacant which needs to be filled up through suitable applicants for proper operation and maintenance of the canal system.

1. 1-No. post of Boatman due to retirement of Mr. Gul Muhammad.
2. 1-No. post of beldar due to death of Mr. Akram Shah Beldar.
3. 1-No. Post of Chowkidar due to retirement of Mr. Painda Gul.
4. 1-No. Post of Road Roller Cleaner.
5. 1-No. Post of Chowkidar likely to become vacant on 29-10-2011 due to retirement of Mr. Umer Ghani.
6. 1-No. Post of Pipe Fitter likely to become vacant on 31-10-2011 due to retirement of Mr. Mehtab.
7. 2-Nos: posts of Operator cum Chowkidar (New) as per Page 427 of Budget Book for 2011-12.
8. 2-Nos: post of Beldars (New) as per Page 427 of Budget Book for 2011-12.

In light of above, the following posts are now lying vacant.

1. 6-Nos: Posts of Beldar.
2. 1-No. Post of Sweeper
3. 1-No. Post of Boatman
4. 2-Nos: Post of Chowkidar
5. 2-Nos: Post of Operator cum Chowkidar.
6. 1-No. Post of Road Roller Cleaner.
7. 1-No. Post of Pipe Fitter

(10)

Several applicants were examined against the above mentioned posts by the Committee accordingly and after thorough scrutiny, the following candidates for appointment against each of the following mentioned posts were recommended by the Committee unanimously.

| S. No. | Name of applicant | Designation | Remarks |
|--------|--|------------------------|--------------|
| 1 | Kamran Ali S/O Sher Dil Khan Shergarh District Mardan. | Beldar | Open |
| 2 | Misal Khan S/O Zarif Khan Khar Bakhela (District Malakand) | Beldar | Employee Son |
| 3 | Ibrar Muhammad S/O Gul Muhammad Alladhand (Distt: Mkd) | Boatman | Specialized |
| 4 | Sohail Ahmad S/O Sher Baz Mkd: | Chowkidar | Open |
| 5 | Bahader Khan S/O Aslam Khan Takht Bahai District Mardan. | Chowkidar | Open |
| 6 | Tariq Hussain S/O Noor Khan Bazar Katlang. | Beldar | Open |
| 7 | Salar Muhammad S/O Fazal Khaliq Khar Bakhela (District Malakand) | Beldar | Employee Son |
| 8 | Ismael S/O Fazal Rehman Maday Baba (District Mardan) | Beldar | Open |
| 9 | Liaqat Ali S/O Ajmal Ako Dheri Lund Khawar. | Sweeper | Open |
| 10 | Daraz Khan S/O Akber Khan Palo Dheri Mardan | Beldar | Disabled |
| 11 | Kifayatullah S/O Saeedullah Khan Malakand. | Operator cum Chowkidar | Employee Son |
| 12 | Rehmatullah Khan S/O Aziz-ur-Rehman Amin Abad (Distt: Mkd) | Operator cum Chowkidar | Employee Son |
| 13 | Liaqat Ali S/O Sher Muhammad Juwar (Kharkai) Dargai District Malakand. | Road Roller Cleaner | Open |
| 14 | Fakhri Alam Khan S/O Mir Alam Khan Jalala District Mardan. | Pipe Fitter | Open |

Eng. GHULAM ISHAQ KHAN
Executive Engineer
Malakand Irrigation Division
Malakand
(CHAIRMAN)

Mr. Misal Khan
Section Officer (E) office of the
Secretary Irrigation Department
Khyber Pakhtoonkhwa Peshawar
(MEMBER)

Eng. Muhammad Sajjad
Sub Divisional Officer
Head Works Irrigation Sub Division
Malakand.
(MEMBER)

Mr. JAMAL SHAH
Head Clerk
Malakand Irrigation Division
Malakand
(SECRETARY)

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

A.W.P. No: 767-M/2016

JUDGMENT

Date of hearing: 11.12.2018

Petitioner:- (Misal Khan) Nemo for the petitioner.

Respondents: - (Government of KPK & others) by Mr. Rafiq Ahmad, Astt. Advocate General.

SYED ARSHAD ALI, J.- Vide our detailed judgment in connected writ petition bearing No. 203-M of 2014 titled "Kamran Ali & others vs Govt. of KPK & others", this writ petition is allowed, thereby, the impugned order dated 04.11.2011 is set aside and the petitioner be reinstated to his service, however, he cannot be granted the financial benefits because he did not serve against the said post during the intervening period. Moreover, the respondents are at liberty to initiate departmental proceedings against the present petitioner, if it appears to them that he has procured his appointment through illegal means or has committed any sort of misconduct.

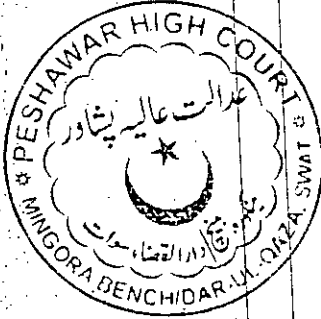
ANNOUNCED
Dr. 11.12.2018

JUDGE

JUDGE

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

Office
14/12/18



(12)

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

1. A.W.P. No. 203-M/2014

2. A.W.P. No. 767-M/2016

3. A.W.P. No. 768-M/2016

4. A.W.P. No. 769-M/2016

&

5. A.W.P. No. 770-M/2016

CONSOLIDATED JUDGMENT

Date of hearing: 11.12.2018

Petitioners:- (Kamran Ali & others) Nemo for the petitioners.

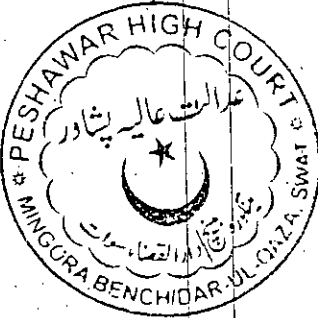
Respondents:- (Government of KPK & others) by Mr. Rafiq Ahmad, Astt. Advocate General.

SYED ARSHAD ALI, J.:- Through this common judgment, we intend to dispose of the present petition as well as the connected writ petitions bearing No. 767-M, 768-M, 769-M & 770-M of 2016, as similar question of law are involved/raised in all these connected matters.

2. In the present writ petition bearing No. 203-M/2014 Kamran Ali & 13 others had earlier filed a writ petition bearing No. 203-M/2014, whereby they had prayed for release of their salaries, however, during pendency of the said writ petition they had applied for amendment in the

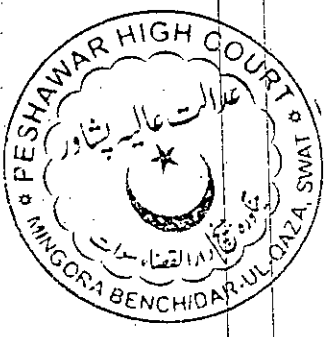
Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali





13

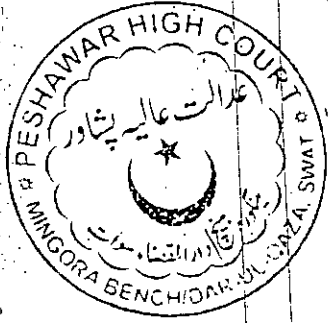
writ petition so that the impugned order of withdrawal of their appointment could be challenged, thereby, their request was allowed by this Court vide order dated 27.03.2014. This amended writ petition has been filed by petitioners Kamran Ali, Kifayat Ullah and Rehmat Ullah Khan, however, during pendency of the present petition, petitioner No. 2 Kifayat Ullah and with the consent of petitioner No. 3 Rehmat Ullah Khan his brother Irfanullah were appointed, therefore, to the extent of petitioners No. 2 & 3 this petition has become infructuous.



