

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

Service Appeal no.616/2023

Masood ur Rahman

..... (Appellant)

Versus

Govt: of KP & others

..... (Respondents)

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Dated: -

Through: -

Advocate General

Place of Hearing D.I Khan on 18/09/23

①

**BEFORE THE HON'BLE SERVICE TRIBUNAL KHYBER
PAKHTUNKHWA PESHAWAR**

Service Appeal No. 616/2023

Masood-ur-Rehman.....Appellant

VERSUS

Secretary Home & others..... Respondents

**JOINT PARAWISE COMMENTS FOR AND ON BEHALF OF
RESPONDENTS**

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6306


Dated 6/7/2023

Preliminary Objections:

1. That Appellant has got no legal competency local standi / reasons / cause to file instant Service Appeal.
2. That the instant Service Appeal is fully misconceived and not maintainable in the eyes of law.
3. That the Appellant is estopped by his own conduct to bring the Appeal in hand.
4. That the Appellant has not come to the Service Tribunal with clean hands.
5. That the appellant has suppressed the material facts from the Hon'ble Tribunal.
6. That the appellant has attempted to mislead the Hon'ble Tribunal their Appeal deserves dismissal on this score alone.
7. That this Hon'ble Tribunal having no jurisdiction to entertain the instant Appeal.

Respectfully Sheweth:

ON FACTS:

- 
1. No comments.
 2. Admitted.
 3. Pertains to record.
 4. Correct to the extent that the respondents advertised several posts for the inhabitants of tribal areas. The appellant applied to the post of Sweeper (BS-03), exclusively reserved for FR Tank and got appointed against the said post on the basis of FR Tank Domicile, submitted by him alongwith his application. Later on, it was found that the appellant was the bonafide resident of District Tank instead of FR Tank and accordingly he was removed from the Government service vide order dated 25.10.2022. Having felt aggrieved, the appellant filled writ petition in the Hon'ble Peshawar High Court D.I.Khan Bench for reinstatement which was converted into representation and sent to the Secretary RR&SD for its decision in accordance with law within a period of two months (**Annex-I**). Accordingly, the said representation was disposed-of by the Secretary Relief wherein the prayer/ request of the appellant was turned down after due consultation with the Government of Khyber Pakhtunkhwa Law, Finance and Establishment Departments (**Annex-II**).

5. Correct, however, the assertion in the preceding para needs perusal.

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6. Incorrect, hence denied. The fact of the matter is that a proper inquiry was conducted into the matter by the respondent No.5 upon scrutiny of the documents including Domicile of the appellant. His removal from service was ordered on recommendations of the said inquiry committee and in exercise of the powers conferred in the Khyber Pakhtunkhwa Emergency Services Regulations, 2014.

7. Incorrect, hence denied. As expressed in para-6 above, the due process of law was followed by the answering respondents ahead of the removal of the appellant from the Government service. As regards recovery of the salaries, the answering respondents hold the view that the petitioner deserves the capital punishment since he concealed facts from the Department to the extent of domicile. Moreover, the appellant should have thought about repercussions prior to commission of a wrong act referred earlier rather to criticize the respondents.

8. Correct. However, it is also to be placed on record that upon receipt of the representation/departmental appeal, the same was duly processed and accordingly regretted after taking input of the Government of Khyber Pakhtunkhwa Law, Finance and Establishment Departments, as referred to in para-4 above.

9. Since the appellant is not a Civil Servant as per the Civil Servant Act, 1973, hence, he has no right to file the appeal before the Hon'ble Tribunal.

