


FORM OF ORDER SHEET

Court of _____

Appeal No. 1087/2023

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	16/05/2023	<p>The appeal of Mr. Faheem Ullah presented today by Mr. Habib Ullah Mohmand Advocate. It is fixed for preliminary hearing before Single Bench at Peshawar on-</p>
		<p>By the order of Chairman  For REGISTRAR</p>

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1087 /2023

Faheem Ullah

..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others Respondents

I N D E X

S.No	Description of Documents	Annex	Pages
1.	Appeal U/S 4 of the KP Service Tribunal Act, 1974 with affidavit		1-9
2.	Copy of Notification dated August 05 th , 2020	I	10-13
3.	Copy of surplus pool employee's adjustment policy of the provincial government	II	14-17
4.	Copy of services requisition to Secretary Establishment for adjustment/absorption on dated 10.09.2020	III	18-20
5.	A copy of the order of appointment of Mr. Shakeel Ahmad S/o Abdul Wasey in BOR	IV	21
6.	Copy of judgment of this Hon'ble Service Tribunal of Khyber Pakhtunkhwa	V	22-35
7.	Copy of impugned order dated 09.10.2020	VI	36-41
8.	Vakalat Nama		42

Appellant

Through



Habib Ullah Mohmand
Advocate High Court.

Dated: 11.05.2023

/

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1087/2023

Faheem Ullah S/o Akhtar Muhammad (Assistant BPS-16),
R/o Tribal District Mohmand.

..... Appellant

Versus

1. Govt. of Khyber Pakhtunkhwa through Chief Secretary,
Civil Secretariat, Peshawar.
2. Secretary Establishment, Civil Secretariat, Peshawar.
3. Secretary Board of Revenue, Civil Secretariat, Peshawar.

..... Respondents

**APPEAL UNDER SECTION 4 OF THE KHYBER
PAKHUNKHWA SERVICE TRIBUNAL ACT,
1974 AGAINST THE IMPUGNED ORDER
DATED 09.10.2020 ISSUED BY THE
RESPONDENTS.**

Prayer in Appeal:

On acceptance of instant appeal, the
impugned order dated 09.10.2020 may kindly
be declared as illegal, void ab initio, unlawful,
against law to be set aside and respondents

2

department may graciously be directed to adjust / absorb / post the appellant at respondents department i.e. Establishment Department of Board of Revenue (BOR) being eligible/entitled as Assistant BPS-16 under the law with all back benefits for the sake of justice.

And the appellant also submitted departmental appeal / representation on 20.01.2023 for adjustment/absorption in respondents department but after passing the stipulated time period, no action has been taken by the respondents department, hence this Appeal.

Respectfully Sheweth:

1. That the appellant is a law abiding citizen of Pakistan, having fundamental rights are guaranteed by the constitution of Islamic Republic of Pakistan, 1973.
2. That appellant was initially appointed as Assistant at Defunct FATA Development Authority (FDA) dated 01.01.2011.
3. That after merging of FATA in Khyber Pakhtunkhwa, all employees of FATA were posted/placed in surplus

pool of Establishment and Administration of Govt. of KP vide Notification No. SO(O&M)/E&AD/3-18/2020 dated Peshawar, August 05th, 2020. (Annexure-I).

4. That after passing the 25th Constitutional amendment the appellant who was serving in Ex.FATA Development Authority (FDA) and subsequently the authority has been dissolved and regular employees were declared surplus and services placed at the disposal of Establishment Department for further adjustment/absorption.
5. According to the surplus pool employee's adjustment policy of the provincial government. (Annex. II) surplus employee can be adjusted in civil secretariat as well as in any attached department against the vacant corresponding post.
6. That at the time sufficient number of posts of Assistant were lying vacant in Civil Secretariat Departments and being eligible, the appellant could be adjusted against the same. However, Establishment Department was reluctant to do so for the obvious reason that the Civil Secretariat employees union will agitate against the same. In this regard, appellant also submitted a separate application for adjustment in Civil Secretariat which was not acceded to.

- 4
7. That That appellant also requested on 25.11.2022 to the respondent department for adjustment/absorption in Establishment Department as Assistant BPS-16 but in vain which is against the law & norms of justice.
 8. That Board of Revenue (being an attached department) requisitioned appellant services after interview the appellant being found eligible / recommended for adjustment in BOR. However, despite frequent reminders from BOR, the said requisition was also not accepted.
 9. That in fact, the respondent No. 3 Board of Revenue recommended the name of the appellant and issued the services requisition to Secretary Establishment for adjustment/absorption on dated 10.09.2020 (Annex. III) however, the requisition of the appellant has been bypassed and turned down without any cogent reason which is against the law and against the norms of justice and also against the establishment department respondent No. 2 surplus pool policy.
 10. That respondent No. 3 gives reminder on 02.10.2020 and 13.10.2020 to Secretary Establishment i.e. respondent No. 2 to place service of the appellant to respondent No. 3 department i.e. Secretary BOR but despite of that respondent No. 2

5

remained silent and turned down the reminders, which is against the law and against the norms of justice.

11. That the Establishment Department of Khyber Pakhtunkhwa has adjusted one blue-eyed urgency appointed surplus employee of the defunct FATA/DA in the KP, without merit/fear of agitation of Civil Secretariat Employees Union. As the appellant having more than 10 years relevant regular services have been ignored while an individual namely Mr. Shakeel Ahmad S/o Abdul Wasey, whose father is working on a responsible position in Chief Minister Secretariat, Khyber Pakhtunkhwa has been adjusted in Board of Revenue which is clear discrimination and injustice with the appellant. A copy of the order of appointment of Mr. Shakeel Ahmad S/o Abdul Wasey in BOR is attached for ready reference please. (Annex. IV).
12. That it is mentioned here that the committee notified for the adjustment of the appellant/others was not the same notified in the surplus pool policy of the provincial government of KP while the committee notified for the adjustment of Mr. Shakeel Ahmad and others is the same in the surplus policy of the provincial government. This also reveals injustice with the appellant and malafide intention on part of respondent NO. 2.