3. It is averred in the petition, that the petitioner Kamran Ali was appointed on the recommendations of the Departmental promotion committee as 'Beldar' (BPS-1) against the quota reserved for the children of retired government employees vide appointment order dated 31.10.2011. Pursuant to the said appointment letter, the petitioner assumed the charge of his duty, his service book was prepared, however, vide impugned order dated 04.11.2011 his appointment order was withdrawn without any rhyme and reasons. On being noticed, the respondents

5.11

A



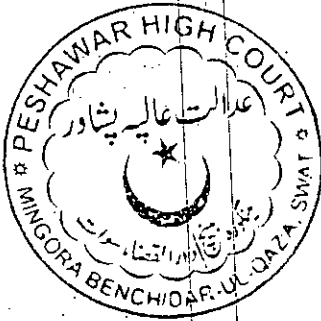
No. 5 & 6 have filed their para-wise comments, wherein they have stated that the appointment of the petitioner was not based on merit, as neither he has joined his services nor his arrival report was submitted. During the course of arguments, the learned A.A.G has also stated that the petitioner Kamran Ali belongs to District Mardan, therefore, he should have not been appointed against any post in Malakand Division because in appointment of the Class-IV employees' the candidate must be a local.

4. It is evident from record that the petitioner was appointed as *Beldar* BPS-1 vide impugned order dated 31.10.2011. His appointment letter does not suggest that he was appointed against the quota reserved for the children of retired government employees', however, the respondents have asserted in their comments that the petitioner had never assumed the charge of his duty nor his service book was prepared, therefore, vide impugned order dated 04.11.2011 his appointment order of was withdrawn by the competent authority. The said order does not contain any reason for withdrawal of the order of appointment of the

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

petitioner and more so before passing the said impugned order no notice was issued to him.

15

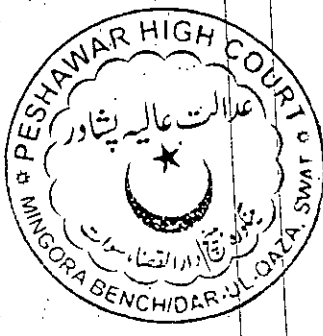


5. Similarly, the petitioner Misal Khan of amended writ petition bearing No. 767-M/2016 has alleged in his petition that he was appointed on the recommendations of the Departmental Promotion Committee against the quota reserved for the children of retired government employees vide appointment letter dated 31.10.2011, however, without any notice his appointment order was withdrawn vide impugned order dated 04.11.2011. On being summoned, the respondents No. 5 & 6 have filed their comments and it is averred in the said comments that the petitioner was appointed against the Employee Sons' Quota, however, he was not entitled to be appointed against the said post, therefore, his appointment order was withdrawn.

6. It is evident from record that the petitioner was appointed as *Beldar* (BPS-1) vide impugned order dated 31.10.2011. His appointment letter does not give any impression that he was appointed against the quota reserved for the children of retired government employees,

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

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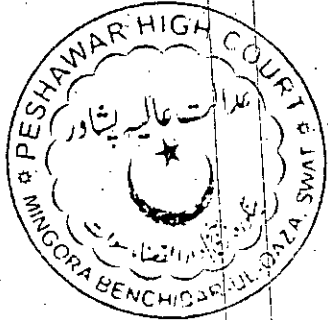
however, the respondents have placed on file the retirement order of the father of the petitioner and according to which the father of the petitioner got retired on 30.9.2011 on his own request, therefore, vide impugned order dated 04.11.2011 appointment order of the petitioner was withdrawn by the Executive Engineer. The said impugned order neither contained any reason for withdrawal of the order of appointment of the petitioner nor any prior notice was issued to him.

7. As per claim of the petitioner Daraz Khan advanced through his amended writ petition bearing No. 768-M/2016 that he was recommended for appointment against the post of *Beldar* BPS-1 on 01.10.2011 by the Departmental Promotion Committee under the disable quota, however, he got appointed by the competent authority vide appointment order dated 31.10.2011. The record further reveals that the petitioner assumed the charge of his duty and his service book was also prepared, however, through impugned order dated 04.11.2011 his appointment order was withdrawn. The said order does not contain any reason for withdrawal of the appointment order and similarly



no notice prior to the withdrawal of the order of his appointment was issued to him. Even in the para-wise comments, the respondents have not put-forward any reason for withdrawal of the appointment order of the petitioner.

17



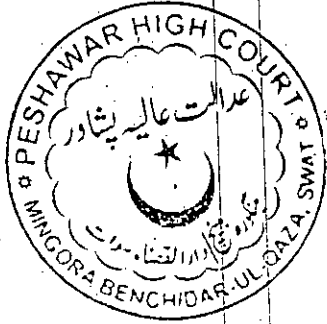
8. Similarly, the petitioner Fakhar-e-Alam Khan of the amended writ petition bearing No. 769-M/2016 has claimed that he was also recommended by the Departmental Promotion Committee for appointment against the post of Pipe Fitter vide recommendations dated 01.10.2011, however, he was appointed against the said post vide appointment letter dated 31.10.2011. The petitioner claimed that he was appointed against the Employee Sons Quota in his petition, however, it is evident from the recommendations of the Departmental Promotion Committee that he was appointed on open merit. It is further evident from record that the petitioner has assumed the charge of his duty and his service book was also prepared. However, his appointment order was also withdrawn vide impugned order dated 04.11.2011, which neither contains any reason nor before issuing the said order the petitioner was issued any

5

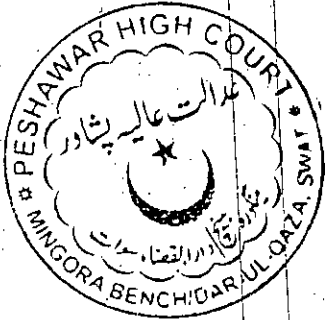
9

show cause notice. In the comments, it is the case of the respondents that the petitioner was illegally appointed because against the impugned posts only the local persons could be appointed, whereas the present petitioner belongs to another District i.e. *Mardan Tehsil Takht Bahai*. It is also the claim of the respondents that the petitioner had never assumed the charge of his duty.

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9. Likewise, the petitioner Salar Muhammad through his amended writ petition bearing No. 770-M/2016 has also challenged the impugned order dated 04.11.2011, whereby his appointment order was withdrawn by the respondents. The petitioner Salar Muhammad was recommended by the Departmental Promotion Committee against the post of *Beldar* (BPS-1) under the Employee Sons' Quota; he was issued appointment letter on 31.10.2011 against the said post. Similarly, he had assumed the charge of his duty and his service book was also prepared, however, his appointment order was withdrawn vide impugned order dated 04.11.2011. In his case too, the impugned order neither contained any reason for withdrawal nor does suggest that any



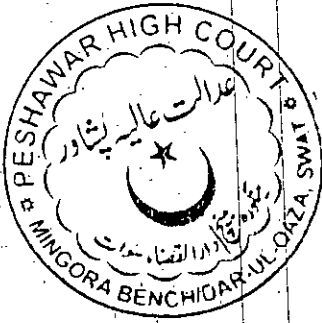
Similar view was reiterated by the august Supreme Court of Pakistan in case law cited as Federation of Pakistan vs Sheikh Abdul Aziz (1998 SCMR 91), Muhammad Saleem & 2 others vs Agricultural Development Bank of Pakistan, Islamabad & another (2003 SCMR 251), Fatima Bibi vs Deputy District Education Officer & others (2007 PLC CS 597) and Provincial Police Officer, N.W.F.P and others vs Muhammad Nawaz (2011 PLC CS 865).

