

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

SERVICE APPEAL NO. 783 /2022

MUHAMMAD AWAIS

V/S

GOVT: OF K.P DEPTT:

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Dated: ____/.05./2022

APPELLANT

Through:

**NOOR MOHAMMAD KHATTAK
ADVOCATE
0345-9383141**

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

SERVICE APPEAL NO. _____/2022

Mr. Muhammad Awais, Ex-DRIVE (BPS-06),
Ex-FATA Tribunal, Home & Tribal Affairs Department, Peshawar.

.....**APPELLANT**

VERSUS

- 1- The Chief Secretary, Government of Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.
- 2- The Secretary Home & Tribal Affairs Department, Khyber Pakhtunkhwa, Peshawar.
- 3- The Secretary Establishment Department, Khyber Pakhtunkhwa, Peshawar.

.....**RESPONDENTS**

APPEAL UNDER SECTION-4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDERS DATED 17-01-2022 WHEREBY MAJOR PENALTY OF REMOVAL FROM SERVICE HAS BEEN IMPOSED ON THE APPELLANT AND AGAINST THE IMPUGNED INACTION OF THE RESPONDENTS BY NOT DECIDING THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUARY PERIOD OF NINETY DAYS.

PRAYER:

That on acceptance of this service appeal the impugned order dated 17-01-2022 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 granted in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That appellant is the law abiding citizen and is a highly qualified person. That the before the promulgation of the 25th constitutional amendment Act the Registrar Ex-FATA tribunal advertised certain posts in the daily news papers. That the appellant being eligible and qualified applied to the post of Key Punch Operator. Copies of the advertisement and educational testimonials are attached as annexure

.....**A&B.**

- 2- That after appearing in the selection process the appellant was selected for the subject post and was appointed in the Ex-FATA

tribunal as ~~Diver~~ (BPS-04) vide order dated 08-03-2019, where after the appellant was medically examined by the competent medical officer and in response to the appointment order the appellant submitted his arrival report on 14-03-2019. Copies of the appointment order ~~are attached~~ are attached as annexure C

3- That it is pertinent to mention here that after the promulgation of the 25th Constitutional Amendment Act, the Ex-FATA tribunal was abolished as the then FATA was merged to the province of Khyber Pakhtunkhwa and the status of FATA was changed to settled area therefore the function and status of FATA tribunal comes to an end. That the employees of the Ex-FATA tribunal was transferred/ posted in the Home and Tribal Affairs Department i.e. respondent No. 2 and vide notification dated 17-06-2021 the appellant was transferred and posted in Security-1 Section. Copy of the notification dated 17-06-2021 is attached as annexure D

4- That it is pertinent to mentioned here that the appellant has regularly received his monthly salary from the respondent department till November, 2021. Copy of the salary slip is attached as annexure E

5- That while performing his duties with zeal and zest and up to the entire satisfaction astonishingly vide letter dated 25-10-2021 a show cause notice was issued to the appellant leveling an allegation that recruitment process so conducted by the Ex-FATA tribunal for the selection of the appellant along with others was unlawful and the appointment so made were without lawful authority and liable to be set aside in that eventuality you are liable to be proceeded under the Khyber Pakhtunkhwa (E&D) Rules, 2011. Copy of the letter dated 25-10-2021 along with show cause notice is attached as annexure..... F.

6- That in response to the show cause supra the appellant submitted his detail reply wherein he explains each and every aspect of the case. Copy of reply to show cause is attached as annexure G

7- That respondent without conducting the regular inquiry in to the matter straight away issued the impugned order dated 17-01-2022 whereby major penalty of removal from service has been imposed upon the appellant with retrospective effect. Copy of the impugned order dated 17-01-2022 is attached as annexure H.

8- That appellant feeling aggrieved from the impugned order dated 17-01-2022 preferred departmental appeal before the appellate authority but no response have been given within the stipulated period of ninety days. Copy of the departmental appeal is attached as annexure I.

9- That by not deciding the departmental appeal of the appellant within the statutory period of ninety days, the appellant feeling aggrieved from the inaction of the respondents and having no other remedy but to file the instant service appeal on the following grounds amongst the others.

GROUND:

