

BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

**Khyber Pakhtunkhwa
Service Tribunal**

Service Appeal No. 244/2023

Diary No. 5546

Dated 24/5/2023

Mian Sadaqat Shah

..... Appellant

Versus

Govt. of Khyber Pakhtunkhwa and 3 others

..... Respondents

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(MUHAMMAD ARSHED KHAN)
SENIOR ADMINISTRATIVE OFFICER

Date # 24/5/2023

" A " 1

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL, PESHAWAR

Service Appeal No. 244 of 2023

Mian Sadaqat Shah

Versus

Government of Khyber Pakhtunkhwa and 3 others

COMMENTS ON BEHALF OF RESPONDENTS No. 1,2 & 3

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

1. That the appellant has no cause of action to file the instant Appeal against the answering respondents.
2. That the instant Appeal is not maintainable in its present form.
3. That the appellant has not come to this Hon'ble Tribunal with clean hands. Hence not entitled for any relief.
4. That the appellant has suppressed material facts from this Hon'ble Tribunal.
5. That the Appeal is barred by law.

ON FACTS:

1. Pertains to record hence no comments.
2. Pertains to record hence no comments.
3. Pertains to record hence no comments.
4. In reply to para-4 it is submitted that the appellant is sticking to the post of his choice. More over after availing departmental remedy as alleged in this para, the Khyber Pakhtunkhwa service tribunal has not been approached within the statutory period.
5. Para pertains to record hence no comments.
6. In reply to para 6 , It is submitted that on the representation of appellant, respondent No 1 passed order No 33-35 dated 03/01/2020 which is implemented but latter on due to shortage of staff in office of the Additional Advocate General Khyber Pakhtunkhwa Abbottabad the office order No 33-35/AG dated 03/01/2020 has been withdrawn.

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- 7. In reply to para 6 it is submitted that pursuant to his application on the ground of spouse policy and hard ship faced by the appellant, he was posted in main office on temporary basis however it was directed that he will remain on the strength of the Additional Advocate General Khyber Pakhtunkhwa Abbottabad and continue to draw salary there from.
- 8. Incorrect. As the appellant was on the strength of Additional Advocate General Abbottabad and was also receiving salary there from, therefore due to shortage of staff in Abbottabad office, the competent authority withdrawn the office order dated 03/01/2020.
- 9. Incorrect. The appellant was treated justly and fairly. The appellant, even after his promotion to the post of assistant, was adjusted in the same office.
- 10. The department appeal of the appellant was not based on valid ground.
- 11. The appellant has got no cause of action and his appeal is liable to be dismissed on the following grounds.

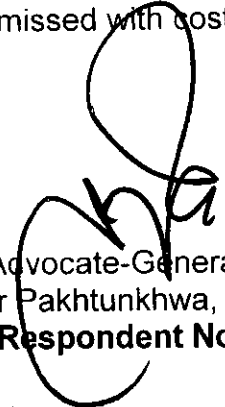
ON GROUNDS:

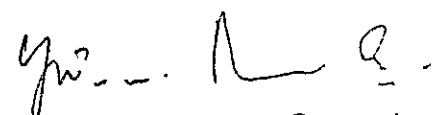
- a. Incorrect. The impugned order, dated 04/10/2022 was issued by the competent authority after observing all codal formalities.
- b. Incorrect. Under section 10 of the Khyber Pakhtunkhwa Civil Servant Act 1973, every civil servant shall be liable to serve any where within or outside the province, on any post under the Federal Government or any Provincial Government etc.
- c. Incorrect. As the appellant has served in Abbottabad office for a sufficient time therefore, the competent authority keeping in view his experience, posted him in office of Additional Advocate General Abbottabad. More over it is the Competent Authority, while making transfer, to ensure the posting of proper person on proper post in terms of the Khyber Pakhtunkhwa posting and transfer policy.
- d. Incorrect. Every case has different facts and circumstances and every case is to be decided in the light of its own facts and circumstances. More over the spouse policy cannot be materialized in the case of the appellant for the simple reason that there is no office of the Advocate General in District Charsadda.
- e. Incorrect. As replied in preceding paras.
- f. Incorrect. The transfer order of the appellant is based on justified reasons. The appellant was promoted to the post of Assistant on 04/10/2022 and his tenure start from the date of actualization of promotion. So the question of non-completion of tenure does not arise.
- g. As replied in preceding paras.