13. That officials of defunct FATA Secretariat came with same grievances to this Hon'ble Service Tribunal, Khyber Pakhtunkhwa and the Hon'ble Tribunal decided the case in their favour. The appellant has the same grievance, also reliance on the same judgment of this Hon'ble Service Tribunal of Khyber Pakhtunkhwa. (Copy annex. "V").
14. That at last, the respondent department No. 2 issued the impugned order dated 09.10.2020 and appellant has been adjusted/absorbed in the Directorate General Industries & Commerce Khyber Pakhtunkhwa which is against the law and against the right of the appellant. (Annex. VI) as it harmed the fringes benefits and better service prospects of the appellant.
15. That at last, the appellant submitted an appeal on 20.01.2023 to adjust the appellant in Board of Revenue to fulfill the norms of justice and to avoid injustices and discrimination.
16. That so feeling aggrieved by the actions of the respondents, having no other remedy, the appellant approach this Hon'ble Service Tribunal Khyber Pakhtunkhwa, inter-alia, on the following grounds:

7

GROUNDS:

- A. That the impugned transfer order dated 09.10.2020 issued by the respondents is not in accordance in law, facts, evidence on record, rules and principles of justice, hence liable to be set aside.
- B. That the act of the respondents is against the Article 2(A), 4, 8 and 25 of the Constitution of the Islamic Republic of Pakistan, 1973.
- C. That every citizen of Pakistan shall be treated equally and also according to the law, but the respondents did not treated the appellant equally which is against the awl and natural justice.
- D. That there shall be no discrimination on the basis of creed and colour.
- E. That the impugned order was pre-planned and was passed malafide, which is the clear from the acts of the respondents.
- F. That any other grounds will be raised at the time of arguments with prior permission of this Hon'ble Tribunal.

8

PRAYER:

It is, therefore, prayed that on acceptance of instant appeal, the impugned order dated 09.10.2020 may kindly be declared as illegal, void ab initio, unlawful, against law to be set aside and respondents department may graciously be directed to adjust / absorb / post the appellant at respondents department i.e. Establishment Department of Board of Revenue (BOR) being eligible/entitled as Assistant BPS-16 under the law with all back benefits for the sake of justice.

And the appellant also submitted departmental appeal / representation on 20.01.2023 for adjustment/absorption in respondents department but after passing the stipulated time period, no action has been taken by the respondents department, hence this Appeal.

Appellant

Through

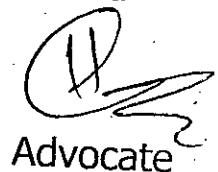


Habib Ullah Mohmand
Advocate High Court.

Dated: 12.05.2023

CERTIFICATE:

Certified that no such like Appeal has earlier been filed by this Hon'ble Court.



Advocate

BEFORE THE KP SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. _____/2023

Faheem Ullah Appellant

Versus

Govt. of Khyber Pakhtunkhwa and others Respondents

AFFIDAVIT

I, Faheem Ullah S/o Akhtar Muhammad (Assistant BPS-16), R/o Tribal District Mohmand, do hereby solemnly affirm and declare that the contents of the accompanying **Appeal** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon/ble Court.



DEPONENT



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

Dated Peshawar, the August 05th, 2020

NOTIFICATION

No. SO(O&M)/E&AD/3-18/2020: In terms of Section-4 of the "The Federally Administered Tribal Areas Development Authority Regulation (Repeal) Ordinance, 2020", the Competent Authority is pleased to declare the following 94 employees of defunct FATA Development Authority as "Surplus" and place them in the Surplus Pool of Establishment Department for their further adjustment/placement as per policy in vogue w.e.f. 20.04.2020:-

S.No.	Name	Designation	BPS
1.	Arshad Khan Afridi	Manager (IT)	18
2.	Muhammad Jamil Khan	ACO SWA	17
3.	Muhammad Tariq Khan	ACO Mohmand	17
4.	Abdul Ghaffar	ACO Bajaur	17
5.	Niaz Bahadar	ACO Kurram	17
6.	M. Haris Shah	ACO Orakzai	17
7.	Tufail Khan Khalil	ACO Khyber	17
8.	Muhammad Hamayun Khan	ACO NWA	17
9.	Mr. Muhammad Saud	AM (M&E)	17
10.	Nihar Ali	Assistant	16
11.	Shahid	Assistant	16
12.	Mazhar Ali Shah	Assistant	16
13.	Farman Ali Afridi	Assistant	16
14.	Mrs. Sadia Jehangir	Assistant	16
15.	Muhammad Akif Khan	Assistant	16
16.	Usman Tariq	Assistant	16
17.	Faheem Ullah	Assistant	16
18.	Luqman Hakeem	Assistant	16
19.	Shakeel Ahmad	Assistant	16
20.	Zaheer ud Din	Assistant	16
21.	Altaf ur Rehman	Computer Operator	16
22.	Nasrullah Khan	Computer Operator	16
23.	Zahidullah	Computer Operator	16
24.	Feroz Shah	Computer Operator	16
25.	Fawad Hussain Khan	Computer Operator	16
26.	Fakhr-e-Alam	Computer Operator	16
27.	Sajid Nabi	Computer Operator	16
28.	Ahtesham Ghani	Computer Operator	16
29.	Muhammad Ajmal	Computer Operator	16

