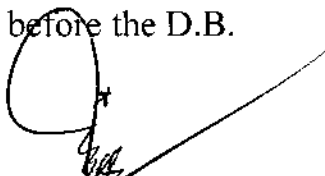



06.01.2023

Appellant in person present. Mr. Muhammad Ayaz, A.O
alongwith Mr. Muhammad Adeel Butt, Additional Advocate General
for the respondents present.

Appellant requested for adjournment on the ground that his
counsel is indisposed today. Adjourned. To come up for arguments on
27.03.2023 before the D.B.


(Mian Muhammad)
Member (E)



(Salah-Ud-Din)
Member (J)


6
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NEED
P
AWARIN

07.09.2022

Learned counsel for the appellant present. Syed Nuseer Ud Din Shah, Asst: AG for respondents present.

Learned counsel for the appellant seeks adjournment on the ground that similar nature of appeals have been fixed for arguments on 15.11.2022. therefore, the same may also be clubbed with the said appeals. Last opportunity is granted for arguments. To come up for arguments on 15.11.2022-before D.B alongwith connected appeals.



(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

15th Nov. 2022 Counsel for the appellant present.

Mr. Muhammad Riaz Khan Paindakhel, Assistant Advocate General for the respondents present.

Former requested for adjournment in order to further prepare the brief. Adjourned. To come up for arguments on 06.01.2023 before the D.B.


(FAREEHA PAUL)
Member(E)


(ROZINA REHMAN)
Member (J)

SCANNED
KPST
Peshawar

28.01.2022

Learned counsel for the appellant present. Mr. Ayaz Khan, A.O alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the appellant sought adjournment on the ground that he has not gone through the record due to some domestic engagements. Adjourned. To come up for arguments on 02.03.2022 before the D.B.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member(J)

2-3-22

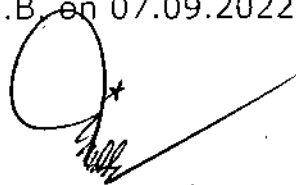
*Due to retirement of the Hon. Jc Chairman
The case is adjourned to come up for the
same as before on 13-6-22*

*Justice
Rehman*

13.06.2022

Clerk of counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Clerk of counsel for the appellant stated that learned counsel for the appellant is unable to attend the Tribunal today due to strike of Lawyers. Adjourned To come up for arguments before the D.B. on 07.09.2022.



(MIAN MUHAMMAD)
MEMBER (EXECUTIVE)




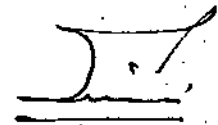
(SALAH-UD-DIN)
MEMBER (JUDICIAL)

08.11.2021

Appellant in person present. Mr. Zia Ullah Computer Programmer alongwith Mr. Asif Masood Ali Shah, Deputy District Attorney for the respondents present.

Appellant sought adjournment on the ground that his counsel is not available today due to strike of Lawyers. Adjourned. To come up for arguments before the D.B on 07.01.2022.


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


(SALAH-UD-DIN)
MEMBER (JUDICIAL)

07.01.2022

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Manzoor Khan, Private Secretary for the respondents present.


Representative of the respondents has submitted written reply/comments. Placed on file. To come up for rejoinder, if any and arguments on 20.01.2022 before the D.B.


(Rozina Rehman)
Member (J)

20.01.2022

Appellant present in person Mr. Muhammad Adeel Butt; Addl. AG alongwith Manzoor Ahmad, Private Secretary for the respondents present.

Due to general strike of the Bar, counsel for the appellant is not in attendance. Case to come up for arguments on 28.01.2022 before the D.B.


(Atiq-Ur-Rehman Wazir)
Member (E)


Chairman

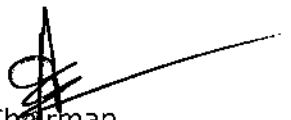
637/2021

21.06.2021

Junior to counsel for the appellant and Mr. Kabirullah Khattak, Addl. AG alongwith Farman Shah, Junior Clerk for respondent No. 3 present and submitted reply/comments.

Rest of the respondents have not submitted reply/comments. Learned AAG seeks time to contact the respondents. He is required to contact the respondents for submission of reply/comments in office within 10 days, positively. If the written reply/comments are not submitted within the stipulated time, the office shall submit the file with a report of non-compliance. File to come up for arguments on 08.11.2021 before the D.B.

Stipulated period has passed in this along with connected appeal and reply has not been submitted.


Chairman

P.S

05.07.2021



Learned Addl: A.G be reminded about the omission and for submission of Reply/comments within extended time of 10 days.


Chairman

01.02.2021

Counsel for the appellant present.


SCANNED
K. S. T.
Peshawar

Learned counsel contends that in the garb of implementation of judgment, issued by this Tribunal on 20.09.2019 in Service Appeal No. 1316/2018, the respondents are bent upon to recover the emoluments drawn by the appellant as Senior Clerk BPS-14. The copy of said judgment was also referred to by learned counsel, wherein, no such order was passed.

In view of the submissions of learned counsel and the available record, including memo dated 24.08.2020, instant appeal is admitted to regular hearing subject to all just exceptions. Appellant is required to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments on 28.04.2021 before S.B.

An application for suspension of operation of impugned order dated 24.08.2020 has also been submitted alongwith the appeal. Notice of the application be also given to the respondents for the date fixed. Till next date, the recovery of disputed amount shall not be effected from the appellant.

Appellant Deposited
Security & Process Fee


Chairman

28.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 21.06.2021 for the same as before.


