

Service Appeal No.1313/2014 titled "Abdullah Noor Vs. Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat Peshawar, and others"

ORDER

11th July, 2023

1. Miss. Sumbal Zaman, Advocate, present and submitted Wakalat Nama in favor of the appellant. Mr. Muhammad Jan, District Attorney alongwith Mr. Irfan Anjum, Superintendent for the respondents present.

2. Admittedly, the appellant was a contract employee which is evident from the offer of appointment letter, wherein, specific condition No.12 was added which reads as under;

"12. Your services shall be terminated on arrival of recommendees of the Public Service Commission".

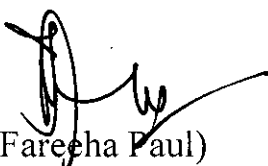
3. Similarly, the impugned order of termination of contract also proves that the appellant was a contract employee. Therefore, in view of Section-2(b) (ii) jurisdiction of this Tribunal is ousted. The relevant para is reproduced as under:


(b) "civil servant" means a person who is a member of a civil service of the Province, or who holds a civil post in connected with the affairs of the Province, but does not include —

- (i) -----
(ii) A person who is employed on contract, or on work charged basis, or who is paid from contingencies;"

This Tribunal thus does not have jurisdiction and the memorandum of appeal is returned accordingly. Consign.

4. Pronounced in open Court at Peshawar and given under our hands and seal of the Tribunal on this 11th day of July, 2023.


(Fareeha Paul)
Member (E)


(Kalim Arshad Khan)
Chairman

20.06.2023


Junior of learned counsel for the appellant present. Mr. Fazal Shah Mohmand, Additional Advocate General for the respondents present.


On previous date, last opportunity was granted, however today junior of learned counsel for the appellant again made a request for adjournment on the ground that learned senior counsel for the appellant is busy in the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 11.07.2023 before the D.B. Parcha Peshi given to the parties.

The appeal in hand pertains to the year 2014, therefore, learned counsel for the appellant shall positively address the arguments on the date fixed.

SCANNED
KPST
Peshawar

Naeem Amin


(Fareeha Paul)
Member (E)


(Salah-ud-Din)
Member (J)

RECEIVED
20/06/2023
PESHAWAR

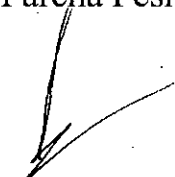
20.03.2023


Junior to counsel for the appellant present.

Asif Masood Ali Shah learned Deputy District Attorney for respondents present.

Former made a request for adjournment as senior counsel for appellant is busy before the Hon'ble Peshawar High Court, Peshawar. Adjourned. To come up for arguments on 06.06.2023 before D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Muhammad Akbar Khan)
Member (E)



(Rozina Rehman)
Member (J)


06.06.2023

Learned counsel for the appellant present. Mr. Asad Ali Khan, Assistant Advocate General for the respondents present.

Learned counsel for the appellant seeks time for preparation of arguments. The appeal in hand is lingering on since the year 2014, therefore, last opportunity is given for arguments. To come up for arguments on ~~07-07~~ ²⁰⁻⁰⁶⁻²⁰²³ 2023 before the D.B. Parcha Peshi given to the parties.

SCANNED
KPST
Peshawar


(Fareeha Paul)
Member (E)

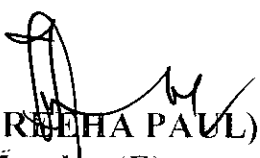

(Salah-ud-Din)
Member (J)

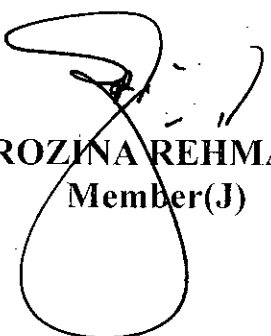
22nd Dec. 2022

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

02. Instant application submitted on 03.11.2022 is for restoration of Service Appeal No. 1313/2014, which was dismissed in default on 11.10.2022.

03. Considering contention of learned counsel for the appellant and in the interest of justice, application is allowed. Instant appeal is restored to its original number. Notices be issued to the respondents. To come up for arguments on 20.03.2023 before the D.B.


(FARIHA PAUL)
Member(E)

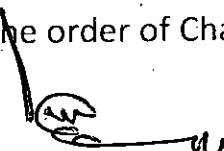

(ROZINA REHMAN)
Member(J)

Form-A

FORM OF ORDER SHEET

Court of _____

Restoration Application No. 663/2022

S.No.	Date of order Proceedings	Order or other proceedings with signature of judge
1	2	3
1	03.11.2022	<p>The application for restoration of appeal No. 1313/2014 submitted today by Mr. Maqsood Ali Advocate. It is fixed for hearing before DIVISION Bench at Peshawar on <u>22-12-22</u>. Original file be requisitioned. Notices be issued to applicant and his counsel for the date fixed.</p> <p>By the order of Chairman  REGISTRAR</p>

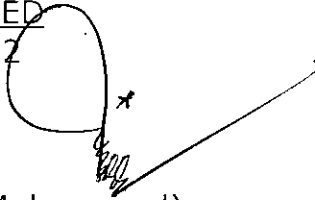
SCANNED
KPST
Peshawar
Counsel was
informed telephonically
on 23/11/22

ORDER
11.10.2022

Nemo for the appellant. Mr. Muhammad Jan, District Attorney for the respondents present.