11. We are also conscious of the jurisdictional contour of this Court, as under Article 212 of the Constitution of the Islamic Republic of Pakistan the jurisdiction of this Court is barred to entertain any petition of the civil servant regarding the enforcement of their terms and conditions, however, as stated above, the impugned order of withdrawal dated 04.11.2011 in all these connected matters is neither provided in the Khyber Pakhtunkhwa Civil Servants Act 1973 nor under the Khyber Pakhtunkhwa (Appointment, Promotion and Transfer) Rules 1989 nor under the Khyber Pakhtunkhwa Government Servants (Efficiency and Discipline) Rules, 2011, therefore, the bar of

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali

jurisdiction, in our humble view, would not be attracted to these connected matters.

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12. In this view of the matter, all these connected writ petitions are allowed, thereby, the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be reinstated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondents are at liberty to initiate departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct.

ANNOUNCED
Dr: 11.12.2018


JUDGE


JUDGE

S No..... 11
Name of Applicant..... Sa. Sami Ullah
Date of Presentation of Applicant..... 12-12-18
Date of Completion of Copies..... 18-12-18
No of Copies..... 12-2
Urgent Fee.....
Fee Charged..... 24/-
Date of Delivery of Copies..... 18-12-18

Certified to be true copy



18-12-18

EXAMINER

Peshawar High Court, Mingora/Dar-ul-Qaza, Swat
Authorized Under Article 87 of Qanoun-e-Shahadat Order 1988

Office
14/12/2018

Nawab (D.B.) Hon'ble Mr. Justice Muhammad Ghazanfar Khan
Hon'ble Mr. Justice Syed Arshad Ali



5

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

E - 22

Civil Appeals Nos. 1993 to 1996 of 2019

(Against the judgment dated 11.12.2018 of the Peshawar High Court, Ningsora Bench (Dar ul Qaza) Swat passed in WP No.203 of 2019)

Govt. of KPK thr. Secretary Irrigation, Peshawar
and others

... Appellants in all cases

Versus

Kamran Ali and others
Misal Khan
Daraz Khan
Salar Muhammad

... Respondents in CA-1993/19
... Respondent in CA-1994/19
... Respondent in CA-1995/19
... Respondent in CA-1996/19

For the appellants:

Barrister Qasim Wadood, Addl. A.G. KP

For respondent No.1 in
CA-1993 & respondents
in CA-1994 & CA-1996:

Mr. Muhammad Siddique Khan Baloch, ASC
Mr. Muhammad Sharif Janjua, ASC

Respondent
in CA-1995/19:

In person.

For respondents 2-3 in
CA-1993/19:

Nemo.

Date of hearing:

10.03.2020

ORDER

Gulzar Ahmed, CJ. - The learned Division Bench of the High Court, in the operative para of the impugned judgment dated 11.12.2018, has observed as under:-

"In this view of the matter, all these connected writ petitions are allowed, thereby, the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be reinstated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondents are at liberty to initiate

APPROVED

CO. JUDGE
SUPREME COURT OF PAKISTAN
10.03.2020

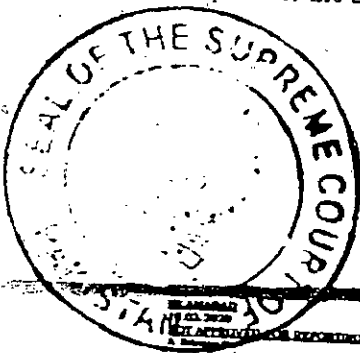


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departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct.

It is stated by the learned AAG before us that this judgment of the High Court is not being complied with for the reason that its operation was suspended by this Court and none of the respondents worked with the appellant. We note from the operative part of the impugned judgment that no financial benefits has been allowed to the respondents, however, the appellant has been allowed to initiate departmental proceedings against the respondents. Where the appellant has been given the option to initiate the departmental proceedings, more so, when the law did not permit withdrawal of the appointment letter, in order to do things in accordance with law, the High Court's observation of initiating departmental proceedings, appears to be a correct observation.

Consequently, while disposing of these appeals, we note that within two months from today the appellant shall initiate the departmental proceedings and conclude the same and during this period, the appellant will not be required to reinstate the respondents. However, after two months, it may reinstate them, if the proceedings are not concluded. Learned counsel for the respondents has no objection to the disposal of the appeal in the above terms. Disposed of accordingly.



Sd/-HCJ

Sd/-J

Sd/-J

Certified to be True Copy

Senior Counsel Associate
Supreme Court of Pakistan
Islamabad

GR No: 1775660/20 Civil/Crimina.
Date of: 12-3-20
No of: 603
No of: 6
Requester Fee Rs: 5
Copy Fee: 2
Court Fee Stamp: 8
Date of Copy: 12/3/20
Date of Delivery of Copy: 12-3-20
Compared and Prepared by: Siddique Khan

Handwritten signature/initials

MOST URGENT SUPREME COURT MATTER



**OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION MALAKAND**

irrigationmkd@yahoo.com



0932-452049

No: 868 /37-W(AG),
To

Dated Malakand the 02 /04/2020

Mr Kamran Ali S/O Sher Dil Khan
R/O Shergarh, Tehsil Takhtbai
District Mardan.

F-24

Subject: -

CA 1993 TO 1995/2019 IN CASE TITLED GOVT: OF KP V/S KAMRAN ALI & OTHERS (SHOW CAUSE NOTICE)

I Engineer Ali-ur-Rehman Executive Engineer Malakand Irrigation Division Malakand being Competent Authority serve you with this notice in light of Supreme Court of Pakistan orders dated:-10/3/2020 in the subject noted case.

1. That you were offered the post of Beldar vide order No.2404/7-E(Sub), dated 31/03/2011 against the vacancy falling in District Malakand, whereas you are resident of Sher Garh, District Mardan.
2. That you were overage by 03 years 08 months and 06 days at the time of appointment as per recruitment rules for various positions in Irrigation Department circulated vide Notification No SO(E)/IRR/23-5/73 dated 20/06/2006.
3. The above facts explicit that you have managed your appointment through illegal means.

You are therefore, directed to show cause as to why your termination order may not be issued and also intimate whether you desire to be heard in person.

If no reply to this notice is received with seven (07) days of its delivery, but not later on 14-04-2020, it shall be presumed that you have no defense to put in and in that case an ex-parte action shall be taken against you.

Engr. Ali-ur-Rehman
EXECUTIVE ENGINEER
(Competent Authority)

02/04/2020

4

G-25

The Executive Engineer,
Malakand Irrigation Division, Malakand.

Subject: Reply to the Show Cause notice dated 02/04/2020.