30.	Nadia Salahuddin	Computer Operator	16
31.	Syed Adnan Ali Shah	Computer Operator	16
32.	Habib ur Rehman	Computer Operator	16
33.	Inamullah Kundi	Computer Operator	16
34.	Muhammad Fawad	Computer Operator	16
35.	Shahzada Saqib Zaman	Computer Operator	16
36.	Sajjad Ali	Computer Operator	16
37.	Rahib Shah	Computer Operator	16
38.	Abdul Jabbar	Computer Operator	16
39.	Syed Shah Said	Computer Operator	16
40.	Baidar Bakht	Computer Operator	16
41.	Shakir Ullah	Computer Operator	16
42.	Shahid Jamal	Computer Operator	16
43.	Muhammad Aftab Khan	Driver	5
44.	Shah Hussain	Driver	5
45.	Muhammad Tahir	Driver	5
46.	Haider Raza	Driver	5
47.	Noor Khan	Driver	5
48.	Muhammad Junaid Khan	Driver	5
49.	Sami Ullah	Driver	5
50.	Kachkol Khan	Driver	5
51.	Imran Ullah	Driver	5
52.	Ali Gul	Driver	5
53.	Abdul Sami	Driver	5
54.	Manzoor ur Rehman	Driver	5
55.	Shabir Jan	Driver	5
56.	Hidayat Ullah	Driver	5
57.	Saleh Khan	Driver	5
58.	Munir Khan	Driver	5
59.	Bilal Khan	Driver	5
60.	Abdul Wahid	Driver	5
61.	Ihsan Ullah Jani	Driver	5
62.	Syed Qasim	Driver	5
63.	Raza Gul	Driver	5
64.	Pir Ullah	Driver	5
65.	Inamullah	Naib Qasid	2
66.	Ikram Ullah	Naib Qasid	2
67.	Sharbat Ali	Naib Qasid	2
68.	Abdur Rehman	Naib Qasid	2

69.	Khan Bacha	Naib Qasid	2
70.	Yasir Khan	Naib Qasid	2
71.	Shah Baz Masih	Sanitary Worker	2
72.	Naeem Shah	Naib Qasid	2
73.	S. Aftab Shah	Naib Qasid	2
74.	Shukrullah	Naib Qasid	2
75.	Adeel Ahmad	Naib Qasid	2
76.	Akhtar Zeb	Naib Qasid	2
77.	Saifur Rehman	Naib Qasid	2
78.	Muhammad Asad	Naib Qasid	2
79.	S. Musanat Shah	Naib Qasid	2
80.	Altaf Masih	Sanitary Worker	2
81.	Muhammad Yaseen	Naib Qasid	2
82.	Din Muhammad	Naib Qasid	2
83.	Arshad Ali	Naib Qasid	2
84.	Tauqeer Ahmad	Naib Qasid	2
85.	Amjad Hussain	Naib Qasid	2
86.	Muqadar Khan	Naib Qasid	2
87.	Liaqat Ali	Chowkidar	2
88.	Rehmat ullah	Naib Qasid	2
89.	Zabit Gul	Naib Qasid	2
90.	Hazrat Noor	Naib Qasid	2
91.	Ubaid Ullah	Naib Qasid	2
92.	Intikhab Hussain	Naib Qasid	2
93.	Hazrat Umar	Naib Qasid	2
94.	Liaqat Ali	Naib Qasid	1

12

2. In order to ensure proper and expeditious adjustment/absorption of the above mentioned surplus staff, Deputy Secretary (Establishment) Establishment Department has been declared as focal person to properly monitor the whole process of adjustment/ absorption of the surplus pool staff.

3. 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

Endst. No. & Date Even

Copy to:-

1. Additional Chief Secretary, P&D Department.
2. Senior Member Board of Revenue.
3. Principal Secretary to Governor, Khyber Pakhtunkhwa.
4. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
5. All Administrative Secretaries, Khyber Pakhtunkhwa.
6. The Accountant General, Khyber Pakhtunkhwa.



- 13
7. Chief Executive defunct FATA Development Authority with the request to ensure provision of Last Pay Certificates (LPCs) of the above mentioned surplus staff/employees to Establishment & Administration Department.
 8. Director General Information & Public Relations, Khyber Pakhtunkhwa.
 9. All Divisional Commissioners in Khyber Pakhtunkhwa.
 10. All Deputy Commissioners in Khyber Pakhtunkhwa.
 11. PS to Chief Secretary, Khyber Pakhtunkhwa.
 12. Deputy Secretary (Establishment), Establishment Department.
 13. Deputy Secretary (Admin). Establishment & Administration Department.
 14. PS to Secretary Establishment Department.
 15. PS to Special Secretary (Regulation), Establishment Department.
 16. PS to Special Secretary (Establishment), Establishment Department.
 17. Section Officer (E-III) Establishment Department with the request to take up case for creation of corresponding 94 regular posts for the above mentioned surplus staff/employees in the surplus pool of Establishment department for drawl of salaries w.e.f. 20.04.2020 onward till further adjustment/posting.
 18. Section Officer (Budget & Development), Establishment & Administration Department for necessary action regarding preparation and submission of Budget Estimates for the purpose of salaries of above mentioned 94 surplus staff/employees of defunct FATA-DA for the period from 20.04.2020 onward to Finance Department.
 19. All Section Officers in Establishment Department.
 20. PA to Secretary defunct FATA Development Authority (FDA).