Reader

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

SERVICE APPEAL No. 637 /2021

MUHAMMAD TUFAIL

VS

GOVT. OF KP
& OTHERS

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20-01-2021

Appellant

Through:



MUHAMMAD MAAZ MADNI, 20/01/21
ADVOCATE, HIGH COURT, PESHAWAR
Khattak Law Associates,
Juma Khan Plaza,
WarsakRaod, Peshawar
0333-9313113, 0345-9090737
muhammad.m3adv@gmail.com

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

SERVICE APPEAL No. 687 /2021

MR. MUHAMMAD TUFAIL s/o Muhammad Zaman, Junior Clerk (BPS-11),
o/o Advocate General, Khyber Pakhtunkhwa, Peshawar
r/o Mohallah Sar Piran, Utmanzai Charsadda.

.....APPELLANT

VERSUS

- 1- GOVERNMENT OF KHYBER PAKHTUNKHWA,
Through Secretary, Law, Parliamentary Affairs & Human Rights
Department, Civil Secretariat, Peshawar.
- 2- THE ADVOCATE GENERAL,
Khyber Pakhtunkhwa, High Court Building, Peshawar.
- 3- THE ACCOUNTANT GENERAL, KHYBER PAKHTUNKHWA,
Fort Road, Peshawar Cantt:.

..... RESPONDENTS

**APPEAL UNDER SECTION- 4 OF KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL ACT 1974 AGAINST THE IMPUGNED
ORDER DATED 24-08-2020 W'HEREBY DIRECTION FOR
MAKING RECOVERY OF EMOLUMENTS DRAWN FOR THE
PROMOTED PERIOD OF SENIOR CLERK (BPS-14) IS ISSUED
AND AGAINST NO ACTION TAKEN ON THE
DEPARTMENTAL APPEAL DATED 22-09-2020 OF APPELLANT
WITHIN THE STATUTORY PERIOD OF NINETY (90) DAYS**

PRAYER:

That on acceptance of this appeal the impugned order dated 24-08-2020 may very kindly be set aside to the extent of making recovery of emoluments for the promoted period to the post of Senior Clerk (BPS-14) and direction may very kindly be issued not to make recovery of the emoluments drawn in the shape of salary. Any other remedy which this august Tribunal deems fit that may also be awarded in favor of the appellant.

Respectfully Sheweth:,

FACTS:

Brief facts giving raise to the instant appeal are as under:

- 1- That, appellant is the Law abiding, Peaceful & bonafide citizen of Pakistan and is a civii servant working under the control of respondents.
- 2- That, appellant is the employee of the respondents Department and is appointed as Junior Clerk (BPS-11) vide order dated 01-10-2011 after fulfilling all the codal formalities required for the post and was posted against the vacant post of Junior Clerk at Peshawar.

Copy of the Appointment Order is attached as Annexure A
- 3- That, the appellant is serving the Department quite efficiently, whole heartedly and upto the entire satisfaction of his superior and as such the appellant has an unblemished service record.
- 4- That after working for quite considerable time in the office of Respondent No. 2 as Junior Clerk (BPS-11), the appellant was promoted to the post Senior Clerk (BPS-14) vide order dated 13/07/2015 against the newly created post.

Copy of the Order dated 13.07.2015 is attached as ANNEXURE B.
- 5- That, in the meanwhile, one of the colleague Mr. Izhar Ahmad Junior Clerk (BPS-11) was proceeded under Khyber Pakhtunkhwa Government Servant-(E&D) Rules-2011 and was awarded major penalty of Removal from Service on 01-06-2015 which was later on modified and converted into Minor Penalty of three (03) increments for three (03) years vide order dated 15-09-2015 on his Departmental Appeal.
- 6- That Mr. Izhar Ahmad challenged the promotion order dated 13-07-2015 of the appellant before the Service Tribunal Khyber Pakhtunkhwa in Service Appeal No. 1316/2018 which was decided vide judgment dated 20-09-2019 with the direction:

"As a sequel to the above, the appeal is remitted to the respondents to again place the case of promotion of Junior Clerks against the post of Senior Clerks before the DPC including the private respondents and the appellant for consideration . . ."

Copy of the Judgment dated 20.09.2020 is attached as ANNEXURE C.
- 7- That the respondents in compliance to implement the judgment dated 20-09-2019, issued the impugned reversion order dated 24-08-2020 whereby promotion order dated 05-05-2017 of the appellant was recalled from the date of passing of the judgment i.e. 20-09-2019 and reverted back to

his original position of Junior Clerk (BPS-11) with a further addition in the impugned order dated 24-08-2020 that emolument drawn in lieu of the promoted post of Senior Clerk (BPS-14) from the date of his promotion i.e. 03-07-2015, be adjusted/recovered.

Copy of the Impugned Order dated
24.08.2020 is attached as Annexure
..... D.

- 8- That, the appellant feeling aggrieved from the impugned order dated 24.08.2020 preferred Departmental Appeal dated 22.09.2020 to the extent of recovery of emoluments drawn on the promoted post i.e. Senior Clerk (BPS-14) but no response has been received to the appellant within the statutory period of 90 (ninety) days.

Copy of Departmental Appeal dated
22.09.2020 is attached as ANNEXURE
..... E.

- 9- That, appellants feeling highly aggrieved from the act of the respondent and having no other adequate or efficacious remedy but to file the instant appeal before this Honourable Tribunal on the following grounds amongst other:

GROUND:

- A- That, the act of the respondents while issuing the impugned order dated 24-08-2020 to the extent of recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14) is void ab-initio, unconstitutional, against the Law, fact, Rules, norms of Natural Justice and material available on record hence not tenable in the eye of Law.
- B- That, the appellant has not been treated by the respondent Department in accordance with law and rules on the subject noted above and as such the respondents violated Article 4, 9 and 25 of the constitution of Islamic Republic of Pakistan 1973.
- C- That, the treatment met out to the appellants is highly discriminatory while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14).
- D- That, the respondent acted in an arbitrary and malafide manner while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14).