R. Sir,

Reference to the showcause notice dated 02/04/2020 where in it has been alleged that you have menured your appointment order against the post of Baildar dated 31/03/2011 through illegal means.

Respected sir it is humbly stated that the undersigned was appointed against the post of Beldar vide order dated 31/10/2011 through district employment exchange and on the proper recommendations of departmental selection committee held on 01/10/2011. That inresponse to my appointment order as Beldar dated 31/10/2011 I got myself medically examined from the concerned medical superintendent of District Headquãrtet Hospital Batkhela, where after my service book was also prepared by your goodself and accordingly I submitted my arrival report dated 01/11/2011.

That after submission of my arrival report I started my duty as Beldar (BPS/03) quite efficiently and upto the entire satisfaction of my superiors including your goodself. that inpite of regular performance of duty as beldar my salaries were not released by your goodslef, feeling aggrieved I knocked the door of the Peshawar Highcourt Dar ul qaza bench at swat in writ petition number 57-m/2012. That during the pendency of above mentioned writ petition the representative of the department produced the withdrawal order of my appointment order. dated 04/11/2011. that where after I withdrew my writ petition number 57-m/2012 from the agust Peshawar Highcourt Dar Ul Qaza bench.

That where after I filed writ petition number 203/2014 before the agust Peshawar Highcourt Dar Ul Qaza bench at Swat by challenging impugned withdrawal order dated 04/11/2011 and as such the said writ petition was allowed in favour of me vide judgment dated 11/12/2018. That the said writ petition was allowed with the directions to your goodself department to reinstate me and my colleagues but without back benefits. That I visited your goodself office time and again for the implementation of the above mentioned judgment but your good self succumbed on the above mentioned judgment. That where after I and my colleagues knocked the door of PHC Dar Ul Qaza Bench in COC petition No 30-m/2019 but during the pendency of the above mentioned COC your goodself filed CPLA No.s 1993 to 1995/2019 in the agust Supream Court of Pakistan.

That the august Spream Court of Pakistan vide judgment dated 10/03/2020 disposed of the said CPLAs with the directions that " to initiate departmental proceedings against me and my colleagues and shall conclude the same with in two months with the condition that not to reinstate me and my colleagues and if the proceedings are not concluded with in two months I and my colleagues be reinstated".

Respected Sir I was appointed against the post of Beldar in light of section 03 of the civil servant Act, 1973 read with Rule 10(2) of the Appointment, Promotion & Transfer Rules, 1989. That no illegality has been committed by myself at the time of my appointment order as Beldar.

That the impugned withdrawal order dated 04/11/201 is violative of the mother judgement of Supream Court of Pakistan reported in 2005 TD(s) page 78. That under the principle of locus poenitentiae once an order has been issued cannot be with drawn unilaterally. So inlight of the above mentioned judgment and principle the impugned withdrwal order is not tenable and liable to be set

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It is therefore most humbly requested that the showcause notice dated 02/04/2020 and impugned order dated 04/11/2011 may very kindly be set aside and I may kindly be re instated into service with all back benefits including seniority and obliged.

Sincerely yours, Kamran Ali

Kamran Ali S/O Sher Dil Khan

R/O Shergarh Tehsil Takht Bhai Distt; Mardan





OFFICE OF THE EXECUTIVE ENGINEER

MALAKAND IRRIGATION DIVISION MALAKAND



irrigationmkd@yahoo.com



0932-452049

No. 951 /7-E(Sub),

Dated Malakand the 29/04/2020.

H-27

OFFICE ORDER

In pursuance to the inquiry report in light of directions issued by the Honorable Supreme Court of Pakistan in the order dated 10-03-2020 in (CA 1993 to 1996/2019), the Departmental Committee constituted for the purpose in light of directions issued by the Chief Engineer (North) Irrigation Department Peshawar vide No.763/North/AO, dated 20/03/2020, in its meeting held on 14/04/2020 in Divisional Office Malakand re-examined the recommendations made for appointments in the DPC held on 08/10/2011 and Unanimously concluded / recommended that:-

- (i) None of the candidate, as recommended for appointment by the DPC held on 08/10/2011, could fulfill the eligibility criteria and there by found violating the merit. Thus, the committee declared all the appointments of respondents mentioned below as against the prevailing Government rules and regulations/eligibility criteria and further declared as non-eligible to be appointed against the mentioned positions.
- (ii) Termination of all the respondents, viz (i) Mr. Kamran Ali S/O Sher Dil Khan, (ii) Mr. Rehmatullah S/O Aziz-ur-Rehman, (iii) Mr. Misal Khan S/O Zarif Khan, (iv) Mr. Daraz Khan S/O Akbar Khan (v) Mr. Salar Khan S/O Fazle Khaliq, shall be made through slight modification in the office order No.2454/7-E(Sub) dated:-04/11/2011 by replacing the word withdrawn through **TERMINATION**.

Therefore as recommended by the Committee, slight modification in the office order No.2454/7-E(Sub), dated 04/11/2011 is here by ordered by replacing the word "WITH DRAWN" in to **TERMINATION** of their services with effect from 31/10/2011 and I being the Appointing Authority hereby order termination of the services of the following candidates with effect from 31/10/2011. The recommendations of DPC dated 08/10/2011 also stands terminated.

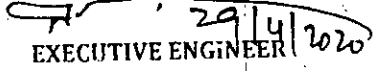
| S# | Name of Candidates (CA 1993 to 1996/2019) | Appointment order No. & Date. | Post offered | Status /Decision |
|----|---|------------------------------------|------------------------|------------------|
| 1 | Mr. Kamran Ali S/O Sher Dil Khan, Village & P.O Shergarh Qasmi Banda, Tehsil Takht Bhai, District Mardan. | No.2404/7-E(Sub), dated 31/10/2011 | Beldar | Terminated |
| 2 | Mr. Rehmatullah Khan S/O Aziz-ur-Rehman, R/O Amin Abad, Batkhela, District Malakand. | No.2402/7-E(Sub), dated 31/10/2011 | Operator Cum Chowkidar | Terminated |
| 3 | Mr. Misal Khan S/O Zarif Khan, R/O Khar Batkhela, District Malakand | No.2397/7-E(Sub), dated 31/10/2011 | Beldar | Terminated |
| 4 | Mr. Daraz Khan S/O Akbar Khan, R/O Palo Dheri, Shah Baz Garhi, District Mardan. | No.2403/7-E(Sub), dated 31/10/2011 | Beldar | Terminated |
| 5 | Mr. Salar Muhammad S/O Fazal Khaliq, R/O Khar Batkhela, District Malakand | No.2399/7-E(Sub), dated 31/10/2011 | Beldar | Terminated |

EXECUTIVE ENGINEER 29/04/2020

P. T. O

Copy of the above is forwarded to the:-

1. P.S to Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department Peshawar for information.
2. Chief Engineer (North), Irrigation Department Peshawar with reference to above along with copy of the enquiry report with relevant documents for his kind perusal please.
3. Superintending Engineer Mardan Irrigation Circle Mardan with reference to his No.719/72-M, dated 20-03-2020 above along with copy of the enquiry report for his kind perusal please.
4. Mr. Ajmal Khan Deputy Collector, Mardan Irrigation Division, Mardan (Committee Member).
5. Engr: Bakhtiar Khan, Sub Divisional Officer Head Works Irrigation Sub Division Malakand (Committee Member).
6. Mr. Muhammad Hayat Khan, Sub Divisional Officer, Dargai Irrigation Sub Division, Dargai (Committee Member).
7. Mr. Arshad Zaman, District Accounts Officer(Local) (Committee Member).
8. Mr. Mir Alam Khan, Head Clerk (Local) (Committee Member).
9. Mr. Asadullah Khan, Establishment Clerk (Local) (Secretary of the Committee).
10. Candidate concerned.(Through Registered Letter).