(FAZLI WADOOD)
SECTION OFFICER (O&M)

05/08/2020

19

Surplus Pool Policy

Policy for declaring government servants as surplus and their subsequent absorption/ adjustment.

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc.

1. POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS.
The Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

2. CREATION OF SURPLUS POOL.
There will be a surplus pools cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

3. IMPLEMENTATION/MONITORING CELL.
For the purpose of coordination and to ensure proper and expeditious adjustment/ absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:-

- a. Additional Secretary(Establishment) E&AD.....Chairman.
- b. Deputy Secretary LG&RD Department.....Member
- c. Deputy Secretary Finance Department.....Member
- d. Deputy Secretary(Establishment) E&AD.....Secretary

4. CRITERIA FOR DECLARING A GOVERNMENT SERVANT AS SURPLUS AS A RESULT OF ABOLITION OF POST.

Consequent upon the abolition of a post in a particular cadre of a department, the junior most employee in that cadre would be declared as surplus. Such posts should be abolished in the respective departments and created in the surplus pool as indicated in para 2 above for the purpose of drawl of pay and allowances and also for consideration for subsequent adjustment.

5. PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:-

- (a) Before transferring an employee to the surplus pool, he should be given option by the concerned department.

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M/V/S

15

(i) to proceed on retirement with normal retiring benefits under the existing rules;

OR

(ii) to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.

(b) Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise-seniority list will be caused in the surplus pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustments shall be on seniority-cum-fitness basis. For this purpose, the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.

(c) Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner:-

(i) In case of occurrence of vacancies in their corresponding posts in any Government Department/ Organization, the senior most employee in the surplus pool should be adjusted first.

(ii) In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.

(iii) If an employee possesses the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post subject to imparting the requisite training.

(iv) (a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.

OR

(b) Where no equivalent post is available the civil servant may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the post immediately preceding his appointment to a lower post shall remain protected.

(v) ⁸⁴In case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.

(vi) ⁸⁵ Surplus employees, who voluntarily opt, may be allowed adjustment in Autonomous/Semi-autonomous bodies with the concurrence of these bodies, where the job is pensionable. The Government will pay pension contribution for the period they rendered regular service under the Government.

⁸⁴ Sub para c (v) added to para 5 vide circular letter No.SORVI(E&AD)5-1/2005, dated 15.2.2006.

⁸⁵ Sub para c (vi) added to para 5 vide circular letter No.SORVI(E&AD)5-1/2005, dated 31.5.2006.

12

- (d) If no suitable person is available in the surplus pool to be adjusted against the vacant/revised post, such a post would be filled up by initial recruitment manner after getting clearance from the E&AD.
- (e) ⁸⁶Surplus Staff in BPS-01 to 15 shall not be adjusted in the district other than their district of domicile.
- (f) To facilitate the adjustment of surplus staff, it will be incumbent upon the Administrative Department to take up the case with Finance Department for revival of the essential posts so retrenched as a result of general directive issued by Finance Department from time to time, giving cogent reasons/justification. Against the resultant revival/restoration of the post, the concerned Department will place a requisition on the E&AD for transferring of suitable surplus employee against the said post.
- (g) Unless the surplus employees in Class-IV are fully adjusted/ absorbed against their respective graded posts in various Government Departments/Organizations, the general policy of the Finance Department regarding conversion of BPS-1 & 2 posts to posts in fixed salary @ Rs.2000/- per month for contractual appointed should be restricted to the above extent.

6. FIXATION OF SENIORITY

The inter-se seniority of the surplus employees after their adjustment in various Departments will be determined according to the following principles:-

- (a) In case a surplus employee could be adjusted in the respective cadre of his parent Department he shall regain his original seniority in that cadre.
- (b) In case, however, he is adjusted in his respective cadre but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre.
- (c) In case of his adjustment against a post in a corresponding basic pay scale with different designation/nomenclature of the post, either in his parent Department or in any other department, he will be placed at the bottom of seniority list.
- (d) ⁸⁷In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again & becoming junior to his juniors.

⁸⁶ (3) Sub para (e) added to para 5 vide circular letter No.SORVI/E&AD/5-1/2005, dated 19.1.2007.

⁸⁷ Sub para d added to para 6 vide circular letter No. SORVI(E&AD)5-1/2005, dated 15.2.2006.

17

NOTE:-

In case the officer/official 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 lose 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 premature retirement he may be compulsorily retired from service by the competent authority.

7. COMPETENT AUTHORITY TO NOTIFY/ORDER ADJUSTMENT/ABSORPTION.

After the transfer of services of surplus employee to a Department for adjustment/absorption against a vacant/revived post, the Competent Authority to notify/order his absorption/adjustment, shall be the respective appointing authority under the relevant rules for the post.

Provided that the decision of adjustment/absorption of surplus employees by the E&AD shall be binding upon the respective appointing authorities.

(Authority: letter NO.SOR-I(E&AD)1-200/98, Dated 8th June, 2001)

Decision of the meeting of chief secretary with district coordination officers, on the issue of surplus pool.