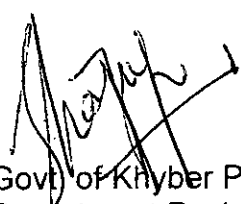
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- h. Incorrect. The transfer posting of the appellant is based on valid and justified reason.
- i. Incorrect. The appellant has not served the department as claimed by him in the instant para. The appellant remained absent on a number of occasions and he was issued numerous explanations.
- j. That with the permission of this Hon'ble Tribunal, the respondents may urge other additional grounds if any, at the time of arguments.

It is, therefore, most respectfully prayed that on acceptance of this Comments, the instant Appeal may kindly be dismissed with cost.


 Advocate-General,
 Khyber Pakhtunkhwa, Peshawar.
(Respondent No. 1)


 Additional Advocate-General,
 Khyber Pakhtunkhwa, Abbottabad.
(Respondent No. 2)


 Secretary to Govt of Khyber Pakhtunkhwa,
 Law Department Peshawar
(Respondent No. 3)

A. I. S. S.
Amjad
 Senior Administrative Officer
 Advocate General Office
 Khyber Pakhtunkhwa Peshawar

THE NWFP CIVIL SERVANTS ACT, 1973
(N.W.F.P. Act No. XVIII of 1973)

¹An Act to regulate the appointment of persons to, and the terms and conditions of service of persons in, the service of the North West Frontier Province.

Preamble- WHEREAS it is expedient to regulate by law, the appointment of persons to, and the terms and conditions of service of persons in, the service of the North West Frontier Province, and to provide for matters connected therewith or ancillary thereto;

It is hereby enacted as follows:-

1. Short title, application and commencement:- (1) This Act may be called the North West Frontier Province Civil Servants Act, 1973.

(2) This section and section 25, shall apply to persons employed on contract, or on work charged basis, or who are paid from contingencies, and the remaining provisions of this Act including this section, shall apply to all civil servants wherever they may be.

3) It shall come into force at once.

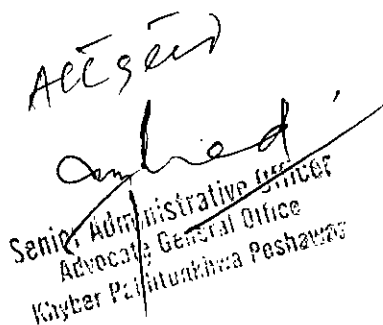
CHAPTER-I

PRELIMINARY

2. Definitions:- (1) In this Act, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "ad hoc appointment" means appointment of a duly qualified person made otherwise than in accordance with the prescribed method of recruitment, pending recruitment in accordance with such method,
- (b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connection with the affairs of the Province, but does not include-
 - (i) a person who is on deputation to the Province from the Federation or any other Province or other authority;
 - (ii) a person who is employed on contract, or on work charged basis, or who is paid from contingencies; or
 - (iii) a person who is a "worker" or "workman" as defined in the Factories Act, 1934 (Act XXV of 1934), or the Workman's Compensation Act, 1923 (Act VIII of 1923);
- (c) "Government" means the Government of the North-West Frontier Province.

¹ Published in the NWFP Government Gazette Extraordinary dated 12-11-1973 at pages 287 N-287V



 Senior Administrative Officer
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 Khyber Pakhtunkhwa Peshawar

(3) Seniority on initial appointment to a service, ⁷[cadre] or post shall be determined as may be prescribed.

⁸(4) Seniority in a post, service or cadre to which a civil servant is promoted shall take effect from the date of regular appointment to that post;

Provided that civil servants who are selected for promotion to a higher post in one batch shall, on their promotion to the higher post, retain their inter-se-seniority as in the lower post.