The appeal in hand was called on for hearing after various intervals, however none appeared on behalf of the appellant till the closing time, therefore, the appeal in hand stands dismissed in default. Parties are left to bear their own costs. File be consigned to the record room.

ANNOUNCED
11.10.2022



(Mian Muhammad)
Member (E)

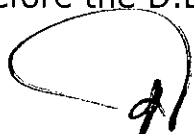


(Salah-Ud-Din)
Member (J)

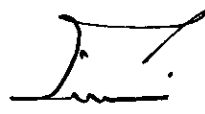
04.07.2022

Learned counsel for the appellant present. Mr. Riaz Ahmad Paindakhel, Assistant Advocate General for the respondents present. Arguments on restoration application heard and record perused.

Vide our order of today passed in restoration application bearing No. 41/2021 titled "Abdullah Noor Versus Government of Khyber Pakhtunkhwa and others", the appeal in hand stands restored on its original number. To come up for arguments before the D.B on 11.10.2022.



(Rozina Rehman)
Member (J)



(Salah-ud-Din)
Member (J)

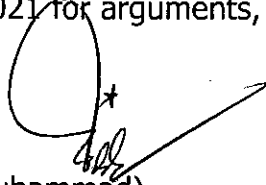
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11.11.2020

Appellant in person present.

Usman Ghani learned District Attorney for respondents present.

Lawyers are on general strike, therefore, case is adjourned to 19.01.2021 for arguments, before D.B.



(Mian Muhammad)
Member (E)



(Rozina Rehman)
Member (J)

19.01.2021

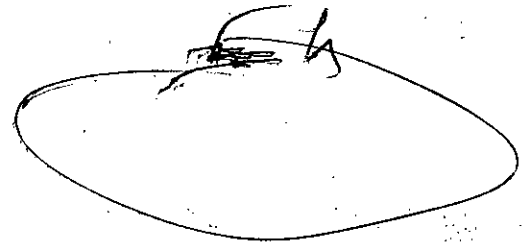
Nemo for the appellant despite having been called time and again and last call was made at 12:25 P.M. Mr. Riaz Ahmad Paindakheil, Assistant Advocate General, for the respondents is present.

The appeal is accordingly dismissed in default due to non-prosecution. File be consigned to the record room.

ANNOUNCED
19.01.2021



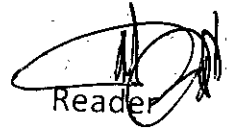
(ATIQ-UR-REHMAN WAZIR)
MEMBER (EXECUTIVE)



(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

27-4 2020

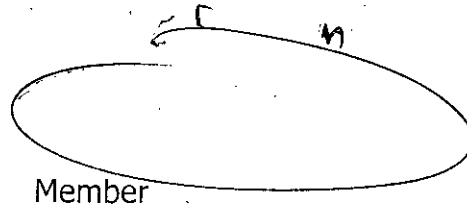
Due to COVID19, the case is adjourned to
9/7/2020 for the same as before.


Reader

09.07.2020

Nemo for appellant. Addl. AG for the respondents present.

On the last occasion instant matter was adjourned through a reader note, therefore, notices be issued to the appellant/learned counsel for arguments on 02.09.2020 before D.B.


Member

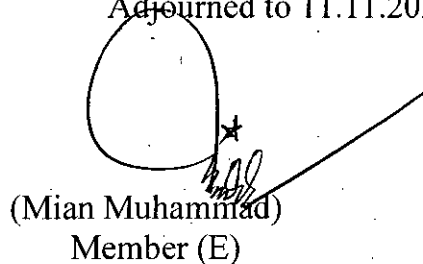

Chairman

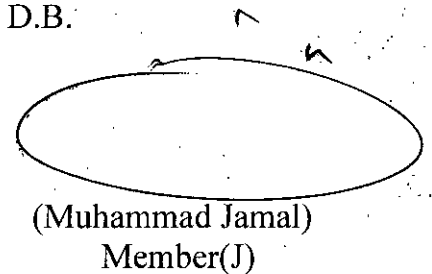
23.09.2020

None for the appellant present. Mr. Muhammad Jan, DDA for respondents present.

Notices to the appellant and his counsel have not been issued. The office is directed to issue fresh notices to the appellant and his counsel for the next date of hearing.

Adjourned to 11.11.2020 before D.B.


(Mian Muhammad)
Member (E)


(Muhammad Jamal)
Member(J)

02.10.2018

Appellant absent. Learned counsel for appellant absent. The present case pertains to the year 2014. Absence of appellant as well as learned counsel for appellant depicts disinterest of the appellant in the present case. Consequently the present service appeal is dismissed in default. No order as to costs. File be consigned to the record room.



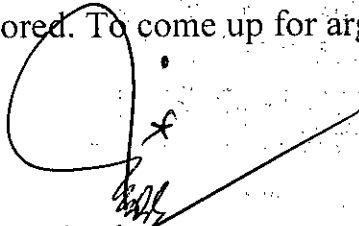
(Hussain Shah)
Member



(Muhammad Hamid Mughal)
Member

11.02.2020

ANNOUNCED.
Vide order of today i.e. on 11.02.2020, passed in restoration application No.380/2018, the present service appeal has been restored. To come up for arguments on 02.03.2020 before D.B.