I am directed to refer to the subject noted above and to say that a meeting was held on 4.8.2001 in the Cabinet Room Civil Secretariat under the Chairman of Chief Secretary, NWFP to discuss the issues relating to adjustment of employees rendered surplus due to restructuring of the Government Departments and Devolution of Power Plan, 2000. The following decisions were taken in the said meeting:-

- i) Administrative Departments may reconsider adjustments already made against the available posts at District level. The guiding principle for reviewing the adjustment would be aimed at avoiding dislocation of the employees to the possible extent.
- ii) The DCOs will maintain the surplus pool of the employees, declared surplus in the District cadres and their subsequent adjustment against the vacant posts (District Cadres). It must be ensured that only the junior most employees in the scale in the cadre be declared surplus. At the stage of adjustment of Class-IV posts, the senior most be adjusted first. However, for the other posts besides seniority, the background of the individual and requisite experience of the posts shall be kept in view. The surplus pool of Divisional cadres be maintained by the DCOs posted at divisional headquarters.
- iii) The surplus pool of the employees of the Head Offices be maintained by the Head of the concerned Attached Department. Declaring employees surplus and their subsequent adjustment be made strictly according to the spirit of the policy of the Provincial Government issued vide circular letter No.SORI (S&GAD)1-200/98, dated 8.6.2001.



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Facebook ID: www.facebook.com/bor.kpk92

Twitter ID: @RevenueBoardkp

No. Ad: IV/S.Pool/BOR/23370-76

Dated Peshawar the 10/09/2020

To,

The Secretary to Govt: of Khyber Pakhtunkhwa
Establishment & Administration Department.

SUBJECT:

ADJUSTMENT OF SURPLUS STAFF IN BOARD OF REVENUE

Dear sir,

I am directed to refer to your letter No. SO(O&M)/E&AD/3-18/2020, dated 05.08.2020 on the subject and to state that the detail of vacant posts in Board of Revenue is given below:-

S.No.	Designation	BPS	Number of Posts
1.	Assistant	BS-16	04
2.	Naib Qasid	BS-3	02 Direct (Merit)

In light of the above it is requested to place the services of following surplus staff out of surplus pool of your respective department preferably at the disposal of this department for the purpose of adjustment against above noted vacant positions under direct quota.

S.No.	Name	Designation
1.	Farman Ali Afridi	Assistant
2.	Usman Tariq	Assistant
3✓	Fahem Ullah	Assistant
4.	Luqman Hakeem	Assistant
5.	Inamullah	Naib Qasid
6.	Ikram Ullah	Naib Qasid

Your early response will be highly appreciated, please.

Endstt: No. & Date even.

Copy of the above is forwarded to:-

1. Principal Secretary to Governor, Khyber Pakhtunkhwa.
2. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
3. Accountant General, Khyber Pakhtunkhwa.
4. DDO, Board of Revenue Khyber Pakhtunkhwa.
5. PS to Senior Member, Board of Revenue Khyber Pakhtunkhwa.
6. Bill Assistant, Board of Revenue Khyber Pakhtunkhwa.

Assistant Secretary (Admin)



19
GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Facebook ID: www.facebook.com/bor.kpk92

Twitter ID: @RevenueBoardkp

No. Ad:IV/S.Pool/BOR/24262-63
Dated Peshawar the 18/09/2020.

To,

The Section Officer (E-III),
Establishment & Administration Department,
Khyber Pakhtunkhwa.

SUBJECT:

ADJUSTMENT OF SURPLUS STAFF IN BOARD OF REVENUE

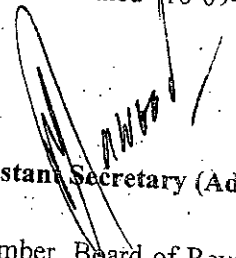
Dear sir,

I am directed to refer to your letter No. SOE-III(E&AD/1-3/2019/Defunct
FDA dated 16-09-2020 on the subject noted above and to state that the requisite information is
given as under:-

1. Adjustment of Surplus staff is required against vacant positions in Board of Revenue.
2. Yes, the adjustment of Surplus staff shall be made against the regular posts of Assistant (BPS-16) under direct quota in Board of Revenue.
3. There is No other post of Assistant under the direct quota exist at present in Board of Revenue.

I am further directed to request you to place the surplus staff already recommended vide this office letter No. Ad:IV/S.Pool/BOR/23370-76 dated 10-09-2020 (Copy enclosed for ready reference).

Endstt: No. & Date even.


Assistant Secretary (Admn)

Copy of the above is forwarded to the PS to Senior Member, Board of Revenue
Khyber Pakhtunkhwa.

Assistant Secretary (Admn)



GOVERNMENT OF KHYBER PAKHTUNKHWA
BOARD OF REVENUE
REVENUE & ESTATE DEPARTMENT

Facebook ID: www.facebook.com/bor.kpk92

Twitter ID: @RevenueBoardkp

No. Ad:IV/S.Pool/BOR/26517-18

Dated Peshawar the 13/10/2020.

To,

The Section Officer (E-III),
Establishment & Administration Department,
Khyber Pakhtunkhwa.

SUBJECT: ADJUSTMENT OF SURPLUS STAFF IN BOARD OF REVENUE

Dear sir,

I am directed to refer to the subject and to state that this department through letter No Ad:IV/S.Pool/BOR/24262-63 dated 18-09-2020 followed by a reminder dated 02-10-2020 (copy are enclosed) has requested for placement of following surplus staff out of employees of defunct FATA,DA at the disposal of this department.

1. Assistant (BS-16) (04)
2. Naib Qasid (BS-03) (02)

Keeping in view the above, no placement has so far been made neither any written response to the availability of surplus staff has been communicated to this department. This department is facing hardship due to acute shortage of class-IV staff.

It is therefore requested to place two Naib Qasid (BS-03) at the disposal of this department otherwise, an NOC may be issued to the extent of non availability of Naib Qasid so that the posts of Naib Qasid be advertised for direct appointment, please.

Endstt: No. & Date even.

