

Chairman Copy

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 1304/2022

Basharat Qayum

Vs.

Chairperson Environmental Protection Tribunal, Khyber Pakhtunkhwa
& Other

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Respondents

Through Registrar (Respondent No.2)

Khyber Pakhtunkhwa
Environmental Protection Tribunal,

Peshawar

Dated: 16/06/2023

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 1304/ 2022

Basharat Qayyum
S/o Abdul Qayum
R/o Swati House, PMA Road,
Bilal Town, House No. CB41,
Street No. 15, Abbottabad Cantt.
Tehsil & District Abbottabad

**Khyber Pakhtunkhwa
Service Tribunal**

Diary No. 6102

Dated 19.06.23

..... Appellant

Vs.

1. Chairperson, Environmental Protection Tribunal, Khyber Pakhtunkhwa, Peshawar.
2. The Registrar, Environmental Protection Tribunal, Khyber Pakhtunkhwa, Peshawar.
..... Respondents

PARA-WISE COMMENTS FOR AND ON BEHALF OF RESPONDENTS

RESPECTFULLY SHEWETH:

PRELIMINARY OBJECTIONS:

1. **That** the appellant has got no cause of action and locus standi to file the instant Appeal.
2. **That** the Appeal is bad due to mis-joinder and non-joinder of necessary parties.
3. **That** the Appeal is time barred.
4. **That** the appellant has not come to this Hon'ble Tribunal with clean hands.
5. **That** this Hon'ble Tribunal has got no jurisdiction to entertain the present Appeal.
6. **That** the instant Appeal is not maintainable in its present form.
7. **That** the appellant has concealed material facts from this Hon'ble Tribunal.
8. **That** the appellant is estopped by his own conduct from filing the instant Appeal as he has admitted at his own free-will of his close relationship with the **Ex-Worthy Chairman, EPT, Peshawar/Chairman, Departmental Selection Committee, i.e. appellant being the real maternal nephew of Ex-Worthy Chairman, EPT, Peshawar/Chairman, Departmental Selection Committee**, hence the instant Appeal is based on illegal grounds.
9. **That** the instant Appeal is bad in the eyes of law.
10. **That** the recruitment and appointment of the appellant is an outcome of conflict of interest, nepotism and favoritism which this Hon'ble Tribunal cannot ignore, hence the Appeal is liable to be dismissed.
11. **That** the Appeal is based on distortion of facts and therefore liable to be dismissed.

12. That facts admitted and available on record need not be proved.

13. That the appellant got himself recruited/appointed through male fides and violation of law.

ON FACTS:

1. Para-1 pertains to record. However, the appellant's permanent residence is at Baffa, District Mansehra and current address is at Abbottabad. It is pertinent to note that the **appellant is the real maternal nephew of the Ex-Chairman, Khyber Pakhtunkhwa Environmental Protection Tribunal, Peshawar/Chairman, Departmental Selection Committee and both belong to Baffa, District Mansehra, Khyber Pakhtunkhwa.**
2. Para-2 pertains to record, hence need no comments.
3. Para-3 pertains to record, hence need no comments.
4. Para-4 pertains to record however it is vehemently denied that all legal and codal formalities were not observed in the recruitment and appointment of the appellant. For clarity it is submitted that in the presence of local and other candidates it is astonishing that the appellant was shortlisted and appointed without giving any reasons for preferring the appellant over the locals. This is an ideal case of favoritism, nepotism and conflict of interest where the **appellant's own maternal uncle, i.e. the Ex-Worthy Chairman, EPT who was also Chairman of the Departmental Selection Committee (DSC)** appointed his own real nephew despite there being other promising candidates who were locals and denied appointment without giving any reason. It is clear and obvious without an iota of doubt that there were other candidates but the appellant was preferred being an immediate blood relative of Ex-Worthy Chairman also a Chairman, DSC. It is on record that other candidates, who could have been appointed for the post of Bailiff, were ignored illustrating favoritism and nepotism. Also, the EPT being permanently based at Peshawar having no other seat except Peshawar required the services of bailiff who should have been local.

(Copy of the Office Order for Constitution of the DSC and List of Shortlisted Candidates for Interview of Bailiff (BPS-03) at EPT are attached herewith as Annexure "A" – "A1")

5. Para-5 pertains to record however it is submitted that a DSC was constituted with the Ex-Worthy Chairman, EPT being the Chairman, DSC. Neither the Chairman, DSC withdrew from the DSC nor did the appellant brought on record that he is the real maternal nephew of the Chairman, DSC from whom he got favour on his insistence and was appointed as Bailiff despite there being other promising candidates for the post of Bailiff who were available and were locals. In essence, the appellant's appointment order was issued by his own real maternal uncle at the cost of other applicants/candidates who were locals as well as others who belonged to other districts of Khyber Pakhtunkhwa in violation of law and judgments of superior courts. It is pertinent to note that no reason has been given for

preferring the appellant over other candidates which speaks volume about the recruitment and appointment process conducted in favour of the appellant but against the norms of justice, transparency and established legal and codal formalities.

(Copy of the DSC Minutes of the Meeting and Appointment Order of Appellant are attached herewith as Annexure "B" – "B1")

6. Para – 6 pertains to record, need no comments.
7. Para – 7 pertains to record, need no comments.
8. Para – 8 pertains to record, need no comments.
9. Para – 9 is subject to legal objections. It is pertinent to mention here that when the appointment of the appellant is illegal then the position and seniority of the appellant in the seniority list/notification, which was issued during the tenure of the Ex-Worthy Chairman, EPT/Chairman, DSC who is the real maternal uncle of the appellant also has got no legal basis or effect.
10. Para – 10 pertains to record however it is pertinent to note that when the appellant submitted leave application dated 8.5.2022, the Show Cause Notice dated 14.04.22 had already been issued.
11. Para – 11 pertains to record. However, the show cause to the appellant was rightly and legally issued and as per law. It is pertinent to note that the official record of the appellant has led to the issuance of the Show Cause Notice.
12. Para – 12 pertains to record. However, the reply to the Show Cause is factually and legally incorrect and without any substance.
13. Para-13 pertains to record. However, the impugned order of removal from service was legally issued and based on record.
14. Para – 14 pertains to record but it merits a mention here that that the appellant has already admitted voluntarily at his own free-will the contents of the allegation that the Ex-Worthy Chairman EPT/Chairman, DSC is his real maternal uncle. It is pertinent to note that the appellant in departmental appeal has taken fresh grounds and explanations have been given which are irrelevant and are afterthought to cover for his own shortcomings and illegal conduct.
15. Para-15 is vehemently denied, the appellant has got no cause of action to file instant appeal.

GROUND:

- A. Ground A is vehemently denied. The Orders passed by the respondent No. 1 complies with the applicable law and rules. In addition, it is pertinent to note that opportunity of personal hearing has already been provided to the appellant and he has made oral and written submissions before the competent authority. The appointment of the appellant is illegal and outcome of nepotism, favoritism and conflict of interest.
- B. Ground B is vehemently denied. All allegations were contested by the appellant and he has admitted at his own free will of his blood relationship with the Ex-Worthy Chairman EPT/Chairman, DSC. Also, the appellant's domicile clearly proves his permanent residence to be Baffa, District Mansehra which is also the home town of the Ex-Worthy Chairman EPT/Chairman, DSC. It is pertinent to note that nothing exists on record for preferring the appellant over other candidates who were local and shortlisted but were not recruited/appointed without giving any reason. The legal principle that allegations which are admitted need not be proved is applicable in this case and is distinguishable from **Appeal No. 7562/2021: Syed Sohail Shah Vs. Chairman, EPT and Appeal No. 7844/2021: Mehtab Alam Vs. Chairman, EPT** pertaining to staff of EPT decided by this Worthy Tribunal. It has been held by superior courts that regular inquiry in presence of adverse material was not mandatory. Also, the Hon'ble Apex Court has "*strictly prohibited illegal appointments which are not based on merits or have been made for any extraneous reason, not recognized by law as well as not being transparent and have been made on account of nepotism and favoritism.*" (2002 PLC (C.S.) 1019 and 1996 SCMR 1349). It has been observed by the Hon'ble Peshawar High Court in case titled as *Muhammad Qureshi Vs. Government of Khyber Pakhtunkhwa and 5 Others* and reported as 2019 PLC(C.S.) 1119 that:

"11..... It is sad to observe that thousands of people are rendered jobless and tens of thousands of families are rendered destitute similarly because public functionaries accommodate people of their own choice. It is tantamount to creating nothing but false sense of achieving employment. Action requires to be taken against those who are guilty of making illegal appointments."