 29/4/2020
EXECUTIVE ENGINEER

70
The Chief Engineer (North),
Irrigation Department, Peshawar.

I - 28

Subject: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 29.04.2020 WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM SERVICE.**

Respected Sir,

It is most humbly stated that the appellant was appointed as Beldar (BPS-01) in the Irrigation Division, Malakand through Employment Exchange Registration Card vide order dated 31.10.2011. After appointment the appellant submitted his arrival report and started performing his duty quite efficiently and up to the entire satisfaction of his superiors.

That astonishingly the Competent authority issued the order dated 04.11.2011 whereby the appointment order of the appellant had been withdrawn. That feeling aggrieved from the order dated 04.11.2011 the appellant preferred Departmental appeal followed by writ petition No.767-M/2016 before the Peshawar High Court, Mingora Bench Dar-Ul-Qaza, Swat which was decided along with other connected writ petitions vide consolidated judgment dated 11.12.2018 with the directions that:-

"In this view of the matter, all these connected writ petitions are allowed, thereby the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be reinstated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondents are at liberty to initiate departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct".

That after obtaining the aforementioned judgment the appellant submitted the same before concerned authority for implementation but the authority filed CPLA No.1993 to 1996 of 2019 before the Honorable Supreme Court of Pakistan which was disposed of with the view that:-

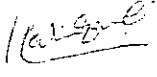
"We note that within two months from today the appellant shall initiate the departmental proceedings and conclude the same and during this period the appellant will not be required to re-instate the respondents. However, after two months, it may re-instate them, if the proceedings are not concluded".

That it is pertinent to mention here that after the judgment of Honorable Supreme Court of Pakistan a show cause notice has been issued to the appellant and the same has been replied by the appellant, but the concerned authority has not taken into consideration the aforementioned reply of the appellant. That it is also pertinent to mention here that the concerned authority without fulfilling the codal formalities straight away issued the impugned order dated 29.04.2020 whereby the appellant has been terminated from service. That no opportunity has been provided to the appellant and as such the appellant has been condemned unheard while issuing the impugned order dated 29.4.2020.

It is, therefore, most humbly prayed that on acceptance of this Departmental appeal the impugned order dated 29.04.2020 may very kindly be set aside and the appellant may kindly be re-instated into service with all back benefits.

Dated: 18.05.2020

APPLICANT



KAMRAN ALI, Ex-Beldar,
Irrigation Division, Malakand.



VAKALATNAMA

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

_____ OF 2020

Kamran Ali

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Irrigation Department

(RESPONDENT)
(DEFENDANT)

I/We Kamran Ali

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2020

Kamran

CLIENT

ACCEPTED

NOOR MOHAMMAD KHATTAK

KAMRAN KHAN

MIR ZAMAN SAFI

&

AFRASIAB KHAN WAZIR
ADVOCATES

OFFICE:
Flat No.4, 2nd Floor, Juma Khan
Plaza, near FATA Secretariat,
Warsak Road, Peshawar.
Mobile No.0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 10409/2020

Kamran Ali S/O Sher Dil Khan (Appellant)

VERSUS

**Secretary to Govt: of Khyber Pakhtunkhwa Irrigation Deptt: Peshawar and
others.....(Respondents)**

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(Engr. Sherin Khan)

Executive Engineer
Malakand Irrigation Division,
Malakand

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO.10409/2020

Kamran Ali S/O Sher Dil Khan.....(Appellant)

VERSUS

Secretary to Govt: of Khyber Pakhtunkhwa Irrigation Department Peshawar and
others.....(Respondents)

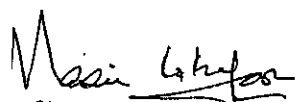
POWER OF ATTORNEY /AUTHORITY LETTER

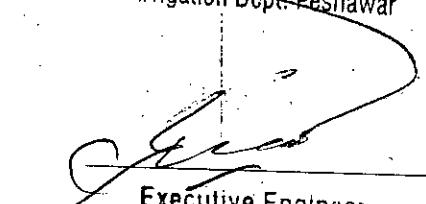
Mr. Fazl-e-Amin, Deputy Collector (BS-17), Malakand Irrigation Division Malakand at Dargai, is hereby authorized as the attorney holder to defend the above noted case on behalf of the undersigned. The said attorney holder is also authorized to file any statement/additional document/evidence as required in the mentioned case on behalf of the undersigned.

1 Secretary to the Govt: of Khyber
Pakhtunkhwa Irrigation Department
Peshawar.
(Respondent 01)

2 Chief Engineer (North),
Irrigation Department
Peshawar.
(Respondent 02)

3 Executive Engineer,
Malakand Irrigation Division
Malakand.
(Respondent 03)


Chief Engineer (N) 19/04/2021
Irrigation Dept: Peshawar


Executive Engineer
Malakand Irrigation Division
Malakand

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 10409/2020

Kamran Ali S/O Sher Dil Khan.....(Appellant)

VERSUS

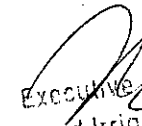
Secretary to Govt: of Khyber Pakhtunkhwa Irrigation Department Peshawar and
others.....(Respondents)[

PRELIMINARY OBJECTIONS

1. That the appellant has no cause of action to file the instant appeal.
2. That the termination order has been issued upon the orders of Supreme Court of Pakistan after proper enquiry.
3. That the appellant has not come to this Honorable Tribunal with clean hands.
4. That the appellant has no locus standi to prefer the present appeal.
5. That the appeal is bad in its present form.
6. That this Honorable Tribunal has no jurisdiction to entertain the appeal.
7. That the termination order of the appellant has rightly been issued due to the following reasons:
 - i. The mentioned candidate/person could not submit his reply in line with the notice served upon him. The candidate could also not satisfy the committee during personal hearing especially on his overage status and on ignoring of local District candidate.
 - ii. The upper age limit, as per prevailing Rules, at the time of appointment was 30-years: (Refer Notification No.SO(E)/IRR/23-5/73, dated 20-12-2006) whereas the age of the candidate as on 08-10-2011 was 33 years 08-months and 06-days. There by the candidate was over age by 03-years 08-months and 06-days.
 - iii. According to the Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules, 1989, local person shall be given priority for appointment as Class-IV but the appellant was resident of Village Qasim Khan Banda Shergarh Tehsil Takht Bhai District Mardan whereas the post of Beldar against which appointment was offered to him was lying vacant at District Malakand instead of Mardan.
 - iv. The consideration of appellant for appointment is found against the Policy and declared as non-eligible for appointment as Beldar under open merit.
 - v. The committee therefore found his appointment against the prevailing rules and regulations and declared him non-eligible for the appointed against the open merit by because of Upper Age Limit and local District candidate as per recruitment policy.

