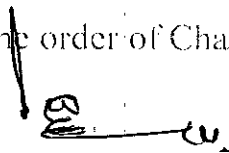


FORM OF ORDER SHEET

Court of _____

Case No. - _____ 824 /2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	12/04/2023	<p>The appeal of Mr. Muhammad Bilal presented today by Mr. Noor Muhammad Khattak Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on 13.04.2023.</p> <p>By the order of Chairman</p> <p> REGISTRAR</p>

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.**

APPEAL No. 824/2023

MUHAMMAD BILAL VS GOVT. OF KP & OTHERS

INDEX

S. NO.	DOCUMENTS	ANNEXURE	PAGE
1.	Memo of Appeal with Affidavit	1-3
2.	Copies of the notification dated 25.06.2019 and dated 27.04.2020	A & B	4-8
3.	Copy of the letter dated 19.06.2020.	C	9
4.	Copy of the order dated 05.10.2020	D	10
5.	Copy of the judgment dated 14.01.2022	E	11-24
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9.	Vakalatnama	31

APPELLANT

THROUGH:

**NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT**

1-

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

SERVICE APPEAL NO. 824/2023

Mr. Muhammad Bilal, Junior Scale Stenographer (BPS-14),
Directorate General Population Welfare Department,
Peshawar.

..... APPELLANT

VERSUS

- 1- Government of Khyber Pakhtunkhwa through Chief Secretary, Khyber Pakhtunkhwa, Peshawar.
- 2- The Secretary Establishment and Administration Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Finance Department, Khyber Pakhtunkhwa, Peshawar.
- 4- The Director General Population Welfare Department, Khyber Pakhtunkhwa, Peshawar.

..... RESPONDENTS

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED INACTION OF THE RESPONDENTS BY NOT ADJUSTING THE APPELLANT IN THE CIVIL SECRETARIAT/ ESTABLISHMENT DEPARTMENT AND AGAINST THE APPELLATE ORDER DATED 14.03.2023 WHEREBY THE DEPARTMENTAL APPEAL OF THE APPELLANT HAS BEEN REJECTED/ DISMISSED.

PRAYER:

That on acceptance of this appeal, the impugned appellate order dated 14.03.2023 may very kindly be set aside and the respondents may please be directed to adjust the appellant in the civil secretariat/ establishment department in light of the judgment dated 14.01.2022 passed in appeal No. 1227/2020 with all back benefits including seniority strictly in accordance with Rule-17 of the Khyber Pakhtunkhwa (APT) Rules, 1989. 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 the appellant was an employee of the erstwhile FATA secretariat. That in wake of 25th amendment the then FATA was merged in to the Khyber Pakhtunkhwa and the staff of the then FATA secretariat was declared as surplus and placed them in the surplus pool of the respondent No. 2 department vide notification dated 25.06.2019;

however the appellant was not enlisted/ included in the list of the employees of the notification dated 25.06.2019 hence submitted an application and vide notification dated 27.04.2020 the appellant was also treated at par with the employees on notification dated 25.06.2019. Copies of the notification dated 25.06.2019 and dated 27.04.2020 are attached as annexure**A&B.**

2- That in pursuance to the notification dated 27.04.2020 the services of the appellant was placed at the disposal of Deputy Commissioner Nowshera for further adjustment. Copy of the letter dated 19.06.2020. Copy of the letter dated 19.06.2020 is attached as Annexure**C.**

3- That vide office order dated 05.10.2020 the appellant was absorbed against the post of Junior Scale Stenographer (BPS-14) in the Population Welfare Department, Khyber Pakhtunkhwa. Copy of the order dated 05.10.2020 is attached as Annexure**D.**

4- That it is pertinent to mention here that erstwhile employees of FATA secretariat who were declared surplus vide notification dated 25.06.2019 challenged their adjustment in other department and asked their adjustment in the establishment department civil secretariat in service appeal No. 1227/2020 and the same was accepted vide judgment dated 14.01.2022 with the direction that the service of the employees of the erstwhile FATA secretariat be adjusted in the Establishment and administration department along with seniority and promotion. Copy of the judgment dated 14.01.2022 is attached as annexure**E.**

5- That it is pertinent to mention here that the judgment supra has been implemented by the respondents vide notification dated 07.10.2022. Copy of the notification dated 07.10.2022 is attached as annexure**F.**

6- That appellant being similarly placed person and also enlisted in the notification dated 25.06.2019, preferred departmental appeal for his adjustment in the establishment department on 14.12.2022. Copy of the Departmental Appeal is attached as Annexure**G.**

7- That the departmental appeal of the appellant was rejected/ dismissed vide appellate order dated 14.03.2023 without justifiable reasons. Copy of the appellate order dated 14.03.2023 is attached as annexure**H.**

8- That appellant having no other efficacious remedy but to file the instant appeal on the following grounds amongst the others.

GROUND:

-3-

- A- That the impugned inaction of the respondents by not adjusting the appellant and the appellate order dated 14.03.2023 are against the law, facts, and norms of natural justice.
- B- That the appellant has not been treated in accordance with the laws and rules by the respondent department on the subject noted above and as such the respondent department violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.
- C- That the impugned inaction of the respondents by not adjusting the appellant in the establishment department and the appellate order is violation of the law and rules on the subject.
- D- That the respondents acted in arbitrary and mala fide manner by not adjusting the appellant the establishment department.
- E- That the impugned inaction of the respondents by not adjusting the appellant in the establishment department and rejecting the departmental appeal vide appellate order dated 14.03.2023 are the violation of the fundamental rights of the appellant.
- F- That appellant seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal may kindly be accepted as prayed for.

Dated: 07-04-2023


**APPELLANT
MUHAMMAD BILAL**

Through:


**NOOR MUHAMMAD KHATTAK
ADVOCATE SUPREME COURT**


KAMARN KHAN


UMAR FAROOQ


MUHAMMAD AIZAZ


**WALEED ADNAN
MUHAMMAD AYUB**


**MUJEEB UR RAHMAN
ADVOCATES**

&

AFFIDAVIT

I Muhammad Bilal, Junior Scale Stenographer (BPS-14), Directorate General Population Welfare Department, Peshawar, do hereby solemnly affirm that the contents of this **Service Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honorable Court.


