BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Service Appeal No. 576/2022

Shabab Hussain.....Appellant

Versus

- 1. Director General Soil & Water Conservation Khyber Pakhtunkhwa, Peshawar.
- 2. Deputy Director Soil & Water Conservation Khyber Pakhtunkhwa, Peshawar.

3. District Officer Soil & Water Conservation, Kohat.

4. District Controller of Accounts, Kohat.

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S.No	Description of documents	Annexure	Pages
1.	Reply	-	1-2
2.	Authority Letter	-	3
3.	Affidavit.	-	4
4.	Civil Servants Appointment, Promotion and Transfer Rules, 1989	I	5
5.	District Rules of Business	II	6-8
6.	Observation of District Controller of Accounts, Kohat	III	9
7.	Copy of Attendance Register	IV	10-17

Director General
Soil and Water Conservation,
Khyber Pakhtunkhwa, Peshawar

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- 7. District Officer Soil & Water Conservation, Kohat.
- 8. District Controller of Accounts, Kohat.

.....Respondents

REPLY ON BEHALF OF RESPONDENT NO.1, 2 & 3.

Respectfully Sheweth: That the respondents submits as and:-

PRELIMINARY OBJECTIONS:

i J

- 1. That the instant writ petition is baseless, frivolous and concocted, based on malafide intentions and for ulterior motive, hence not tenable at all.
- 2. That the petitioner wishes to waste the precious time of this Hon'ble Tribunal by filing the instant appeal.
- 3. That the petitioner has got no prima facie to file present appeal.
- 4. That the petitioner has deliberately concealed the important facts from this Hon'ble Tribunal.
- 5. That the appeal is not maintainable in its present form and liable to be dismissed.
- 6. That the petitioner has no cause of action to file the instant appeal.
- 7. That the petitioner has no locus standi to file the instant appeal.
- 8. That the petitioner has deliberately concealed the material facts from this Hon'ble Tribunal.
- 9. That the petitioner has not come to this Hon'ble Tribunal with clean hands.
- 10. That the appeal is bad due to mis-joinder/non-joinder of necessary parties.
- 11. That the appeal of the appellant is barred by law and limitation.

ON FACTS

- 1. Pertains to the record.
- 2. Correct to the extent that the appellant was appointed as field watcher dated: 30-06-2006, against the quota reserved for the children of retired/deceased Class-IV Government servants on superannuation.
- 3. Pertains to the record.
- 4. Incorrect, the impugned order dated: 30-06-2008 is invalid and insignificant as the procedure mandatory for such appointment was not followed, according to the NWFP Civil Servants Appointment, Promotion and Transfer Rules, 1989 (Annex-I), the procedure for initial recruitment is as following

"Initial appointment to posts in BPS-1 to 15 shall be made on the recommendation of the Departmental Selection Committee after the vacancies have been advertised in newspapers".

There is no record of any advertisement in any newspapers, no minutes of meeting or merit order. Furthermore, the impugned order dated: 30-06-2008 itself says "on the recommendation of District Officer Soil Conservation, Kohat" which is against the rules as there has to be a Departmental Selection Committee for giving any such recommendation for recruitment. The appellant is further misleading the court by calling a source proforma as payroll which itself is not fully signed.

5. Incorrect, the impugned order dated: 30-06-2008 issued by the Deputy Director Soil Conservation NWFP a provincial office is invalid as according to the Schedule-iv of District Rules of Business

- of the concerned devolved department (Annex-II).
- 6. Incorrect, the District Controller of Accounts Kohat returned the incomplete source proforma, declaring it against the Rules. Even the appellant neither assumed charge of Junior Clerk nor marked attendance against the said post, rather working as Field Watcher (BPS-03) till date. (Annex-IV)
 - 7. Incorrect, no such application is on record, furthermore if the appellant case was genuine, why did he remain silent for such a long period and approached the Honorable Tribunal after 14 years.
 - 8. The impugned order is invalid and no record of the procedure mandatory for the appointment of junior clerk was found.

GROUNDS:

- A. Incorrect, there is no issue of pay fixation as the impugned order dated: 30-06-2008 was against the rules.
- B. Incorrect, the impugned order dated: 30-06-2008 issued by the Deputy Director Soil Conservation NWFP a provincial office is invalid as according to the Schedule-iv of District Rules of Business (Rules-25) 2001, Executive District Officer was declared as appointing authority for BPS-16 and below of the concerned devolved department.
- C. Incorrect, the appellant neither assumed charge of Junior Clerk nor marked attendance against the said post, rather working as Field Watcher (BPS-03) till date. (Annex-IV).
- D. As mentioned above the impugned order dated: 30-06-2008 was against the rules, therefore the appellant cannot be allowed to work as Junior Clerk.
- E. The impugned order is invalid, therefore no further action can be taken in this regard.
- F. As respondent No. 04 has declared the appellant appointment as Junior Clerk against the Rules. (Annex-III)
- G. Incorrect, the appellant is misleading the court as the impugned order is invalid.
- H. That the respondent also seek permission to raise further grounds at the time of arguments.