- E- That the appellant was validly promoted to the post of Senior Clerk (BPS-14) vide order dated 13-05-2015 and since then the appellant has worked on the post of Senior Clerk (BPS-14) according to the best of his abilities and the satisfaction of his superiors till the issuance of the impugned order dated 24-08-2020 whereby the appellant was not only reverted but an illegal direction was issued for recovery of the emolument drawn in the shape of salary since promoted to the post of Senior Clerk (BPS-14) .
- F- That act of the respondents while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14) is against Article-3 which enshrines the Principle of "Equal Pay for Equal Work" and as such the appellant had worked on the post of Senior Clerk (BPS-14) honestly, wholeheartedly and with full devotion.
- G- That act of the respondent while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14) is against the Principle of Locus Poententiae as the appellant has worked on the post for quite considerable time and the same is against the judgment passed by the August Supreme Court of Pakistan in case titled *Shams ur Rehman VS Military Accountant General, Rawalpindi & another* which is reported as 2020 SCMR page 188 has declared the recovery of emolument drawn for the higher post as illegal.
- H- That act of the respondents while issuing the impugned order dated 24-08-2020 to the extent of making recovery of the emoluments drawn on the promoted post of Senior Clerk (BPS-14) is against the spirit of the judgment 20.09.2019 passed by this Honourable Tribunal and issuing the impugned order dated 24-08-2020 is nothing but just misinterpretation of the judgment.
- I- That act of the respondent while issuing the impugned reversion order dated 24-08-2020 to the extent of making recovery of emolument for the promoted period from the appellant to the post of Senior Clerk (BPS-14) issued from the office of Respondent No. 2 is illegal on the analogy of a judgment of Lahore High Court, Lahore passed in the case titled *Muhammad Akhtar & 3 Others V/S Board Of Intermediate And Secondary Education, Faisalabad through Chairman and 3 others*, reported as 2020 P L C (C.S.) page 352.

J- That, act of the respondents is also a clear violation of Article-38 (e) of the Constitution of Islamic republic of Pakistan which states that:

“to reduce disparity in the income and earning of the individual including the persons in Service of Pakistan”.

K- That the impugned reversion order dated 24-08-2020 has neither been passed in the public interest nor in the exigencies of services rather the order of recovery of emolument for the promoted period to the post of Senior Clerk (BPS-14) have been issued.

L- That the appellant seeks permission to advance other grounds and proofs at the time of hearing.

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

Dated: 20.01.2021

Appellant:



MUHAMMAD TUFAIL

Through:


MUHAMMAD MAAZ MADNI
ADVOCATE,
HIGH COURT PESHAWAR

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

SERVICE APPEAL No. _____/2021

MUHAMMAD TUFAIL

VS

GOVT. OF KP
& OTHERS

**APPLICATION FOR SUSPENSION OF OPERATION OF THE
IMPUGNED ORDER DATED 24-08-2020 TO THE EXTENT
OF MAKING RECOVERY OF EMOLUMENT DRAWN TILL
THE DISPOSAL OF THE ABOVE MENTIONED APPEAL**

R/SHEWETH:

- 1- That the above mentioned appeal along with this application has been filed the appellant before this august service Tribunal in which no date has been fixed so far.
- 2- That appellant filed the above mentioned appeal against the impugned order dated 24-08-2020.
- 3- That all the three ingredients necessary for the stay is in favor of the appellant.
- 4- That the impugned order dated 24-08-2020 had been issued by the respondents in utter disregard of law and prevailing Rules.


It is therefore, most humbly prayed that on acceptance of this application the impugned order dated 24-08-2020 may very kindly be suspended to the extent of making recovery of emoluments drawn for the promoted period to the post of Senior Clerk (BPS-14) till the disposal of the above mentioned appeal.

Dated: 20-01-2021

APPLICANT


MUHAMMAD TUFAIL

Through:


MUHAMMAD MAAZ MADNI
ADVOCATE,
High Court, Peshawar

(7)

Flag - "A"

ANNEXURE - A

OFFICE OF THE ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR.

OFFICE ORDER

On the recommendations of the Departmental Selection Committee, Mr. Muhammad Tufail S/O Muhammad Zaman is hereby appointed as Junior Clerk (BPS-07) against the vacant post in the office of the Advocate General, Khyber Pakhtunkhwa, Peshawar with immediate effect on the following terms and conditions:-

1. He will get pay at the minimum of BPS-07, including usual allowances as admissible under the rules. He will be entitled to annual increment as per existing policy.
2. The appointment is subject to the antecedent's verification of the appointee.
3. He shall be governed by the NWFP, Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made there under.
4. He shall, for all intents and purposes, be a Civil Servant except for purpose of pension and gratuity. In lieu of pension and gratuity, he shall be entitled to receive such amount as would be contributed by him towards Contributory Provident Fund (C.P. Fund) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
5. He shall produce Medical Certificate of fitness before the assumption of charge.
6. In case, he wishes to resign at any time, 14-days notice will be necessary or in lieu thereof 14-days pay will be forfeited.
7. He has to join duties at his own expenses.
8. If he accepts the post on the above terms and conditions, he may report for duty in this office within fifteen (15) days of receipt of this offer. In case of failure, this office order shall stand withdrawn.

ADVOCATE-GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.

No. 9865-66 /AG,

dated Peshawar the 01 / 10 /2011

A copy is forwarded for information and necessary action to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Mr. Muhammad Tufail S/O Muhammad Zaman, Resident of Kali Sir Piran, Utmanzal, Charsadda.
3. Relevant file.
4. Personal File.

ADVOCATE-GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.

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Flag - 'B'
Anx C

OFFICE ORDER

The following promotion/postings/ transfers are hereby ordered with immediate effects.