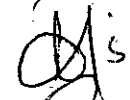
- A- That the impugned order dated 17-01-2022 and the inaction of the respondents by not deciding the departmental appeal are against the law, facts, norms of natural justice and materials on the record, hence not tenable and liable to be set aside.
- B- That appellant has not been treated by the respondent department in accordance with law and rules on the subjected noted above and as such respondents violated the Article 4 and 25 of the Constitution of Islamic Republic of Pakistan.
- C- That the appellant has not committed any misconduct but despite of that the respondents issued the impugned order dated 17.1.2022 whereby major penalty of removal from service has been imposed on the appellant.
- D- That no regular inquiry has been conducted before the issuance of the impugned order dated 17-01-2022 which is the violation of the plethora of judgments of the apex courts of Pakistan as well as the law on the subject.
- E- That the impugned order dated 22-12-2017 contain a retrospective punishment, therefore, the same is void ab initio and in nullity in the eye of law, hence liable to be set aside.
- F- That the appellant was appointed by the then competent authority after fulfilling the codal formalities and thereafter the appellant had served for more than 3 long years, so how could the respondent proceed against the appellant for no fault of him, the action of the respondents are in violation of the doctrine of locus Poenitentiae.
- G- That it is the principle of natural justice as well as consistent view of the higher courts and apex court of Pakistan that no one should be punished for the fault of others, so even if the irregularities so happened in the recruitment process the appellant is not responsible at this belated stage as he has performed for about 3 years in the department.
- H- That no regular inquiry has been conducted and neither a chance of personal hearing and personal defense has been provided to the appellant before imposing the impugned penalties which is violation

of Article 10-A of the constitution of the Islamic republic of Pakistan, 1973.

- I- That apex court of Pakistan has held in a number of judgments that harsh punishment/ major penalty should not be imposed before conducting a full flag and regular inquiry.
- J- That the appellant seeks permission to advance any other ground and proofs at the time of hearing.

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

APPELLANT^{qu}



MUHAMMAD AWAIS

THROUGH:

NOOR MUHAMMAD KHATTAK

&

KAMRAN KHAN



**UMAR FAROOQ
ADVOCATES**

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

SERVICE APPEAL NO. _____/2022

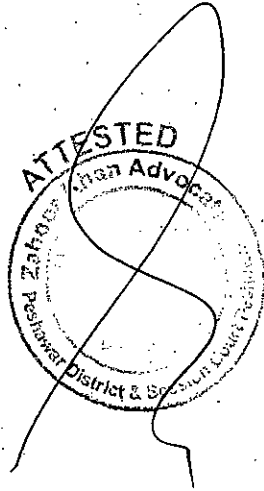
MUHAMMAD AWAIS

V/S

GOVT: OF K.P DEPTT:

AFFIDAVIT

Stated on oath that the contents of the accompanying service appeal are correct to best of my knowledge and belief and nothing has been concealed from this Honorable Service Tribunal.



Zahid Khan
Zahid Khan
DEPONENT

CERTIFICATE:

Certify that no earlier service appeal has been filed by the appellant in the instant matter before this Honorable Service Tribunal.

Zahid Khan
Zahid Khan
CERTIFICATION

01/10/2020

IMG-20200909-WA0030.jpg



JOB OPPORTUNITIES

Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.

S.No	Name of Post	IPS	No. of Post	Age	Qualification
1	Accountant	14	04	18-32	B.A/B.Sc. II Class I Equivalent with 10 years experience
2	Key Punch Operator	12	04	18-32	B.A/B.Sc. II Class I Equivalent
3	Stenographer	12	04	18-32	B.A/B.Sc. II Class I Equivalent with 10 years experience
4	Typist	07	04	18-32	B.A/B.Sc. II Class I Equivalent with 10 years experience
5	Driver	01	01	18-32	B.A/B.Sc. II Class I Equivalent with 10 years experience
6	Sub Guard	01	01	18-32	B.A/B.Sc. II Class I Equivalent
7	Chowkidar	01	01	18-32	B.A/B.Sc. II Class I Equivalent

Terms & Conditions:
 1. Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.
 2. Only candidates who are eligible for the posts mentioned above are eligible to apply.
 3. No TA/DA will be allowed for the interview.
 4. Applications should be submitted in the form of a self-addressed envelope.
 5. Candidates should attach a recent photograph and a recent passport size photograph.
 6. The original applications received after the closing date will not be considered.
 7. The Government reserves the right to change the terms & conditions, not to fill the posts and to cancel the recruitment process at any time.
 8. The Government is not bound by the conditions of the advertisement.

JOB OPPORTUNITIES

Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.

S.No	Name of Post	IPS	No. of Post	Age	Qualification
1	Motorist	14	04	18-32	B.A/B.Sc. II Class I Equivalent with 10 years experience
2	Key Punch Operator	12	04	18-32	B.A/B.Sc. II Class I Equivalent
3	Stenographer	12	04	18-32	B.A/B.Sc. II Class I Equivalent with 10 years experience
4	Typist	07	04	18-32	B.A/B.Sc. II Class I Equivalent with 10 years experience
5	Driver	01	04	18-32	B.A/B.Sc. II Class I Equivalent with 10 years experience
6	Sub Guard	01	01	18-32	B.A/B.Sc. II Class I Equivalent
7	Chowkidar	01	01	18-32	B.A/B.Sc. II Class I Equivalent

Terms & Conditions:
 1. Applications are invited from highly motivated candidates having domicile of Khyber Pakhtunkhwa and newly merged areas against the following vacant posts on regular basis.
 2. Only candidates who are eligible for the posts mentioned above are eligible to apply.
 3. No TA/DA will be allowed for the interview.
 4. Applications should be submitted in the form of a self-addressed envelope.
 5. Candidates should attach a recent photograph and a recent passport size photograph.
 6. The original applications received after the closing date will not be considered.
 7. The Government reserves the right to change the terms & conditions, not to fill the posts and to cancel the recruitment process at any time.
 8. The Government is not bound by the conditions of the advertisement.