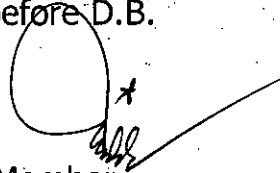
Member



Member

02.03.2020

• Junior to counsel for the appellant present. Mr. Ziaullah, DDA alongwith Mr. Yaseen, B&AO for respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not available today. Adjourned. To come up for arguments on 27.04.2020 before D.B.



Member



Member

06.04.2018


None for the appellant present. Addl: AG alongwith Mr. Saleem ur Rehman, AO for respondents present. Adjourned. To come up for arguments on 12.06.2018 before D.B.


(Ahmad Hassan)
Member


(M. Hamid Mughal)
Member

12.06.2018


Junior to counsel for the appellant and Mr. Usman Ghani, learned District Attorney alongwith Mr. Saleem AO for the respondents present. Junior to counsel for the appellant seeks adjournment as senior counsel is not in attendance. Adjourned. To come up for arguments on 07.08.2018 before D.B.



(Ahmad Hassan)
Member


(Muhammad Hamid Mughal)
Member

07.08.2018

Clerk to counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Clerk to counsel for the appellant requested for adjournment. Adjourned. To come up for arguments on 02.10.2018 before D.B


(Muhammad Amin Kundi)
Member


(Muhammad Hamid Mughal)
Member

12.01.2018

Counsel for the appellant present and Mr. Usman Ghani, District Attorney for the respondents present. Learned District Attorney informed this Tribunal that appeal of same nature is fixed today before D.B-II. That some other appeals of the same nature were also decided by the D.B-II comprising of Mr. Muhammad Hamid Mughal Member and Mr. Ahmad Hassan, Member on 24.07.2017. On the other hand the learned counsel for the appellant informed this Tribunal that there is no similarity between this appeal and those which were decided by Bench-II in the interest of justice this appeal is also entrusted to the D.B-II. It is for the learned counsel to prove dissimilarity between these cases. To come up for argument on 08.02.2018 before D.B-II.

Member

Chairman

08.02.2018

Clerk of the counsel for appellant present. Mr. Usman Ghani, District Attorney for the respondent present. Clerk of the counsel for appellant seeks adjournment as his senior counsel is not in attendance today. Adjourned. To come up for arguments on 06.04.2018 before D.B.

(Gul Z. Khan)
Member

(Muhammad Hamid Mughal)
Member

1313/2014

28.04.2017

Appellant with counsel present. Mr. Usman Ghani, Senior Government Pleader for the respondents as left the court due to his emergency at Islamabad. Adjourned for final hearing to 21.08.2017 before D.B.


Member


Chairman

21/8/2017


None for the appellant and Mr. Muhammad Adeel Butt, AAG for the respondents present. Due to non-availability of DB, case to come up for argument on 26/10/2017 before DB.


Reader

26.10.2017

Jr. to counsel for the learned counsel for the appellant present and stated that the learned counsel for the appellant is busy in By-Election in Peshawar today. Requested for adjournment. Seeks adjournment. Granted. Addl AG alongwith Muhammad Yaseen, Superintendent for the respondents present. To come up for arguments on 12.01.2018 before the D.B.


Member


Chairman

05.05.2016

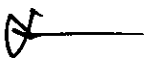
Counsel for the appellant and Addl:AG for respondents present. Counsel for the appellant requested for adjournment. To come up for rejoinder and arguments on 04.08.2016 alongwith the connected appeals.


Member


Member

04.08.2016

Counsel for the appellant and Mr. Muhammad Yasin, Superintendent alongwith Mr. Usman Ghani, Sr.GP for respondents present. Learned counsel for the appellant submitted that identical appeal of Mujtaba Qureshi is fixed on 15.12.2016 therefore the instant appeal may be fixed alongwith that appeal. Order accordingly. To come up for arguments on ~~15.12.16~~ before D.B alongwith connected appeal.


Member


Member

15.12.2016

Appellant in person and Mr. Muhammad Yasin, Superintendent alongwith Additional AG for the respondents Appellant requested for adjournment as his counsel is not available today before the Tribunal. Request accepted. To come up for arguments on 28.04.2017 before D.B.


(ASHFAQUE TAJ)
MEMBER


(MUHAMMAD AAMIR NAZIR)
MEMBER

7

10.08.2015

Appellant in person and Mr. Muhammad Yasin, Supdt. alongwith Assistant A.G for respondents present. Written reply not submitted. Requested for further adjournment. Last opportunity granted. To come up for written reply/comments on 3.9.2015 before S.B.


Chairman

8


03.09.2015

Counsel for the appellant and Mr. Muhammad Yasin, Supdt. alongwith Addl: A.G for respondents present. Written statement submitted. The appeal is assigned to D.B for rejoinder and final hearing for 3.12.2015.


Chairman

3.12.2015

Appellant in person and Sr.GP with Muhammad Siddique Admn. Officer for the respondents present. Appellant requested for time to file rejoinder. To come up for rejoinder and arguments on 11.12.2015

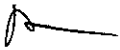

Member


Member

11.12.2015

Counsel for the appellant and Mr. Muhammad Siddique Admn. Officer alongwith Mr. Usman Ghani, Sr. GP for respondents present. Counsel for the appellant requested for adjournment. Therefore, the case is adjourned to

5.5.2016 for arguments.