ON GROUNDS:

A. Incorrect, hence denied. Detail reply is given above.

B. Incorrect, hence denied. The respondents advertised several posts for the inhabitants of tribal areas. The appellant applied to the post of Sweeper (BS-03), exclusively reserved for FR Tank and got appointed against the said post on the basis of FR Tank Domicile, submitted by him alongwith his application. Later on, it was found that the appellant was the bonafide resident of District Tank instead of FR Tank and according he was removed from the Government service vide order dated 25.10.2022. Having felt aggrieved, the appellant filled writ petition in the Hon'ble Peshawar High Court D.I.Khan Bench for reinstatement which was converted into representation and sent to the Secretary RR&SD for its decision in accordance with law within a period of two months. Accordingly, the said representation was disposed-of by the Secretary Relief wherein the prayer/ request of the appellant was turned down after due consultation with the Government of Khyber Pakhtunkhwa Law, Finance and Establishment Departments. So far the issue of recovery of the salaries is concerned, it is humbly submitted that the said action was taken on account of concealment of facts and exploiting the rights of deserving candidates of the specified vicinity, requiring capital punishment.

C. Incorrect, hence denied. His removal from service was ordered on recommendations of the said inquiry committee and in exercise of the powers conferred in the Khyber Pakhtunkhwa Emergency Services Regulations, 2014.

D. Incorrect, hence denied. Details have already been given in Para-B above.


E. Since the appellant got appointed on the basis of a factually incorrect domicile by the time of his appointment and the same being a fraudulent mean confers the right/ powers to recover the salaries drawn by the appellant for the period he served.


F. Incorrect, hence denied.


H. Incorrect, hence denied. Detail reply is given above.


J. Needs no comments.

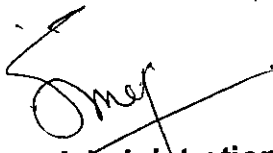
For the reason stated above the Service Appeal may graciously be dismissed with the Special Cost.



Secretary Home Department
KPK, Peshawar
RESPONDENT NO.1



Secretary Relief, Rehab
& Setl: Dept: KPK Peshawar
RESPONDENT NO.2

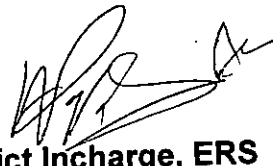

Director General, Directorate of
ERS (Rescue-1122) KPK, Peshawar
RESPONDENT NO.3


Director Operation, ERS
(Rescue-1122), KPK Peshawar
RESPONDENT NO.4


Director Administration, ERS
(Rescue-1122) KPK, Peshawar
RESPONDENT NO.5


Deputy Director (Admin), ERS
(Rescue-1122), KPK Peshawar
RESPONDENT NO.6

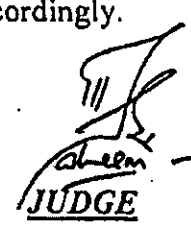


Assistant Director Accounts, ERS
(Rescue-1122) KPK, Peshawar
RESPONDENT NO.7



District Incharge, ERS
(Rescue-1122), FR Tank
RESPONDENT NO.8

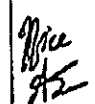
PESHAWAR HIGH COURT, D.I. KHAN BENCH

FORM OF ORDER SHEET

Annex-1
1/6
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Date of Order or Proceedings	Order or other proceedings with signature of Judge(s).
(1)	(2)
07.12.2022	<p><u>W.P.No.665-D/2022 with C.M.No.813-D/2022.</u></p> <p><u>Present:</u> Mr. Gul Tiaz Khan Marwat, Advocate for the petitioner.</p> <p align="center">***</p> <p><u>SHAHID KHAN, J.-</u> The learned counsel for the petitioner, at the very outset, stated at the bar that the petitioner would be satisfied if the instant petition is treated as a representation and sent to respondent No.4 for its disposal in accordance with law.</p> <p>2. In view of above, we treat this petition as a representation on behalf of petitioner and send it to respondent No.4 for its decision in accordance with law within a period of two months.</p> <p>3. The petition stands disposed of accordingly.</p> <p><u>Announced.</u> <u>Di:07.12.2022.</u></p> <p align="right">  <u>JUDGE</u> </p> <p align="right">  <u>JUDGE</u> </p>

attested by



08/12



GOVERNMENT OF KHYBER PAKHTUNKHWA
RELIEF REHABILITATION & SETTLEMENT
DEPARTMENT

123
Annex-11

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Subject: MINUTES OF THE MEETING OF REGARDING WRIT PETITION NO.665-D/2022 WITH CM 813-D/2022 "TITLE MASOOD UR REHMAN VS GOVT. OF KPK

The subject meeting was held under the chairmanship of Additional Secretary RR&S Department on 24.01.2023 at 02:00 PM in his office to discuss the legal aspect of termination/removal of Mr. Masood ur Rehman from the post of Sweeper (BPS-03) in Rescue-1122. List of participants is attached as Annex-A.