ATTACHED

ANNEX B (7)

Roll No. 89271

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ

Sr No 23044

Board of Intermediate and Secondary Education
Peshawar Khyber Pakhtunkhwa
Pakistan



Intermediate Examination

(Humanities Group)

SESSION ANNUAL 2013

This is to Certify that Muhammad Awais

Son of Naseer Ahmad

and a student of Govt College Peshawar


has passed the Intermediate Examination of the Board of Intermediate & Secondary Education

Peshawar, held in May, 2013 as a Regular candidate. He obtained 648 marks


out of 1100 and has been placed in grade C representing Good

The examination was taken as a whole.

Registered No. 1449-B/GP-2011


Asstt. Secretary


Secretary

 This certificate is issued without alteration or erasure.

~~ANNEX B~~

S No. 86080

Roll No. 126890

بِسْمِ اللّٰهِ الرَّحْمٰنِ الرَّحِیْمِ



Board of Intermediate & Secondary Education Peshawar



Khyber Pakhtunkhwa (Pakistan)

Secondary School Certificate Examination

SESSION 2011- ANNUAL

(Arts Group)

This is to Certify that Muhammad Awais Son of Naseer Ahmad
and a student of Govt. High School Haji Muhammad Noor Killi Kohat Road Peshawar has passed the Secondary School Certificate Examination of the Board of Intermediate and Secondary Education, Peshawar held in March, 2011 as a Regular candidate. He obtained 697 Marks out of 1050 and has been placed in Grade B Representing Very Good

The Candidate passed in the following subjects:

- | | | | |
|--------------------|------------------------|---------------------|---------------------|
| 1. English | 2. Urdu | 3. Islamiyat (Comp) | 4. Pakistan Studies |
| 5. General Science | 6. Art & Model Drawing | 7. Maths | 8. Islamic Studies |

Date of birth according to admission form 23 April, 1995

[Signature]
Asstt Secretary

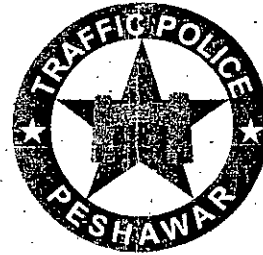
[Signature]
Secretary

This Certificate is issued without alteration or erasure.

No. 4011

Dated 29-04-2015

Peshawar Traffic Police



Driving Certificate

This is to certify that MUHAMMAD AWAIS S/O NASEER AHMAD
has successfully completed the driving course No 77 for Motor Car / Jeep held
from 01-04-2015 to 29-04-2015 & placed in grade A

Incharge
Traffic Police Driving School

Sr. Superintendent of Police
Traffic Peshawar



ANNEX

C

10

OFFICE OF THE
REGISTRAR FATA TRIBUNAL,
PESHAWAR

ORDER

No. R/11/2018-19/ 117 dated: 08.03.2019. On Recommendation of the Departmental Selection Committee, the Competent Authority is pleased to appoint **Mr. Muhammad Awais S/o Naseer Ahmad** against the vacant post of Driver BPS-04 (9900-440-23100) in FATA Tribunal at Peshawar under rule-10 sub rule 2 of Civil Servant (Appointment, Promotion and Transfer) Rules 1989 on the following terms and conditions:

Terms & conditions;

1. He will get pay at the minimum of BPS-04 including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. He shall be governed by Civil Servant Act 1973 for purpose of pension or gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards General Provident Fund (GPF) along with the contributions made by Govt: to his account in the said fund, in prescribed manner.
3. In case, he wishes to resign at any time, 14 days notice will be necessary and he had thereof, 14 days pay will be forfeited.
4. He shall produce medical fitness certificate from Medical Superintendent/ Civil Surgeon before joining duties as required under the rule.
5. He has to join duties at his own expenses.
6. If he accepts the post on these conditions, he should report for duties within 14 days of the receipt of this order.

REGISTRAR
FATA TRIBUNAL

Copy to;

01. The Accountant General Pakistan Revenues Sub Office, Peshawar.
02. Ps to ACS FATA, Peshawar.
03. PS to Secretary Law & Order FATA, Peshawar.
04. PS to Secretary Finance FATA, Peshawar.
05. Personal File.
06. Official Concerned.