Member


Member

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR**

In Re: Service Appeal No. 1313 /2014

Abdullah Noor s/o Haji Shalawzan

(Sub-Engineer, Public Health Engineering Department, Peshawar)

R/o House No. 911, Street No. 25, Section E-5,

Phase-VII, Hayatabad, Peshawar

.....*Appellant*

Versus

1. Government of Khyber Pakhtunkhwa

through Chief Secretary,
Civil Secretariat, Peshawar

2. Secretary

Public Health Engineering Department, Peshawar
Government of Khyber Pakhtunkhwa

3. Chief Engineer (South)

Public Health Engineering Department, Peshawar
Government of Khyber Pakhtunkhwa

.....*Respondents*

Service Appeal under Section
4 of the Khyber Pakhtunkhwa
Service Tribunal Act, 1974
against the Order of
Termination No. 11/E-9/PHE
dated 01.07.2013 passed by
the learned Respondent-3

Isaac Ali Qazi

Advocate

12, K-3, Phase-III, Hayatabad, Peshawar

Phone 5817132, 5818446, Mobile: 0300 8594555

Email: isaac.ali.qazi@gmail.com

www.isaacalaw.org

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR**

In Re: Service Appeal No. 1313 /2014

Abdullah Noor s/o Haji Shalawzan

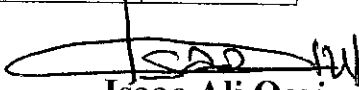
.....*Appellant*

Versus

Government of Khyber Pakhtunkhwa & 2 Others

.....*Respondents*

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Isaac Ali Qazi
ASC

①

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR**

In Re: Service Appeal No. 1313 /2014

Abdullah Noor s/o Haji Shalawzan

(Sub-Engineer, Public Health Engineering Department, Peshawar)

R/o House No. 911, Street No. 25, Section E-5,

Phase-VII, Hayatabad, Peshawar

.....Appellant

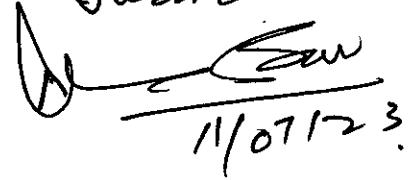
Versus

1. **Government of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar
2. **Secretary**
Public Health Engineering Department, Peshawar
Government of Khyber Pakhtunkhwa
3. **Chief Engineer (South)**
Public Health Engineering Department, Peshawar
Government of Khyber Pakhtunkhwa

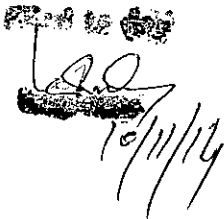
Date of Presentation 10.11.2014

Date of Return 07.07.2023

Reason: Lack of
Jurisdiction


11/07/23

.....Respondents


10/11/14

Service Appeal under Section
4 of the Khyber Pakhtunkhwa
Service Tribunal Act, 1974
against the Order of
Termination No. 11/E-9/PHE
dated 01.07.2013 passed by
the learned Respondent-3 at
Annexure-I

Respectfully Sheweth,

The Appellant humbly submits as under:-

1. That Appellant, born 03.03.1980, is a *bona fide* resident of the Province Khyber Pakhtunkhwa. Appellant is holding Diploma of Associate Engineer in Civil from the respective Khyber Pakhtunkhwa Board of Technical Education, Peshawar in the year 2002.

Copy of CNIC at Annexure-II

Copy of the Diploma of Associate Engineer at Annexure-III

2. That Department of Public Health Engineering in Daily Aaj Peshawar on 22.04.2010 advertised post of Sub Engineers (BPS-11) on ad hoc basis for a period of one year or till the arrival of candidates recommended by the Provincial Public Service Commission whichever come first.

Copy of the Advertisement dated 22.04.2010 at Annexure-IV

3. That Appellant in response to the aforesaid advertisement having the aforesaid qualification applied for the post. After going through all the due process, finally the Appellant on the recommendation of the Departmental Selection Committee *vide* letter No. 8/06/E-4/PHE dated 23.02.2011 was appointed as Sub Engineer **“purely on contract basis in BPS-11”** with the terms and conditions that **“for all intents and purposes, be Civil Servant”** to **“be governed by the NWFP Civil Servant Act, 1973 and all the laws applicable to the Civil Servants and Rules made there under”**. Besides **“He will also be entitled to annual increment as per existence policy”** and most importantly the appointment letter provided that **“He shall, initially, be on probation for the period of two years extendable up to three years”**.

Copy of the letter of Appointment dated 23.02.2011 at Annexure-V

4. That Appellant in pursuance of the aforesaid letter of appointment joined the service and performed his duties with all due care and diligence as and where he was posted. It is worth to mention that from the date of appointment till his impugned termination his performance was satisfactory in all respect as evident from the service book of the Appellant; the extract of which is annexed herewith.