DEPONENT



GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)

(Dated Peshawar, the 25th June, 2019)

NOTIFICATION

No. SO/O&M/E&AD/3-18/2019: In pursuance of integration and merger of erstwhile FATA with Khyber Pakhtunkhwa, the Competent Authority is pleased to declare the following 117 employees appointed by erstwhile FATA Secretariat as "Surplus" and place them in the Surplus Pool of Establishment and Administration Department for their further adjustment/placement w.e.f. 01.07.2019:-

Sr.No.	Name of employee	Designation	BPS (Personal)
1.	Ashiq Hussain	Assistant	16
2.	Hanif ur Rehman	Assistant	16
3.	Shoukat Khan	Assistant	16
4.	Zahid Khan	Assistant	16
5.	Qaiser Khan	Assistant	16
6.	Shahid Ali Shoh	Computer Operator	16
7.	Farooq Khan	Computer Operator	16
8.	Tauseef Iqbal	Computer Operator	16
9.	Waseem	Computer Operator	16
10.	Ataf Hussain	Computer Operator	16
11.	Amir Ali	Computer Operator	16
12.	Rub Nawaz	Computer Operator	16
13.	Kamran	Computer Operator	16
14.	Hafiz Muhammad Amjad	Computer Operator	16
15.	Fazi-ur-Rehman	Computer Operator	16
16.	Rajab Ali Khan	Head Draftsman	13
17.	Bakhtiar Khan	Sub Engineer	11
18.	Hakeem-ud-Din	Draftsman	11
19.	Musceen Khan	Storekeeper	7
20.	Inumullah	Driver	5
21.	Fazrat Gul	Driver	5
22.	Said Ayaz	Driver	5
23.	Abdul Qadir	Driver	5
24.	Sharbat Khan	Driver	5
25.	Iqbal Shuh	Driver	5
26.	Muhammad Ali	Driver	5

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27.	Khan Muhammad	Driver	5
28.	Waheedullah Shah	Driver	5
29.	Mustan Shah	Driver	5
30.	Mubashir Alam	Driver	5
31.	Yousaf Hussain	Driver	5
32.	Ihsanullah	Driver	5
33.	Daud Shah	Driver	5
34.	Qismat Wali	Driver	5
35.	Alam Zeb	Driver	5
36.	Shafqatullah	Driver	5
37.	Qismatullah	Driver	5
38.	Wali Khan	Tracer	5
39.	Muhammad Zahir Shah	Tracer	5
40.	Niaz Akhtar	Driver	4
41.	Mena Jan	Driver	4
42.	Zaki ullah	N/Qasid	3
43.	Sabir Shah	Naib Qasid	2
44.	Muhammad Hussain	Naib Qasid	2
45.	Zubair Shah	Naib Qasid	2
46.	Muhammad Sharif	Naib Qasid	2
47.	Dost Ali	Naib Qasid	2
48.	Nishat Khan	Naib Qasid	2
49.	Wadan Shah	Naib Qasid	2
50.	Inamullah	Naib Qasid	2
51.	Maqsood Jan	Naib Qasid	2
52.	Zecshan	Naib Qasid	2
53.	Arshad Khan	Naib Qasid	2
54.	Ikhlaq Khan	Naib Qasid	2
55.	Safdar Ali Shah	Naib Qasid	2
56.	Kifayatullah	Naib Qasid	2
57.	Hidayatullah	Naib Qasid	2
58.	Khalid Khan	Naib Qasid	2
59.	Shabir Khan	Naib Qasid	2
60.	Saeed Gul	Naib Qasid	2
61.	Zahidullah	Naib Qasid	2
62.	Parhad Gul	Naib Qasid	2
63.	Hameed Khan	Naib Qasid	2
64.	Rashid Khan	Naib Qasid	2
65.	Dost Muhammad	Naib Qasid	2
66.	Sajidullah	Naib Qasid	2
67.	Ifikhar ud Din	Naib Qasid	2
68.	Aliaf ur Rehman	Chowkidar	2
69.	Muhammad Amir	Chowkidar	2
70.	Yasar Arafat	Chowkidar	2
71.	Zamrud Khan	Chowkidar	2
72.	Kimya Gul	Chowkidar	2
73.	Azizullah	Chowkidar	2

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Advocate

74.	Zainullah	Chowkidar	2
75.	Safiullah	Chowkidar	2
76.	Inayatullah	Chowkidar	2
77.	Muhammad Abid	Chowkidar	2
78.	Daud Khan	AC Cleaner	2
79.	Muhammad Suleem	AC Cleaner/N/Qasid	2
80.	Fazale Haq	Mall	2
81.	Alamzeb	Mall	2
82.	Nehad Badshah	Mall	2
83.	Niaz Ali	Cook	2
84.	Muhammad Arshad	Cook	2
85.	Roohullah	Khadim Mosque	2
86.	Lal Jan	Regulation Beldar	2
87.	Muhammad Arshad	Sweeper	2
88.	Ramish	Sweeper	2
89.	Karan	Sweeper	2
90.	Majid Anwar	Sweeper	2
91.	Shumail	Sweeper	2
92.	Ruhid Maseeh	Sweeper	2
93.	Nacem Munir	Sweeper	2
94.	Pardcep Singh	Sweeper	2
95.	Mukesh	Sweeper	2
96.	Muhammad Naveed	Sweeper	2
97.	Daia Ram	Sweeper	2
98.	Muhammad Nisar	Sweeper	2
99.	Said Anwar	Naib Qasid	1
100.	Haseeb Zeb	Naib Qasid	1
101.	Abid	Naib Qasid	1
102.	Wakcel Khan	Naib Qasid	1
103.	Muhammad Amjad Ayaz	Naib Qasid	1
104.	Samiullah	Naib Qasid	1
105.	Habib-ur-Rehman	Naib Qasid	1
106.	Muhammad Shoaib	Naib Qasid	1
107.	Bawar Khan	Naib Qasid	1
108.	Misbahullah	Naib Qasid	1
109.	Muhammad Tanveer	Naib Qasid	1
110.	Waqus Khurshid	Naib Qasid	1
111.	Muhammad Zahir Shah	Naib Qasid	1
112.	Javed Khan	Naib Qasid	1
113.	Noor Nabla	Bera	1
114.	Amjad Khan	Mall	1
115.	Jawad Khan	Mall	1
116.	Inam ul haq	Chowkidar	1
117.	Siraj-ud-din	Chowkidar	1

2. In order to ensure proper and expeditious adjustment/absorption of the above mentioned surplus staff, Deputy Secretary (Establishment), Establishment Department has

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been declared as focal person to properly monitor the whole process of adjustment/ placement of the surplus pool staff.

Consequent upon above all the above surplus staff alongwith their original record of service are directed to report to the Deputy Secretary (Establishment) Establishment Department for further necessary action.

**CHIEF SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA**

Encls: No. & Date Even

Copy to:-

1. Additional Chief Secretary, P&D Department.
2. Additional Chief Secretary, Merged Areas Secretariat.
3. Senior Member Board of Revenue.
4. Principal Secretary to Governor, Khyber Pakhtunkhwa.
5. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
6. All Administrative Secretaries, Khyber Pakhtunkhwa.
7. The Accountant General, Khyber Pakhtunkhwa.
8. Secretary (AI&C) Merged Areas Secretariat.
9. Additional Secretary (AI&C) Merged Areas Secretariat with the request to hand over the relevant record of the above staff to the Establishment Department for further necessary action and taking up the case with the Finance Department with regard to financial implications of the staff w.e.f. 01.07.2019.
10. All Divisional Commissioners in Khyber Pakhtunkhwa.
11. All Deputy Commissioners in Khyber Pakhtunkhwa.
12. Director General Information, Khyber Pakhtunkhwa.
13. PS to Chief Secretary, Khyber Pakhtunkhwa.
14. Deputy Secretary (Establishment), Establishment Department for necessary action.
15. Section Officer (E-I), Establishment Department.
16. Section Officer (I-II) Establishment Department for necessary action.
17. Section Officer (I-IV) Establishment Department.
18. PS to Secretary Establishment Department.
19. PS to Special Secretary (Regulation), Establishment Department.
20. PS to Special Secretary (Establishment), Establishment Department.