REGISTRAR
FATA TRIBUNAL

~~ANNEX~~



ANNEX " F "

GOVERNMENT OF
KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

Dated Peshawar the 17/6/2021

NOTIFICATION

No. E & A (HD) 2 - 5 / 2021. The following posting/transfer of staff of Ex-Fata Tribunal is hereby ordered with immediate effect till further order:

S/No	Name & Designation	Posted In
1	Muhammad Adnan Assistant	Court Section
2	Tahir Khan Assistant	L&K Section NMAs
3	Kafil Ahmad Assistant	SO(L&O)NMAs
4	Muhsin Nawaz Stenographer	Litigation Section NMAs
5	Sami Ullah KPO	Security-I Section
6	Adnan Khan KPO	SO (Defence Planning Cell)
7	Muhammad Shoaib KPO	SO L&O NMAs
8	Asad Iqbal Junior Clerk	Litigation Section NMAs
9	Ikram Junior Clerk	O/O DS (Admn)
10	Khair Ul Bashir Junior Clerk	Security-II Section
11	Sadiq ullah Driver	O/O DS (Dev)
12	Ziafat ullah Driver	General Branch
13	Yaseen Driver	O/O DS (Judicial)
14	Owais Driver	General Branch
15	Amjid Driver	O/O DS(L&O) NMAs
16	Farman Driver	Pool Duty (PCMC)
17	Aleem Shah Driver	O/O DS Security
18	Farman Afridi Driver	O/O AS (L&O)NMAs
19	Gohar Ali Naib Qasid	O/O Planning Officer
20	Sher Khan Naib Qasid	O/O DS L&O NMAs
21	Farooq Azam Naib Qasid	SO L&O NMAs
22	Ishafaq Naib Qasid	SO litigation NMAs
23	Muhammad Shoaib Naib Qasid	Distribution of Mail NMAs
24	Fahim Shehzad Naib Qasid	O/O DS Dev Home
25	Nasir Gul Naib Qasid	IT Cell
26	Ikramullah Naib Qasid	O/O DS Admn
27	Naveed Ahmad Naib Qasid	O/O DS Judicial
28	Asif Khan Naib Qasid	Budget section
29	Falak Niaz Naib Qasid	Police-II
30	Habib Ali Chowkidar	General Branch
31	Sadam Hussain Chowkidar	O/O Special Secretary-II
32	Hassan Ali Chowkidar	General Branch
33	Ishafaq Chowkidar	General Branch
34	Ziaur Rehman Chowkidar	Judicial Section
35	Bahar Ali Chowkidar	General Branch
36	Reedad Khan Chowkidar	General Branch

Deputy secretary (Admn)

Copy is forwarded to:

1. Section Officer(Courts) Home Department
2. Section Officer Security-I&II Home Department
3. Section Officer Budget Home Department
4. Section Officer Judicial Home Department
5. Section Officer L&K NMAs Home Department
6. Section Officer L&O NMAs Home Department
7. Section Officer litigation NMAs Home Department
8. Section Officer DPC Home Department
9. Planning officer Home Department
10. PS to Secretary Home Department
11. PS to Special Secretary I&II Home Department

P.T.O

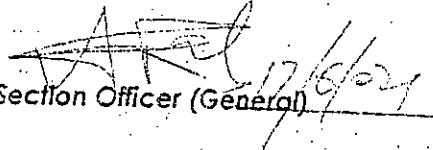


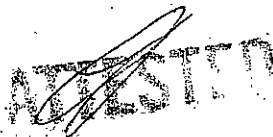
(12)

GOVERNMENT OF
KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT

Dated Peshawar the 17/6/2021

12. PA to Additional Secretary L&O Home Department
13. PA to Deputy secretary Admn Home Department
14. PA to deputy secretary dev Home Department
15. PA to deputy secretary L&O Home Department
16. PA to deputy secretary security Home Department
17. Officials concerned


Section Officer (General)



ANNEX

E

13

Government of Khyber Pakhtunkhwa
Accountant General Khyber Pakhtunkhwa, Peshawar
Monthly Salary Statement (December-2021)



Personal Information of Mr MUHAMMAD AWAIS d/o/s of NASEER AHMED

Personal Number: 50497486

CNIC: 17301107303589

NTN:

Date of Birth: 23.03.1995

Entry into Civil Service: 08.03.2019

Length of Service: 02 Years 09 Months 02 Days

Employment Category: Active Temporary

Designation: DRIVER

80877370-GOVERNMENT OF KHYBER PAKH

DDO Code: PR3073-FCR Tribunal Merged Areas

Payroll Section: 006

GPF Section: 002

Cash Center:

GPF A/C No:

Interest Applied: Yes

GPF Balance:

32,448.00

Vendor Number: -

Pay and Allowances:

Pay scale: BPS Bar - 2017

Pay Scale Type: Civil - BPS: 06

Pay Scale: J

Wage type	Amount	Wage type	Amount
0001 Basic Pay	12,350.00	1004 Home Rent Allow. 45% KPPI	3,640.00
1210 Convet Allowance 2005	1,932.00	1300 Medical Allowance	1,500.00
1315 Design Allowance	150.00	1500 Overtime Allowance	2,000.00
2103 15% Adhoc Relief All-2017	269.00	2199 Adhoc Relief Allow @ 10%	168.00
2111 Adhoc Relief All 2018 10%	1,062.00	2224 Adhoc Relief All 2017 10%	1,230.00
2207 Adhoc Relief All 2018 10%	1,230.00	2264 Adhoc Relief All 2019 10%	1,330.00
2309 Adhoc Relief All 2021 10%	1,230.00	2311 Deas Allowance - 2021	1,000.00
2312 Washing Allowance 2021	1,000.00	2313 Integrated Allowance 2021	600.00

Deductions - General

Wage type	Amount	Wage type	Amount
3026 GPF Subscriptions	-950.00	3501 Benevolence Fund	-1,200.00
3534 R. Ben @ Death Camp Fresh	-450.00		0.00

Deductions - Loans and Advances

Loan	Description	Principal amount	Deduction	Balance

Deductions - Income Tax

Payable: 0.00 Recovered till DEC-2021: (0.00) Resumptions: 0.00 Recoverable: 0.00

Gross Pay (RS.): 30,532.00 Deductions: (RS.): 2,640.00 Net Pay: (RS.): 27,892.00

Payee Name: MUHAMMAD AWAIS

Account Number: 001005900746001a

Bank Details: ALLIED BANK LIMITED, 250215 Mewa Masjid Peshawar City, Peshawar

Loan/Adv: Opening Balance: Available: Earned: Balance:

Permanent Address:

City: Peshawar

District:

Housing Status: No Official

Temp Address:

City:

Email: muhammadawaiskhan77@gmail.com

~~APPROVED~~
APPROVED



ANNEX F

14

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
KHYBER ROAD PESHAWAR

HD/B&A/FATA Tribunal/55/2021/1448-53

Dated: 25-10-2021

To:

✓
Muhammad Awais
Driver (BPS-06),
Ex-FATA Tribunal.

Subject: **SHOW CAUSE NOTICE.**

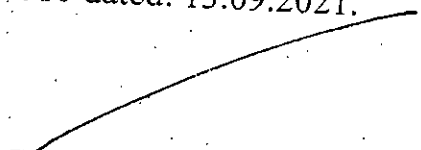
I am directed to refer to the subject noted above and to enclose herewith Show Cause Notice (in original) duly signed by the Competent Authority for your compliance within stipulated time period and further necessary action.


Section Officer (B & A)

Encl: As above

Copy to:

1. PS to Secretary Home & TAs Department Khyber Pakhtunkhwa.
2. PS to Special Secretary Home & TAs Department Khyber Pakhtunkhwa.
3. PS to Additional Secretary (L & O) Home & TAs Department NMAs.
4. PA to Deputy Secretary (L & O) Home & TAs Department NMAs.
5. Section Officer (E-II) Government of Khyber Pakhtunkhwa Establishment Department with reference to his letter No. SOE-II(ED)2(9)2010 dated: 13.09.2021.


Section Officer (B & A)

~~ATTESTED~~

15

SHOW CAUSE NOTICE

I Mr. Ikram Ullah Khan Secretary Home & Tribal Affairs Department as Competent Authority, under Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011, do hereby serve upon you, Muhammad Awais, Driver employees of Ex-FATA Tribunal as follows:-

"That Consequent upon the findings & recommendations of the Inquiry Committee it has been proved that the recruitment process for selection of 24 employees in Ex-FATA Tribunal was unlawful and all 24 appointment orders were issued without lawful Authority and liable to be cancelled".

I am, therefore, satisfied that you have been found guilty of "Misconduct" as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules, 2011 read with Rule-2, Sub-Rule (I) (vi) "appointed in violation of law and rules".

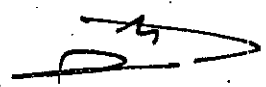
2. To, dispense with the Inquiry and serve you with a show cause notice under Rule-7 of the ibid Rules.

3. As a result thereof, I, as Competent Authority, have tentatively decided to impose upon you the following penalty under the Rule-4 of the Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rule, 2011:-

i. Removal from service

4. you are therefore required to show cause as to why the aforesaid penalty should not be imposed upon you and also intimate whether you desire to be heard in person.

5. If no reply to this notice is received within seven days or not more than of fifteen days of this delivery, it shall be presumed that you have no defense to put in, and in that case ex-parte action shall be taken against you.


(IKRAM ULLAH KHAN)
HOME SECRETARY
(Competent Authority)

Muhammad Awais,
Driver
Ex-FATA Tribunal

ATTESTED

ANNEX 4

16

To,

Home Secretary,
Khyber Pakhtunkhwa,
Peshawar,

Subject: Reply to the show cause notice dated 25.10.2021.