It merits a mention here that in cases reported as 2002 PLC (C.S.) 1019 and 2019 PLC(C.S.) 1119, the fathers had appointed their sons and the same analogy exists in the instant case/appeal as the relationship is of blood relative. In addition, in *Fuad Asadullah Khan Vs. Federation of Pakistan through Secretary, Establishment Division; Islamabad and 2 others* and reported as 2002 PLC (C.S.) 480 it has been observed and held that:

"11. It is pertinent to note that one of the Members of the so-called Interview Committee was Muhammad Shabbir Ahmed, the then Joint D.G (A), who was a close relative of the appellant. The norms of justice and rules of transparency demanded that he should have not acted as Member of that Interview Committee being a close relative

of the appellant but his association in the selection process has marred such selection, as being close relative of appellant, his opinion could not remain uninfluenced/unbiased nor the same could be held to be independent.”

(Copy of the judgments reported as 2002 PLC (C.S.) 1019, 1996 SCMR 1349, 2019 PLC(C.S.) 1119 and 2002 PLC (C.S.) 480 are attached herewith as Annexure “C” – “C3”)

- C. Ground C is vehemently denied. The appellant has appeared in person before the Worthy, Chairman, EPT and argued for his stance and innocence thereby benefitting from personal hearing. He not only submitted reply to the Show Cause Notice but also filed representation against his removal from service.
- D. Ground D is vehemently denied. The appellant had appeared before the Worthy Chairman, EPT to clarify his position and was therefore given opportunity of personal hearing.
- E. Ground E is vehemently denied. The appellant has been warned and cautioned on number of occasions in the past. He was issued a warning vide letter No. EPT/Basharat/408 dated 03.02.2021 as well as vide letter No. EPT/Basharat/P.F.2/21585 dated 21.10.2021. These warnings speak for themselves and have not been challenged till date.

(Copy of the letter No. EPT/Basharat/408 dated 03.02.2021 and letter No. EPT/Basharat/P.F.2/21585 dated 21.10.2021 are attached herewith as Annexure “D”- “D1”)

- F. Ground F is vehemently denied. The appellant was appointed on basis of favoritism, nepotism and conflict of interest and at the cost of other well deserving, promising and local candidates. It only transpired later at EPT after the expiry of the term of the Ex-Worthy Chairman, EPT/Chairman DSC that the appellant is his nephew leading to the departmental proceedings.
- G. Ground G is vehemently denied. The due process of law has been followed in letter and spirit in removing the appellant from service. The appellant has been heard and given opportunity to make submissions and representations. The authority at EPT cannot shut its eyes to illegal recruitment of the appellant.
- H. Ground H is misconceived hence denied. The appellant’s removal of service has been made as per law while law does not protect the appellant from process of accountability where favoritism has taken place and law and rules flouted to appoint a blood relative and that also having same domicile.
- I. Ground I is vehemently denied. The competent authority when came to know that illegality has been committed in certain recruitments, law took its own course. The Show

Cause Notice and Removal Order has justification provided in the same. The appellant has been given opportunity of hearing and representation.

J. Ground J is misconceived hence denied. The appellant was given additional charge due to shortage of staff while he has received two warnings where he was informed that his work is not up to the mark.

(Copy of the Office Order dated 04.03.2022 is attached herewith as Annexure "E")

K. Ground K is vehemently denied. The appellant cannot protect his illegal recruitment with the cover of judgments of the superior courts. The appellant's lame excuses are an effort to misguide this Worthy Tribunal and are without any iota of doubt unprofessional to say the least as he is blaming others for his own shortcomings.

L. Ground L is vehemently denied. The appellant's removal of service has been made as per law while law does not protect the appellant from process of accountability where favoritism and nepotism has taken place and law and rules flouted to appoint a blood relative and that also having same domicile. The crux of the matter is that when the appellant has admitted that he is the real maternal nephew of the Ex-Chairman, Khyber Pakhtunkhwa Environmental Protection Tribunal, Peshawar/Chairman, DSC and appointed the appellant (who is non-local) for the post of Bailiff in presence of other candidates who were locals against the applicable law and rules, then there was no need to hold an inquiry as the admitted facts are evident from the record. The appellant was consequently legally and rightly removed from service.

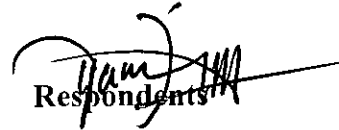
PRAYER:

To sum up, the reply to the text of the appeal of the accused/appellant, it is stated that the accused/appellant was removed from service mainly on two grounds which is evident from the dismissal order. The appointment of the accused/appellant is the callous example of nepotism, favoritism and conflict of interest besides the legal one i.e. the appointment being illegal and made in violation of provision of section 12(3) Civil Servants (Appointment, Promotion & Transfer) rules 1989 and other enabling rules.

With respect to the nepotism, favoritism and conflict of interest it is vehemently urged that the Chairman of the Departmental Selection Committee, who was also a Chairman of EPT is the real maternal uncle of the accused/appellant and which fact he (accused/appellant) has admitted in his reply to the show cause notice which is annexed with the memo of appeal. The factum of relationship has also been admitted by the accused/appellant during his personal hearing which was conducted in the presence of Barrister Isfandyar Ali Khan (Member Legal, EPT).

In view of the fact of close relationship, there is no need of inquiry. The same is the case of provision section 12(3) Civil Servants (Appointment, Promotion & Transfer) rules 1989 and other enabling rules which is a legal question and for which inquiry is not required.

In the given circumstances of the case, it is prayed that the appeal of the accused/appellant may kindly be dismissed on the above two grounds.


Respondents

**Through Registrar (Respondent No.2)
Khyber Pakhtunkhwa
Environmental Protection Tribunal,
Peshawar**

BEFORE THE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR

Appeal No. 1304/ 2022

Basharat Qayum

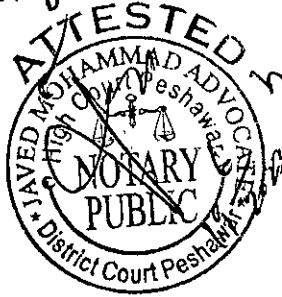
Vs.

**Chairperson Environmental Protection Tribunal, Khyber Pakhtunkhwa
& Other**

AFFIDAVIT

I, Naeem Ullah S/o Arsala Khan, currently serving as Acting Registrar EPT do hereby solemnly affirm and declare on oath that the enclosed Para-wise Comments/ Reply are correct to the best of my knowledge and belief and that nothing has been concealed or withheld from this Worthy Tribunal.

It is further stated on oath that in this appeal the answering Respondents have neither been placed es parte nor their defence has been struck off



Naeem
DEPONENT



KHYBER PAKHTUNKHWA
ENVIRONMENTAL PROTECTION TRIBUNAL
PESHAWAR

PH: 091-9219003

kpkept@gmail.com

No.EPT/Admn/23 965-967

Dated 19/06/2023

AUTHORITY LETTER

The Competent Authority is pleased to authorize Mr. Naeem Ullah, Acting Registrar EPT to submit para wise comments/reply and to attend and appear in appeal no.1237/2022 & 1304/2022 in Hon'ble KP Service Tribunal, Peshawar/Camp Court.

CHAIRMAN
Environmental Protection tribunal
Peshawar

Copy forwarded for information:

- PS to Chairman EPT.
- Master File.

Alleged by

Registrar
Environmental Protection
Tribunal

Annexure "A" / 10



KHYBER PAKHTUNKHWA
ENVIRONMENTAL PROTECTION TRIBUNAL
PESHAWAR

PH: 091-9219003
kpkpt@emaail.com

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OFFICE ORDER

Dated 15/10/2018

The competent Authority is pleased to constitute Departmental selection Committee comprising of the following members for filling the vacant posts in Khyber Pakhtunkhwa Environmental protection Tribunal, Peshawar.

| | | |
|---|--|---|
| 1 | Justice (R) Abdul Latif Khan, Chairman KP- Environmental protection Tribunal, Peshawar | Chairman, Departmental Selection Committee |
| 2 | Mr. Adnan Navid Babar, Member Legal KP-EPT | Member |
| 3 | Mr. Farid Ullah Shah, Nominee of FE&WD. | Member |


Registrar
Environmental Protection
Tribunal


Chairman
KP-Environment
Protection Tribunal,
Peshawar. 15/10/18

Endst: No & Date Even.

- 1) The Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2) Both of the Members.
- 3) PS to Chairman, KP-EPT, Peshawar.
- 4) PS to Secretary FE&WD, Govt of Khyber Pakhtunkhwa, Peshawar.