(GAUHAN ALI)
SECTION OFFICER (O&M)

25/06/19

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"B" -8-

**GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN. DEPARTMENT
(REGULATION WING)**

Dated Peshawar, the 27th April, 2020

NOTIFICATION

No. SO(O&M)/E&AD/3-18/2019: Mr. Muhammad Bilal, Junior Scale Stenographer (BS-14) of AI&C Department erstwhile FATA Secretariat has requested for inclusion of his name in the list of 117 employees recruited by the erstwhile FATA Secretariat and subsequently declared surplus and placed in the surplus pool of Establishment Department.

2. In order to trace out the factual position of the case, the matter was taken up with Finance and Home Departments for views/comments. In response, they clarified that the case of the applicant is analogous and similarly placed one with the cases of M/S Shahid Ali Shah and Mr. Farooq Khan, Computer Operators reflected at S.No.6&7 of the Notification dated 25.6.2019 wherein their services have already been included in the list of 117 employees declared surplus and placed at the disposal of Establishment Department. As such the applicant deserves to be included in the list of 117 employees already declared surplus.

3. Since name of the applicant has erroneously been left out from the list of 117 employees, therefore, in continuation of this department notification dated 25.06.2019 and keeping in view comments of Finance and Home & Tribal Affairs Departments, the competent authority has been pleased to order placement of the services of Mr. Muhammad Bilal, Junior Scale Stenographer (BS-14) of AI&C Department erstwhile FATA Secretariat as "Surplus" and place him in the Surplus Pool of Establishment and Administration Department for his further adjustment/placement.

4. Consequent upon above he is directed to report to the Deputy Secretary (Establishment), Establishment Department alongwith his original record of service for further necessary action in the light of this department notification dated 25.6.2019.

**CHIEF SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA**

Endst: No. & Date Even

Copy to:-

1. The Accountant General, Khyber Pakhtunkhwa.
2. The Secretary, Home & Tribal Affairs Department.
3. The Secretary, Finance Department.
4. PS to Chief Secretary, Khyber Pakhtunkhwa.
5. Deputy Secretary (Estt.), Establishment Department for necessary action.
6. Section Officer (E-III) Establishment Department for necessary action.
7. PS to Secretary Establishment Department.
8. PS to Special Secretary (Regulation), Establishment Department.
9. PS to Special Secretary (Establishment), Establishment Department.
10. PA to Additional Secretary (Regulation-II), Establishment Department.
11. PA to Deputy Secretary (Policy), Establishment Department.

27/4/2020
SECTION OFFICER (O&M)

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Advocate

**GOVT. OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMN: DEPARTMENT
(REGULATION WING)**

Dated Peshawar, the 27th April, 2020

NOTIFICATION

No. SO(O&M)/E&AD/3-18/2019: Mr. Muhammad Bilal, Junior Scale Stenographer (BS- 14) of AI&C Department erstwhile FATA Secretariat has requested for inclusion of his name in the list of 117 employees recruited by the erstwhile FATA Secretariat and subsequently declared surplus and placed in the surplus pool of Establishment: Department.

2. In order to trace out the factual position of the case, the matter was taken up with Finance and Home Departments for views/comments. In response, they clarified that the case of the applicant is analogous and similarly placed one with the cases of M/S Shahid Ali Shah and Mr. Farooq Khan, Computer Operators reflected at S.No.6&7 of the Notification dated 25.6.2019 wherein their services have already been included in the list of 117 employees declared surplus and placed at the disposal of Establishment Department. As such the applicant deserves to be included in the list of 117 employees already declared surplus.

3. Since name of the applicant has erroneously been left out from the list of 117 employees, therefore, in continuation of this department notification dated 25.06.2019 and keeping in view comments of Finance and Home & Tribal Affairs Departments, the competent authority has been pleased to order placement of the services of Mr. Muhammad Bilal, Junior Scale Stenographer (BS-14) of AI&C Department erstwhile FATA Secretariat as "Surplus" and place him in the Surplus Pool of Establishment and Administration Department for his further adjustment/ placement.

4. Consequent upon above he is directed to report to the Deputy Secretary (Establishment). Establishment Department alongwith his original record of service for further necessary action in the light of this department notification dated 25.6.2019.

**CHIEF SECRETARY
GOVT. OF KHYBER PAKHTUNKHWA**

Endst: No. & Date Even

Copy to:-

1. The Accountant General, Khyber Pakhtunkhwa.
2. The Secretary, Home & Tribal Affairs Department.
3. The Secretary, Finance Department.
4. PS to Chief Secretary, Khyber Pakhtunkhwa.
5. Deputy Secretary (Estt), Establishment Department for necessary action.
6. Section Officer (E-III) Establishment Department for necessary action.
7. PS to Secretary Establishment Department.
8. PS to Special Secretary (Regulation), Establishment Department.
9. PS to Special Secretary (Establishment), Establishment Department.
10. PA to Additional Secretary (Regulation-II), Establishment Department.
11. PA to Deputy Secretary (Policy), Establishment Department

Sd-
Section Officer (O&M)

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Advocate



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(ESTABLISHMENT WING)

No. SOE-III (E&AD)1-3/2019/Erstwhile FATA
Dated Peshawar the June 19, 2020

"C"
9-

To: The Deputy Commissioner,
Nowshera.

Subject:- ADJUSTMENT OF REMAINING SURPLUS STAFF OF ERSTWHILE FATA
SECRETARIAT.

Dear Sir,

I am directed to refer to the subject noted above and to state that Muhammad Bilal Junior Scale Stenographer (BPS-14) remaining employee of AI&C of Erstwhile FATA Secretariat is declared as surplus and notified vide Establishment Department's Notification No.SO(O&M)/E&AD/3-18/2019 dated 27-04-2020 (copy enclosed). As per Surplus Pool Policy Notification dated 14-06-2007 (copy enclosed), services of the above official having domicile of District Nowshera placed at your disposal for further adjustment w.e.f 01-07-2019.


2. It is therefore, requested that the above mentioned Surplus Pool Staff may be adjusted in your District as per Surplus Pool Policy.

Yours faithfully

SECTION OFFICER (E-III)

Endst. of even No. & date
Copy forwarded to:-

1. The Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
2. The District Accounts Officer, Nowshera.
3. The Section Officer (O&M), Establishment Department.
4. The Section Officer (Adm/Budget & Dev.) E&A Department.
5. P.S to Secretary (Estt.), Establishment Department.
6. P.S to Special Secretary (Estt.), Establishment Department.
7. Officials concerned with the direction to report to Deputy Commissioner, Nowshera.
8. Master file.


SECTION OFFICER (E-III)

ATTESTED



- 10 - "D"

Dated Peshawar the 25 /10/2020.

OFFICE ORDER

F.No.4(35)/2019/HR/Admn.:- Consequent upon the transfer of services of Mr. Muhammad Bilal, Junior Scale Stenographer (BPS-14) from the Surplus pool maintained in the office of Deputy Commissioner Nowshera vide No.5891-94/E.A-8/DC/NSR/2020 dated 21.09.2020, the competent authority is pleased to absorb Mr. Muhammad Bilal, Junior Scale Stenographer (BPS-14) in Population Welfare Department Khyber Pakhtunkhwa. He is posted against the vacant post of Junior Scale Stenographer (BPS-14) and attached with litigation section of this Directorate with immediate effect.