Respected Sir,

I very humbly submit the following few lines for your kind and sympathetic consideration:

1. That 23 posts including the post of the undersigned i.e. Driver, were advertised in daily AJJ and Aeen newspaper dated 09.02.2019 for open competition, being fit and eligible in all respect the undersigned applied for the post of Driver.
2. That after gone all the rigors and selection process i.e interview, the undersigned was duly recommended for the post of Driver and was appointed on the said post vide office order dated 08.03.2019.
3. That since my appointment I performed my duties with great zeal and devotion to the entire satisfaction of my superiors without any complaint whatsoever regarding my performance.
4. That while serving in the said capacity, the undersigned received a show Cause Notice dated 25.10.2021 by leveling false and baseless allegation which was never committed by the undersigned by any malafide intention nor any connection or relation with authority issued my appointment order and even have no relation with the recruitment process, the allegations are the following

“That consequent upon the findings & recommendations of the inquiry committee it has been proved that the recruitment process for selection of 24 employees in Ex-FATA Tribunal was unlawful and all 24 appointment orders were issued without lawful authority and liable to be cancelled’

I am therefore satisfied that you have been found guilty of “Misconduct” as specified in rule-3 of Khyber Pakhtunkhwa Government Servants (Efficiency & Discipline) Rules 2011.

(17)

5. That proper procedure was adopted in the process of recruitment i.e. advertisement, test and interview and the undersigned was appointed on the post after gone all the rigors and selection process provided under the law.
6. That the allegation so leveled against me regarding the misconduct is false and baseless in have never committed any act or omission which could be term as misconduct and the allegations leveled against me does not come in the orbit of misconduct.
7. That there is nothing on the part of undersigned which term as misconduct as undersigned applied for the advertised post while having all the request eligibility criteria and also compete along with all other candidates who applied for the post and when found fit and eligible for the post declare recommended for the post of Driver.
8. That the members of Tribunal attended the test and interview on the said date and all the committee members were agreed principally on the selection and recommendation of the selection committee and on such principle on the same date issued the appointment orders and the copy of the recommendation of selection committee was handed over to section officer and further process, and on the same issued when the inquiry officer called upon the selected candidates they given on Oath the statement that they duly appeared before the selection committee.
9. That the so-called inquiry committee called upon all the selected candidate and given Oath regarding the favoritism an nepotism if so made in favor of any of the candidate which they duly replied on oath that no such act of favoritism and nepotism were exist in the present selection process, furthermore none of the member of the selection committee were duly inquired in the matter as all the process was taken place in their presence nor any sort of evidence was taken on record which can proof any of the allegation.
10. That the inquiry committee did not associate me with the inquiry proceedings. Not a single witness has been examined during the enquiry

(18)

in my presence nor I have been given opportunity to cross examine any of the evidence which show my involvement in any malafide action or my eligibility for the post in question.

11. That the undersigned was not even served with a charge sheet and statement of allegation, neither any fact finding nor regular inquiry was conducting which can show any sort of involvement of the undersigned in the requirement process, which is mandatory provision under the law.
12. That the undersigned is a responsible, cautious citizen and cannot even think of the display of the charges leveled against me.
13. That the inquiry committee did not associate me properly with the inquiry proceedings. Not a single witness has been examined during the enquiry in my presence nor I have been given opportunity to cross examine those who may have deposed anything against me during the inquiry.
14. That the undersigned has never committed any act or omission which could be termed as misconduct, I duly performed my duties as assigned with full devotion, zeal and loyalty albeit I have been roped in the instant false and baseless charges.
15. That the charges leveled against me were neither proved during the inquiry proceedings, nor any independent and convincing proof/ evidence has been brought against me in the inquiry that could even remotely associate me with the charges, as such the charges remained unproved during the inquiry and the inquiry officer has thus rendered his findings on mere surmises and conjunctures regarding charges, further to add that the so called inquiry was conducted in sajjad ur Rehman registrar case.
16. That the undersigned has at his credit an unblemished and spotless service career, during entire service career, I have never given any chance of complaint whatsoever regarding my performance. I always preferred the interests of the department over and above my personal interests. The proposed penalty if imposed upon me, it would be too harsh and would stigmatized the bright and spotless service record of the undersigned.
17. That I also desire to be heard in person.

~~TESTED~~

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It is, therefore, humbly prayed that on acceptance of this reply the subject Show cause may kindly be dropped and I may be exonerated of the charges leveled against me.

Yours Faithfully,

Muhammad Awais
Driver (BPS-06)
Ex-FATA Tribunal.

Received today i.e. 09/11/21
[Signature]

~~XXXXXXXXXX~~



ANNEX H

20

GOVERNMENT OF KHYBER PAKHTUNKHWA
HOME & TRIBAL AFFAIRS DEPARTMENT
KHYBER ROAD PESHAWAR

Dated Peshawar 17th January, 2022

ORDER

HD/FATA Tribunal/B&A/55/2022/288-97 WHEREAS, Muhammad Awais, Driver (BPS-06) of Ex-FATA Tribunal was proceeded against under the Rule-4 of Khyber Pakhtunkhwa Government Servant (Efficiency & Disciplinary) Rules, 2011, for the charges mentioned in the statement of show cause notice served upon him.