ANNEXURE-B

S. No.	NAME	PRESENT POSTING	PROMOTED AS	REMARKS
1	Mr. Muhammad Tufail	Junior Clerk (BPS-11) in Main Office Peshawar	Senior Clerk (BPS-14)	Promoted as Senior Clerk (BPS-14) against newly created vacancy in main office Peshawar.
2	Mr. Imtiaz Ali	Nain Qasid (BPS-01) in Additional Advocate General Office Service Tribunal, Peshawar	Junior Clerk (BPS-11)	Promoted as junior Clerk (BPS-11) against vice No. 01
3	Mr. Muhammad Riaz	Nain Qasid (BPS-01) in Main Office Peshawar	Junior Clerk (BPS-11)	Promoted as junior Clerk (BPS-11) against newly created post in main office
4	Mr. Amir Afridi	Mali - cum - Chowkidar (BPS-01) in Additional Advocate General Office Bannu.	Naib Qasid (BPS-01)	Posted/ Transferred as Naib Qasid (BPS-01) in Main Office, Peshawar.

**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.**

No. 14725-30/AAG


Dated Peshawar the 13/07/2015

A copy is forwarded for information and necessary action to the:-

1. Additional Advocate General, Bannu.
2. Additional Advocate General, Service Tribunal, Peshawar.
3. Accountant General, Khyber Pakhtunkhwa, Peshawar.
4. District Comptroller of Accounts, Bannu.
5. Official Concerned.
6. Relevant file.

CTC


**ADVOCATE GENERAL,
KHYBER PAKHTUNKHWA,
PESHAWAR.**


(Attested)

9

Flag - 2

ANNEXURE - C



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR.

Appeal No. 1316/2018

Date of Institution ... 05.10.2018

Date of Decision ... 20.09.2019

Izhar Ahmad, Junior clerk, S/O Javed Ahmad, presently posted as Junior/Clerk in Additional Advocate General Office, Khyber Pakhtunkhwa Service Tribunal, Peshawar. ... (Appellant)

VERSUS

Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar and four others. ... (Respondents)

MALIK HAROON IQBAL,
Advocate

--- For appellant.

MR. M. RIAZ KHAN PAINDAKHEL,
Assistant Advocate General

--- For respondents no. 1 to 3.

MR. M. MAAZ MADNI
Advocate

--- For respondent no.4

AMIR KHAN CHAMKANI,
Barrister

--- For respondent no.5

MR. AHMAD HASSAN,
MR. MUHAMMAD HAMID MUGHAL

--- MEMBER(Executive)
--- MEMBER(Judicial)

JUDGMENT

AHMAD HASSAN, MEMBER:- Arguments of the learned counsel for the parties heard and record perused.

ARGUMENTS:

02. Learned counsel for the appellant argued that he joined the office of respondent no.3 as Junior Clerk on 11.04.2011 and performed duty devotedly. That through letter dated 26.07.2014 option/willingness was sought from the appellant for promotion against the post of Senior Clerk. The appellant conveyed

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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STATE OF TEXAS
COUNTY OF DALLAS
SUPERIOR COURT
PROBATION DEPARTMENT

ATTESTED

04. Learned Assistant Advocate General argued that on the charges of misconduct, the appellant removed from service vide order dated 01.06.2015 but on acceptance of departmental appeal, the penalty was converted into stoppage of three annual increments for three years vide order dated 15.09.2015. He submitted arrival report on 19.09.2015. He also invoked the jurisdiction of this Tribunal by way of filing service appeal, whereby the penalty was further reduced to stoppage of one increment for one year. Moreover, seniority alone was not the sole criteria for promotion, fitness of the civil servant was also required to be taken into

03. That vide order dated 13.07.2015 and 5.05.2017 private respondent no.4 and 5 were promoted as Senior Clerk despite being junior to the appellant in the seniority list of junior clerks, issued by the respondents from time to time. As impugned promotion order was passed without observance all codal formalities thus the same was illegal and unlawful.

his willingness vide application dated 05.08.2014. In the meanwhile disciplinary proceedings were initiated against him and finally major penalty of removed from service was awarded vide order dated 01.06.2015. Subsequently, upon acceptance of his departmental appeal, the major penalty of removal from service was modified/reduce into stoppage of three annual increments for three years vide order dated 15.09.2015. He submitted arrival report on 19.09.2015. Feeling aggrieved, he filed service appeal no. 1311/15 in this Tribunal which was accepted vide judgment dated 10.04.2017. The penalty was further reduced to stoppage of one increment for one year.

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consideration. He filed departmental appeal on 05.07.2018, which was badly time barred. Promotions were strictly made in accordance with law and rules.

05. Learned counsels for private respondent no. 4 and 5 relied on the arguments advanced by the learned Assistant Advocate General.

CONCLUSION

06. The appellant was serving as Junior Clerk in the office of respondent no.3 since 11.04.2011. Some posts of Senior Clerks. were lying vacant and willingness/option was sought from the eligible employees including the appellant. He tendered option for promotion to the post of Senior Clerk. Thereafter, on the allegations of misconduct departmental enquiry was conducted and major penalty of removal from service was imposed on him vide order dated 01.06.2015. On preferring departmental appeal, the penalty was reduced/ modified into stoppage of three annual increments for three years vide order dated 15.09.2015. He submitted arrival report on 19.09.2015. He also invoked the jurisdiction of this Tribunal by filing service appeal no. 1311/15, which was accepted vide judgment dated 10.04.2017, whereby penalty of three increments was further reduced to stoppage of one annual increment for one year.