RESPECTFULLY SHEWETH:

1. Correct to the extent that the appellant was appointed as Beldar BPS-01 vide No.2404/7-E(Sub), Dated:31-10-2011, but the order was withdrawn vide Executive Engineer, Malakand Irrigation Division Malakand Office Order No. 2454/7-E(Sub), Dated 04-11-2011. The appellant was not assigned any duty. Therefore, the claim of the appellant is not true and denied.
2. The office order dated 31-10-2011 was rightly withdrawn as the merit was violated by ignoring the local candidate of the District as the appellant was also overage at the time of appointment and the appellant was overage by 3 years 08-months and 06-days (Refer Notification No. SO(E)/IRR/23-5/73, Dated: 20-12-2006).
Furthermore, according to Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules,

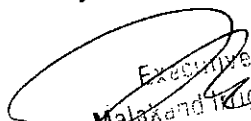

Executive Engineer
Malakand Irrigation Division
Malakand

1989, local person shall be given priority for appointment as a Class-IV, but the appellant was resident of Qasim Khan Banda, Shergarh, District Mardan, whereas the post of Beldar was vacant in District Malakand. Therefore, the considerations for appointment of the appellant was examined by the committee constituted under the directions of Supreme Court of Pakistan Order dated 10-03-20 (in CA 1993 to 1996/2019) and found against the policy and declared as non-eligible for appointment as Beldar under open merit.

3. The Peshawar High Court Order, dated 11-12-2018, in writ petition 767-M/2016, connected Writ Petition bearing No.203-M/2014 was challenged in the Supreme Court of Pakistan, wherein the Supreme Court in Civil Appeal No.1993 to 1996 of 2019 in case titled Government of Khyber Pakhtunkhwa through Secretary Irrigation Department Peshawar versus Kamran Ali& others directed that consequently, **while disposing of these appeals, we note that within two months from today the appellant shall initiate the Departmental proceedings and conclude the same and during this period, the appellant will not be required to reinstate the respondents. However, after two months, it may reinstate them, if the proceedings are not concluded. Learned counsel for the respondents has no objection to the disposal of the appeal in the above terms, Disposed of accordingly (Copy of judgment of Supreme Court attached as Annex-A).**
4. In light of Honorable Supreme Court of Pakistan Order dated 10-03-2020, a committee was constituted to re-examine the recommendations made for appointment in the D.P.C on 08-10-2011 and the committee unanimously concluded and recommended vide office order No.951/7-E(Sub), dated 29-04-2020 slightly modify the word "withdrawn" with "Termination" w.e.f 31-10-2011 (Copy attached as Annex-B).
5. That Show Cause Notice was properly examined by the committee and the appellant was also given proper opportunity for personal hearing on 14-04-2020 at 11:00 AM before the committee wherein the appellant fail to satisfy the committee in response to the Show Cause Notice during personal hearing. Therefore, termination order of the appellant has rightly been issued in light of the Rules and Regulations.
6. The Para is incorrect and hence denied as all the Rules and Regulations was considered by the committee constituted in light of the Honorable Supreme Court of Pakistan order, dated: 10-03-2020. In addition, the appropriate explanation has already been highlighted as per Para No.2 above.
7. That the appeal of the appellant was examined by the Chairman of the committee Respondent No.3) and was duly regretted within the prescribed period through letter No.2110/7-E(Sub), dated 04-09-2020.
(Copy attached as Annex-C)

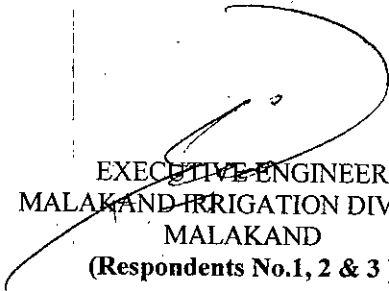
GROUND:

- A. Para No. 01 is incorrect that the order dated 29-04-2020 has rightly been issued in accordance with the direction of Honorable Supreme Court of Pakistan Order, dated: 10-03-2020, keeping in view the prevailing Rules and Regulation for appointment by the committee and the appellant has rightly been declared as non-eligible to be appointed against the open merit by ignoring upper age limit and local District candidate.
- B. Incorrect. That the appellant has been treated in according with the prevailing Rules and Regulation and the committee has properly examined his appointment order and declared him non eligible as per explanation given in Para No.2 above, thereby the respondent has not violated Article (4)&(25) of the constitution of Islamic Republic of Pakistan, 1973.
- C. The order dated 29-04-2020 has been issued in accordance with the prevailing Rules and Regulations. Keeping in view, the order of Honorable Supreme Court of Pakistan, the statement of appellant regarding amplified manner is not based on facts and is false.
- D. Incorrect. All the codal formalities have been fulfilled while issuing the termination order by the competent authority.

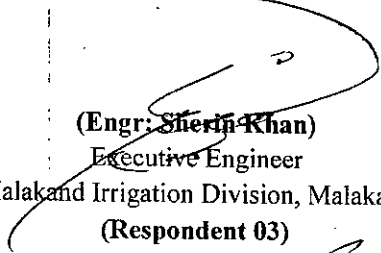

Executive Engineer
Malakand Irrigation Division
Malakand

- E. Incorrect. The statement of the appellant is false as fair opportunity was provided to the appellant to defend his appointment before the committee in response of Show Cause Notice, dated: 02-04-2020, during personal hearing, dated: 14-04-2020.
- F. Incorrect. That the appellant also given proper opportunity for personal hearing on 14.04.2020 at 11:00 AM, before the committee **(Copy attached as Annex-D)**.
- G. Incorrect. That proper inquiry was initiated under the Honorable Supreme Court of Pakistan order dated 10.03.2020.
- H. The appellant has not been discriminated and treated in accordance with Rules and Regulations.
- I. No comments.

Keeping in view the above explanation, it is therefore humbly prayed that upon the acceptance of above replies the appeal of the appellant may kindly be dismissed with cost.

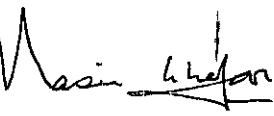

EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION
MALAKAND
(Respondents No.1, 2 & 3)

I Engr: Sherin Khan Divisional Canal Officer/Executive Engineer, Malakand Irrigation Division Malakand do hereby solemnly affirm and declare on oath that the contents of the subject replies are true and correct to the best of my knowledge and nothing has been concealed from this honorable court.


(Engr. Sherin Khan)
Executive Engineer
Malakand Irrigation Division, Malakand
(Respondent 03)

1) Secretary to the Govt:
of Khyber Pakhtunkhwa
Irrigation Department Peshawar.
(Respondent 01)

2) Chief Engineer (North),
Irrigation Department, Peshawar.
(Respondent 02)


Chief Engineer (N)
Irrigation Dept: Peshawar

19/04/2021

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 10409/2020.

Kamran Ali S/O Sher Dil Khan (Appellant)

VERSUS

**Secretary to Govt: of Khyber Pakhtunkhwa Irrigation Deptt: Peshawar and
others..... (Respondents)**

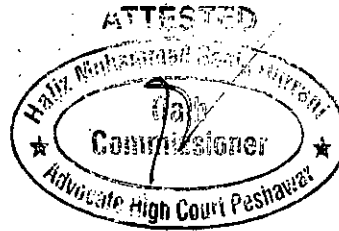
AFFIDAVIT

I Engr: Sherin Khan, Divisional Canal Officer/Executive Engineer, Malakand Irrigation Division, Malakand do hereby solemnly affirm and declare on oath that the contents of the subject replies are true and correct to the best of my knowledge and nothing has been concealed from this honorable court.