2. AND WHEREAS, the Department gave opportunity of personal hearing to Muhammad Awais, Driver (BPS-06), Ex-FATA Tribunal as required under the rules 7(d) of Government Servant (Efficiency & Disciplinary) Rules, 2011, AND WHEREAS, Muhammad Awais, Driver (BPS-06), Ex-FATA Tribunal was not able to produce any favorable record.

3. NOW, THEREFORE, the Competent Authority has been pleased to impose major penalty of "Removal from Service" on Muhammad Awais, Driver (BPS-06), Ex-FATA Tribunal under Khyber Pakhtunkhwa (Efficiency & Disciplinary) Rules, 2011, with effect from 11-01-2022.

-Sd-

Secretary to Govt. Khyber Pakhtunkhwa
Home & Tribal Affairs Department

Endst No & Date even

Copy for information forwarded to:

1. The Accountant General Govt. of Khyber Pakhtunkhwa.
2. Secretary to Govt. of Khyber Pakhtunkhwa Home & Tribal Affairs Department.
3. Secretary to Govt. of Khyber Pakhtunkhwa Establishment Department.
4. Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
5. Special Secretary-II Home & Tribal Affairs Department Khyber Pakhtunkhwa.
6. Additional Secretary (Judicial) Home & TAs Deptt: Khyber Pakhtunkhwa.
7. PSO to Chief Secretary Khyber Pakhtunkhwa.
8. PS to Chief Minister Khyber Pakhtunkhwa.
9. Account Section Home & TAs Department (NMAs).
10. Official concerned.


Section Officer (B & A)

~~SECRET~~

date: 24/1/2022

HS

To

The Honourable Chief Secretary,
Khyber Pakhtunkhwa, Civil Secretariat, Peshawar.

Subject:

DEPARTMENTAL APPEAL AGAINST THE REMOVAL ORDER
DATED 17-01-2022

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R/Sir,

ANNEX I

Most respectfully, it is stated that I am a resident of District Peshawar and was initially appointed as Driver (BPS-04) now BPS-06 in FATA Tribunal at Peshawar after fulfilling all the legal & codal formalities required for the post vide order dated 08-03-2019.

I started performing my duty quite efficiently whole heartedly and up to the entire satisfaction of my high ups after receiving the appointment order dated 08-03-2019 and submitting arrival report.

The FATA Tribunal was abolished after the 25th Constitutional Amendment the FATA was merged in the Khyber Pakhtunkhwa Province. After the abolition of the FATA Tribunal all the staff working in FATA Tribunal was deputed to Secretary Home & Tribal Affairs and as such the staff of FATA Tribunal started performing duty in the office of Secretary Home & Tribal Affairs Khyber Pakhtunkhwa.

Astonishingly, I received Show Cause notice dated 25-10-2021 with the allegation that "appointment/recruitment process so made in my as well as other 24 staff is without Lawful Authority". Which was properly replied by denying the entire allegation leveled against me in the ibid show cause notice.

In this connection it is stated in your honour that my appointment was made after fulfilling all the codal formalities i.e. which includes Advertisement, other relevant selection process and appearance before the Departmental Selection Committee for interview.

It is well settled principle of law that one should not be punished for the fault of others and accordingly I am punished for no fault on my part.

The impugned removal order dated 17-01-2022 is not issued in accordance with Law as no charge sheet and statement of allegation have been served upon me; no proper regular inquiry was conducted nor the inquiry report was handed over to me.

RECEIVED
17/01/2022

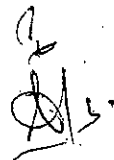
22

Only I am been prosecuted in the matter while issuing the impugned order date 17-01-2022 in such a way that the only the inquiry is conducted against me and not against those authority that issued appointment order dated 08-03-2019. Hence, the authority did not look into the matter in accordance with Law & Rules while issuing the impugned order dated 17-01-2022.

Therefore, it is, most kindly requested that the impugned order dated 17-01-2022 whereby major penalty of Removal from Service has been impose upon me may very kindly be cancelled and I may be reinstated into service with all back benefit.

I shall be very thankful to you for this kindness.