It is, therefore, most humbly prayed that on acceptance of this Para-wise comments, the appeal being devoid of legal footings and merit graciously be dismissed with cost.

(Respondent No. 03)

(Respondent No. 02)

District Officer,
Soil & Water Conservation,
Kohat

Deputy Director,
Soil and Water Conservation,
Government Khyber Pakhtunkhwa,
Peshawar.

(Respondent No. 01)

Director General
Soil and Water Conservation,
Khyber Pakhtunkhwa, Peshawar

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- 4. District Controller of Accounts, Kohat.

AUTHORITY LETTER

I, hereby authorized Mr. Khalid Gohar Khan, Deputy Director (BPS-18) Soil & Water Conservation Khyber Pakhtunkhwa, Peshawar to file Para Wise Comments in the case as well as pursue the case in the Honorable Service Tribunal, Peshawar till decision of the case.

Director General
Soil & Water Conservation
Khyber Pakhtunkhwa
Peshawar
(Respondent No. 01)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

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- 3. District Officer Soil & Water Conservation, Kohat.
- 4. District Controller of Accounts, Kohat.

Affidavit

I, Khalid Gohar Khan, Deputy Director Soil & Water Conservation Khyber Pakhtunkhwa, Peshawar do hereby solemly affirm on oath that the contents of accompanying comments on behalf of respondents No. 1 to 3 are correct to the best my knowledge and behalf. Nothing has been concealed from this Honorable Tribunal.

Respondents through

(Khalid Gohar Khan)

CNIC:17301-1568928-1 Cell No. 0321-9080005

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PROCEDURE FOR SELECTION FOR PROMOTION/INITIAL RECRUITMENT

I am directed to say that under rule 7 of the NWFP Civil Servants (Appointment, Promotion & Transfer) Rules,1989 appointment by promotion to posts in BPS-2 to BPS-16 shall be made on the recommendations of the appropriate Departmental Promotion Committee. Similarly, under rule 11 of the rules ibid, initial appointments to posts in BPS-1 to 15 shall be made on the recommendation of the Departmental Selection Committee after the vacancies have been advertised in newspapers. However, no criteria for selection has so far been prescribed.

- 2. In order to ensure a fair degree of selection, minimize the chances of discretion and favouritism, the Provincial Government have laid down the following criteria for selection for promotion vis-a-vis initial recruitment to the posts which are filled by the department concerned:-
 - (I) Criteria for Selection for Promotion:-Promotion to any post in a grade below Grade-16 shall not be subject to any test. The suitability of candidates shall be determined on the basis of service record i.e seniority-cum-fitness.
 - (II) Criteria of Selection for initial recruitment:-
 - (i) For post in Grades 1 to 4- No special criteria has been laid down and the committee concerned shall adopt its own method and procedure for selection.
 - (ii) For posts in Grade-5 and above in all departments- -ln addition to the total marks allocated for a written competitive examination, if any held, the total marks will be 100 as per distribution given below:-

(a)	Prescribed	qualification	70

(b) 1	Higher	qualification)l.	2
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(c) Experient	ence10
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- (d) Interview ...08
- 3. Para 2 above indicates only the general distribution of the marks. To enable the Administrative Departments to develop criteria of comparative grading of candidates within the above overall framework, S&GAD has done a model exercise(attached as Annexure) for guidance of all concerned.
- 4. I am accordingly directed to request you to kindly ensure that the aforesaid criteria for selection for promotion vis-a-vis initial recruitment to posts is adhered to strictly in filling the vacant posts in future.

Administrative Under to Director General Soll & Water Conservation K.P.K Peshawar

Annex II

District's Rules of Business

General

1. Short title and commencement.

- (1) These rules may be called the North West Frontier Province District Government Rules of Business, 2001.
- (2) It shall come into force at once.