2. After a welcoming note, the chair asked to start proceedings. Director Administration (Rescue-1122) briefed the participants about the subject case. He stated that Mr. Masood ur Rehman s/o Kabal Khan was appointed against the post of Sweeper in Rescue-1122 at FR Tank in August 2021 under project policy. One of the candidate namely Mr. Zainullah s/o Omer Khel r/o Jandola FR Tank filed writ petition against the appointment of Mr. Masood ur Rehman on the plea that he was holding the domicile of District Tank whereas the said post was reserved for FR Tank.

3. He further stated that an inquiry was conducted at Rescue to probe the facts of the case. After inquiry the fact was established that the plea of the petitioner (Mr. Zainullah) was correct to the extent that Mr. Masood ur Rehman was the domicile holder of the District Tank instead of FR Tank and recommended that Mr. Masood Ur Rehman may be removed from service and recovery on account of pay may be made from the official. After his removal, Mr. Masood Ur Rehman also filed a writ for his restoration vide WP No.665-D/2022 with CM No.813-D/2022. The Peshawar High Court DI Khan Bench decided that "We treat this petition as a representation on behalf of petitioner and send it to respondent No.4 (Secretary RR&SD) for its decision in accordance with law within a period of two months. The petition stands disposed of accordingly".

4. Representative from Establishment & Law Department were of the view that it was clearly mentioned in the advertisement the post was reserved for the domicile holders of FR Tank therefore, candidate from FR Tank were required to apply to the same post. In the instant case, Mr. Masood ur Rehman, Ex-Sweeper belonged to District Tank therefore, his right to claim that post is not justified as per rules.

5. **Decision:** - After threadbare discussion, it was unanimously decided that since the post of Sweeper was reserved for the candidates belonging to FR Tank, therefore, the said post can only be filled from the candidates of FR Tank. The claim of Mr. Masood Ur Rehman who was the holder of domicile of District Tank, is not justified as per rules.

6. The meeting ended with a vote of thanks from and to the Chair.

attested by
[Signature]

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

In Re:

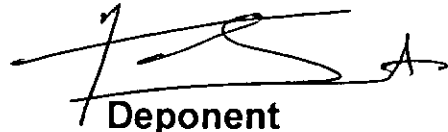
6

Service Appeal. No. 616/2023

Masood ur Rehman _____ Vs _____ Govt of KPK

AFFIDAVIT

I, Mohammad Waqas Ali, Assistant Director (Legal) Rescue (1122) Peshawar do hereby solemnly affirm and declare on oath that the contents of these comments are true and correct to the best of my knowledge and belief and nothing material has been concealed from this Honourable Court. It is further stated on oath that in this appeal the answering respondent have neither been placed ex-parte nor their defense has been struck off.



Deponent

CNIC.No.17201-1887730-3

Cell# 0333-9297463

03072023

ATTESTED





DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RESCUE - 1122)

GOVERNMENT OF KHYBER PAKHTUNKHWA

info@rescue1122kpk.com www.rescue1122kpk.com

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No.1-46/RR&SD/DG-1122/Estt:

768/3

Peshawar: 3-07-2022

ATHORITY LETTER

Consequent upon the approval of competent authority Mr. Muhammad Waqas Ali (Assistant Director-Legal) is hereby authorized to look after the court case pertaining to Rescue 1122 and is also authorized to Sign the Affidavit and submit the comments.