Copy of Extract of the Appellant Service Book at Annexure-VI

5. That it is worth to mention that as per condition 5 of his appointment letter, his probation period of two years was expired on 23.02.2013. Having being satisfied his probation period was not extended and by operation of departmental practice, the Appellant has become a permanent Civil Servant with all intents of law and procedure.

6. That most importantly during the period one year as was stipulated in the advertisement; the candidate recommended by the commission were not arrived.

7. That **after having more than two and half years of service**, out of the blue *vide* Office Order No. 11/E-9/PHE dated 01.07.2013 while working under the Chief Engineer FATA was terminated by the Chief Engineer (South) on the ground that "Since Public Service Commission has furnished names of Selected persons for the post of Sub Engineers on the basis of requisition sent by Secretary PHE Department dated 10.02.2010, the Following contract Sub Engineers are hereby terminated with immediate effect". (Annexed as Annexure-I)

8. That against the impugned order, the Appellant on **03.07.2013** submitted **departmental appeal** to the Respondent-2 under section 22 of Khyber Pakhtunkhwa Civil Servants Act, 1973 read with Rule 3 of KP Civil Servant (Appeal Rules, 1976) against the impugned orders.

Copy of the Appellant Department Appeal filed on 03.07.2013 at Annexure-VII

9. That it is worth to bring on record that through a common WP No. 2146-P/2013 on 24.06.2013, the Appellant challenged the order of Termination before the Honourable Peshawar High Court, Peshawar. In the said WP the Respondent filed Parawise comments and Appellant filed rejoinder, However, finally the honourable High Court *vide* order dated 11.09.2014 for reasons mention thereon refused to interfere.

Copy of the W.P. No. 2146-P/2013 at Annexure-VIII

Copy of the Comments filed by the Respondents at Annexure-IX

Copy of the Rejoinder filed by Appellant on 27.11.2013 at Annexure-X

Copy of the Order of W.P. No. 2146-P/2013 dated 11.09.2014 at Annexure-XI

10. That here it is worth to mention that against Order dated 26.02.2014 of the Honourable Peshawar High Court, Peshawar in W.P. No. 615/2014 filed by similarly placed terminated employee of the PHE preferred C.P. No. 551/2014 before the august Supreme Court of Pakistan. The Petition was heard by the Bench headed by the Honourable Chief Justice and it was disposed of as under:

“Tassaduq Hussain Jillani, CJ:- Petitioner are civil servants and they challenged the order terminating their service in a Constitution petition which stands dismissed *vide* the impugned order mainly on the ground that the said petition was not maintainable in view of Article 212 of the Constitution read with Section 4 of the Service Tribunal Act, 1973. The only ground being taken by the learned High Court to invoke Article 199 of the Constitution is that the competent authority in the department had passed the order of termination of petitioners’ service pursuant to a judgment of this Court and the learned Service Tribunal may be diffident to decide the case independently and in accordance with law.

5

2. We are afraid, the apprehension of the petitioners is misconceived. In the event of filing the appeal, the Service Tribunal shall decide the appeal as mandate in law. Disposed of in terms noted above”.

Copy of the Honourable Supreme Court Order dated 28.04.2014 in C.P. No. 551/2014 at Annexure-XII

Copy of the Order of Peshawar High Court, Peshawar in W.P. No. 615-P/2014 dated 26.02.2014 at Annexure-XIII

Copy of the W.P. No. 615-P/2014 dated 24.02.2014 at Annexure-XIV

11. That as so far departmental appeal filed by the Appellant on 03.07.2013 and the competent authority has not proceeded with the appeal, hence, this Appeal.

12. That the Appellant, seeking protection u/s 5 and 14 of the Limitation Act, 1908 and other enabling laws and Rules prefers this Appeal against the impugned Order dated 01.07.2013, *inter alia*, on the following:

Grounds:

- I. That impugned order is erred both in law and facts.
- II. That the impugned Order of Termination of the Respondent-3 (Chief Engineer South) is *void ab initio* for being *coram non judice* as the Appellant at the time of termination was working under the administrative control of the Chief Engineer (FATA).

- III. That impugned *ex parte* order is not only against the principle of natural justice *audi alteram partem* but virtually the Appellant has been denied the right of fair trial as protected under Article 10A of the Constitution, 1973 as one of the fundamental rights of the citizens of the Pakistan. Hence, on this score alone the impugned order is liable to be set aside.
- IV. That the impugned order is hit by **Article 25** of the Constitution for being **treated discriminatory** as during the last 5 years or so about 250 appointments have been made in the department but no such action has been taken against them.
- V. That the appointment of Appellant was made by competent authority after due process of law on the recommendation of **Departmental Selection Committee**, the Appellant besides, within age limit, had the prescribe qualifications, thus, in such circumstances the Respondent-3 has no legal justification to treat the valid appointment of Appellant as illegal.
- VI. That **WITHOUT PREJUDICE** though post was advertised for ad hoc appointment, however, later on the terms of the advertisement were impliedly revised as Appellant on 23.02.2011 was appointed on “contract basis” and “for all intents and purposes, be Civil Servant”
- VII. That similarly term that “for period of one year or till arrival of the candidates recommended by the Provincial Public Service Commission which ever come first” had become *void* when the Respondent or Public Service Commission failed to recommend candidate within the prescribed period of one year.