Annepure "A1" / 38

| Bailiff | | | | |
|---------|------|-----------------|---------------------|---------|
| S.No | D.No | Name | Father name | Remarks |
| 1. | 3 | Muhammad Sohail | Muhammad Rafique | PA |
| 2. | 7 | Asadullah | Saminullah | PA |
| 3. | 24 | Hassan Nisar | Muhammad Nisar | P |
| 4. | 41 | Arshad Naveed | Ghulam Fareed | α |
| 5. | 46 | Hazrat Sher | Raham Sher | α |
| 6. | 48 | Ramzan Ulalh | Muhammad Akram Khan | α |
| 7. | 50 | Jamil Khan | Momin Khan | PA |

~~Registrar~~
Registrar
Environmental Protection
Tribunal



(12)

| | | | | |
|-----|-----|-------------------|--------------------|-----|
| 8. | 59 | Latif Ullah | Najeen Ullah | |
| 9. | 83 | Nabeel Basheer | Basheer Rasheed | P d |
| 10. | 88 | Siraj | Aziz ul Haq | d |
| 11. | 90 | Zeeshan | Muhammad Akram | d |
| 12. | 91 | Ishtiaq Ahmed | Mushtaq Khan | d |
| 13. | 98 | Safiullah | Taj Nazar | d |
| 14. | 100 | Saddarm Hussain | Zar Said Khan | d |
| 15. | 107 | Abbas Ali | Nazir Ahmed Saddiq | / |
| 16. | 113 | Nawaz Khan | Murad Khan | / |
| 17. | 114 | Fayaz Khan Afridi | Murad Khan | P d |
| 18. | 115 | Syed Awais Ahmad | Syed Anees Ahmad | d |

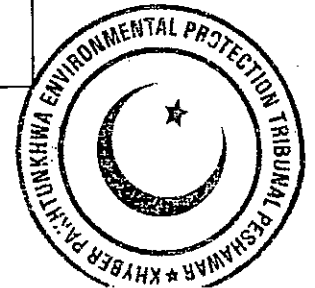
Registrar
Environmental Protection
Tribunal



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| | | | | |
|-----|-----|---------------------|------------------------|-----|
| 19. | 116 | Asad Ali Awan | Saeed Ahmed Awan | PX |
| 20. | 126 | Muhammad Asif | Basheer Ahmed | X |
| 21. | 130 | Safiullah | Muhammad Ikram | P X |
| 22. | 134 | Abdul Karim | Muhammad Umer | X |
| 23. | 136 | Syed Tawas Ali Shah | Syed Alam Hussain | X |
| 24. | 139 | Syed Afrasiyab Shah | Muhammad Tahir Shah | P X |
| 25. | 140 | Irshadullah | Abdullah Khan | A |
| 26. | 147 | Naeem Khan | Imdad Khan | P |
| 27. | 148 | Hayat Ahmed Khan | Alamzeb | P |
| 28. | 149 | Iftekhhar | Bahadar Khan | P |



[Signature]
Registrar
Environmental Protection
Tribunal

(14)

(41)

| | | | | |
|-------|-------|--------------------------|---------------------------|----------------------------|
| 29. | 169 | Manzoor Hayat | Hayat Shah | A |
| 30. | 181 | Mujeeb Alam | Jan Alam | P α |
| 31. | 191 | M. Karrar Khan | Itbar Khan | α |
| 32. | 193 | Waseem Ullah | Bismaulalh Jan | P α |
| 33. | 207 | Shah Faizal | Mir Afzal Shah | α |
| ✓ 34. | 213 | Basharat Qayyum | Abdul Qayyum | P1 Subject being new entry |
| 35. | 239 | Farma Ullah | Abdul Ahad | α |
| 36. | 252 | Zakirullah | Sher Farzand | P ✓ |
| 37. | 283-A | Fayaz Ahmad | Fazle Ellahi | ✓ |
| 38. | 286 | Muhammad Idrees Zaman | Muhammad Badi uz Zaman | ✓ |

~~Registrar~~
Registrar
Environmental Protection
Tribunal



| | | | | |
|-----|-----|--------------------------|------------------|--|
| 39. | 292 | Shamas ul Tabraiz | Shamas ur Rehman | |
| 40. | 313 | Shah Sawar | Mahabud Din | |
| 41. | 315 | Rafaqat Javed | Shah Janan | |
| 42. | 320 | Shahriyar Khan | Jamshed Khan | |
| 43. | 334 | Sahil Khan | Fazale Subhan | |
| 44. | 351 | Muhammad Arabi | Mir Rehman | |
| 45. | 359 | Bawar Khan | Rustam Khan | |
| 46. | 363 | Muhammad Zeeshan Khan | Rustam Khan | |

~~Registrar~~
 Registrar
 Environmental Protection
 Tribunal



| | | | | |
|-----|-----|-----------------------|-----------------------|--|
| 47. | 378 | Sayed Shahid Ali Shah | Sayed Kamran Ali Shah | |
| 48. | 394 | Waqar Khan | M. Sheer Khan | |
| 49. | 406 | Faheem Ullah Khan | M. Iqbal | |
| 50. | 418 | Sanaullah | M. Ayyaz | |
| 51. | 451 | Jawad Ali | Bakhtiar Ali | |
| 52. | 474 | Abuzar | Lal Zada | |
| 53. | 478 | Hamza Khan | Kifayat Ullah | |
| 54. | 481 | Akhtar Gul | Noor Said | |
| 55. | 495 | Amir Hayat | Hayat Shah | |
| 56. | 503 | Numan Khan | Taif Ullah | |


Registrar
Environmental Protection
Tribunal





| | | | | |
|-----|-----|------------------|----------------|----------|
| 57. | 515 | Anwar Zeb | Khan Zeb | P/- |
| 58. | 525 | Zahid ur Rehman | Walayat Khan | |
| 59. | 537 | Muhamamd Irfan | M. Perviz | P P/- |
| 60. | 540 | Hamad Ullah | Tehsin Ullah | P/- |
| 61. | 557 | Zakir Khan | Sabir Khan | |
| 62. | 565 | Fayaz Ahmad | Ghulam Mustafa | P/- x |
| 63. | 582 | M. Rizwan | Waris Khan | |
| 64. | 583 | Ishaq Khan | Noor Zad Khan | P/V x |
| 65. | 584 | Barkat Ullah | Rambil Badshah | f |
| 66. | 585 | Muhammad Javid | Abdul Jalil | P/x |
| 67. | 586 | Muhamamd Ishtiaq | Khan Khel | x |
| 68. | 587 | Noor Ul Amin | Roohullah | x |

Registrar
Environmental Protection
Tribunal



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| | | | | |
|-----|-----|--------------------|-------------------|-----------------------|
| 69. | 588 | Jawad Ali Khan | Fayaz Hussain | |
| 70. | 589 | Aftab Hussain | Sher Khan | pk |
| 71. | 590 | Misbahullah | Mushtamand Khan | α |
| 72. | 591 | Amir Muhammad Khan | Ghulam Ahmad Khan | α |
| 73. | 592 | Qari Tariq | M Farooq | α |
| 74. | 593 | Shakeel Ahmad | JamI Ahmad | α |
| 75. | 594 | Hafiz ur Rehman | M Azam | α |
| 76. | 595 | Fazle Amin | Umar Khan | α |
| 77. | 596 | Fakhre Alam | Sher Zaman | |
| 78. | 983 | Sheraz Khan | Abdur Rasheed | Sumit being withdrawn |


Registrar
Environmental Protection
Tribunal



Annexure "B" / 19/19

MINUTES OF THE MEETING OF DEPARTMENTAL SELECTION COMMITTEE
HELD IN THE OFFICE OF CHAIRMAN ENVIRONMENTAL PROTECTION
TRIBUNAL PESHAWAR. AT 9:00 AM ON 29/10/2018 to 03/11/2018.

In order to fill in the vacant posts of Driver (BPS-06), Bailiff (BPS-03), Naib Qasid (BPS-03), Mali (BPS-06), Chowkidar (BPS-03) and Farash (BPS-03) a meeting of the Departmental Selection Committee was held in the office of the Chairman Environmental Protection Tribunal Peshawar.

1. Justice (R) Abdul Latif Khan Chairman
2. Mr. Adnan Naveed Babar Member
3. Mr. Farid Ullah Shah Member/Nominee of FEWD

After consideration of the application and interview of the following candidates are found fit and suitable for appointment of vacant post mentioned against their names.

| S. No. | Name | Father Name | Post |
|--------|-------------------|---------------------|---------------------|
| 1. | Naeem Ullah | Arsala Khan | Driver (BPS-06) |
| 2. | Nasir Ali | Liaqat Ali | Driver (BPS-06) |
| 3. | Ahsan Farooq | Muhammad Hanif Khan | Driver (BPS-06) |
| 4. | Hameed Ullah | Muhammad Ishaq | Naib Qasid (BPS-03) |
| 5. | Ahsan Hassan Khan | Santaraz | Naib Qasid (BPS-03) |
| 6. | Shahzad Hussain | Ashiq Hussain | Naib Qasid (BPS-03) |
| 7. | Basharat Qayyum | Abdul Qayyum | Bailiff (BPS-03) |
| 8. | Sheraz Khan | Abdur Rasheed | Bailiff (BPS-03) |
| 9. | Mehtab Khan | Humayun Khan | Chowkidar (BPS-03) |
| 10. | Muhammad Rizwan | Waris Khan | Chowkidar (BPS-03) |
| 11. | Marjan Ali | Firdos Khan | Chowkidar (BPS-03) |
| 12. | Shams ul Tabraiz | Shams ur Rehman | Mali (BPS-03) |
| 13. | Muhammad Adil | Muhammad Rafiq | Farash (BPS-03) |

The committee recommends them for appointment accordingly.