(Director General)
Population Welfare Department

Copy Forwarded to the

1. The Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Nowshera with reference to letter No. quoted above.
3. Assistant Director (Admn).
4. PS to Secretary PWD Khyber Pakhtunkhwa Peshawar.
5. PS to Director General Population Welfare Deptt. Peshawar.
6. Muhammad Bilal Junior Scale Stenographer (BPS-14) C/O Deputy Commissioner Nowshera
7. HR Assistant.
8. Master File

Assistant Director (HR)

TESTED
DATE

**GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE GENERAL POPULATION WELFARE**

Plot No:18, Sector E-8, Phase-7,
Hayatabad, Peshawar

Dated Peshawar the 05/10/2020.

OFFICE ORDER:-

F.No.4(35)/2019/HR/Admn:- Consequent upon the transfer of services of Mr. Muhammad Bilal, Junior Scale Stenographer (BPS-14) from the Surplus pool maintained in the office of Deputy Commissioner Nowshera vide No.5891-94/E.A-8/DC/NSR/2020 dated 21.09.2020, the competent authority is pleased to absorb Mr. Muhammad Bilal, Junior Scale Stenographer (BPS-14) in Population Welfare Department Khyber Pakhtunkhwa. He is posted against the vacant post of Junior Scale Stenographer (BPS-14) and attached with litigation section of this Directorate with immediate effect.

(Director General)
Population Welfare Department

Copy Forwarded to the:-

1. The Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Nowshera with reference to letter No. quoted above.
3. Assistant Director (Admn).
4. PS to Secretary PWD, Khyber Pakhtunkhwa Peshawar.
5. PS to Director General. Population Welfare Deptt: Peshawar.
6. Muhammad Bilal Junior Scale Stenographer (BPS-14) C/O Deputy Commissioner Nowshera.
7. IIR Assistant.,
8. Master File.

Sd/-
Assistant Director (HR)

ATTESTED

10/10/2020
Advocate

"E" -11-



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1227/2020

Date of Institution ... 21.09.2020

Date of Decsion 14.01.2022

Hanif Ur Rehman, Assistant (BPS-16), Directorate of Prosecution Khyber Pakhtunkhwa. (Appellant)

VERSUS

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

Syed Yahya Zahid Gillani, Taimur Haider Khan & Ali Gohar Durrani, Advocates

... For Appellants

Muhammad Adeel Butt, Additional Advocate General

... For respondents

AHMAD SULTAN TAREEN
ATIQ-UR-REHMAN WAZIR

... **CHAIRMAN**
... **MEMBER (EXECUTIVE)**

JUDGMENT

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

This single judgment

shall dispose of the Instant service appeal as well as the following connected service appeals, as common question of law and facts are involved therein:-

1. 1228/2020 titled Zubair Shah
2. 1229/2020 titled Farooq Khan.
3. 1230/2020 titled Muhammad Amjad Ayaz.
4. 1231/2020 titled Qaiser Khan.
5. 1232/2020 titled Ashiq Hussain
6. 1233/2020 titled Shoukat Khan
7. 1244/2020 titled Haseeb Zeb.

ATTESTED


CHAIRMAN
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

-12-

8. 1245/2020 titled Muhammad Zahir Shah

9. 11125/2020 titled Zahid Khan

10. 11126/2020 titled Touseef Iqbal

02. Brief facts of the case are that the appellant was initially appointed as Assistant (BPS-11) on contract basis in Ex-FATA Secretariat vide order dated 01-12-2004. His services were regularized by the order of Peshawar High Court vide judgment dated 07-11-2013 with effect from 01-07-2008 in compliance with cabinet decision dated 29-08-2008. Regularization of the appellant was delayed by the respondents for quite longer and in the meanwhile, in the wake of merger of Ex-FATA with the Province, the appellant alongwith others were declared surplus vide order dated 25-06-2019. Feeling aggrieved, the appellant alongwith others filed writ petition No 3704-P/2019 in Peshawar High Court, but in the meanwhile the appellant alongwith others were adjusted in various directorates, hence the High Court vide judgment dated 05-12-2019 declared the petition as infructuous, which was challenged by the appellants in the supreme court of Pakistan and the supreme court remanded their case to this Tribunal vide order dated 04-08-2020 in CP No. 881/2020. Prayers of the appellants are that the impugned order dated 25-06-2019 may be set aside and the appellants may be retained/adjusted against the secretariat cadre borne at the strength of Establishment & Administration Department of Civil Secretariat. Similarly seniority/promotion may also be given to the appellants since the inception of their employment in the government department with back benefits as per judgment titled Tikka Khan & others Vs Syed Muzafar Hussain Shah & others (2018 SCMR 332) as well as in the light of judgment of larger bench of high court in Writ Petition No. 696/2010 dated 07-11-2013.

03. Learned counsel for the appellants has contended that the appellants has not been treated in accordance with law, hence their rights secured under the Constitution has badly been violated; that the impugned order has not been

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passed in accordance with law, therefore is not tenable and liable to be set aside; that the appellants were appointed in Ex-FATA Secretariat on contract basis vide order dated 01-12-2004 and in compliance with Federal Government decision dated 29-08-2008 and in pursuance of judgment of Peshawar High Court dated 07-11-2013, their services were regularized with effect from 01-07-2008 and the appellants were placed at the strength of Administration Department of Ex-FATA Secretariat; that the appellants were discriminated to the effect that they were placed in surplus pool vide order dated 25-06-2019, whereas services of similarly placed employees of all the departments were transferred to their respective departments in Provincial Government; that placing the appellants in surplus pool was not only illegal but contrary to the surplus pool policy, as the appellants never opted to be placed in surplus pool as per section-5 (a) of the Surplus Pool Policy of 2001 as amended in 2006 as well as the unwillingness of the appellants is also clear from the respondents letter dated 22-03-2019; that by doing so, the mature service of almost fifteen years may spoil and go in waste; that the illegal and untoward act of the respondents is also evident from the notification dated 08-01-2019, where the erstwhile FATA Secretariat departments and directorates have been shifted and placed under the administrative control of Khyber Pakhtunkhwa Government Departments, whereas the appellants were declared surplus; that billion of rupees have been granted by the Federal Government for merged/erstwhile FATA Secretariat departments but unfortunately despite having same cadre of posts at civil secretariat, the respondents have carried out the unjustifiable, illegal and unlawful impugned order dated 25-06-2019, which is not only the violation of the Apex Court judgment, but the same will also violate the fundamental rights of the appellants being enshrined in the Constitution of Pakistan, will seriously affect the promotion/seniority of the appellants; that discriminatory approach of the respondents is evident from the notification dated 22-03-2019, whereby other employees of Ex-FATA were not placed in surplus pool but Ex-FATA Planning Cell of P&D was placed and merged into Provincial

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P&D Department; that declaring the appellants surplus and subsequently their adjustment in various departments/directorates are illegal, which however were required to be placed at the strength of Establishment & Administration department; that as per judgment of the High Court, seniority/promotions of the appellants are required to be dealt with in accordance with the judgment titled Tikka Khan Vs Syed Muzafar (2018 SCMR 332), but the respondents deliberately and with mala fide declared them surplus, which is detrimental to the interests of the appellants in terms of monetary loss as well as seniority/promotion, hence interference of this tribunal would be warranted in case of the appellants.