Copy of the above is forwarded to the PS to Senior Member, Board of Revenue Khyber Pakhtunkhwa.

Assistant Secretary (Admn)

Assistant Secretary (Admn)

(Annex - IV) TV



GOVERNMENT OF KHYBER PAKHTUNKHWA
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT
(ESTABLISHMENT WING)
Email: soeiiisection@gmail.com

21

Dated Peshawar, the 26th August, 2022

091-9210524

NOTIFICATION

No. SOE-III (E&AD)1-3/2021/FDA: Consequent upon approval of Chief Minister, Khyber Pakhtunkhwa, subsequent Notification of this Department bearing No. SO(O&M)/E&AD/3-18/2020, dated 29-04-2022 and in exercise of the power vested under provision of Rule-4(2)(c)(ii) Khyber Pakhtunkhwa Appointment, Promotion and Transfer Rules, 1989, read with Para-5(c)(i) of the Surplus Policy contained in E&A Department (Regulation Wing) Govt. of Khyber Pakhtunkhwa circular letter No. SOR-I(E&AD)1-200/1998, dated 08-06-2001, the services of **Mr. Shakeel Ahmed, Assistant (BPS-15)** are placed at the disposal of **Senior Member Board of Revenue**, for further adjustment in the **Board of Revenue, Khyber Pakhtunkhwa** against the vacant post of **Assistant (BPS-16)** under initial quota, on standard terms and conditions as per relevant Service Rules.

-Sd-

CHIEF SECRETARY
KHYBER PAKHTUNKHWA

Endst: No. SOE-III (E&AD)1-3/2021/FDA

Dated Peshawar the 26th August, 2022

Copy forwarded to the:

1. Senior Member, Board of Revenue, Revenue & Estate Department
2. Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
3. Section Officer (Admn/Budget & Dev.), E&A Department.
4. Section Officer (O&M) Establishment Department.
5. PS to Secretary (Estt) Establishment Department.
6. PS to Special Secretary (Estt) Establishment Department.
7. PS to Additional Secretary(Reg-II) Establishment Department
8. PA to Additional Secretary (Estt) Establishment Department.
9. Official concerned.
10. Master file.

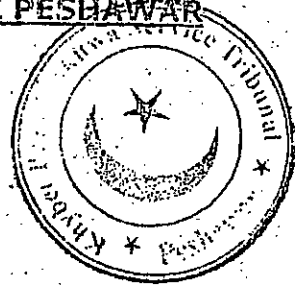
(TAUSEEF ULLAH)
SECTION OFFICER (E-III)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No. 1227/2020

Date of Institution ... 21.09.2020

Date of Decision ... 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 ...

CHAIRMAN

ATIQ-UR-REHMAN WAZIR ...

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 Amjid 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

ATTIESTED

(Signature)
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

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

ATTESTED



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

ATTESTED

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 malafide 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

ATTESTED


 ATTENDING OFFICER

26

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.

ATTESTED
EXAMINER

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,

ATTESTED

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.

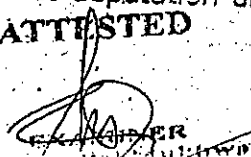
ATTORNEY GENERAL

BSA
Federal Government
Islamabad

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 monitor terms as well as their seniority/promotion also affected being placed at the bottom of the seniority line.

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,

ATTESTED


 EX-AMINER
 AUTHORITY

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

ATTACHED


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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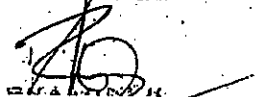
declared surplus, which was discriminatory and based on malafide, as there was no reason for declaring the appellants as surplus, as total strength of FATA Secretariat from BPS-1 to 21 were 56983 of the civil administration against which employees of provincial government, defunct FATA DC, employees 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

ATTESTED

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

ATTESTED



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.

ATTESTED


EXAMINED BY
Khyber Pakhtunkhwa
Service Tribunal

35

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


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

Conserved to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

Date of Presentation of Application 18/04/22
 Number of Warrants 5600
 C. No. 587
 U. No. 91
 Total 627
 Date of Conv. 18/04/22

Annex-VI

36



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

Dated Peshawar, the October 09, 2020

NOTIFICATION

No. SOE-III (E&AD)1-3/2020/FDA- In exercise of the power vested under provision of Sr. No. 2 (ii) of Rule-4 Appointment, Promotion and Transfer Rules, 1989 read with Para-5(c)(i) of the Surplus Policy contained in E&A Department (Regulation Wing) Govt. of Khyber Pakhtunkhwa circular letter No. SOR-I(E&AD)1-200/1998 dated 08-06-2001, the Competent Authority has been pleased to place the services of the following three (03) Assistants (BPS-16) (Surplus Pool of Establishment & Administration Department) at the disposal of Secretary, Industries Commerce and Technical Education Department for their further adjustment in the Directorate of Industries & Commerce, Khyber Pakhtunkhwa against the vacant posts of Assistants (BPS-16) under initial recruitment quota.