07. While the appellant was out of service promotion of private respondent no.4 as Senior Clerk was notified vide order dated 13.07.2015, whereas promotion of private respondent no.5 was made on 05.05.2017. During that period the appellant was in service. The appellant submitted departmental appeal on 05.07.2018. Learned Asst: AG was asked to produce copy of working paper and minutes of the

ATTESTED

EXAMINER
Hyderabad
Service Tribunal
Peshawar

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DPC meeting in which cases of the aforementioned private respondents were cleared for promotion against the post of Senior Clerk. However, he expressed his inability to arrange the said document. On the other hand, learned counsel for the appellant alleged that promotions were made without holding meeting of the DPC and just to extend undue favor to blue eyed employees working in the office of respondent no.3. Again Asst: AG was unable to rebut the plea of learned counsel for the appellant. Perusal of parawise comments submitted by the respondents were also silent, whether the said promotion cases were placed before the DPC or otherwise? Had it been cleared by the above forum, the respondents could easily use it in their defense. Attention is drawn to Section-5 of Khyber Pakhtunkhwa Civil Servants Act, 1973 and is reproduced below for ready reference:

"Appointment.-- Appointment to a civil service of the Province or to a civil post in connection with the affairs of the Province shall be made in the prescribed manner by the Governor or by a person authorized by the Governor in that behalf.

08. It transpired that promotions referred to above were not made in accordance with the procedure laid down Rule-7 of the Khyber Pakhtunkhwa Civil Servants (Appointment, Promotion and Transfer) Rules 1989. Therefore, question of limitation hardly carries any weight. It cannot be used as a shield to cover misdeeds of the respondents. Orders of promotion referred to above issued in violation of rules/laid down criteria were patently illegal and unlawful. In order to ensure substantial justice there is ample justification that the respondents should reconsider the promotions against the posts of Senior Clerk of all the candidates including the appellant by placing it before the DPC for decision.

03

ATTESTED

Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

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09. As a sequel to the above, the appeal is remitted to the respondents to again place the case of promotion of Junior Clerks against the post of Senior Clerks before the DPC including the private respondents and the appellant for consideration. Parties are left to bear their own costs. File be consigned to the record room.

(MUHAMMAD HAMID MUGHAL)
MEMBER

(AHMAD HASSAN)
MEMBER

ANNOUNCED
20.09.2019

Certified to be true copy

EXAMINER
Khyber Pakhtunkhwa
Service Journal
Peshawar

Date of Presentation of Application	23-9-2019
Number of Words	1800
Copying Fee	22
Urgent	4
Total	26
Name of Copyist	
Date of Completion of Copy	1-10-2019
Date of Delivery of Copy	1-10-2019



OFFICE OF THE ADVOCATE GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

No. 8976-79 /AG

Dated Peshawar, the 24-Aug-2020

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

Exchange: 091-9213833
Fax No. 091-9210270

To

ANNEXURE - D

Mr. Muhammad Tufail,
Senior Clerk of this office.

Subject:

IMPLEMENTATION OF JUDGMENT DATED 20/09/2019 IN
SERVICE APPEAL NO. 1316/2018 (IZHAR AHMAD VERSUS GOVT.
OF KHYBER PAKHTUNKHWA ETC)

Your promotion order bearing No. 14725-30/AG, dated 03/07/2015 as Senior Clerk (BPS-14) has been declared as illegal and ultra-vires by the Services Tribunal, Khyber Pakhtunkhwa in its judgment, dated 20/09/2019 in Service Appeal No. 1316/2018 (Izhar Ahmad-vs-Govt of Khyber Pakhtunkhwa etc). You had been put in notice of this judgment vide earlier correspondence bearing No. 2956-57/AG, dated 18/02/2020 but you had not made any legal recourse to challenge the aforesaid judgment and since the Fitness Committee has also decided not to file any Appeal vide minutes of the Scrutiny Committee, dated 16/10/2019. Aforesaid judgment has, therefore, attained finality and has to be given effect.

In pursuance to the aforesaid judgment, your promotion order, dated 03/07/2015 is hereby recalled w.e.f. from 20/09/2019. You are accordingly reverted back to your original position as Junior Clerk (BPS-11). All the emoluments drawn are also to be adjusted / recovered.

(MUHAMMAD ARSHAD KHAN)
ADMINISTRATIVE OFFICER

[Signature]

Encl. No. & date even

Copy to the:

1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
2. Budget & Accounts Officer of this office.
3. PS to the Ld. Advocate General, Khyber Pakhtunkhwa, Peshawar.

ADMINISTRATIVE OFFICER

[Signature]
CTC

(14)

File - D

(15)

ANNEXURE E

To

THE HONOURABLE SECRETARY,
Govt. of Khyber Pakhtunkha,
Law, Parliamentary Affairs & Human Rights Department,
Peshawar.

Accom
92/9/2020

Subject: DEPARTMENTAL APPEAL AGAINST 24-08-2020

R/Sir,

Most respectfully states as:

1. That I am appointment as Junior Clerk vide order dated 05-10-2011 after fulfilling all the codal formalities required for the post and was posted against the vacant post of Junior Clerk at Peshawar. (Copy of Appointment order is attached as Flag-A)
2. That after working for quite considerable time in the office of Advocate General at Peshawar as Junior Clerk (BPS-11), I was promoted to the post Senior Clerk (BPS-14) vide order dated 13/07/2015 against the newly created post. (Copy of promotion order dated 13-07-2015 is attached as Flag-B)
3. That, in the meanwhile, one of my colleague Mr. Izhar Ahmad Junior Clerk (BPS-11) was proceeded under Khyber Pakhtunkhwa Government Servant (E&D) Rules-2011 and was awarded major penalty of Removal from Service on 01-06-2015 which was later on modified and converted into Minor Penalty of three (03) increments for three (03) years vide order dated 15-09-2015 on his Departmental Appeal.
4. That Mr. Izhar Ahmad challenged my promotion order dated 03-07-2015 before the Service Tribunal Khyber Pakhtunkhwa in Service Appeal No. 1316/2018 which was decided vide judgment dated 20-09-2019 with the direction:

"As a sequel to the above, the appeal is remitted to the respondents to again place the case of promotion of Junior

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Clerks against the post of Senior Clerks before the DPC including the private respondents and the appellant for consideration . . .”