(Engr. Sherin Khan)

Executive Engineer
Malakand Irrigation Division
Malakand

08 JUL 2021



PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Ijaz ul Ahsan
Mr. Justice Sajjad Ali Shah

Civil Appeals Nos. 1993 to 1996 of 2019

(Against the judgment dated 11.12.2018 of the Peshawar High Court, Mingora Bench (Dar ul Qaza) Swat passed in WP No. 203-M of 2014)

Govt. of KPK thr. Secretary Irrigation, Peshawar
and others

... Appellants in all cases

Versus

Kamran Ali and others
Misal Khan
Daraz Khan
Sajid Muhammad

... Respondents in CA-1993/19
... Respondent in CA-1994/19
... Respondent in CA-1995/19
... Respondent in CA-1996/19

For the appellants:

Barrister Qasim Wadood, Addl. A.G. KP

For respondent No.1 in
CA-1993 & respondents
in CA-1994 & CA-1996:

Mr. Muhammad Siddique Khan Baloch, ASC
Mr. Muhammad Sharif Janjua, ASC

Respondent
in CA-1995/19:

In person.

For respondents 2/ 3 in
CA-1993/19:

Nemo.

Date of hearing:

10.03.2020

ORDER

Gulzar Ahmed, CJ. The learned Division Bench of the High Court, in the operative para of the impugned judgment dated 11.12.2018, has observed as under:-

"In this view of the matter, all these connected writ petitions are allowed, thereby, the impugned order of even date i.e. 04.11.2011 in all these cases is accordingly set aside and all the petitioners be reinstated to their services, however, they cannot be granted the financial benefits because they did not serve against the said posts during the intervening period. Moreover, the respondents are at liberty to initiate

ATTESTED

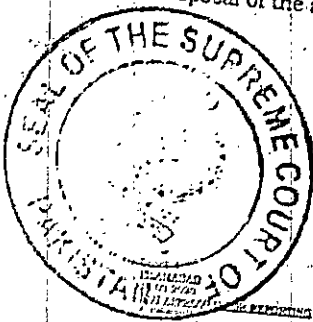
Senior Court Associate
Supreme Court of Pakistan
Islamabad

Executive Engineer
Malakand Irrigation Division
Malakand

departmental proceedings against the present petitioners, if it appears to them that they have procured their appointments through illegal means or have committed any sort of misconduct."

It is stated by the learned AAG before us that this judgment of the High Court is not being complied with for the reason that its operation was suspended by this Court and none of the respondents worked with the appellant. We note from the operative part of the impugned judgment that no financial benefits has been allowed to the respondents, however, the appellant has been allowed to initiate departmental proceedings against the respondents. Where the appellant has been given the option to initiate the departmental proceedings, more so, when the law did not permit withdrawal of the appointment letter, in order to do things in accordance with law, the High Court's observation of initiating departmental proceedings, appears to be a correct observation.

2. Consequently, while disposing of these appeals, we note that within two months from today the appellant shall initiate the departmental proceedings and conclude the same and during this period, the appellant will not be required to reinstate the respondents. However, after two months, it may reinstate them, if the proceedings are not concluded. Learned counsel for the respondents has no objection to the disposal of the appeal in the above terms. Disposed of accordingly.






Sd/-HCJ
Sd/-J
Sd/-J
Certified to be True Copy

Senior Court Associate
Supreme Court of Pakistan
Islamabad

GR No: 1995/660/20 Civil/Criminal
Date of Filing: 12-3-20
No of Words: 600
No of Pages: 6
Requisition Fee Rs: 500
Copy Fee in: 200
Court Fee Stamp: 800
Date of Completion: 12/3/20
Date of delivery of Copy: 12-3-20
Compared by/Prepared by: [Signature]

Executive Engineer
Malakand Irrigation Division
Malakand

| | | |
|---|--|--|
|  | OFFICE OF THE EXECUTIVE ENGINEER MALAKAND IRRIGATION DIVISION MALAKAND  irrigationmkd@yahoo.com |  0932-452049 |
| | | |

No. 951 /7-E(Sub),

Dated Malakand the 29/04/2020.

OFFICE ORDER

In pursuance to the inquiry report in light of directions issued by the Honorable Supreme Court of Pakistan in the order dated 10-03-2020 in (CA1993 to 1996/2019), the Departmental Committee constituted for the purpose in light of directions issued by the Chief Engineer (North) Irrigation Department Peshawar vide No.763/North/AO, dated 20/03/2020, in its meeting held on 14/04/2020 in Divisional Office Malakand re-examined the recommendations made for appointments in the DPC held on 08/10/2011 and Unanimously concluded / recommended that:-

- (i) None of the candidate, as recommended for appointment by the DPC held on 08/10/2011, could fulfill the eligibility criteria and there by found violating the merit. Thus, the committee declared all the appointments of respondents mentioned below as against the prevailing Government rules and regulations/eligibility criteria and further declared as non-eligible to be appointed against the mentioned positions.
- (ii) Termination of all the respondents, viz. (i) Mr. Kamran Ali S/O Sher Dil Khan, (ii) Mr. Rehmatullah S/O Aziz-ur-Rehman, (iii) Mr. Misal Khan S/O Zarif Khan, (iv) Mr. Daraz Khan S/O Akbar Khan (v) Mr. Salar Khan S/O Fazle Khaliq, shall be made through slight modification in the office order No.2454/7-E(Sub) dated:-04/11/2011 by replacing the word withdrawn through **TERMINATION**.

Therefore as recommended by the Committee, slight modification in the office order No.2454/7-E(Sub), dated 04/11/2011 is hereby ordered by replacing the word "WITH DRAWN" in to **TERMINATION** of their services with effect from 31/10/2011 and I being the Appointing Authority hereby order termination of the services of the following candidates with effect from 31/10/2011. The recommendations of DPC dated 08/10/2011 also stands terminated.

| S# | Name of Candidates (CA 1993 to 1996/2019) | Appointment order No. & Date. | Post offered | Status /Decision |
|----|---|------------------------------------|------------------------|------------------|
| 1 | Mr. Kamran Ali S/O Sher Dil Khan, Village & P.O Shergarh Qasmi Banda, Tehsil Takht Bhai, District Mardan. | No.2404/7-E(Sub), dated 31/10/2011 | Beldar | Terminated |
| 2 | Mr. Rehmatullah Khan S/O Aziz-ur-Rehman, R/O Amin Abad, Batkhela, District Malakand. | No.2402/7-E(Sub), dated 31/10/2011 | Operator Cum Chowkidar | Terminated |
| 3 | Mr. Misal Khan S/O Zarif Khan, R/O Khar Batkhela, District Malakand | No.2397/7-E(Sub), dated 31/10/2011 | Beldar | Terminated |
| 4 | Mr. Daraz Khan S/O Akbar Khan, R/O Palo Dheri, Shah Baz Garhi, District Mardan. | No.2403/7-E(Sub), dated 31/10/2011 | Beldar | Terminated |
| 5 | Mr. Salar Muhammad S/O Fazal Khaliq, R/O Khar Batkhela, District Malakand | No.2399/7-E(Sub), dated 31/10/2011 | Beldar | Terminated |