Registrar
Environmental Protection
Tribunal

Justice (R) Abdul Latif Khan
Chairman DSC
KP EPT Peshawar

Adnan Naveed Babar
Member Legal

Farid Ullah Shah
Representative Member

Annexure "B1" / 30

KHYBER PAKHTUNKHWA ENVIRONMENTAL PROTECTION
TRIBUNAL PESHAWAR

ORDER

Dated Peshawar The, 30th April, 2019

In pursuance of the recommendations of Departmental selection Committee vide its meeting dated 28.10.2018, the Competent Authority has been pleased to appoint the following candidates against the vacant posts, mentioned against each in Khyber Pakhtunkhwa Environmental protection Tribunal, Peshawar, With immediate effects:-

| S.NO. | Name and Father Name | Appointed as |
|-------|--------------------------------------|-----------------------|
| 1 | Malsam Raza S/O Musawer Ali | Reader (BPS-12) |
| 2 | Muhammad Haris Khan S/O Riaz Khan | Junior Clerk (BPS-11) |
| 3 | Naeem Ullah S/O Arsala Khan | Driver (BPS-06) |
| 4 | Nasir Ali S/O Liaqat Ali | Driver (BPS-06) |
| 5 | Ahsan Farooq S/O Muhammad Hanif Khan | Driver (BPS-06) |
| 6 | Hameed Ullah S/O Muhammad Ishaq | Naib Qasid (BPS-03) |
| 7 | Ahsan Hassan khan S/O Santaraz | Naib Qasid (BPS-03) |
| 8 | Shahzad Hussain S/O Ashiq Hussain | Naib Qasid (BPS-03) |
| 9 | Basharat Qayyum S/O Abdul Qayyum | Bailliff (BPS-03) |
| 10 | Sheraz Khan S/O Abdur Rasheed | Bailliff (BPS-03) |
| 11 | Mehtab Khan S/O Humayun Khan | Chowkidar (BPS-03) |
| 12 | Muhammad Rizwan S/O Waris Khan | Chowkidar (BPS-03) |
| 13 | Marjan Ali S/O Firdos Khan | Chowkidar (BPS-03) |
| 14 | Shams ul Tabraiz S/O Shams ur Rehman | Mali (BPS-03) |
| 15 | Muhammad Adil S/O Muhammad Rafiq | Farash (BPS-03) |

The appointment shall be subject to the following terms & Condition:-

- I. The appointment is subject to antecedent verification of the appointee.
- II. The Appointees shall produce Medical Fitness certificates before their charge assumption.
- III. Their services shall be governed by the KP-EPT Service rules, 2018 and Khyber Pakhtunkhwa (Appointment, Promotion and Transfer, rules, 1989).
- IV. The Appointees shall report for duty within 15 days failing which the appointment shall stand withdrawn.

Registrar
Environmental Protection
Tribunal

Chairman
DSC KP-Environmental Protection Tribunal
Peshawar

Endst: NO & Date Even.

1. The Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Members of DSC, Khyber Pakhtunkhwa Environmental Protection Tribunal, Peshawar.
3. The Officials concerned by names.
4. Master file.

Chairman
DSC KP-Environmental Protection Tribunal
Peshawar

Annexure "C" (21)

2002 P L C (C.S.) 1019

[Supreme Court of Pakistan]**Present Iftikhar Muhammad Chaudhry and****Hamid Ali Mirza, JJ****PAKISTAN INTERNATIONAL AIRLINES—Petitioner****Versus****OMAR SAEED NAZI—Respondent**

Civil Petition No. 131-K of 2001, decided on 18th April, 2002.

(On appeal from the judgment/order dated 6-12-2000 passed by Federal Service Tribunal, Islamabad in Appeal No. 1322-K of 1998).

Service Tribunals Act (LXX of 1973)-----

---S. 4---Constitution of Pakistan (1973), Art. 212(3)---Reinstatement in service---Illegal appointment---Service of employee of Pakistan International Airlines Corporation were terminated for the reason that his appointment was the result of favouritism and nepotism shown to him---Service Tribunal allowed the appeal filed by the employee and he was reinstated in service-- Leave to appeal was granted by Supreme Court to consider, whether appointment of the employee as Officer Marketing had been made contrary to the principle laid down by Supreme Court in the case of Abdul Jabbar Memon reported as 1996 SCMR 1349 or otherwise.

Abdul Jabbar Memon and other's case 1996 SCMR 1349 ref.

Fazal-e-Ghani, Senior Advocate Supreme Court for Petitioner

Nemo for Respondent

Date of hearing: 18th April, 2002

ORDER

IFTIKHAR MUHAMMAD CHAUDHRY, J.-----This petition for leave to appeal has been filed against the judgment, dated 2nd October 1998 passed by Federal Service Tribunal, Islamabad whereby service appeal filed by respondent has been allowed.

2. Precisely stating the facts of the case are that respondent Umar Saeed Kazi was appointed as Officer (Marketing) in Pay Group-VI on contract basis for the period of three years commencing from 29th May, 1994 till 28th May, 1997 vide Letter No. AM/PE/P-48278/94, dated 29th May, 1994 in PIA.

3. It is important to note that respondent has been appointed by Sheikh Saeed K. Kazi, who is his father and was working as Administrative Engineer in the same Department at the time of his appointment and he himself issued his appointment letter, which reads thus:--

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Mr. Umar Saeed. Kazi

P-48278 No. Am/PE/P-48278/94

Dear Sir,

Subject: APPOINTMENT LETTER

With reference to agreement, dated 27-5-1994, executed between you and PIAC, we wish to inform you that you Have been appointed as Officer (Marketing) in Precision Engineering Department's office at Islamabad on contract for a period of 3 years, commencing from 29-5-1994 until 28-5-1997 and thereafter may be extended for such further terms as the Corporation may its discretion determine. Your appointment in the Corporation shall be based on the following terms and conditions:--

(a) Salary and Perquisites:

Basic Pay Rs.6,215/-p.m.

(in the scale of Rs.6215-215-7290, Pay Group VI (ii))

House Rent Rs.3729/-p.m.

Utility Allowance Rs.622/-p. m.

Personal Pay Rs.680/-p.m.

Washing Allowance Rs.320/-p.m.

Special Indention Rs.215/-p.m.

Conveyance Allowance Rs.800/-p.m.

or

Car allowance Rs.575/-p.m.

(Subject to ownership of car)

(b) Reimbursement:

Books and Magazines Rs.200/-p. m.

Entertainment Allowance Rs.835/-p.m.

Fuel 155 litres p.m.

(Subject to ownership of car)

(c) Other terms and Conditions:

(i) You will be posted at Precision Engineering Department's office at Islamabad.

(ii) Your appointment in the Corporation will be subject to:--

- Medical fitness.

- I. D. Clearance/Police verification from appropriate Authorities.

- release certificate from previous employer, if any.

(iii) Your service will be governed under the terms and conditions of your service

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agreement, dated 29th May, 1994. For any matter-not provided in the agreement, the rules and regulations of the Corporation shall apply and prevail, however, in case of conflict between the provisions of your agreement or the rules and regulations of the Corporation, the provisions of the agreement shall apply and prevail.

(Sd.)
(Saeed K. Kazi),
Administrative Manager
Precision Engg.

3. Surprisingly, same officer i.e. Sh. Saeed K. Kazi, Administrative Engineer under his signature confirmed the services of the respondent vide order, dated 31st March, 1996.

4. Later on the petitioner PIA Corporation on coming to know about above irregularity issued a show-cause notice to respondent specifically pointing out to him that his appointment is irregular and illegal because he was appointed by his father Sh. Saeed K. Kazi, Relevant para. from the show-cause notice is reproduced hereinbelow:--

According to the available record, you did submit an unsolicited application to Director Precision Engineering for employment to the Corporation. At that time, your father was working as Administrative Manager in Precision Engineering Department. Simultaneously with the submission of your unsolicited application for employment a note was initiated by General Manager (Q/A) of the Precision Engineering Department seeking approval of establishment of four vacancies in Marketing Cell of the Precision Engineering Department. This note was approved by the then Managing Director on the same date notwithstanding the fact that the then Managing Director had no authority whatsoever to approve the establishment of any vacancy in the Corporation, as this power was vested exclusively in the Board of Directors. As such, right from the beginning your appointment was irregular as you were being considered, and appointed against a vacancy which was not approved for establishment by the competent Authority.

Neither any advertisement was released by the Corporation for the position secured by you nor any application was solicited from you. It is evident that you secured the aforesaid appointment as a result of extraneous pressure in clear contravention of the judgment of the Supreme Court of Pakistan in the case. name Abdul Jabbar Memon v. PIA.