04. Learned Additional Advocate General for the respondents has contended that the appellants has been treated at par with the law in vogue i.e. under section-11(A) of the Civil Servant Act, 1973 and the surplus pool policy of the provincial government framed thereunder; that proviso under Para-6 of the surplus pool policy states that in case the officer/officials declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall loose the facility/right of adjustment/absorption and would be required to opt for pre-mature retirement from government service provided that if he does not fulfill the requisite qualifying service for pre-mature retirement, he may be compulsory retired from service by the competent authority, however in the instant case, no affidavit is forthcoming to the effect that the appellant refused to be absorbed/adjusted under the surplus pool policy of the government; that the appellants were ministerial staff of ex-FATA Secretariat, therefore they were treated under section-11(a) of the Civil Servant Act, 1973; that so far as the issue of inclusion of posts in BPS-17 and above of erstwhile agency planning cells, P&D Department merged areas secretariat is concerned, they were planning cadre employees, hence they were adjusted in the relevant cadre of the provincial government; that after merger of erstwhile FATA with the Province, the Finance Department vide

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ATTORNEY GENERAL
Sindh High Court
Karachi

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order dated 21-11-2019 and 11-06-2020 created posts in the administrative departments in pursuance of request of establishment department, which were not meant for blue eyed persons as is alleged in the appeal; that the appellants has been treated in accordance with law, hence their appeals being devoid of merit may be dismissed.

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

06. Before embarking upon the issue in hand, it would be appropriate to explain the background of the case. Record reveals that in 2003, the federal government created 157 regular posts for the erstwhile FATA Secretariat, against which 117 employees including the appellants were appointed on contract basis in 2004 after fulfilling all the codal formalities. Contract of such employees was renewed from time to time by issuing office orders and to this effect; the final extension was accorded for a further period of one year with effect from 03-12-2009. In the meanwhile, the federal government decided and issued instructions dated 29-08-2008 that all those employees working on contract against the posts from BPS-1 to 15 shall be regularized and decision of cabinet would be applicable to contract employees working in ex-FATA Secretariat through SAFRON Division for regularization of contract appointments in respect of contract employees working in FATA. In pursuance of the directives, the appellants submitted applications for regularization of their appointments as per cabinet decision, but such employees were not regularized under the pleas that vide notification dated 21-10-2008 and in terms of the centrally administered tribal areas (employees status order 1972 President Order No. 13 of 1972), the employees working in FATA, shall, from the appointed day, be the employees of the provincial government on deputation to the Federal Government without deputation allowance, hence they are not entitled to be regularized under the policy decision dated 29-08-2008.

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07. In 2009, the provincial government promulgated regularization of service Act, 2009 and in pursuance, the appellants approached the additional chief secretary ex-FATA for regularization of their services accordingly, but no action was taken on their requests, hence the appellants filed writ petition No 969/2010 for regularization of their services, which was allowed vide judgment dated 30-11-2011 and services of the appellants were regularized under the regularization Act, 2009, against which the respondents filed civil appeal No 29-P/2013 and the Supreme Court remanded the case to the High Court Peshawar with direction to re-examine the case and the Writ Petition No 969/2010 shall be deemed to be pending. A three member bench of the Peshawar High Court decided the issue vide judgment dated 07-11-2013 in WP No 969/2010 and services of the appellants were regularized and the respondents were given three months time to prepare service structure so as to regulate their permanent employment in ex-FATA Secretariat vis-à-vis their emoluments, promotions, retirement benefits and inter-se-seniority with further directions to create a task force to achieve the objectives highlighted above. The respondents however, delayed their regularization, hence they filed COC No. 178-P/2014 and in compliance, the respondents submitted order dated 13-06-2014, whereby services of the appellants were regularized vide order dated 13-06-2014 with effect from 01-07-2008 as well as a task force committee had been constituted by Ex-FATA Secretariat vide order dated 14-10-2014 for preparation of service structure of such employees and sought time for preparation of service rules. The appellants again filed CM No. 182-P/2016 with IR in COC No 178-P/2014 in WP No 969/2010, where the learned Additional Advocate General alongwith departmental representative produced letter dated 28-10-2016, whereby service rules for the secretariat cadre employees of Ex-FATA Secretariat had been shown to be formulated and had been sent to secretary SAFRAN for approval, hence vide judgment dated 08-09-2016, Secretary SAFRAN was directed to finalize the matter within one month, but the respondents instead of doing the needful

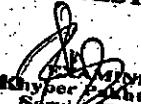
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declared all the 117 employees including the appellants as surplus vide order dated 25-06-2019, against which the appellants filed Writ Petition No. 3704-P/2019 for declaring the impugned order as set aside and retaining the appellants in the Civil Secretariat of establishment and administration department having the similar cadre of post of the rest of the civil secretariat employees.

08. During the course of hearing, the respondents produced copies of notifications dated 19-07-2019 and 22-07-2019 that such employees had been adjusted/absorbed in various departments. The High Court vide judgment dated 05-12-2019 observed that after their absorption, now they are regular employees of the provincial government and would be treated as such for all intent and purposes including their seniority and so far as their other grievance regarding their retention in civil secretariat is concerned, being civil servants, it would involve deeper appreciation of the vires of the policy, which have not been impugned in the writ petition and in case the appellants still feel aggrieved regarding any matter that could not be legally within the framework of the said policy, they would be legally bound by the terms and conditions of service and in view of bar contained in Article 212 of the Constitution, this court could not embark upon to entertain the same. Needless to mention and we expect that keeping in view the ratio as contained in the judgment titled Tikka Khan and others Vs Syed Muzafar Hussain Shah and others (2018 SCMR 332), the seniority would be determined accordingly, hence the petition was declared as infructuous and was dismissed as such. Against the judgment of High Court, the appellants filed CPLA No 881/2020 in the Supreme Court of Pakistan, which was disposed of vide judgment dated 04-08-2020 on the terms that the petitioners should approach the service tribunal, as the issue being terms and condition of their service, does fall within the jurisdiction of service tribunal, hence the appellant filed the instant service appeal.

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09. Main concern of the appellants in the instant service appeal is that in the first place, declaring them surplus is illegal, as they were serving against regular posts in administration department Ex-FATA, hence their services were required to be transferred to Establishment & Administration Department of the provincial government like other departments of Ex-FATA were merged in their respective department. Their second stance is that by declaring them surplus and their subsequent adjustment in directorates affected them in monetary terms as well as their seniority/promotion also affected, being placed at the bottom of the seniority line.