S. No.	NAME	DESIGNATION
1)	Mr. Nihar Ali	Assistant (BPS-16)
2)	Mr. Faheem Ullah / Faheem Ullah	Assistant (BPS-16)
3)	Mr. Uqman Hakeem / Mr. Uqman Hakeem	Assistant (BPS-16)

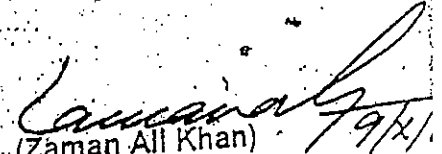
SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA
ESTABLISHMENT DEPARTMENT

Endst: No. SOE-III (E&AD) 1-3/2020/FDA

Dated Peshawar the October 09, 2020

Copy forwarded to the:

1. Secretary to Govt. of Khyber Pakhtunkhwa, Industries, Commerce and Technical Education Department.
2. Secretary to Govt. of Khyber Pakhtunkhwa Finance Department.
3. Accountant General Khyber Pakhtunkhwa.
4. Directorate of Industries & Commerce, Khyber Pakhtunkhwa.
5. Section Officer (Admn/Budget & Dev.), E&A Department.
6. Section Officer (O&M) Establishment Department.
7. PS to Secretary (Estt) Establishment Department.
8. PS to Special Secretary (Estt) Establishment Department.
9. PS to Additional Secretary (Reg-II) Establishment Department.
10. PA to Deputy Secretary (Estt) Establishment Department.
11. Officials concerned.
12. Master file.


(Zaman Ali Khan)
Section Officer (E-III)

37

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

(Dated Peshawar the August 11, 2019)

NOTIFICATION

No. SOE-III (E&AD)1-3/2020:- The Competent Authority has been pleased to constitute the Committee comprising the following regarding "adjustment of surplus employees of Defunct FATA Development Authority":-

- | | |
|--|-----------|
| i. Additional Secretary (R-II)
Establishment Department | Chairman |
| ii. Deputy Secretary (Estt;)
Establishment Department. | Member |
| iii. Section Officer (O&M)
Establishment Department. | Member |
| iv. Section Officer (Budget)
E&A Department. | Member |
| v. Budget Officer-IV,
Finance Department. | Member |
| vi. Section Officer (E-III),
Establishment Department. | Secretary |

**SECRETARY TO GOVERNMENT OF
KHYBER PAKHTUNKHWA ESTABLISHMENT
DEPARTMENT**

ENDST: NO. & DATE EVEN

Copy forwarded to the:

1. Section Officer (O&M), Establishment Department.
2. Section Officer (Budget & Dev;) E&A Department.
3. Budget Officer-IV, Finance Department.
4. PS to Secretary Establishment Department.
5. PS to Special Secretary Establishment Department.
6. PS to Additional Secretary (Reg-II), Establishment Department.
7. PA to Deputy Secretary (Estt.), Establishment Department.

(Signature)
(Zaman Ali Khan)
Section Officer (E-III)

To,

38

The Secretary Establishment,
Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.

SUBJECT: INJUSTICE WITH SURPLUS POOL EMPLOYEES (FATA DEVELOPMENT AUTHORITY).

Respected Sir,

Most humbly, it is submitted that we were serving in FATA Development Authority as Assistants on regular basis. Due to merging of FATA in Khyber Pakhtunkhwa, all employees of FATA posted/ placed in surplus pool of Establishment & Administration of Govt. of KP vid Notification No: SO (O&M)/E&AD/3-18/2020 Dated: Peshawar, August 05th,2020 (Annex-I).

2. According to the surplus pool employee's adjustment policy of the provincial government, (Annex-II) surplus employee can be adjusted in civil secretariat as well as in any attached department against the vacant corresponding post.

3. At that time sufficient Number of posts of Assistants were lying vacant in civil secretariat and being eligible, we could be adjusted against the same. However, Establishment & Administration Department was reluctant to do so, for the obvious reason that the civil secretariat employees' union will agitate against the same. In this regard we also submitted a separate application for adjustment in civil secretariat which was not acceded to.

4. The Board of Revenue (being an attached department) requisitioned our services (Annex-III) after interviews all the applicants who were found eligible/recommended for adjustment in BOR. However, despite frequent reminders from BOR, the said requisition was also not accepted. Consequently, we were adjusted in different attached formations.

5. Sir, question arises why we, the surplus employees are aggrieved with the adjustment in the attached formations. The simple reason is that the emolument/ chances of promotion are better in the civil secretariat. Moreover, another attraction is that civil secretariat employees are not transferred out of Peshawar. Therefore, we desired to be adjusted in Civil Secretariat or atleast in BOR.

6. Sir, the authority of the provincial government cannot be challenged, therefore we have unwillingly accepted existing adjustment, but that have not been treated just according to the surplus pool policy. Instances exists number of surplus employees have been adjusted in

Civil Secretariat as well as in Board of Revenue as one of them mentioned below. Sir, recently the Establishment Department of Khyber Pakhtunkhwa has adjusted one blue eyed urgency appointed surplus employee of the defunct FATA-DA in the BOR KP, without merit/ fear of agitation of civil secretariat employee's union. We the applicants having more than 10 years relevant regular services have been ignored while an individual namely Mr. Shakeel Ahmad s/o Abdul Wasey, whose father is working on a responsible position in Chief Minister Secretariat, Khyber Pakhtunkhwa has been adjusted in Board of Revenue which is clear discrimination and injustice with the applicants. A copy of the order of adjustment of Mr. Shakeel Ahmad s/o Abdul Wasey in BoR is attached for ready reference please (Annex-IV).

7. It is further mentioned here that the committee notified for the adjustment of the applicants was not the same Notified in the surplus pool policy of the provincial Govt. of KP, while the committee notified for the adjustment of Mr. Shakeel Ahmad and others is the same in the surplus pool policy of the provincial government. This also reveals injustice with the applicants and malafid intention on part of committee.

8. In view of the above it is requested that Establishment Department Khyber Pakhtunkhwa may kindly adjust the appellant in Board of Revenue to fulfill the norms of justice and to avoid injustices and discrimination.