VIII. That it is pertinent to mention that by notification No. SO(O&N)E&AD/8-16/2000 dated 05.11.2001, the three departments namely Public Health Engineering, Physical Planning & Housing and Communication and Works Department were merged into Works and Services Department as mentioned in order dated 05.11.2001 and meanwhile the Khyber Pakhtunkhwa Local Government Ordinance, 2001 was also promulgated and under section 14 thereof the administrative and financial authority for management of the offices of the government specified in Part-A of the first schedule was decentralized to district government. Similarly the posts in BPS-01 to 15 in the Works and Services Department were also declared as district cadre posts and outside the scope and purview of Public Service Commission *vide* notification No. SO(Estt:)W&SI13-1177 dated 22.03.2005 as referred in letter dated 08.04.2006 by the Establishment Department to W & S Department.

Copy of the Notification No. SO(O&N)E&AD/8-16/2000 dated 05.11.2001 at Annexure-XV

Copy of the Notification No. SO(Estt)W&SI13-1177 dated 22.03.2005 at Annexure-XVI

IX. That when the posts in BPS 1 to 15 in W & S Department were declared District Cadre Posts including the posts of Appellants then a letter was written to Secretary Khyber Pakhtunkhwa Public Service Commission, Peshawar on 02.05.2007 therein requested for withdrawal the requisition for filling in the vacant posts of Sub Engineers (BPS-11) in the W & S Department and done accordingly. In such circumstances the plea of Respondent-3 regarding non fulfilling the requirements of recommendation of **Public Service Commission, Khyber Pakhtunkhwa** in the case of Appellant is

unjustified, unreasonable, *mala fide* and without lawful authority and not sustainable under the law and rules.

Copy of the Respondent letter No. SOR-V(E&AD)1-368/2005(SE) dated 02.05.2007 at Annexure-XVII

X. That **WITHOUT PREJUDICE** there was no cause for termination as admitted before the Honourable Peshawar High Court, Peshawar, there was still post vacant at the time of termination and even aftermath too as evident from the comments filed by the Respondent before the Honourable High Court.

XI. That **WITHOUT PREJUDICE** in similar circumstances the Governments and the Superior Court regularized the services of contract / ad hoc employee in this respect attention is invited to the “Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013”, the Finance Division letter No. SOSR-III/FD/12-1/2005 dated 27.02.2013 and the FATA Secretariat Order No. FS/100-35(Vol-9)/1066-78 dated 17.01.2014 where may such employees have been regularized.

Copy of the Khyber Pakhtunkhwa Civil Servant (Amendments) Act, 2013 at Annexure-XVIII

Copy of KPK Finance Division Letter dated 27.02.2013 at Annexure-XIX

Copy of the FATA Secretariat letter dated 17.01.2014 at Annexure-XX

XII. That the Appellant has not been treated in accordance with law and the impugned order has been passed in violation of fundamental rights as guaranteed under chapter 1 of part II of the Constitution, 1973.

XIII. That in view of clause 5 of the appointment order of the Appellant, his appointment was on probation for a period of two years extendable up to three years which the Appellant has completed satisfactorily **becoming confirmed employee** of the Respondent Department. At the time of passing of impugned order, the Appellant has rendered more than two and half years service to the department efficiently, satisfactorily and without any complaint. Therefore the Respondent-3 has not acted in accordance with law and rules and unlawfully passed the impugned order without observing codal formalities as required in the case of a confirmed employee. Therefore the impugned order whereby Appellant was terminated have no legal sanctity being without lawful authority.

XIV. That clause 2 of appointment order of Appellant provided that he will be governed by the Khyber Pakhtunkhwa Civil Servants Act, 1973 and all the laws applicable to the Civil Servants and Rules made there under and similarly in the impugned show cause notice mentioned that action would be taken under the Efficiency and Disciplinary Rules, 2011 but the Respondent-3 has not followed any law in passing the impugned order which is arbitrary, unjust and unfair and not warranted, liable to be set aside.

XV. That in the impugned order, Respondent-3 used the word of "termination" which neither applicable in the case of Appellant being confirmed employee of the department nor prescribed in the E&D Rules, 2011 therefore the impugned order is ambiguous, vague and illegal not Sustainable under the law and rules.

XVI. That the impugned order has been passed at the back of Appellant. Neither any regular enquiry has been conducted nor was a fair opportunity provided to him to defend his case, therefore, the impugned order is illegal, without lawful authority being violative of principle of natural justice.

XVII. That the Appellant was continuously serving the department having more than two and half years service at his credit without any complaint which accrued vested rights in his favour which could not be taken away or withdrawn by the authority under the principle of *locus poenitentiae*.

XVIII. That in case of any defect in the appointment of Appellant is existed for which only the respondent authority is responsible and not the Appellant, therefore, the action of the Respondent-3 is not warranted under the law and rules and the impugned order is illegal and of no legal effect.


XIX. That Appellant is permanent and confirmed employee of the department and performing his respective duties efficiently since his date of appointment during which he was provided all the benefits and privileges attached with his post including annual increments. Now the Appellant has crossed the upper age limit, supporting a family with his children who are getting education in various schools, thus, in such circumstances, the Respondent-3 has no legal justification to hold the appointment of Appellant as illegal. Therefore, the act and action of the Respondent-3 is tainted with *mala fide* intention, unlawful and not operative against the vested rights of Appellant.