P.T.O

[Signature]
 Executive Engineer
 Malakand Irrigation Division
 Malakand

[Signature]
 29/4/2020
 EXECUTIVE ENGINEER

Copy of the above is forwarded to the:-

1. P.S to Secretary to Govt. of Khyber Pakhtunkhwa Irrigation Department Peshawar for information.
2. Chief Engineer (North), Irrigation Department Peshawar with reference to above along with copy of the enquiry report with relevant documents for his kind perusal please.
3. Superintending Engineer Mardan Irrigation Circle Mardan with reference to his No.718/72-14, dated 20-03-2020 above along with copy of the enquiry report for his kind perusal please.
4. Mr. Ajmal Khan Deputy Collector, Mardan Irrigation Division, Mardan (Committee Member).
5. Engr. Bakhtiar Khan, Sub Divisional Officer Head Works Irrigation Sub Division Malakand (Committee Member).
6. Mr. Muhammad Hayat Khan, Sub Divisional Officer, Dargai Irrigation Sub Division, Dargai (Committee Member).
7. Mr. Arshad Zaman, District Accounts Officer (Local) (Committee Member).
8. ✓ Mr. Mir Alam Khan, Head Clerk (Local) (Committee Member).
9. Mr. Asadullah Khan, Establishment Clerk (Local) (Secretary of the Committee).
10. Candidate concerned. (Through Registered Letter).


EXECUTIVE ENGINEER

29/4/2020

Annex-C



OFFICE OF THE EXECUTIVE ENGINEER
MALAKAND IRRIGATION DIVISION MALAKAND

e-mail: irrigationmkd@yahoo.com



0932-452049

No: 2/110 /7-E(Sub),
To

Dated Malakand the 4 /09/2020.

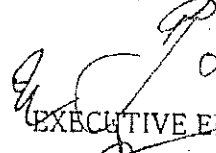
The Superintending Engineer,
Mardan Irrigation Circle,
Mardan.

Subject: - DEPARTMENTAL APPEAL AGAINST THE IMPUGNED ORDER DATED 29.04.2020 WHEREBY THE APPELLANT HAS BEEN TERMINATED FROM SERVICES
Reference: - Your office letter No.988/75-E, dated 17-06-2020.

In this connection kindly refer to this office No.951/7-E(Sub), dated 29.04.2020 vide which a detail inquiry report and recommendations in light of directions of Supreme Court of Pakistan dated 10-03-2020 has already been submitted to your office, as well as the higher-ups, vide which the requisite formalities were fulfilled in light of Honorable Supreme Court of Pakistan directions dated 10.03.2020. "However a copy of the same is enclosed herewith for ready reference as Annex-A.

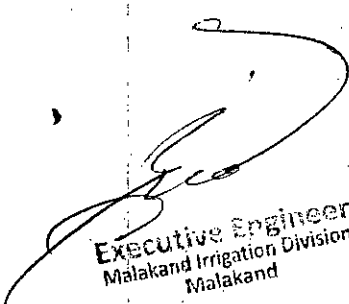
The Departmental appeal of 03-Nos applicants viz Kamran Ali, Misal Khan and Salar Muhammad received with your letter under reference is returned herewith duly regretted please.

Enclosure: As above.


04/09/2020
EXECUTIVE ENGINEER

Copy forwarded to the Chief Engineer (North), Irrigation Department, Peshawar with reference to his No..998/North/A-1/10-E(X), dated 03-06-2020 for information. please.

EXECUTIVE ENGINEER


Executive Engineer
Malakand Irrigation Division
Malakand

سوال و جواب از کامران علی ولد شیردل خان بابت انکوائری سپریم کورٹ آف پاکستان آرڈر 10/03/2020

کیس نمبر (CA 1993-1996/2019) حکومت خیبر پختونخواہ بنام کامران علی وغیرہ۔

(وضاحتی بیان المرقوم 14 اپریل 2020ء)

| نمبر شمار | سوال | جواب |
|-----------|---|--|
| 01 | اپنا پورا نام ہمہ ولدیت بتادیں۔ | سید پورانہ کا حیران علی ولد شیردل خان ہے۔ |
| 02 | آپ کا ڈیپازٹ کس ضلع کا ہے۔ | میرا ڈیپازٹ ضلع مردان کا ہے۔ |
| 03 | شاخہ کارڈ کے مطابق آپ کا مستقل موجودہ پتہ تاریخ پیدائش کیا ہے۔ | ششما فتح کا درجہ کے مطابق حیران علی ولد شیردل خان کا پتہ ضلع مردان ہے۔ پیدائش کا تاریخ 1978-02-02 ہے۔ |
| 04 | کیا آپ Employment Exchange کارڈ رجسٹریشن نمبر و تاریخ بنا سکتے ہیں۔ جسکی بنیاد پر آپ کی بھرتی کی سفارش کی گئی ہے۔ | میرا Employment Exchange نمبر 2230/11 ہے۔ تاریخ 08-09-2011 ہے۔ |
| 05 | Employment Exchange کا دفتر کہاں پر واقع ہے۔ جہاں پر آپ نے رجسٹریشن کیا تھا۔ | Employment Exchange کا دفتر محمد آباد پشاور ضلع ملتان میں ہے۔ |
| 06 | اگر سوال نمبر 04 و 05 کے جواب اثبات میں ہے تو original Registration کی کاپی فراہم کریں۔ | جس رجسٹریشن کا کاپی لف ہے۔ |
| 07 | کیا آپ کے علم میں ہے کہ حکومت خیبر پختونخواہ کی مروجہ پالیسی برائے کلاس فور ملازمین کے تحت جیلدار کے اسامی کیلئے عمر کی حد (18-30) سال تھی۔ نیز خالی آسامی پر مقامی باشندگان کا حق تھا۔ | ہاں یہ درست ہے۔ کہ عمر کی حد 30 سال تھی۔ میں چونکہ ضلع مردان سے تعلق رکھتا ہوں اور میرا بھی ملک کی شہری کی حیثیت سے رہتا ہوں۔ |
| 08 | کیا یہ درست ہے کہ مورخہ 08-10-2011 وقت IDPC کی عمر 33 سال 8 مہینے اور 6 دن تھی جو کہ مروجہ قانون کے حساب سے 3 سال 8 مہینے اور 6 دن زائد الیاد تھی۔ | یہ درست ہے۔ کہ میرا عمر 3 سال 8 مہینے اور 6 دن زائد الیاد تھی۔ |
| 09 | نیز اگر سوال نمبر 07 و 08 کا جواب اثبات میں ہے تو مورخہ 08-10-2011 DPC پر زریعہ آرڈر 10-10-2011 کی تصدیقاتی درست تھی، وضاحت کریں۔ | یہ تو اس وقت کی تھی جبکہ اس وقت سے کہ اس وقت سے میری تصدیقات کی سفارشات تھیں جو کہ موجودہ قانون اور قاعدے سے مطابقت رکھتی ہیں۔ |
| 10 | اگر آپ کی عمر زائد الیاد تھی۔ تو کیا مجازاً شمارتی سے Age Relexation کیلئے منظور کی گئی تھی یا نہیں کیلئے کوئی خط و کتابت کی تھی۔ | اس سے پہلے میں میرے علم کے مطابق کوئی خط و کتابت نہیں ہوئی تھی۔ |

14/4/2020

14/4/2020

Engineer

14/4/2020