(Copy of Judgment dated 20-09-2019 is attached as Flag-C)

5. That in compliance to implement the judgment dated 20-09-2019, I was issued with the impugned reversion order dated 24-08-2020 whereby my promotion order dated 05-05-2017 was recalled from the date of passing of the judgment i.e. 20-09-2019 and reverted back to my original position of Junior Clerk (BPS-11) with a further addition in the impugned order dated 24-08-2020 that emolument drawn in lieu of the promoted post of Senior Clerk (BPS-14) from the date of my promotion i.e. 03-07-2015, be adjusted/recovered.
(Copy of Reversion order dated 24-08-2020 is attached as Flag-D)

6. That the impugned reversion order dated 24-08-2020 has neither been passed in the public interest nor in the exigencies of services rather the order of recovery of emolument for the promoted period to the post of Senior Clerk (BPS-14) have been issued.

7. That the impugned reversion order dated 24-08-2020 to the extent of recovery of emolument for the promoted period from the applicant to the post of Senior Clerk (BPS-14) issued from the office of Advocate General Peshawar is illegal on the analogy of a judgment of Lahore High Court, Lahore passed in the case titled MUHAMMAD AKHTAR and 3 others V/S BOARD OF INTERMEDIATE AND SECONDARY EDUCATION, FAISALABAD through Chairman and 3 others, reported as 2020 P L C (C.S.) 352.
(Copy attached as Flag-E)

8. That the impugned reversion order dated 24-08-2020 is against the Principal of Locus Poenitentiae as in the judgment it has clearly been mentioned that the case of promotion of Junior Clerks against the post of Senior Clerks be place before the DPC for consider but till date no DPC meeting has been called as an approximately year is going to complete while the judgment dated 20-09-2020 has

CTC
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passed. Hence, the same is against the recent judgment passed by the August Supreme Court of Pakistan in case titled *Shams ur Rehman VS Military Accountant General, Rawalpindi & another* which is reported as 2020 SCMR 188 has declared the recovery of emolument drawn for the higher post as illegal. (Copy attached as Flag-F)


9. That the impugned reversion order dated 24-08-2020 to the extent of recovery of emoluments is also illegal as the applicant has worked on the post of Senior Clerk (BPS-14) from the date of promotion i.e. 03-07-2015 with full zeal & zest and recovery for the promoted period would amount to force labour, which is against Article-11 of the Constitution of Islamic Republic of Pakistan.

In light of the above, it is therefore, most kindly requested that the impugned reversion order dated 24-08-2020 may be cancelled/modified to the extent of recovery of emoluments drawn for the promoted period to the post of Senior Clerk (BPS-14).

I shall be very thankful to you for this act of kindness.

Dated: 21-09-2020

CTC
OB

Obediently Yours,

(MUHAMMAD TUFAIL)
Senior Clerk (BPS-14),
o/o Advocate General,
Khyber Pakhtunkhwa, Peshawar.

(POWER OF ATTORNEY)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. _____/2021

MUHAMMAD TUFAIL

VS

GOVT. OF KP & Others

I, Muhammad Tufail do hereby nominated and appointed **MUHAMMAD MAAZ MADNI**, Advocate, High Court, Peshawar, to be counsel in the above matter for me/us and on my/our behalf as agreed to appear, plead, act and answer in the above court or any appellate court or any court to which the business is transferred in the above matter as and is agreed to sign and file petition, appeals, statements, accounts, exhibits, compromises or other documents whatsoever, in connection with the said matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc and to apply for and issue summons and other writs or subpoena and to apply for and get issued any arrest, attachment or other execution, warrants or order and to conduct any proceedings that may arise there out; and to apply for and receive payment of any or all sums or submit the above matter to arbitration, and to employ an other legal practitioner authorizing him to exercise the power and authorities hereby conferred on the advocate whenever he may think fit to do so.

AND to do all acts legally necessary to manage and conduct the said case in all respects whether herein specified or not, as may be proper and expedient.

AND I/WE hereby agree to ratify and confirm all lawful acts done on my/our behalf; under or by virtue of these present or of the usual practice in such matter. PROVIDED always that I/WE undertake at the time of calling of the case by the court I/MY authorized agent shall inform the advocate and make him appear in the court, if the case, may be dismissed in default, it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

IN WITNESS WHERE OF I/We hereunto set MY/OUR hand to these presents, the contests of which have been explained to and understood by ME/US this 20th day of January 2021.

EXECUTANT Muhammad Tufail
(Muhammad Tufail)

Accepted subject to the terms regarding fees:

MUHAMMAD MAAZ MADNI,
ADVOCATE HIGH COURT, PESHAWAR

BC No. (BC-11-1460)

CNIC No. 17101-9263898-1

20/01/2021

OFFICE: KHATTAK LAW ASSOCIATES,
Juma Khan Plaza, Warsak Road, Peshawar.
Contact#: 0333-9313113, 0345-9090737

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 637/2021

M. Tufail.....Appellant.

V/S

Government of Khyber Pakhtunkhwa, through Secretary,
Law Department, Peshawar & others.....Respondents.

(Para wise reply on behalf of respondent No. 3)

Respectfully Sheweth:-

Para :- 1 to 9 :-

Being an Administrative matter the issue relates to other Respondents. And they are in a better position to redress the grievances of the Appellant. Besides the Appellant has raised no grievances against Respondent No.03.

It is Pertinent to mention here that a letter vide No.8980-83/AG, dated: 24/08/2020 issued by Advocate General Khyber Pakhtunkhwa Peshawar is very much clear and gets finality. Hence all the emoluments drawn by the appellant are liable to be adjusted / recovered (copy enclosed).