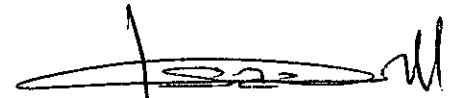
XX. That it is humbly submitted that in view of the order dated 28.04.2014 of august Supreme Court of Pakistan in CP No. 551/2014, this honourable Tribunal instead of earlier order dated 15.01.2014 of the august Supreme Court in CP No. 2026/2013 and CP No. 2029/2013, is under obligation to **“decide the appeal as mandated in law”** as ordained by the later order dated 28.02.2014 of the Bench headed by the Honourable Chief Justice of Pakistan.

XXI. That Appellant craves to take / raise any other ground with permission of this Honourable Tribunal which is necessary for just decision of the Appeal in hand.

Prayer: Considering the above submissions, it is, therefore, most respectfully prayed that by way of acceptance of this Appeal, this honourable Court may please set aside the impugned order of the termination and reinstate the Appellant with all back benefits.

Or any other relief deemed appropriate by this Honourable Tribunal under the circumstances may please also be granted.


Appellant
through



Isaac Ali Qazi
Advocate

12, K-3, Phase-III, Hayatabad, Peshawar
Phone 5817132, 5818446, Mobile: 0300 8594555
Email: isaac.ali.qazi@gmail.com
www.isaacalaw.org

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR**

In Re: Service Appeal No. _____/2014

Abdullah Noor s/o Haji Shulozan

(Sub-Engineer, Public Health Engineering Department, Peshawar)

R/o House No. 911, Street No. 25, Section E-5,

Phase-VII, Hayatabad, Peshawar

.....Appellant

Versus

1. **Government of Khyber Pakhtunkhwa**
through Chief Secretary,
Civil Secretariat, Peshawar

2. **Secretary**
Public Health Engineering Department, Peshawar
Government of Khyber Pakhtunkhwa

3. **Chief Engineer (South)**
Public Health Engineering Department, Peshawar
Government of Khyber Pakhtunkhwa

.....Respondents

Affidavit

I, Abdullah Noor s/o Haji Shulozan, Appellant do hereby solemnly affirm that contents of this Appeal are true and correct to the best of knowledge and belief and nothing has been concealed intentionally from this honourable Tribunal.

Deponent

Identified By:

Isaac Ali Qazi
Advocate



**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR**

In Re: C.M. No. _____/2014
In Service Appeal No. _____/2014

Abdullah Noor s/o Haji Shulozan

(Sub-Engineer, Public Health Engineering Department, Peshawar)

R/o House No. 911, Street No. 25, Section E-5,

Phase-VII, Hayatabad, Peshawar

.....*Applicant*

Versus

Government of Khyber Pakhtunkhwa & 2 Others

.....*Respondents*

Application for Condonation of Delay, IF ANY

Respectfully Sheweth,

The Applicant humbly submits as under:-

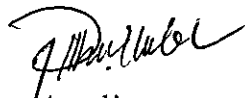
1. That Applicant has filed the instant Appeal before this Honourable Tribunal in which no date has been fixed.
2. That the facts and grounds mentioned in the Appeal may kindly be considered as an integral part of this Application.
3. That against the impugned Order 01.07.2013, the Applicant filed Departmental Appeal on 03.07.2013 as there was other terminated employees of PHE Department filed Writ Petition (mentioned in the Memo of Appeal), hence, the Applicant also filed W.P. No. 2146-P/2013 on 24.06.2013 wherein the department filed comments on 24.09.2013 to which Applicant filed rejoinder on 27.11.2013 and the WP was finally disposed off on 11.09.2014. Though departmental appeal is yet to be disposed off, the Applicant prefers the instant Appeal before this Honourable Tribunal.

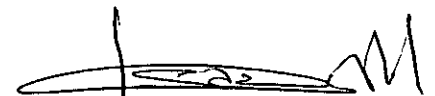
4. That **WITHOUT PREJUDICE** in view of the Section 5 and 14 of the Limitation Act, 1908 along with all other enabling laws, the cause of limitation is condonable as the Applicant was following the proceedings before the honourable Peshawar High Court, Peshawar with bona fide intention to rectify the wrong and breach of fundamental rights through the Constitutional Petition.

5. That as evident from the record, the Appellant shown due diligence and adopted the due legal course, hence, the limitation is condonable specially when similarly placed terminated employees Appeals are pending before this Honourable Tribunal, hence, treating the Applicant at par and for the end of justice this Appeal may please be disposed off on merit.

6. It is, therefore, humbly prayed that on acceptance this Application, the delay, if any in filing of Appeal may please condoned.

OR any other relief deems appropriate in the circumstances may be granted.