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10. In view of the foregoing explanation, in the first place, it would be appropriate to count the discriminatory behaviors of the respondents with the appellants, due to which the appellants spent almost twelve years in protracted litigation right from 2008 till date. The appellants were appointed on contract basis after fulfilling all the codal formalities by FATA Secretariat, administration wing but their services were not regularized, whereas similarly appointed persons by the same office with the same terms and conditions vide appointments orders dated 08-10-2004, were regularized vide order dated 04-04-2009. Similarly a batch of another 23 persons appointed on contract were regularized vide order dated 04-09-2009 and still a batch of another 28 persons were regularized vide order dated 17-03-2009; hence the appellants were discriminated in regularization of their services without any valid reason. In order to regularize their services, the appellants repeatedly requested the respondents to consider them at par with those, who were regularized and finally they submitted applications for implementation of the decision dated 29-08-2008 of the federal government, where by all those employees working in FATA on contract were ordered to be regularized, but their requests were declined under the plea that by virtue of presidential order as discussed above, they are employees of provincial government and only on deputation to FATA but without deputation allowance.

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hence they cannot be regularized, the fact however remains that they were not employee of provincial government and were appointed by administration department of Ex-FATA Secretariat, but due to malafide of the respondents, they were repeatedly refused regularization, which however was not warranted. In the meanwhile, the provincial government promulgated Regularization Act, 2009, by virtue of which all the contract employees were regularized, but the appellant were again refused regularization, but with no plausible reason, hence they were again discriminated and compelling them to file Writ Petition in Peshawar High Court, which was allowed vide judgment dated 30-11-2011 without any debate, as the respondents had already declared them as provincial employees and there was no reason whatsoever to refuse such regularization, but the respondent instead of their regularization, filed CPLA in the Supreme Court of Pakistan against such decision, which again was an act of discrimination and malafide, where the respondents had taken a plea that the High Court had allowed regularization under the regularization Act, 2009 but did not discuss their regularization under the policy of Federal Government laid down in the office memorandum issued by the cabinet secretary on 29-08-2008 directing the regularization of services of contractual employees working in FATA, hence the Supreme Court remanded their case to High Court to examine this aspect as well. A three member bench of High Court heard the arguments, where the respondents took a U turn and agreed to the point that the appellants had been discriminated and they will be regularized but sought time for creation of posts and to draw service structure for these and other employees to regulate their permanent employment. The three member bench of the High Court had taken a serious view of the unessential technicalities to block the way of the appellants, who too are entitled to the same relief and advised the respondents that the petitioners are suffering and are in trouble besides mental agony, hence such regularization was allowed on the basis of Federal Government decision dated 29-08-2008 and the appellants were declared as civil servants of the FATA

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Secretariat and not of the provincial government. In a manner, the appellants were wrongly refused their right of regularization under the Federal Government Policy, which was conceded by the respondents before three member's bench, but the appellants suffered for years for a single wrong refusal of the respondents, who put the matter on the back burner and on the ground of sheer technicalities thwarted the process despite the repeated direction of the federal government as well as of the judgment of the courts. Finally, Services of the appellants were very unwillingly regularized in 2014 with effect from 2008 and that too after contempt of court proceedings. Judgment of the three member bench is very clear and by virtue of such judgment, the respondents were required to regularize them in the first place and to own them as their own employees borne on the strength of establishment and administration department of FATA Secretariat, but step-motherly behavior of the respondents continued unabated, as neither posts were created for them nor service rules were framed for them as were committed by the respondents before the High Court and such commitments are part of the judgment dated 07-11-2013 of Peshawar High Court. In the wake of 25th Constitutional amendments and upon merger of FATA Secretariat into Provincial Secretariat, all the departments' alongwith staff were merged into provincial departments. Placed on record is notification dated 08-01-2019, where P&D Department of FATA Secretariat was handed over to provincial P&D Department and law & order department merged into Home Department vide notification dated 16-01-2019, Finance department merged into provincial Finance department vide notification dated 24-01-2019, education department vide order dated 24-01-2019 and similarly all other department like Zakat & Usher Department, Population Welfare Department, Industries, Technical Education, Minerals, Road & Infrastructure, Agriculture, Forests, Irrigation, Sports, FDMA and others were merged into respective Provincial Departments, but the appellants being employees of the administration department of ex-FATA were not merged into Provincial Establishment & Administration Department, rather they were

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declared surplus, which was discriminatory and based on malafide, as there was no reason for declaring the appellants as surplus, as total strength of FATA Secretariat from BPS-1 to 21 were 56983 of the civil administration against which employees of provincial government, defunct FATA DC, employees appointed by FATA Secretariat, line directorates and autonomous bodies etc were included, amongst which the number of 117 employees including the appellants were granted amount of Rs. 25505.00 million for smooth transition of the employees as well as departments to provincial departments and to this effect a summary was submitted by the provincial government to the Federal Government, which was accepted and vide notification dated 09-04-2019, provincial government was asked to ensure payment of salaries and other obligatory expenses, including terminal benefits as well of the employees against the regular sanctioned 56983 posts of the administrative departments/attached directorates/field formations of erstwhile FATA, which shows that the appellants were also working against sanctioned posts and they were required to be smoothly merged with the establishment and administration department of provincial government, but to their utter dismay, they were declared as surplus inspite of the fact that they were posted against sanctioned posts and declaring them surplus, was no more than malafide of the respondents. Another discriminatory behavior of the respondents can be seen, when a total of 235 posts were created vide order dated 11-06-2020 in administrative departments i.e. Finance, Home, Local Government, Health, Environment, Information, Agriculture, Irrigation, Mineral and Education Departments for adjustment of the staff of the respective departments of ex-FATA, but here again the appellants were discriminated and no post was created for them, in Establishment & Administration Department and they were declared surplus and later on were adjusted in various directorates, which was detrimental to their rights in terms of monetary benefits, as the allowances admissible to them in their new places of adjustment were less than the one admissible in civil secretariat. Moreover, their seniority was also affected

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as they were placed at the bottom of seniority and their promotions, as the appellant appointed as Assistant is still working as Assistant in 2022, are the factors, which cannot be ignored and which shows that injustice has been done to the appellants. Needless to mention that the respondents failed to appreciate that the Surplus Pool Policy-2001 did not apply to the appellants since the same was specifically made and meant for dealing with the transition of district system and resultant re-structuring of governmental offices under the devolution of powers from provincial to local governments as such, the appellants service in erstwhile FATA Secretariat (now merged area secretariat) had no nexus whatsoever with the same, as neither any department was abolished nor any post, hence the surplus pool policy applied on them was totally illegal. Moreover the concerned learned counsel for the appellants had added to their miseries by contesting their cases in wrong forums and to this effect, the supreme court of Pakistan in their case in civil petition No. 881/2020 had also noticed that the petitioners being pursuing their remedy before the wrong forum, had wasted much of their time and the service Tribunal shall justly and sympathetically consider the question of delay in accordance with law. To this effect we feel that the delay occurred due to wastage of time before wrong forums, but the appellants continuously contested their case without any break for getting justice. We feel that their case was already spoiled by the respondents due to sheer technicalities and without touching merit of the case. The apex court is very clear on the point of limitation that cases should be considered on merit and mere technicalities including limitation shall not debar the appellants from the rights accrued to them. In the instant case, the appellants has a strong case on merit, hence we are inclined to condone the delay occurred due to the reason mentioned above.