In order to accommodate you through Back door, a proposal was initiated for establishment of a vacancy of Marketing Officer in PF-VI at Islamabad. This proposal was approved by the then Managing Director and on 13th February, 1994 in spite of the fact that he was not competent to create such a vacancy for which the competent Authority was the Board of Directors. Followed by this irregular approval, the then Director Precision Engineering recommended that you may be employed in PG-VI (ii) as an Officer Marketing at Islamabad on a contract for three years, in his Minute-3, dated 19th April, 1994, it was stated that you have over 3 years' work experience in the field of International Marketing, which statement was not correct. His recommendation was approved by the then Managing Director and you were appointed on contract basis for a period of three years with effect from 29th May, 1994. In these circumstances there was a built-in element of misrepresentation in your appointment. The appointment letter issued to you was. signed by none else but your real father which is an evidence of nepotism and irregular appointment.

Within two months of your appointment at Islamabad, you manoeuvred your transfer from Islamabad to Karachi for which a letter, dated 5th July, 1994 was issued by Personal Officer Precision Engineering, who was working directly under your father.

On 19th June, 1995 your father initiated a note recommending that you may be absorbed in the permanent cadre of P.I.A. This recommendation was approved by the Managing Director and accordingly you were absorbed on permanent basis in the service of the Corporation

No properly approved position of Officer Marketing in PG-VI (ii) in the Precision Engineering Department was available in the Corporation against which you could be appointed. You were treated as over and above the approved strength for this cadre. Your appointment resulted in unjustified and avoidable financial burden on the Corporation, which contributed to increase in costs as a result of which profitability was diluted.

At the time of appointment you had neither any experience nor training for service as an Officer Marketing in PG-VI (ii) in the Precision Engineering Department. By manoeuvring this appointment and securing a lateral entry as an Officer Marketing in PG-VI (ii), you blocked the career advancement of more experienced employees already working with the Corporation in PG-V. This assault in their demoralization and frustration and led to employees' grievances.

A special Selection Board was constituted for inducting you in the employment of the Corporation which is indicative of the fact that officials of the Corporation were acting under extraneous pressure and extending you unwarranted favour and support.

The aforesaid facts and circumstances show that your appointment was irregular being against the applicable law, rules, and regulations. This makes you liable to be removed from the service of the Corporation.

5. Respondent Omer Saeed Qazi filed a reply to show: cause notice denying the factum of his appointment as Officer Marketing being irregular but could not answer about favour shown to him by his father in his appointment. The competent Authority, being not satisfied from the reply of respondent to show-cause notice, vide order dated 21st March, 1997 terminated his services. Against this order, after availing departmental remedy, respondent filed an appeal by invoking the jurisdiction of Federal Service Tribunal, which has been allowed by means of impugned judgment. As such instant petition has been filed.

6. Learned counsel appearing for petitioner (PIAC), inter alia, contended that the appointment of respondent is contrary to the principle laid down by this Court in the case of Abdul Jabbar Memon and others (1996 SCMR 1349) wherein this Court has strictly prohibited illegal appointments which are not based on merits or have been made for any extraneous reason, not recognized by law as well as not being transparent and have been made on account of nepotism and favoritism.

7. He stated that instant case is of its unique nature because there would be a rare example where a father by showing favoritism and nepotism has appointed to his own son, even without bothering to obtain written application from him and without getting



published in the news papers, inviting application for eligible candidates to contest for the post available with the petitioner (PIAC). Not only this, after a short span of time, the father of respondent under his own signature absorbed him permanently into service, knowing well that his initial appointment was on contract for a period of three years, therefore, status of permanent employee cannot be bestowed upon him. According to learned counsel, even on merit, respondent was not eligible for the post against which he was appointed, therefore, Service Tribunal was duty bound to take into consideration all these aspects of the case.

After hearing learned counsel for petitioner, we are inclined to grant leave to appeal, inter alia, to examine as to whether appointment of the A respondent as Officer Marketing has been made contrary to the principle laid down by this Court in the case of Abdul Jabbar Memon (ibid) or otherwise.

Q.M.H./M.A.K./P-55/SC Leave granted.

4/11/2023, 8:23 PM

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Annexure "C2"



2019 P L C (C.S.) 1119

[Peshawar High Court (D.I. Khan Bench)]

Before Ijaz Anwar and Shakeel Ahmad, JJ

MUHAMMAD QURESHI

Versus

GOVERNMENT OF KHYBER PAKHTUNKHWA and 5 others

W.P. No. 818-D of 2015, decided on 10th October, 2018.

(a) Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989---

----R. 10---Advertisement/Print Media Policy, 2009, Clause V---Appointment without advertisement against the post of Work Supervisor---Effect---Locus poenitentiae, principle of---Applicability---Contention of petitioner was that respondent maneuvered the selection process and succeeded to get the appointment order in his favour---Validity---Filling of post in question was required to be preceded by an advertisement in the press notifying availability of said post, inviting applications from all the eligible candidates and the consequent recommendations of Departmental Selection Committee as a result of requisite test of all the qualified applicants---Post in question was never advertised in two newspapers i.e. one provincial and one local of the target area---Neither Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules, 1989 nor Government approved policy had been followed in the present case---Alleged post had been advertised only in one local newspaper---No written test and interview was conducted by the Departmental Selection Committee---Father of appointee was serving in the department at the relevant time---Impugned post was advertised in the local newspaper on 05-09-2014 and same fell vacant on 14-09-2015 and appointment was approved on the same day---Respondent had maneuvered his appointment to the post in question by exerting the influence of his father in disregard of law and requirement of merit and transparency---Appointment of respondent was illegal and plea of locus poenitentiae was not available to him---High Court observed that action should be taken against those who were guilty of making illegal appointment---Object of Court was to dispense and foster justice and to right the wrong---Appointment in question was illegal and unlawful and void ab initio and same was laid to rest---Authorities were directed to fill post in question afresh through advertisement in accordance with law---Constitutional petition was allowed, in circumstances.

Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others PLD 1973 SC 236; The Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and others PLD 1975 SC 331 at 350; Syed Nazim Ali and others v. Syed Mustafa Ali and others 1981 SCMR 231; Wali Muhammad and others v. Sakhi Muhammad and others PLD 1974 SC 106; Tufail Muhammad and others v. Raja Muhammad Ziaullah and others PLD 1965 SC 269; Khiali Khani v. Haji Nazir and others PLD 1997 SC 304; Abdul Haq Indhar and others v. Province

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of Sindh and others 2000 SCMR 907 and Farzand Ali v. Province of West Pakistan PLD 1970 SC 98 rel.

(b) Administration of justice---

---Object of court---Object of Court was to dispense and foster justice and to right the wrong---Said object could not be achieved unless the injustice done was undone and unless the court stepped in and refused to perpetuate what was patently illegal, unjust, unfair and unlawful.

Muhammad Waheed Anjum for Petitioner.

Adnan Ali, Assistant Advocate General.

Muhammad Ismail Alizai for Respondents.

Date of hearing: 10th October, 2018.

JUDGMENT

SHAKEEL AHMAD, J.---Through the instant constitutional petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 the petitioner Muhammad Qureshi has sought the following relief:-

It is therefore humbly prayed that on acceptance of the present writ petition the respondents may kindly be directed to cancel the appointment order of respondent No. 6 and to appoint the petitioner against the subject post or any other appropriate relief may be given that deem fit by this Hon'ble Court in the interest of the petitioner.

2. Brief facts of the case are that father of petitioner namely Muhammad Ayub Qureshi was posted as the work supervisor (BPS-9) in C and W Division, D.I. Khan and stood retired on 14.9.2015, after attaining the age of superannuation. The petitioner submitted an application to the respondent No.5 for appointment against the post vacated by his father but all his efforts in this respect proved to be a wild goose chase. The contents of the petition further reveals that father of the respondent No.6 was serving as S.D.O in C and W Division, D.I. Khan and he maneuvered the selection process and succeeded to get the appointment order of the respondent No.6 as work supervisor in C and W Division, D.I. Khan, hence, this petition.

3. It was argued by the learned counsel for the petitioner that petitioner possesses the requisite qualification for appointment as work supervisor (BPS-9), however, the impugned post was advertised in a local newspaper and the respondent No.6 was appointed as work supervisor BPS-9 without conducting test and interview at the behest of his father Javed Rahim who was serving as S.D.O in C and W Division, D.I. Khan, therefore, impugned order dated 16.9.2015 is liable to be set aside.

4. As against that learned counsel representing the respondent No.6 argued that the post in question was advertised in the local newspaper, where against 04 candidates including respondent No.6 applied and participated in open competition

and after conducting proper test and interview, he was selected on merit, therefore, no illegality or irregularity was committed and prayed for dismissal of the writ petition.

5. Arguments heard and record perused with the able assistance of the learned counsel for the parties.

6. Vide order dated 21.3.2018, learned Assistant Advocate General was directed to produce the original record and in pursuance thereof he produced the same.