Keeping in view the above mentioned facts it is, therefore, humbly prayed that the name of Respondent No.3 may kindly be deleted from the list of Respondents.


ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA

BEFORE THE HON'BLE SERVICES TRIBUNAL, KHYBER PAKHTUNKHWA
PESHAWAR

Service Appeal No. 637/2021

Muhammad Tufail

.....

Appellant

Versus

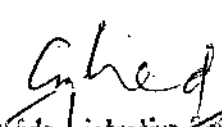
Govt. of Khyber Pakhtunkhwa etc

.....

Respondents

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Senior Administrative Officer
Advocate General Office
Khyber Pakhtunkhwa Peshawar

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Appeal No.637 of 2021

Muhammad Tufail

.....Appellant

Verses

Government of Khyber Pakhtunkhwa
Through Secretary Law Department & others

.....Respondents

PARAWISE COMMENTS ON BAHALF OF RESPONDENTS NO.1 TO 02

RESPECTFULLY SHEWETH:-

PRELIMINARY OBJECTIONS:-

- I. That the Appellant has got no cause of action/locus standi to file the instant Appeal.
- II. That Appellant has not come to this Hon'ble Tribunal with clean hands.
- III. That this Honorable Tribunal has got no jurisdiction to adjudicate upon the matter.
- IV. That the Appellant has deliberately concealed material facts from this Honorable Tribunal.
- V. That the Competent Authority reverted back Appellant to his original position as Junior Clerk (BPS-11) and answering Respondents are authorized to recover from the Appellant all emoluments drawn on the post of Senior Clerk (BPS-14).
- VI. That the instant Appeal is barred by law and time.
- VII. That the instant Appeal is bad in its present form hence not maintainable and liable to be dismissed with special cost throughout.

ON FACTS:-

1. Para No.1 is correct to the extent that the Appellant is a Civil Servant and working under the control of answering Respondent No.2 while rest of the Para is subject to proof.
2. Para No.2 is correct to the extent that Appellant was appointed as Junior Clerk (BPS-11) and still working on the said post.

Musaid
Ghous
Senior Administrative Officer
Advocate General Office
Khyber Pakhtunkhwa Peshawar

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3. Para No.3 is denied for want of proof.

ON GROUNDS

4. Para No.4 is correct to the extent that Appellant was promoted to the post of Senior Clerk (BPS-14) vide Order No.14725-30/AAG dated 13/07/2015, however, the said promotion order has been declared as illegal and ultra-virus by the Khyber Pakhtunkhwa Service Tribunal in its Judgment/Decree dated 20/09/2019 rendered in Service Appeal No.1316/2018 case titled "Izhar Ahmad Vs Government of Khyber Pakhtunkhwa & others". Respondents have not violated any provision of the Constitution of Pakistan 1973.

5. Para No.5 is correct to the extent that Mr. Izhar Ahmad Junior Clerk (BPS-11) who was proceeded under the relevant rules was awarded major penalty of removal from service on 01/06/2015, however, the same was modified and converted into minor penalty of stoppage of 03 annual increments for 03 years vide Order dated 15/09/2015 He also invoked the jurisdiction of Service Tribunal by filing Service Appeal No.1311/2015 which was accepted vide Judgment/Order dated 10/04/2017 whereby penalty of 03 increments was further reduced to stoppage of one annual increment for one year.

6. Para No.6 is correct to the extent that Mr. Izhar Ahmad assailed the promotion order dated 13/07/2015 by filing Service Appeal No.1316/2018 before the Khyber Pakhtunkhwa Service Tribunal which was decided by the Tribunal vide its Judgment/Order dated 20/09/2019 and orders of promotion in respect of present Appellant & other namely Abdul Bais declared illegal and unlawful. Judgment of

7. Para No.7 is correct to the extent that the Judgment/Order dated 20/09/2019 has been issued by the Competent Authority whereby the Appellant was reverted back to his original position as Junior Clerk (BPS-11) with the direction for recovery of all emoluments drawn on the promoted post of Senior Clerk (BPS-14). All emoluments drawn on the promoted post of Senior Clerk (BPS-14) is also be recovered from the Appellant.

8. Para No. 8 is incorrect against facts & law, hence, denied. The Order dated 24/03/2021 is not against any provision of the law. representation, however, the same was turned down by the Competent Authority and he is required to deposit emoluments drawn on the promoted post.

9. Para No. 9 is incorrect against facts & law, hence, denied. Each case has its own merits and the referred Judgment has not no concerned with the case of Appellant. That the Service Appeal No.637/2021 filed by the Appellant is not maintainable and the answering Respondents have no malafide or ill will with the Appellant,

10. Hence, Appellant has got no right to file the Appeal. Para No. 10 is incorrect against facts & law, hence, denied. As stated above that each case has its own features and is required to

Abdul Bais
Ghosh
Senior Administrative Officer
Advocate General Office
Khyber Pakhtunkhwa Peshawar

14/1
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(14)

OFFICE OF THE ADVOCATE GENERAL KYBER PAKHTUNKHWA PESHAWAR



Address: High Court Building, Peshawar
Tel. No. 031-8212321
Fax No. 031-8212323
E-mail: ag@kpk.gov.pk

ANNEXURE-D

To

Mr. Muhammad Tufail
Senior Clerk of this office

IMPLEMENTATION OF JUDGMENT DATED 20/09/2019 IN SERVICE APPEAL NO. 1316/2018 (FAR AHMAD VS GOVT. OF KHYBER PAKHTUNKHWA ETC)

Your promotion order bearing No. 14752-30/AG dated 03/07/2019 as Senior Clerk (BPS-14) has been declared as illegal and ultra-vires by the Services Tribunal, Khyber Pakhtunkhwa in its judgment dated 20/09/2019 in Service Appeal No. 1316/2018 (Far Ahmad vs Govt. of Khyber Pakhtunkhwa etc). You had been put in notice of this judgment vide earlier correspondence bearing No. 2926-27/AG dated 18/02/2020 but you had not made any legal recourse to challenge the aforesaid judgment and since the Fitness Committee has also decided not to file any appeal vide minutes of the Scrutiny Committee dated 16/10/2019. Aforesaid judgment has therefore, attained finality and has to be given effect.