11. We are of the considered opinion that the appellants has not been treated in accordance with law, as they were employees of administration department of the ex-FATA and such stance was accepted by the respondents in their comment

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submitted to the High Court and the High Court vide judgment dated 07-11-2013 declared them civil servants and employees of administration department of ex-FATA Secretariat and regularized their services against sanctioned posts, despite they were declared surplus. They were discriminated by not transferring their services to the establishment and administration department of provincial government on the analogy of other employees transferred to their respective departments in provincial government and in case of non-availability of post, Finance department was required to create posts in Establishment & Administration Department on the analogy of creation of posts in other Administrative Departments as the Federal Government had granted amount of Rs. 25505 million for a total strength of 56983 posts including the posts of the appellants and declaring them surplus was unlawful and based on malafide and on this score alone the impugned order is liable to be set aside. The correct course would have been to create the same number of vacancies in their respective department i.e. Establishment & Administrative Department and to post them in their own department and issues of their seniority/promotion was required to be settled in accordance with the prevailing law and rule.

12. We have observed that grave injustice has been meted out to the appellants in the sense that after contesting for longer for their regularization and finally after getting regularized, they were still deprived of the service structure/rules and creation of posts despite the repeated directions of the three member bench of Peshawar High Court in its judgment dated 07-11-2013 passed in Writ Petition No. 969/2010. The same directions has still not been implemented and the matter was made worse when impugned order of placing them in surplus pool was passed, which directly affected their seniority and the future career of the appellants after putting in 18 years of service and half of their service has already been wasted in litigation.

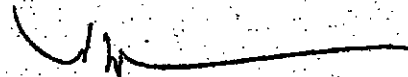
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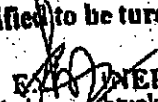
13. In view of the foregoing discussion, the instant appeal alongwith connected service appeals are accepted. The impugned order dated 25-06-2019 is set aside with direction to the respondents to adjust the appellants in their respective department i.e. Establishment & Administration Department Khyber Pakhtunkhwa against their respective posts and in case of non-availability of posts, the same shall be created for the appellants on the same manner, as were created for other Administrative Departments vide Finance Department notification dated 11-06-2020. Upon their adjustment in their respective department, they are held entitled to all consequential benefits. The issue of their seniority/promotion shall be dealt with in accordance with the provisions contained in Civil Servant Act, 1973 and Khyber Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989, particularly Section-17(3) of Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rules, 1989. Needless to mention and is expected that in view of the ratio as contained in the judgment titled Tikka Khan and others Vs Syed Muzafar Hussain Shah and others (2018 SCMR 332), the seniority would be determined accordingly. Parties are left to bear their own costs. File be consigned to record room.

ANNOUNCED
14.01.2022


(AHMAD SULTAN TAREEN)
CHAIRMAN


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

Date of Presentation of Application 01-03-22
 Words 5600
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 Date of Copy 01-03-22
01-03-22

Certified to be true copy

 MEMBER
 Khyber Pakhtunkhwa
 Service Tribunal
 Peshawar



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Dated Peshawar, the October 7th, 2022

NOTIFICATION

No. SO E-IV (E&AD)/1-2/2022: - In pursuance of Khyber Pakhtunkhwa Service Tribunal judgement in Service Appeal No. 1227/2020 dated 14.01.2022 and subsequent Execution Petition No. 242-252/2022 dated 26.07.2022 in Service Appeal No. 1227/2020 dated 14.01.2022, in compliance of the orders passed by Khyber Pakhtunkhwa Service Tribunal Mr. Hanif Ur. Rehman, Assistant (BS-16), presently working as Assistant in Directorate of Prosecution, Home Department Khyber Pakhtunkhwa is hereby conditionally adjusted as Assistant (BS-16) in Civil Secretariat, Peshawar till final judgement of Supreme Court of Pakistan in CPLA No. 358-P/2022 dated 25.04.2022 which is pending adjudication before Supreme Court of Pakistan.

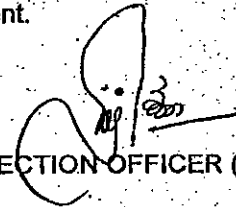
2. His seniority and other claims will be settled in due course of time.

**CHIEF SECRETARY
KHYBER PAKHTUNKHWA**

Endst: Even No. & Date.

Copy of the above is forwarded to: -

1. Accountant General, Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa, Home Department.
3. Director General, Directorate of Prosecution, Home Department.
4. Section Officer (Admn), Administration Department.
5. Section Officer (Secret), Establishment Department.
6. Section Officer (Lit-III), Establishment Department for further necessary action.
7. P.S to Secretary Establishment Department.
8. P.S to Special Secretary (Estt), Establishment Department
9. P.A to Addl: Secretary (Estt), Establishment Department.
10. P.A to Deputy Secretary (Estt), Establishment Department.
11. Official concerned.


SECTION OFFICER (E-IV)

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ESTABLISHMENT DEPARTMENT
PESHAWAR

To

"G" -26-

The Worthy Chief Secretary
Government of Khyber Pakhtunkhwa
Peshawar.

Subject:- DEPARTMENTAL APPEAL FOR ADJUSTMENT
SURPLUS EMPLOYEES OF ERSTWHILE FATA
SECRETARIAT IN RESPECTIVE ESTABLISHMENT &
ADMINISTRATION DEPARTMENT GOVERNMENT OF
KHYBER PAKHTUNKHWA.

Respected Sir,

With due respected it is submitted that in wake of 25th constitutional amendment, and in pursuance of the integration and merger of the erstwhile FATA with the Province of Khyber Pakhtunkhwa, the employees of various Departments of erstwhile FATA Secretariat vide Notification No. SO(O&M)/E&AD/3-18/2019 dated 25-06-2019 were declared as surplus and their services were placed in the Surplus Pool of the Establishment and Administration Department for their further adjustment/placement (Annexure-I). Subsequent to the above Notification, the undersigned on his appeal was also declared as surplus and my services were placed at the placed in the Surplus pool of the Establishment Department Khyber Pakhtunkhwa vide Notification No. SO(O&M)/E&AD/3-18/2019 dated 27-04-2020 (Annexure-II). Later on, Establishment Department, Government of Khyber Pakhtunkhwa vide letter dated 19-06-2020 placed my services at the disposal of office of the Deputy Commissioner, Nowshera for further adjustment as per Surplus Pool policy (Annexure-III).