7. The filling of the said post was required to be preceded by an advertisement in the press notifying availability of the said post, inviting applications from all the eligible candidates and the consequent recommendations of the Departmental Selection Committee as a result of the requisite testing of all the qualified applicants, as required under 5th proviso of Rule 10 of Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules, 1989. In order to show transparency, the Government of Khyber Pakhtunkhwa, Information and Public Relations Department, with the approval of competent authority promulgated the advertisement/print Media Policy, 2009. Clause (V) of the said policy deals with the vacant post, which reads as under.

"Advertisement relating to vacant posts upto BPS-10 will be released to two newspapers i.e. one provincial and one local of the target area. Similarly advertisement for the post of BPS-11 and above will be released to the newspaper i.e. two national and one provincial level by Khyber Pakhtunkhwa Public Service Commission as per Government policy."

8. We noted that neither the said rules nor Government approved policy were followed, as admittedly, the availability of the post was never advertised in two newspapers i.e. one provincial and one local of the target area as required under the policy referred to above, the post in question was advertised only in one local newspaper and obviously, in the absence of record of written test and interview and attendance sheet of the contesting candidates, it can safely be held that there was no question of any examination being held by Departmental Selection Committee and that the candidates shown in the minutes of meeting of the departmental selection/promotion committee were dubious.

9. Before coming to the merits of the case, it may be re-called at this stage that the learned Assistant Advocate General and representative of the department, while speaking from record, has admitted that the record of the test, interview and attendance sheet of the contesting candidates are not available on record. They also admitted that father of the respondent No. 6 / appointee was serving as S.D.O in C & W Department, D.I. Khan during the relevant days.

10. When we consulted the record it transpired that the impugned post fell vacant on 14.09.2015, it was advertised to be filled through initial recruitment in the local newspaper on 05.09.2014. Perusal of the contents of advertisement reflects that test and interview of the short listing candidates were to be held on 14.09.2015, and case of respondent No. 6 was approved for appointment on the

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same day i.e. 14.09.2015, as is reflected from the minutes of Departmental Selection/Promotion Committee held on 14.09.2015 and his appointment order was issued on 16.09.2015.

11. The post in question fell in BPS-09 and as per Khyber Pakhtunkhwa Civil Servants (Appointments, Promotion and Transfer) Rules, 1989, and ibid Policy the availability of the said post was never advertised in the press or in any other manner, therefore, it can safely be held that on 14.9.2015 the candidates including the respondent No. 6 had never been tested, interviewed or examined by the Departmental Selection Committee or by anyone else for that matter and that he maneuvered his appointment to the post in question by exerting the influence of his father being posted as S.D.O in C & W Department, D.I. Khan in complete disregard of law and requirement of merit and transparency, therefore, what had been secured by the respondent No. 6 was an illegal gain, therefore, plea of locus poenitentiae is also not available to him. It is sad to observe that thousands of people are rendered jobless and tens of thousands of families are rendered destitute similarly because public functionaries accommodate people of their own choice. It is tantamount to creating nothing but false sense of achieving employment. Action requires to be taken against those who are guilty of making illegal appointments.

12. Before parting with the judgment, it is important to mention here that the object of the establishment and creation of Courts of law is to dispense and foster justice and to right the wrongs. This purpose can never be completely achieved unless the injustice done was undone and unless the Courts stepped in and refused to perpetuate what was patently illegal, unjust, unfair and unlawful. In this behalf reference may be made to the cases reported as Nawab Syed Raunaq Ali and others v. Chief Settlement Commissioner and others (PLD 1973 SC 236) The Chief Settlement Commissioner, Lahore v. Raja Muhammad Fazil Khan and others (PLD 1975 SC 331 at 350) Syed Nazim Ali and others v. Syed Mustafa Ali and others (1981 SCMR 231) Wali Muhammad and others v. Sakhi Muhammad and others (PLD 1974 SC 106) Tufail Muhammad and others v. Raja Muhammad Ziaullah and others (PLD 1965 SC 269), Khiali Khani v. Haji Nazir and others (PLD 1997 SC 304), Abdul Haq Indhar and others v. Province of Sindh and others (2000 SCMR 907) and Farzand Ali v. Province of West Pakistan (PLD 1970 SC 98).

13. We, therefore, conclude that appointment in question was illegal and unlawful, contrary to Khyber Pakhtunkhwa Civil Servants (Appointment and Promotion and Transfer) Rules, 1989 and approved policy of the advertisement print Media Policy, 2009 and void ab initio, therefore, the same is laid to rest. The respondents are directed to fill post in question afresh through advertisement in accordance with law as discussed above.

ZC/353/P Petition allowed.

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Ameyre "C3"/32

[Federal Service Tribunal]

Before Muhammad Ayub Khan and Abdul Hameed Khan Khattak, Members

FUAD ASADULLAH KHAN

versus

FEDERATION OF PAKISTAN through Secretary, Establishment' Division;
Islamabad and 2 others

Appeal No. 867(R) of 1997, decided on 16th August, 2000.

Civil service---

---Reversion---Civil servant appointed as Director (B-19) was reverted to post of Deputy Director (B-18) on the ground that his appointment as Director was irregular and was procured through illegal manna ---Validity-- Appointment of civil servant as Director proved to be tainted with legal procedural infirmities of substantial nature which rendered same to be null and void and illegal ab initio for the reasons; firstly that before selection of civil servant, existing rule with regard to qualifications and experience for post of Director was Master's Degree in Engineering with 12 years' experience, but as civil servant was not so qualified, said rule was promptly changed, just to accommodate him---Secondly as per recruitment policy minimum period for receipt of applications for that vacant post was thirty days from advertisement, but in case of civil servant only eight days were allowed, thus violating the recruitment policy---Had thirty days' period been allowed for entertaining applications a lot more of aspiring candidates could have filed applications for the post; thirdly the only other contesting candidate was at higher footing qua civil servant as he had foreign Master's Degree in Engineering (Telecom) with snore than six years' experience as against civil servant who was having Simply five years' experience and was only a Graduate and despite that civil servant was given preference over contesting candidate which smacked of injustice; fourthly, no written test was conducted and no merit list was prepared and civil servant was seated simply on interview basis for which no record was maintained; and fifthly, as per Recruitment Policy, recruitment was to be made in the mouths of February and August each year whereas interview of civil servant was conducted during the month of March and advertisement was also floated in the same month--No reason, unavoidable circumstances or urgency was shown for resorting to such hasty procedure---One of the members of Interview Committee was close relative of the .civil servant---Norms of justice and rules of transparency demanded that relative of civil servant should not, have acted as member of the Interview Committee-- Interview/selection Committee was not properly constituted as the competent authority or its representative was not associated therein---Appointment of civil servant as Director (B.P.S.19) being tainted with legal procedural infirmities, he was rightly reverted to his original post of Deputy Director (B. P. S.-18)

Raja Muhammad Asghar Khan for Appellant.

Muhammad Aslam Uns, Standing Counsel for Respondents alongwith M. Saeed Akhtar, A.D. IB and Mustansir Haroon, Asstt. Establishment Division, DR.

Date of hearing: 11th August, 2000.

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JUDGMENT

ABDUL HAMEED KHAN KHATTAK (MEMBER),---This appeal is directed against Notification dated 8th July, 1997 whereby, the appellant was reverted to the post of Deputy Director (BPS-18).

2. Brief facts are that appellant was appointed in the Intelligence Bureau as Deputy Assistant, Director (BPS-17) on regular basis w.e.f. 18-4-1990 and posted to Technical Wing vide order dated 8-5-1990 (Annexure-C). Subsequently the nomenclature of the pay scale of the post of Deputy Assistant Director was changed into that of the post of Assistant Director (B-17). He was promoted to the post of Deputy Director (B-28) w.e.f. 26-9-1995 vide order dated 27-9-1995 (Annexure D). During March, 1996 the post of Director (B-19) was advertised in the daily newspaper on 13-3-1996 (Annexure-E) inviting applications for the same and as the appellant fulfilled the required qualification and experience, thus he also submitted an application, he was called vide the Memo. dated 21-3-1996 (Annexure F) to appear for interview before the Board of Intelligence Bureau and was selected for appointment as Director (B-19) and after approval of Secretary, Establishment Division, he was appointed as Director (Technical) (BPS-19) with special pay of Rs.275 per month against direct recruitment quota in the Intelligence Bureau w.e.f. 8-4-1996 vide the Notification dated 9-4-1996 (Annexure G). Due to change of Government (taking-over of Government by the Care Takers), the Intelligence Bureau at the instance of Care Takers moved for termination of the services of the appellant from the post of Director (B-19) to which Establishment division did not agree resulting in a conflict between the Intelligence Bureau and Establishment Division over this matter a per establishment Division, the appointments of appellant being lawful and in a prescribed manner, the question of termination did not arise. It was alleged that due to constant pressure of Intelligence Bureau, the Establishment Division had no alternative but to yield and as a consequence the impugned order in the form of reversion of the appellant to the post of Deputy Director (B-18) was made against which he submitted a departmental appeal (Annexure-A) on 5-8-1997 but having not been responded within stipulated period, the appellant preferred One instant appeal on 1-12-1997 on the grounds as stand reflected under the heading Grounds available in the memo. of appeal.