In pursuant to the aforesaid judgment your promotion order, dated 03/07/2019 is hereby recorded w.e.f. from 20/09/2019. You are accordingly reverted back to your original position as Junior Clerk (BPS-11). All the emoluments drawn are also to be adjusted / recovered.

ADMINISTRATIVE OFFICER (GENERAL HEAD OFFICE)

Project No. A-14752-30/AG

Copy to the:

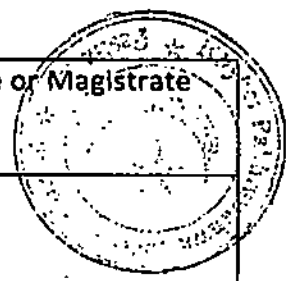
- 1. Accountant General, Khyber Pakhtunkhwa, Peshawar.
- 2. Budget & Accounts Officer of this office.
- 3. PS to the Ad. Advocate General, Khyber Pakhtunkhwa, Peshawar.

OTC
14/1

ADMINISTRATIVE OFFICER

14/1
14/1
14/1
14/1
14/1

15



Sr. No	Date of order/ proceedings	Order or other proceedings with signature of Judge or Magistrate
	2	3

BEFORE THE KPK SERVICE TRIBUNAL, PESHAWAR

Appeal No. 1311/2015

Izhar Ahmad Versus Secretary to Govt. Law, Preliminary Affairs and Human Right Department, Peshawar and one other.

JUDGMENT

10.04.2017

AHMAD HASSAN, MEMBER:- Appellant with counsel and

Mr. Kabirullah Khattak, Assistant Advocate General alongwith Mr. Muhammad Arshad, Admin Officer for respondents present.

2. Mr. Izhar Ahmad, hereinafter referred to as the appellant has preferred the instant service appeal under Section-4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against order dated 15.09.2015 vide which departmental appeal of the appellant has been partially accepted and the major penalty of removal from service modified into minor penalty of stoppage of three increments for three years, hence the instant service appeal on 25.11.2015.

3. Brief facts of the case giving rise to the instant appeal are that the appellant was initially appointed as Junior Clerk (BPS-09) on 11.04.2011. That on 17.12.2014, while the appellant was busy in assigned duty, Mr. Khurshid Khan Kundi, Superintendent came to appellant office and snatched the daily cases list from him, which resulted in exchange of hot words between them but very soon the appellant apologized for his behavior. That subsequently disciplinary proceedings were initiated

ATTESTED

[Signature]
Senior Administrative Officer
Advocate General Office
Khyber Pakhtunkhwa Peshawar

[Signature]
Senior Administrative Officer
Advocate General Office
Khyber Pakhtunkhwa Peshawar


10/1

Having gone through the record it is required that conduct exhibited by the appellant was unbecoming of an employee and a gentleman and also falls in the ambit of 'willful transgression and breach of service discipline'. It also amounts to misconduct as explained/illustrated in sub-Rule (VI) and (iii) of Rule-2 of Khyber Pakhtunkhwa Government Service (Efficiency and Discipline) Rules 2011. Admission of guilt in his written statement and tendering apology was quite sufficient to substantiate that charges stood proved against the appellant. He willingly refused to avail the opportunity of cross examining Mr. Khurshid Ki to Kundi, Superintendent. However, behavior shown by the Superintendent was also provocative, all happened at the spur of the moment. The Industry Officer in his report mentioned that due to hurry the Superintendent pulled the list from the appellant as such he cannot be absolved of his behavior and shifting entire responsibility on the appellant. Had Superintendent shown some restraint this incident would have been avoided. Appellant being a new entrant in service and taking lenient view of the situation, we partially accept the appeal and order dated 12.02.2012 is modified from stoppage of three annual increments for three years to that of stoppage of one annual increment for one year alongwith consequential back benefits if any for which the appellant is otherwise entitled under the rules. Appeal is disposed of in the above terms. Parties are however, left to bear their own cost. File is consigned to the record room.


 (AHMAD HASSAN)
 MEMBER


 (MUHAMMAD AMIN KHAN KUNDI)
 MEMBER

ANNOUNCED
 10/04/2017


 Chief Executive Officer
 Khyber Pakhtunkhwa Government
 Peshawar

18



BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

APPEAL NO. 637/2021

M. Tufail.....Appellant.

V/S

Government of Khyber Pakhtunkhwa, through Secretary,
Law Department, Peshawar & others.....Respondents.

(Para wise reply on behalf of respondent No. 3)

Respectfully Sheweth:-

Para :- 1 to 9 :-

Being an Administrative matter the issue relates to other Respondents. And they are in a better position to redress the grievances of the Appellant. Besides the Appellant has raised no grievances against Respondent No.03.

It is Pertinent to mention here that a letter vide No.8980-83/AG, dated: 24/08/2020 issued by Advocate General Khyber Pakhtunkhwa Peshawar is very much clear and gets finality. Hence all the emoluments drawn by the appellant are liable to be adjusted / recovered (copy enclosed).

Keeping in view the above mentioned facts it is, therefore, humbly prayed that the name of Respondent No.3 may kindly be deleted from the list of Respondents.

**ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA**

Accepted

**Senior Administrative Officer
Advocate General Office
Khyber Pakhtunkhwa Peshawar**