Accordingly, the services of the undersigned was absorbed in the Population welfare Department and I was posted against the vacant post of Junior Scale Stenographer (BPS-14) in the Directorate General Population Welfare Khyber Pakhtunkhwa (Annexure-IV). In the meanwhile, the erstwhile FATA Secretariat employees who were declared surplus and adjusted in various Directorates and sub offices filed an appeal in the Honourable Services Tribunal

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Peshawar, Khyber Pakhtunkhwa against the Government of Khyber Pakhtunkhwa for placement of their services at the strength of Establishment Department being employees of Civil Secretariat. The learned Service Tribunal has accepted the appeal and passed an order in favour of the employees who were declared as surplus by the Provincial Government and directed for their adjustment in Civil Secretariat (Annexure-V). The rest of the para of the Judgment is reproduced herein below:-

"In view of the foregoing discussion, the instant appeal alongwith connected service appeals are accepted. The impugned order dated 25-06-2019 is set aside with direction to the respondents to adjust the appellants in their respective department i.e Establishment & Administration Department Khyber Pakhtunkhwa against their respective posts and in case of non-availability of posts, the same shall be created for the appellants on the same manner, as were created for other Administrative Departments vide Finance Department notification dated 11-06-220. Upon their adjustment in their respective department, they are held entitled to all consequential benefits. The issue of their seniority/promotion shall be dealt with in accordance with the provisions contained in Civil Servant Act, 1973 and Khyber Pakhtunkhwa Government Servants (Appointment, Promotion & Transfer) Rules, 1989, particularly Section 17(3) of Khyber Pakhtunkhwa Government Servants (Appointment Promotion & Transfer) Rues, 1989. Needless to mention and is expected that in view of the ratio as contained in the Judgment titled Tikka Khan and others Vs Syed Muzafar Hussain Shah and others (2018 SCMR 332), the seniority would be determined accordingly. Parties are left to bear their own costs. File be consigned to record room."

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In light of the Judgement passed by the learned Services Tribunal Khyber Pakhtunkhwa, the appellants were adjusted in Establishment Department Civil Secretariat Government of Khyber Pakhtunkhwa and further posted in various Departments (Annexure-VI).

Moreover, 2009 SCMR has very specifically laid down criteria for employees who has not litigated but will receive the benefits of judgments/decision (Annexure-VII). The relevant para of the judgment is as under:-

“Administrative of justice— If a Tribunal or the Supreme Court decides a point of law relating the terms and conditions of a civil servant who litigated, and there were other civil servants, who may not have taken any legal proceedings, in such a case, the dictates of justice and rule of good governance demand that the benefit of the said decision be extended to other civil servants also, who may not be parties to that litigation, instead of compelling them to approach the Tribunal or any other legal forum— All citizens are equal before law and entitled to equal protection of law as per Art 25 of the Constitution.”

Forgoing in view the above, you are therefore requested that on acceptance of this appeal, the undersigned having the same status as per the appellant may also be adjusted in Civil Secretariat and my services be placed at on the strength of Establishment Department in light of the above judgment passed by the learned Services Tribunal of Khyber Pakhtunkhwa and of judgments/decision 2009, SCMR, please.

Sincerely Yours,

(Muhammad Bilal)
Junior Scale Stenographer (BPS-14)
Directorate General Population
Welfare Department Peshawar
03339286257-03149468955

Dated:- 14/12/2022

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091-9210524

Dated Peshawar, the 14th March, 2023

ORDER

No. SOE-III (E&AD)1-3/2023/Erstwhile FATA Sec. & E.C. WHEREAS in pursuance of merger of erstwhile FATA with Khyber Pakhtunkhwa, the employees of FATA Secretariat were declared surplus and placed in the surplus pool of Establishment Department for further adjustment under the Surplus Pool Policy vide Notification dated 25.6.2019 read with 27.4.2020.

AND WHEREAS, feeling aggrieved to the adjustment outside of Establishment Department, certain employees of the erstwhile FATA challenged the case in the Service Tribunal and the Hon'ble Tribunal in Service Appeal No. 1227/2020 dated 14.01.2022 directed to adjust the appellants in their respective department i.e. Establishment Department against their respective posts and in case of non-availability the same shall be created.

AND WHEREAS, in compliance with the orders passed by the Khyber Pakhtunkhwa Service Tribunal one of them namely Mr. Hanif Ur Rehman has been conditionally adjusted as Assistant (BPS-16) in Civil Secretariat, Peshawar.

AND WHEREAS, Mr. Muhammad Bilal, Junior Scale Stenographer (BPS-14), who was declared as "Surplus" and adjusted in the Directorate of Population Welfare District Nowshera under Surplus Pool Policy 2001, has submitted a departmental appeal for his re-adjustment in Establishment & Administration Department in light of the judgment of the Service Tribunal Khyber Pakhtunkhwa passed in the service appeal No.1227/2020 dated 14.01.2022.

AND WHEREAS, the judgment of the Khyber Pakhtunkhwa Service Tribunal in Service Appeal No.1227/2020 dated 14.01.2022 has not attained finality as Establishment Department has filed CPLA before the Hon'ble Supreme Court of Pakistan against the judgment which is still pending for adjudication. Moreover, the name of the appellant i.e. Mr. Muhammad Bilal was not included amongst the petitioners who had filed the above referred service appeal.

NOW THEREFORE, the Secretary Establishment, Khyber Pakhtunkhwa, being competent authority in terms of Rule 4(3)(b)(ii) of APT Rules, 1989, after going through the Provincial Surplus Policy 2001, and Judgment of the Khyber Pakhtunkhwa Service Tribunal is pleased to dismiss the departmental appeal of the applicant named Muhammad Bilal, Junior Scale Stenographer (BPS-14), Directorate of Population Welfare, Nowshera on the above mentioned grounds.

-Sd-
SECRETARY
KHYBER PAKHTUNKHWA

Copy forwarded to the:

- 1. PS to Secretary Establishment Department
- 2. Official concerned Jr. Scale Stenographer, Directorate General Population
- 3. Master file

Welfare department, Peshawar.
 0333-9286257 / 0314-9468955
 (Mr. Muhammad Bilal)



(ABDUL HAQ)
 SECTION OFFICER (E-III)

DS
 Population

SEARCHED
 SERIALIZED
 INDEXED

بعدالت سروس ٹرمینوشن کے بعد



2023ء منجانب محمد بلال

محمد بلال بنام گورنمنٹ
و منیجر

مورخہ

مقدمہ

دعویٰ

جرم

باعث تحریر آنکے

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کارروائی متعلقہ
آن مقام کے لئے لوز محمد بلال + ASC + حکامریں خان + ولید عزیز
محمد بلال + محمد ایوب ایڈووکیٹس ہیں۔

مقرر کر کے اقرار کیا جاتا ہے۔ کہ صاحب موصوف کو مقدمہ کی کل کارروائی کا کامل اختیار ہوگا۔ نیز
وکیل صاحب کو راضی نامہ کرنے ق تقرر ثالث و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور
بصورت ڈگری کرنے اجراء اور وصولی چیک و روپیہ ارضی دعویٰ اور درخواست ہر قسم کی تصدیق
زرائیں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی
اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا محتاج ہوگا۔ از بصورت ضرورت
مقدمہ مذکور کے کل یا جزوی کارروائی کے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنے بجائے
تقرر کا اختیار ہوگا۔ اور صاحب مقرر شدہ کو بھی وہی جملہ مذکور با اختیارات حاصل ہوں گے
اور اس کا ساختہ پر داخستہ منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانبہ التوائے مقدمہ ہوں گے
سب سے وہوگا۔ کوئی تاریخ پیشی مقام دورہ پر ہو یا حد سے باہر ہو تو وکیل صاحب پابند ہوں گے۔
کہ پیروی مذکور کریں۔ لہذا وکالت نامہ لکھ دیا کہ سند ہے۔

Accepted

محمد بلال

محمد بلال

2023

ماہ ابریل

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المرقوم

واہ العبد

د

العبد

محمد بلال

Accepted

محمد بلال