2. Definitions.

- (1) In these rules unless the context other-wise requires.
- 1. "body corporate" means a body having perpetual succession and a common seal with power to sue and be sued:
- 2. "budget" means an official statement of income and expenditure for a financial year:
- 3. "business" includes all work done by a local government:
- 4. "component" means the officers mentioned in column 2 of schedule 1 to the Ordinance:
- 5. "convenor" means the convenor of the Council concerned.
- 6. "Federal Government" means the Government of Islamic Republic of Pakistan.
- 7. "financial year" means the year beginning from the 1st day of July and ending on the 30th day of June next following.
- 8. "Government " means the Government of the North West Frontier Province:
- 9. "Governor" means the North West Frontier Province:
- 10. "Ordinance" means the North West Frontier Province Local Government Ordinance, 2001 (NWFP Ord, XIV of 2001)
- 11. "Schedule" means a Schedule to these rules:
- 12. "Secretariat" means the Secretariat of Council: and
- 13. "Section" means a section of the Ordinance.
- (2) Words and expressions used in these rules but not defined shall have the same meanings assigned to

them in the Ordinance the North West Frontier Province Government Rules of Business, 1985 or any

other Provincial law for the time being in force.

3. Composition of Departments and allocation of Business.

- 1. The composition of the offices and groups of officers shall be the same as provided in section 14 of the Ordinance read with the First Schedule thereof, and may be varied in accordance with the provisions of the aforesaid section.
- 2. The business of the offices shall be distributed amongst the Department s in accordance with Schedule-1:

Provided that any particular subject or matter of an office may be transferred from, or reallocated to an office, in accordance with the section 14.

- 3. A Zilla Nazim shall be assisted by the District Coordination Officer.
- 4. Organization of Officers.
- 1. The Organization of various offices shall be the same as provided in the Ordinance or, where the Ordinance has not so provided as determined by Government.
- 2. The Executive District Officer shall by means of standing orders distribute the work of the officers subordinate to him.
- 5. Secretariat of District Government.

Administrative Officer
to Director General
Soil & Water Conservation
K.P.K Peshawar

<u>SERVICES</u>

23. Public Service Commission.

The advice of the Public Service Commission shall ordinarily be accepted by the District Government (s) in all matters where it is obligatory to consult the Commission under any rules or regulations for the time being in force. If it is proposed not to accept the advice of the Commission. It shall be submitted to the Chairman, Local Government Commission, who may give an opportunity to the Public Service Commission of further justifying its recommendation before a final decision is taken.

24. Selection Board.

- (1) District Government may constitute one or more Selection Boards and specify the appointments and promotions to posts, other than those to be made on the advice of the Public Service Commission, to be made on the advice of such Selection Boards, under the District Service Rules, when framed.
- (2) In case, a Department does not propose to accept the advice of Selection Board in regard to a matter in which its advice is required under sub-rule.
- (1) The case shall be returned to the Selection Board for reconsideration, and the Selection Board shall reconsider such case. If on reconsideration the difference still persists, the case shall be submitted to the Zilla Nazim through the Coordination Department, for his orders.

25. Posting and transfer.

- (1) Posting /Transfer of Officers/Officials shown in Column 2 of Schedule-IV shall be made by the authorities shown against such officers/officials in column 3 thereof.
- (2) the District Coordination Department of the District shall consult Government if it is proposed to.
- (a) transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure; and
- (b) require an officer to hold charge of more than on post period exceeding four months.

Administrative Officer to Director General Soil & Water Conservation K.P.K Peshawar

- 3. Cases in which Provincial Government has issued directions.
- 4. Complaints to the Provincial Government Commission about disputes between any departments of the Government

and District Government or between two District Government.

5, All cases which are liable to involve District Government controversy with Provincial Government or with another

District Government.

6. Recommendations for the grant of honours and awards.

SCHEDULE □II See rule 4 (3)

- 1. All periodical reports of District Coordination Officer, District Police Officer and Executive District Officers.
- 2 Press notes issued by District Coordination Officer, District Police Officer and Executive District Officers.
- 3. All Periodical and special reports relating to law and order such as fortnightly situation reports submitted by the police.
- 4. Intelligence reports.
- 5. Reports of Committees of inquiry appointed by District Government.

SCHEDULE □IV (See Rule 18)

S.No	Officers	Authority
1	2	3
1.	Posting of District Coordination Officer and Executive District Officer in a District.	Provincial Government.
2.	Posting of District Police Officer.	Provincial Government.
3.	Other Officer in BPS-17 and above posted in the District.	Provincial Government in consultation with Zilla Nazim.
4.	Official in BPS-16 and below	Executive District Officer in consultation with District Coordination.

Administrative Officer
to Director General
Soil & Water Conservation
K.P.K Peshawar

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Administrative Officer to Director General Water Conservation K.P.K Peshawar

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