For/ **DEPUTY DIRECTOR (ADMIN)**

Emergency Rescue Service (Rescue 1122)
Khyber Pakhtunkhwa, Peshawar

Copy to:-

1. PA to Director General, ERS (Rescue 1122) Khyber Pakhtunkhwa.
2. Office file.

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DEPUTY DIRECTOR (ADMIN)
Emergency Rescue Service (Rescue 1122)
Khyber Pakhtunkhwa, Peshawar



DIRECTORATE GENERAL
EMERGENCY RESCUE SERVICE (RESCUE - 1122)
GOVERNMENT OF KHYBER PAKHTUNKHWA



NO. 1-18/ (DD Planning-I)-1122:

3770-76

PESHAWAR: 22/7/2022

To,

Mr. Masood Ur Rahman
Sweeper,
ERS, (Rescue-1122).

Subject: SUMMON

It is in reference to the order No. 1-1/Office Order/DG-1122/Estt: 3760-63 Peshawar dated: 27-06-2022 regarding the negation filed against him.

The inquiry committee nominated in the reference has summon you for personal hearing along with all relevant records/document/evidences for the proceedings in the matter, at the date, time and place shown below:

- | | | |
|------|-----------|-------------------------------------------|
| i. | Location: | Office of Deputy Director Planning-I H/Q. |
| ii. | Date: | 03-08-2022. |
| iii. | Time: | 10:00 AM |

Inquiry committee members:

- | | | |
|-----|-------------------|--------------------|
| i. | M. Snaib | (Director A.S) |
| ii. | Mr. Omer Iftikhar | (Planning Officer) |

Unless you receive notice from this inquiry committee granting a requested temporary excuses, or the committee notifies you in writing or by phone to report at a different time, you must appear before the committee as directed in this summon. Failure to comply may allow the committee to take punishment action against you under Khyber Pakhtunkhwa Emergency Rescue Service Regulations 2015.

[Signature]
Deputy Director Planning-I

Copy to: -

1. Director (Admin), ERS (Rescue-1122), Khyber Pakhtunkhwa.
2. Director (Operations), ERS (Rescue-1122), Khyber Pakhtunkhwa.
3. District Emergency Officer, Tank, ERS (Rescue-1122), Khyber Pakhtunkhwa.
4. PA to Director General, ERS (Rescue-1122), Khyber Pakhtunkhwa.
5. Personal files of the official concerned.
6. Office file.

[Signature]
Deputy Director Planning-I



DIRECTORATE GENERAL
EMERGENCY RESCUE SERVICE (RESCUE - 1122)
Government of Khyber Pakhtunkhwa

(9)



**INQUIRY REPORT AGAINST MR. MASOOD-UR-REHMAN S/O KABAL KHAN IN COURT
CASE DISTRICT TANK.**

Reference to the office order No.1-1/Office Order/DG-1122/Estt:/3760-63 Dated: 27.06.2022 the undersigned officers were nominated to conduct an impartial fact finding inquiry regarding the subject matter (**Annex-I**).

BACKGROUND:

Mr. Masood-ur-Rehman S/o Kabal Khan was appointed in Rescue-1122 as Sweeper (BPS-01) against FR Tank position in August 2021 and is currently serving in District Tank. However, the domicile of the said official is that of District Tank, while the seat – against which his appointment has been made – is reserved for FR Tank.

Mr. Zain Ullah S/o Ghafar Khan R/o Omer Khel Jandola FR Tank had filed a writ petition against the said official in Tank, stating that, Mr. Masood-ur-Rehman had been falsely enlisted in Rescue-1122 and that his district of domicile is Tank while his appointment has been made against FR Tank domicile for which he is not eligible.

FINDINGS:

The inquiry committee summoned all the concerned officials and the petitioner. After conducting a detailed impartial inquiry based on the available record, written statements of the concerned officials & petitioner concluded the following findings / observations: -

- i. Mr. Masood-ur-Rehman S/o Kabal Khan was enlisted in Rescue-1122 as Sweeper (BPS-01) against FR Tank position in August 2021 and is currently serving in District Tank. (**Annex-II**).
- ii. As per record the actual district of domicile of Mr. Masood-ur-Rehman is District Tank (**Annex-III**).
- iii. The district of domicile of the said official was mistakenly written in record as FR Tank & was overlooked during the recruitment process by Rescue-1122. (**Annex-IV**).
- iv. The said official should have been enlisted against the domicile of District Tank and not FR Tank against the post Sweeper (BPS-01).
- v. Hence established that, Mr. Masood-ur-Rehman S/o Kabal Khan did not belong to FR Tank and owing to the clerical mistake during the recruitment process he had been mistakenly enlisted against the post Sweeper (BPS-01) in Rescue-1122 in