The applicant can provide any additional information/ clarification in this regard if required. We will be highly obliged of your kind action please.

Note: Reply may kindly be communicated on the given WhatsApp's numbers.

Your Faithfully,

Fah
Ullah 20/11/2023
(Faheem Ullah)
Assistant (BPS-16)
Directorate of Industries
0346-9056930

Copy forwarded to the:-

- 1. Secretary, Board of Revenue.

Dated :- 20/11/2023

_____ + _____ + _____

Fah
Ullah
(Faheem Ullah)
Assistant (BPS-16)
Directorate of Industries.

To,

The Secretary Establishment,
Civil Secretariat, Khyber Pakhtunkhwa, Peshawar.

13/10/21/12-10-21
SUBJECT: INJUSTICE WITH SURPLUS POOL EMPLOYEES (FATA DEVELOPMENT AUTHORITY).

Respected Sir,

Most humbly, it is submitted that we were serving in FATA Development Authority as Assistants on regular basis. Due to merging of FATA in Khyber Pakhtunkhwa, all employees of FATA posted/ placed in surplus pool of Establishment & Administration of Govt. of KP vid Notification No: SO (O&N) E&AD-3-18/2020 Dated: Peshawar, August 05th, 2020. (Annex-I).

2. According to the surplus pool-employee's adjustment policy of the provincial government, (Annex-II) surplus employee can be adjusted in Board of Revenue attached department or as well as in Civil Secretariat against the vacant corresponding post.

3. At that time sufficient Number of posts of Assistants were lying vacant in civil secretariat and being eligible, we could be adjusted against the same. However, Establishment & Administration Department was reluctant to do so, for the obvious reason that the civil secretariat employees' union will agitate against the same. In this regard we also submitted a separate application for adjustment in civil secretariat which was not acceded to.

4. The Board of Revenue (being an attached department) requisitioned our services (Annex-III) after interviews all the applicants who were found eligible/recommended for adjustment in BOR. However, despite frequent reminders from BOR, the said requisition was also not accepted. Consequently, we were adjusted in different attached formations.

5. Sir, question arises why we, the surplus employees are aggrieved with the adjustment in the attached formations. The simple reason is that the emolument/ chances of promotion is better in the Board of Revenue (BOR). Moreover, another attraction is that Board of Revenue employees are not transferred out of Peshawar. Therefore, we desired to be adjusted in Board of Revenue.

6. Sir, the authority of the provincial government cannot be challenged, therefore we have unwillingly accepted existing adjustment, but that have not been treated just according to the surplus pool policy. Instances exist number of surplus employees have been adjusted in Civil Secretariat as well as in Board of Revenue as one of them mentioned below.

41

7. Sir, recently the Establishment Department of Khyber Pakhtunkhwa has adjusted one blue eyed urgency appointed surplus employee of the defunct FATA-DA in the BOR KP, without merit/ fear of agitation of civil secretariat employee's union. We the applicants having more than 10 years relevant regular services have been ignored while an individual namely Mr. Shakeel Ahmad s/o Abdul Wasey, whose father is working on a responsible position in Chief Minister Secretariat, Khyber Pakhtunkhwa has been adjusted in Board of Revenue which is clear discrimination and injustice with the applicants. A copy of the order of adjustment of Mr. Shakeel Ahmad s/o Abdul Wasey in Board of Revenue is attached for ready reference please (Annex-IV).

8. It is further mentioned here that the committee notified for the adjustment of the applicants was not the same Notified in the surplus pool policy of the provincial Govt. of KP, while the committee notified for the adjustment of Mr. Shakeel Ahmad and others is the same in the surplus pool policy of the provincial government. This also reveals injustice with the applicants and malafid intension on part of committee.

9. In view of the above it is requested that Establishment Department Khyber Pakhtunkhwa may kindly adjust us in Board of Revenue to full fil the norms of justice and to avoid injustices and discrimination with us.

We the applicants can provide any additional information/ clarification in this regard if required. We will be highly obliged of your kind action please.

Note: Reply may kindly be communicated on the given WhatsApp's numbers.

Your Faithfully,

> Faheem Ullah (Assistant) .034690569930


Signature



موردہ
 مقدمہ
 دعویٰ
 جرم

Faheem Ullah / فہیم اللہ

2023 بمغاب
 بنام
 KPK et

لوہندا آف
 KPK دفتر
 Govt at

باعث تحریر آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام لٹاؤر کیلئے حبیب اللہ محمد ایڈووکیٹ کے صاحب موصوف کو مقدمہ کی کل کاروائی کا کامل اختیار ہوگا۔ نیز وکیل صاحب کو راضی نامہ کرنے و تقررات و فیصلہ پر حلف دیئے جواب دہی اور اقبال دعویٰ اور بصورت ڈگری کرنے اجراء اور وصولی چیک دروپہ اررضی دعویٰ اور درخواست ہر قسم کی تصدیق زرائں پر دستخط کرانے کا اختیار ہوگا۔ نیز صورت عدم پیروی یا ڈگری کی طرف یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا مختار ہوگا۔ از بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی 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 مذکورہ باختیارات حاصل ہوں گے۔ اس کا ساختہ پرداخت منظور و قبول ہوگا دوران مقدمہ میں جو خرچہ ہر جانہ التوائے مقدمہ کے سبب 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 لکھد یا کہ سندر ہے۔

2023 ماہ

المرقوم

توق لٹاؤر
 لور لٹاؤر
 Attest and accept
 (Signature)

مقام لٹاؤر
 APPellant = فہیم اللہ ولد اختر محمد مکہ ڈھراں
 (Signature)