3. The appeal was hotly contested only by respondent No.2, D.G Intelligence Bureau, whereas respondents 1 and 3 did not avail the opportunity of filing any objection although they were served in due course. The stand taken by respondent No.2 was that as the appointment/selection of appellant as Director (B-19) was irregular having been procured through illegal manner hence no exception could be taken to the impugned order. Precisely the case of respondent No.2 was that the existing recruitment rules for the post of Director (Tech.) (BPS-19) designedly and purposely were got changed to adjust the appellant against the said post inasmuch as no written test was conducted, instead of period of 30 days required for the receipt of applications, only 10 days' time was advertised for the purpose of invitation of applications, the qualification of having Master's Degree in Engineering was reduced to B.E. (Elect) and the experience of 12 years was slashed to only 5 years, and one of the Member of the Interview Board was closely related to the appellant.

4. We have heard the arguments and perused the record.

5. The learned counsel for the appellant strenuously argued that appellant was appointed/selected as Director in a prescribed manner, thus his selection being regular, and lawful for all intents and purposes, did not smack of any irregularity or illegality,

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it: that was having required academic qualification and experience required for the said post under the existing rules and as advertised, before passing of the impugned order no show-cause notice was issued to the appellant, it was the Secretary, Establishment Division who was the Competent Authority to appoint the Director or to remove from that post but the impugned order of reversion was instead made by the Prime Minister and not by the said Secretary, hence the impugned order was not tenable in law, that misstatement of facts was made in the Summary forwarded to the Prime Minister resulting in passing of the impugned order, certain officers of I.B. at the relevant time were unhappy with the appellant's direct appointment as Director, who were all out to get him removed from the- said post, the Competent Authority did not apply independent mind while making the impugned order and the Care-Taker Government had no lawful authority to initiate proceedings for reversion of the appellant.

6. The learned counsel for respondent No.2, I.B. on the contrary, supported the impugned order of reversion and reiterated in his arguments the stance already reproduced above in para.3, i.e. the appellant's appointment as Director was irregular and suffering from legal flaws which need not to be reproduced again.

7. We have considered these contentions and carefully examined the record before us. The net result of such consideration is that appointment/selection of appellant as Director was tainted with legal/procedural infirmities of substantial nature which rendered the same as to be null and void and illegal ab initio and our such observation is supported by the following reasons:--

8. Admittedly before the selection of appellant as Director, the existing rules with regard to qualification and experience for this post required a candidate to be possessed Master's Degree in Engineering with 12 years experience but as the appellant was not so qualified hence those rules were promptly got modified/changed by reducing academic qualification to B.E. (Elect) 1st Division and to 5 years experience as by that time appellant had completed 5 years service (experience) and he was B.E. (Elect) 1st Class. Astonishingly the Notification whereby the qualification and experience for this post was amended and changed was issued by Intelligence Bureau, Islamabad on 13-3-1996 and on the same date i.e. 13-3-1990 the advertisement in the daily News of Lahore appeared in this respect. It does not pass comprehensions as to how this was made possible through such God-speed. The only presumption and conclusion which is to be deduced from this peculiar fact is that the functionaries of IB, who were at the helm of affairs and had actually initiated and motivated change/modification in the rules were already in the know of this fact as the matter in question was pre planned by them. No doubt a draft of changed rules might have been sent to the Establishment Division by I.B. earlier but unless and until a final Notification to that effect was issued by I.B. Islamabad, how could an advertisement for such post be floated and sent to newspaper prior to 13-3-1996 when actually the relevant Notification as given above, was issued by I.B. on 13-3-1996 and simultaneously the advertisement (Annexure-E) also did appear in the newspaper on 13-3-1996. It transpires that the advertisement was floated much prior to issuance of said Notification by the I.B. whereby experience and academic qualification were slashed down to fit in the case of appellant and this modus operandi being mala fide was not sustainable in law.

9. Vide Office Memorandum dated 2-1-1992 of Cabinet Secretariat, Establishment Division, bearing No.3/1/1992-R2, relating to recruitment Policy for the Federal Services/Autonomous Bodies/Corporations, it is specifically given that no Ministry/Division/Department/Organization shall receive applications for any post unless the vacancies are advertised and a minimum period of 30 days will be allowed

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for receipt of applications. But in the present case, the advertisement appeared in the daily News of 13-3-1996 and the last date given therein for receiving the applications was 21-2-1996 meaning thereby that total period allowed for receiving the applications was only 8 days which was certainly violative of the above Recruitment Policy as curtailing of the required period of 1/4th was certainly repugnant to the very object and purpose of publicity and information with the result that in this case only one other candidate Mr. Asad Abbas could apply. Had there been one month period allowed for entertaining the applications, a lot of aspiring candidates would have pured in during this period of unemployment especially when it was a high post and there is no dearth of meritorious and potential applicants.

10. The only other contesting candidate Mr. Asad Abbas seems to be at higher footing qua the appellat as Asad Abbas was having Master's Degree in the Engineering (Telecom) from University of Limerick (Ireland) with more than six years experience but as against him, the appellat who was simply having 5 years experience and was a Graduate was given preference which smacks of injustice. No written test for the candidates was conducted hence no merit list was prepared their appellat was selected simply on interview basis for which no record is maintained whereas under the above O.M. dated 2-1-1992 regarding recruitment Policy, it is specifically given that no weightage shall be given to the interview and the interview shall be resorted to only if considered necessary to determine the suitability for a particular job. It is also laid down- therein that recruitment shall be made only in the months of February and August each year whereas this interview was conducted on 25-3-1996 and the advertisement was also floated-in the month of March. No reason, unavoidable circumstances or urgency was shown especially for resorting to such galloping type of hasty procedure especially when the appellat was already having the current charge of the post of Director since 31-12-1995 and the Organization's/Department's work was not suffering for want of appointment of Director. It is to be noted that appellat was given the current charge of the post of Director since 31-12-1995 and Notification to that effect, bearing No.4/196/A-I was issued on 10-14996 and he was to hold current charge of that post for a period of three months w.e.f. 31-12-1995. The learned standing counsel, however even objected to the matter of current charge being given to the appellat as he was not the senior most Deputy Director, though this assertion seems to be well-founded nevertheless at the moment we are not to address ourselves to this issue. Nevertheless in the light of above hard facts, it stands established to the hilt that there were no compelling circumstances to appoint a Director independently in such hot haste.

11. It is pertinent to note that one of the Members of the so-called Interview Committee was Muhammad Shabbir Ahmed, the then Joint D.G(A), who was a close relative of the appellat. The norms of justice and rules of transparency demanded that he should have not acted as Member of that Interview Committee being a close relative of the appellat but his association in the selection process has marred such selection, as being close relative of appellat, his opinion could not remain uninfluenced/unbiased nor the same could be held to be independent.

12. To crown this all, no representative from the Establishment Division was associated in the Interview Board. Vide Office Memorandum C No.D.346/80-D.V /A(IB), dated 25-6-1981, issued by the Establishment Division, the Selection Board for all the posts in Grade-17 and above in the Intelligence Bureau was to comprise of the following:--

1. Director, I.B. Chairman.

2. Joint Secretary (Regulation), Establishment Division. Member

3. Joint Director, IB. Member

4. Deputy Director (Admn) IB HQ. Secretary.

By not joining Joint Secretary (Regulation), Establishment Division as Member of the Selection Committee (Interview Board) in the present case, all the proceedings of such selection stand rendered void as the competent Authority to make appointment for the post of Director' (B-19) was Secretary, Establishment Division and his representative was required to be one of the Members of the Selection Board tinder the above O.M.

13. It would be appreciated that Summary for removal of the appellant from service. was moved, by D.-G., I.B. as early as 28-12-1996 and the same was addressed to Secretary, Establishment wherein all the aforementioned illegalities with regard to appointment of the appellant were pin-pointed and was specifically mentioned therein that at that time appellant was a probationer and his services could be terminated without assigning any reason as his probation of one year's period for the post of Director was to expire on 8-4-1997 but it is quite manifest that as the then Secretary, Establishment Division was glove in hand with the then D.-G., J.-D.-G. of LB. in appointment of the appellant he delayed the matter indefinitely till finally the Prime Minister intervened and passed the impugned order of reversion on 8th July, 1997.

14. The contention of the learned counsel for the appellant that the reversion is bad in law as it was passed by the Prime Minister although the Competent Authority in the matter was Secretary, Establishment Division, seems to be devoid of force as even Secretary, Establishment Division was subordinate to Prime Minister, thus there was no illegality if such reversion order was passed by the Prime Minister who was having all the powers with which the Secretary was vested and no prejudice was caused to the appellant as the very order of appointment in the light of above discussion was illegal null and void ab initio.