Dated: 21/01/2022



Obediently Yours,

(MUHAMMAD AWAIS s/o Naseer Ahmad)
Driver (Ex-FATA Tribunal),
0333-9338589

~~ATTESTED~~

BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.783/2022

Muhammad Awais

(Appellant)

VS

Govt. of Khyber Pakhtunkhwa etc

(Respondents)

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Section Officer (Litigation-III)

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BEFORE THE HON'BLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal No.783 /2022

1. Muhammad Awais

(APPELLANT)

VERSUS

1. Govt. of Khyber Pakhtunkhwa etc.

(RESPONDENTS)

**JOINT PARA-WISE COMMENTS ON BEHALF
OF RESPONDENT NO. 1 (CHIEF SECRETARY, KHYBER
PAKHTUNKHWA), RESPONDENT NO.2 (SECRETARY
HOME & TRIBAL AFFAIRS DEPARTMENT, KHYBER
PAKHTUNKHWA) AND RESPONDENT NO. 3
(SECRETARY ESTABLISHMENT DEPARTMENT, KHYBER
PAKHTUNKHWA)**

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTIONS:-

1. That this Hon'ble Tribunal with profound respect has got no jurisdiction to entertain and adjudicate the instant appeal.
2. That the appellant is estopped by his own words and conduct to file the instant service appeal before this Hon'ble Tribunal.
3. That the appellant has got no locus standi to invoke the jurisdiction of this Hon'ble Tribunal.
4. That the appellant has concealed the entire material facts from this Hon'ble Tribunal.
5. That the appellant has not come with clean hands. Therefore, he is not entitled for any relief by this Hon'ble Tribunal.
6. That the appellant has got on cause of action to file the instant service appeal before this Hon'ble Tribunal.
7. That the service appeal is not maintainable in its present form.
8. That the service appeal is based on surmises and conjectures.
9. That the appellant is not an aggrieved person within the meaning of Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974. Hence, the instant service appeal is liable to be dismissed on this score alone.

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ON FACTS:

1. The appellant may satisfy the Hon'ble Tribunal regarding the contents mentioned in Para 1.
2. That Para 2 needs no comments.
3. That Para 3 also needs no comments.
4. That Para 4 is correct.
5. Reference to Para 5, a full fledged inquiry was conducted in the matter to check the credibility and authenticity of the process of advertisement and selection and it was held that the entire process of selection from top to bottom was "*Coram Non Judice*". *Furthermore, inquiry was conducted against Mr. Sajjad ur Rehman ex-Registrar, FATA Tribunal under rule 10 of Khyber Pakhtunkhwa Govt. Servant (E&D), Rules, 2011 wherein the inquiry report held that the same selection Committee was constituted without any lawful authority. The said Committee comprised of temporary/contract/daily wages employees of FATA Tribunal who themselves were candidates against these posts. The inquiry proceedings further revealed that there were exists no attendance sheet, minutes of the meeting and even the appointment orders were found ambiguous. The said Departmental Committee unlawfully increased the number of posts from 23 to 24 illegally and issued 24 orders without any recommendations of legitimate Departmental Selection Committee. Else then, the Inquiry Committee has termed all the said 24 appointments illegal and without lawful authority and recommended to be cancelled/withdrawn.*
6. That Para 6 pertains to the appellant.
7. That Para 7 is totally incorrect, misconceived and hence denied as there was sufficient material exists in shape of documentary proof and after issuance of show cause notice and fulfilling all legal and codal formalities, major penalty of removal from service was imposed upon the appellant under the relevant rules/law.
8. That Para 8 needs no comments.
9. That Para 9 also needs no comments.

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GROUND:-

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

PRAYER:-

In view of the above narrated facts and grounds, it is, therefore, most humbly prayed that the instant service appeal may graciously be dismissed with special cost been devoid of merits and substances.

Signature
5/8/2022

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

Signature

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

Signature
5/8/2022

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

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO.783/2022

Muhammad Awais

(APPELLANT)

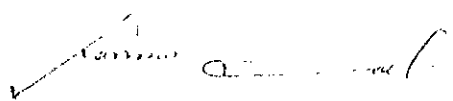
VERSUS

Govt: of Khyber Pakhtunkhwa etc.

(RESPONDENTS)

AUTHORITY

Mr. Shah Wali Khan Section Officer (Litigation) Home & T.As Department Peshawar do hereby authorized to submit reply in Service appeal No. 783/2022 titled Muhammad Awais Versus Government of Khyber Pakhtunkhwa through Chief Secretary Khyber Pakhtunkhwa on behalf of respondent No. 2 in the Service Tribunal Peshawar.


Deputy Secretary (Litigation)

BEFORE THE HONORABLE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR.

SERVICE APPEAL NO. 783/2022

Muhammad Awais

(APPELLANT)


VERSUS

Govt: of Khyber Pakhtunkhwa etc.

(RESPONDENTS)

Affidavit

Mr. Shah Wali Khan Section Officer (Litigation-III) Home & T.As Department Peshawar do hereby solemnly affirm and declares on oath that the contents of reply Service appeal No. 783/2022 titled Muhammad Awais Versus Government of Khyber Pakhtunkhwa and others on behalf of respondent No. 2 in the Service Tribunal Peshawar are true and correct as per record and nothing has been concealed from the Honorable Court.


Section Officer (Litigation-III)