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**DIRECTORATE GENERAL
EMERGENCY RESCUE SERVICE (RESCUE-1122)**
Government of Khyber Pakhtunkhwa




RECOMMENDATION:


In view of the above facts, the following recommendations are hereby submitted for perusa and further orders of the Competent Authority: -

- i. a. **Mr. Masood-ur-Rehman S/o Kabal Khan** cannot be enlisted in Rescue-1122 against Sweeper (BPS-01) post reserved for FR Tank.
 - b. The petitioner, **Mr. Zain Ullah S/o Ghafar Khan** had an aggregate of 3.58.
 - c. **Mr. Muhammad Riaz S/o Gul Nawab** had an aggregate of 3.58.
 - d. Both the petitioner and Mr. Muhammad Riaz has the same aggregate, however, the latter is senior in age to the petitioner. (Annex-V).
- ii. It is recommended that **Mr. Muhammad Riaz S/o Gul Nawab** who had an aggregate of 3.58 and is senior in age to the petitioner may be enlisted, adjusted against the post of Sweeper (BPS-01) reserved for FR Tank quota as per prevailing rules & regulations.
 - iii. **Mr. Masood-ur-Rehman S/o Kabal Khan – Sweeper (BPS-01) District Tank** may be removed from service under Regulation 43-44 of Emergency Rescue Service Regulations 2015 on account of his irregular appointment in Rescue-1122 and recovery may be made from the said official from the date of appointment till date.

The inquiry report is submitted for perusal and further orders of the Competent Authority please.

Dated: August 18, 2022


Dr. Muhammad Shoaib
Dy: Director (Operations)
ERS (Rescue-1122), K.P.


Omer Iftikhar
Deputy Director (Planning-I)
ERS (Rescue-1122), K.P.



DIRECTORATE GENERAL OF
EMERGENCY RESCUE SERVICE (RESCUE - 1122)

GOVERNMENT OF KHYBER PAKHTUNKHWA
feedbackrescue1122@gmail.com www.rescue1122kpk.com



No.1-1/Office Order/DG-1122/Estt:

5850-61

Peshawar 25-10-2022

OFFICE ORDER:

Upon recommendation of the inquiry committee and subsequent approval of the Competent Authority (Director General), Mr. Masood Ur Rehman S/O Kabal Khan (Sweeper BPS-03) having CNIC#12201-0758505-1, Khyber Pakhtunkhwa Emergency Rescue Service (Rescue-1122) FR Tank is hereby removed from the post of Sweeper under para 43-44 of Khyber Pakhtunkhwa Emergency Rescue Service (Rescue-1122) Regulation, 2015 with immediate effect.

SD/-
(DIRECTOR GENERAL, ERS 1122)

Endstt: No.1-1/Office Order/DG-1122/Estt:

Copy forwarded to:-

- 1- Accountant General Khyber Pakhtunkhwa.
- 2- Director Operations, ERS (Rescue 1122), Khyber Pakhtunkhwa.
- 3- Director Administration, ERS (Rescue 1122), Khyber Pakhtunkhwa.
- 4- District Incharge, ERS (Rescue 1122), FR Tank.
- 5- PS to Secretary RR&S Department Khyber Pakhtunkhwa.
- 6- Assistant Director (Actts), ERS (Rescue-1122), Khyber Pakhtunkhwa *with the direction to recover the salary already paid to Mr. Masood Ur Rehman from the date of appointment i.e. 11-08-2021.*
- 7- Assistant Director (Legal), ERS (Rescue-1122), Khyber Pakhtunkhwa.
- 8- P.A to Director General, ERS (Rescue 1122), Khyber Pakhtunkhwa.
- 9- Official Concerned.
- 10- Personal File of the concerned officer.
- 11- Office file.

DEPUTY DIRECTOR (ADMIN)