15. We are constrained to observe with heavy heart that perhaps ours is the unique country on the face of earth where laws/rules are enacted, modified and repealed just in order to favour or seal the fate of one individual. In the present case simple in order to get a post of BPS-19 for the appellant so abruptly without waiting for his promotion in due course to that post, the relevant rules were got changed in a hot haste by flouting the legal formalities with impunity. The obvious reason for all this seems to be that the functionaries at the helm of affairs were perhaps keening in view the maxim "make hay while the sun shines". It would not be out of place to point out at this juncture that the then D.-G. and J.D.-G. and their other functionaries appointed hundred's of officers/officials in I.B. in different pay scales although Intelligence Bureau is a highly sensitive organization, and at the same time of utmost importance. As such appointments were made on the recommendations of Prime Minister, Ministers and other political high-ups and with the change of the then Government such functionaries who were working on contractual basis had to quit their offices and the succeeding D.-G. moved the case on 20-1-1997 for the abolition of hundreds of such posts and termination of services of a lot of such appointees in order to save the public exchequer, and such suggestion was approved by the Competent Authority on 13-2-1997 and in consequence thereof, all the post; were abolished and the services of incumbents of such appointment; were terminated who preferred appeals in this Tribunal out of which as many as 201 appeals were dismissed on 3-10-1997 by a Bench of this Tribunal and the judgment was recorded in ,Appeal No.59(P) of 1997 which is quite a detailed judgment wherein it was inter alia held that all those posts

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were . . . of nepotism, favouritism and politically motivated.

16. The contention of the learned counsel for the appellant in the present appeal that no prior show-cause notice was issued to the appellant and the impugned order was sans reasons for reversion, thus the impugned order is illegal, null and void, seems devoid of force as in view of our above observations and reasoning, the very appointment order of appellant as Director was void ab initio being tainted with favouritism and mala fide and also violative of substantial prescribed selection procedure, thus there was no need to issue show-cause notice to the appellant before making of the impugned order and as he was not being proceeded against under E&D Rules, thus there was no need to assign any reason for his reversion. To our mind, the appellant should be thankful to his stars that he was simply reverted to his lower post otherwise legally speaking he was not having any lien to that post and he could straightaway be removed from service by holding the appointment as Director to be illegal. It transpired that the Prime Minister was much lenient vis-a-vis this matter.

17. We may also refer here to the O.M. dated 7-7-1997 Issued by Government of Pakistan, Cabinet Secretariat, Establishment Division with regard to termination of service of appellant addressed to Intelligence Bureau, D.-G., whereby the Competent Authority was pleased to direct as under:-

(a) The officer (Mr. Fuad Asadullah) be reverted back to his original post in BS-18 and posted out of the I.B.;

(b) Requirement of Master' 3 Degree with .12 years experience be prescribed for initial appointment and Recruitment Rules revised according to the prescribed principles.

It is, thus manifestly clear that the change/modification brought about in the academic qualification and quantum of experience for the post of Director in I.B. at the time of appointment of present appellant was taken seriously viewed by the Prime Minister who succeeded the earlier Prime Minister and it was for this reason that the old requirements i.e. Master's Degree and 12 years experience were ordered to be re-introduced

18. For all the aforesaid reasons, we are of the considered view that the appeal is meritless and the same as such is hereby dismissed with costs.

19 Copies of this judgment to be sent to the parties through registered mail.

H. B. T./84/FST

Appeal dismissed.

1996 S C M R 1349

Annexure "C1" / 39

[Supreme Court of Pakistan]

Present: Muhammad Afzal Zullah C.J., Nasim Hasan Shah and Shafiur Rahman, JJ

In re: ABDUL JABBAR MEMON and others---Applicants

Human Rights Cases Nos. 104 (i), 104 (ii), 104 (iii) and 104 (iv) of 1992, heard on 6th March, 1993.

Constitution of Pakistan (1973)---

---Arts. 184 & 18--Human Rights case---Irregular appointments---Supreme court while inquiring into various complaints of violation of Fundamental /Human Rights, found that Federal Government, Provincial Governments, Statutory Bodies and Public Authorities had been making initial recruitments, both ad hoc and regular, to posts and offices without publicly and properly advertising vacancies and at times by converting ad hoc appointments into regular appointments---Such practice was prima facie violative of Fundamental Rights (Art. 18) guaranteeing to every citizen freedom of profession---Supreme Court, after notice to all concerned and after full hearing in the matter ordered that violation of such Fundamental/Human Right should be discontinued forthwith--- Authorities were directed to take immediate steps to rectify so as to bring such practice in accord with the Constitutional requirement.

Nemo for Petitioners.

Faqir Muhammac. Khokhar, Deputy Attorney-General for Pakistan Mumtaz Ali Mirza, Deputy Attorney-General, Raja M. Afsar, Advocate-General, Balochistan, Abdul Ghafoor Mangi, Additional Advocate General Sindh, Khalid Ahmed, Assistant Advocate-General Punjab, Anwar Kamal, Advocate Supreme Court, for PIA.

Date of hearing 6th March, 1993.

ORDER

The matter has come up for consideration in the presence of the Deputy Attorneys- General. Provincial Law Officers and Mr. Anwar Kamal, Advocate/counsel for PIA. The interim order proposed to be made is hereby confirmed and the case adjourned to enable the Provincial Governments, the Federal Government and the counsel for PIA to seek appropriate instructions from their respective Governments/Departments and to ensure compliance with the order. The interim order is reproduced hereunder in extenso:-----

"While inquiring into various complaints of violation of Fundamental/ Human Rights, it has been found that the Federal Government, Provincial Governments, Statutory Bodies and the Public Authorities have been making initial recruitments, both ad hoc and regular, to posts and offices without publicly and properly advertising the vacancies and at times by converting ad hoc appointments into regular appointments. This practice is prima facie violative of Fundamental Right (Article 18 of the Constitution) guaranteeing to every citizen "freedom of profession.

Subject to notice to all concerned, and subject to final orders after full hearing in the matter, it is ordered as an interim measure that the violation of this Fundamental/Human Right shall be discontinued forthwith.

Steps shall immediately be taken to rectify, so as to bring the practice in accord with the Constitutional requirement. "



KHYBER PAKHTUNKHWA
ENVIRONMENTAL PROTECTION TRIBUNAL
PESHAWAR

Annexure "D" / (10)

PH: 091-9219003
kpkept@gmail.com

(40)

No. EPT/Basharat/ 408

Dated: 03/02/2021

To

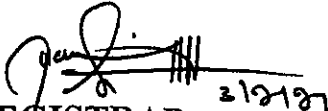
Mr. Basharat Qayyum
Bailiff (BPS-03),
Environmental Protection Tribunal, Peshawar.

Subject: WARNING

I am directed to refer to the subject noted above and to inform you that the Hon'ble Chairperson is not satisfied with your work.


You are therefore warned to improve your efficiency, failing which you shall be exposed to disciplinary proceedings.


Registrar
Environmental Protection
Tribunal


REGISTRAR
Environmental Protection Tribunal
Peshawar

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1. PS to Chairperson.
2. ✓ Personal file of official concerned


3/2/2021



KHYBER PAKHTUNKHWA
ENVIRONMENTAL PROTECTION TRIBUNAL
PESHAWAR

Answer No. D1/12
PH: 091-9219003
kpkept@gmail.com

No. EPT/Basharat/P.F-2/21 585

Dated: 21/10/2021

To


Mr. Basharat Qayyum,
Bailiff (BPS-03),
Environmental Protection Tribunal, Peshawar.

Subject: LAST WARNING

I am directed to refer to the subject noted above and to inform you that the Hon'ble Chairperson is not satisfied with your work.

You are therefore warned to improve your efficiency, failing which you shall be exposed to disciplinary proceedings.


Registrar
Environmental Protection
Tribunal


21/10/21
REGISTRAR
Environmental Protection Tribunal
Peshawar

Copy Forwarded to.

1. PS to Chairperson EPT.
2. Personal file-2 official concerned. ✓



KHYBER PAKHTUNKHWA
ENVIRONMENTAL PROTECTION TRIBUNAL
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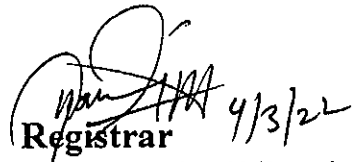
No.EPT/Admn-2/22/ 655

Dated 04/03/2022

Office Order

In view of the shortage of staff, the Competent Authority is pleased to post Mr. Basharat Qayyum Bailiff (BPS-03) as Assistant Record Keeper on his own pay-scale & till further order.


Registrar
Environmental Protection
Tribunal.


Registrar
Environmental protection Tribunal
Peshawar

Copy forwarded for information:

- P.S to Chairman EPT.
- ✓ Official concerned file.
- Master File.