⁹(5) The seniority lists prepared under sub-section(1), shall be revised and notified in the official Gazette at least once in a calendar year, preferably in the month of January.

9. **Promotion:-**(1) A civil servant possessing such minimum qualifications as may be prescribed, shall be eligible for promotion to a ¹⁰[higher] post for the time being reserved under the rule for departmental promotion in ¹¹[] the service or cadre to which he belongs.

(2) A post referred to in sub-section.(1) may either be a selection post or a non selection post to which promotion shall be made as may be prescribed-

- (a) in the case of a selection post, on the basis of selection on merit; and
- (b) in the case of non-selection post, on the basis of seniority-cum-fitness.

10. **Posting and Transfer:-** Every civil servant shall be liable to serve anywhere within or outside the province, in any post under the Federal Government, or any Provincial Government or Local authority, or a corporation or body set up or established by any such Government:

Provided that nothing contained in this section shall apply to a civil servant recruited specifically to serve in a particular area or region:

Provided further that, where a civil servant is required to serve in a post outside his service or cadre, his terms and conditions of service as to his pay shall not be less favourable than those to which he would have been entitled if he had not been so required to serve.

11. **Termination of service:-** (1) The service of a civil servant may be terminated without notice-

- (i) During the initial or extended period of his probation:

Provided that, where such civil servant is appointed by promotion on probation or, as the case may be, is transferred from one [service], cadre or post to another [service], cadre or post, his service shall not be so terminated so long as he

⁷ The word "grade" substituted by NWFP Ordinance No. IV of 1985.

⁸ Sub section (4) of Sec-8 substituted by NWFP Ordinance No. IV of 1985.

⁹ Sub section (5) of Sec-8 added by NWFP Act No. I of 1989

¹⁰ The word "higher" inserted by NWFP Ordinance No. IV of 1985.

¹¹ The words "the higher grade of" omitted by NWFP Ordinance No. IV of 1985.

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BEFORE THE HON'BLE SERVICES TRIBUNAL KHYBER PAKHTUNKHWA,
PESHAWAR

Service Appeal No. 244/2023

Mian Sadaqat Shah

Appellant

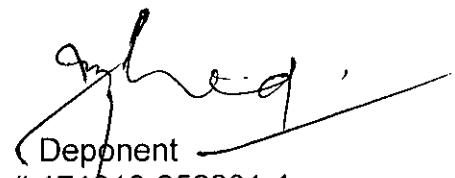
VERSUS

Govt of Khyber Pakhtunkhwa

Respondents

AFFIDAVIT

I, Muhammad Arshad Khan, Senior Administrative Officer, Advocate General Office, Khyber Pakhtunkhwa, Peshawar do hereby solemnly affirm and declare on oath that the contents of the **parawise comments** on behalf of **Respondents No. 1 & 2** and **3** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



(Deponent

CNIC # 171010-252231-1

Mob# 03338959697

Identified by

Oath Commissioner,
Advocate High Court

92.05.2023





(7)

OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 22982-83 /AG Dated Peshawar, the 24-May-2023

Address: High Court Building, Peshawar
Tel No. 091-9212681

Exchange: 091-9213833
Fax No. 091-9210270

AUTHORITY LETTER

Mr. Hafeez-ur-Rehman, Senior Clerk is hereby authorized to appear before the Hon'ble Services Tribunal, Khyber Pakhtunkhwa and submit parawise comments in Service Appeal No.244/2023 (Mian Sadaqat Shah-vs-Govt. of Khyber Pakhtunkhwa etc) fixed for today 24/05/2023.

Sd/-
**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.**

Endst. No. & date even

Copy to the:

1. Senior PS to the Ld. Advocate General, Khyber Pakhtunkhwa.
2. Mr. Hafeez-ur-Rehman, Senior Clerk of this office.


(MUHAMMAD ARSHAD KHAN)
SENIOR ADMINISTRATIVE OFFICER