Applicant
through



Isaac Ali Qazi
Advocate

12, K-3, Phase-III, Hayatabad, Peshawar
Phone 5817132, 5818446, Mobile: 0300 8594555
Email: isaac.ali.qazi@gmail.com
www.isaacalaw.org

**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR**

In Re: C.M. No. _____/2014
In Service Appeal No. _____/2014

Abdullah Noor s/o Haji Shulozan

(Sub-Engineer, Public Health Engineering Department, Peshawar)
R/o House No. 911, Street No. 25, Section E-5,
Phase-VII, Hayatabad, Peshawar

.....*Applicant*


Versus

Government of Khyber Pakhtunkhwa & 2 Others

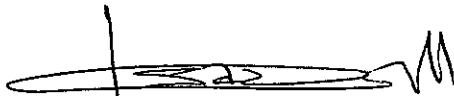
.....*Respondents*

Affidavit

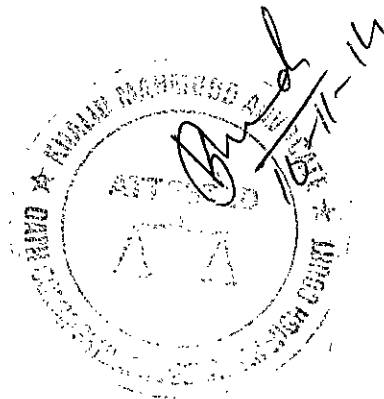
I, Abdullah Noor s/o Haji Shulozan, Applicant do hereby solemnly affirm that contents of this Application are true and correct to the best of knowledge and belief and nothing has been concealed intentionally from this honourable Tribunal.


Deponent

Identified By:



Isaac Ali Qazi
Advocate



Annexure-I

(16)

OFFICE OF THE CHIEF ENGINEER(SOUTH)
PUBLIC HEALTH ENGG:DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 11 / E - 9 / PHE

Dated Pesh: the 01 / 07 / 2013.

OFFICE ORDER.

Since Public Service Commission has furnished names of Selected persons for the post of Sub Engineers on the basis of requisition sent by Secretary PHE Department dated 10.02.2010, the Following contract Sub Engineers are hereby terminated with immediate effect:-

1. Mr. Abdullah Noor O/O Chief Engineer (FATA) Works & Services Department Peshawar.
2. Mr. Shahid Khan O/O Executive Engineer PHE Division Kohat.
3. Mr. Mujtaba Qureshi O/O Executive Engineer PHE Nowshera
4. Mr. Shahid Iqbal O/O Executive Engineer PHE Division Karak
5. Mr. Usman Ullah O/O Executive Engineer PHE Division Nowshera.

CHIEF ENGINEER

Copy to the:-



1. Chief Engineer (FATA) Works & Services Department Peshawar.
2. Superintending Engineer PHE Circle Peshawar / Kohat /
3. Executive Engineer PHE Division Nowshera / Kohat / Karak.
4. District Accounts Officer Nowshera / Kohat / Karak.
5. Officials concerned.

CHIEF ENGINEER

Handwritten signature

Handwritten signature

حکومت پاکستان
 کابینہ
 21505-9402686-7
 محمد علی جناح
 قائد اعظم
 03/03/1980



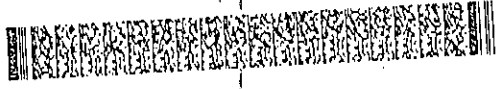
محمد علی جناح
 قائد اعظم

شناختی نمبر: 21505-9402686-7
 تاریخ اجراء: 29/10/2010
 تاریخ منسوخ: 30/09/2020

محمد علی جناح
 قائد اعظم

محمد علی جناح
 قائد اعظم

15780148379

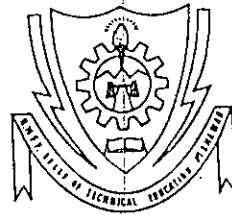




S.No. A 5308

Annexure-III
Roll No. 31617

(18)

N.W.F.P. Board of Technical Education



PESHAWAR - PAKISTAN

DIPLOMA OF ASSOCIATE ENGINEER

SESSION 2000

(ANNUAL / SUPPLEMENTARY)*

This is to certify that

Mr. / Miss. ABDULLAH NOOR

Son / Daughter of Mr. H. SHAHAWZAN KHAN

Registration No. GPI/BU/C/96-5650

of GOVT. POLYTECHNIC INSTITUTE, HANNU

has passed the Diploma of Associate Engineer Examination in CIVIL Technology, conducted by the N.W.F.P. Board of

Technical Education, Peshawar, in the month of May, 2002

He / She Secured 1908 Marks out of 3400 and

has been placed in Grade 'C'

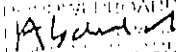
In recognition thereof this

DIPLOMA OF ASSOCIATE ENGINEER

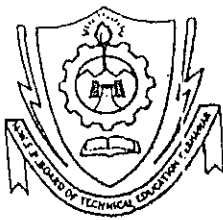
is awarded to him / her at Peshawar

on the 13th day of Dec. 02


ASSISTANT SECRETARY


SECRETARY

THIS CERTIFICATE IS ISSUED WITHOUT ANY ALTERATION OR ERASURE



N.W.F.P. Board of Technical Education
Peshawar

(19)

Book No. _____
S.No _____

DETAIL MARKS CERTIFICATE
CIVIL TECHNOLOGY
(3rd Year Annual Based)

Name of Candidate Abdul Wahid Noor
Father's Name H. Shalwazai Khan.
Roll No 31617 Session (Annual / Supply) 1999
Institute/College G.P.S. Bannu.

S.No	Subject	Total Marks	Marks Obtained	
			In Fig:	In Words
	2nd Year Marks	2350	1324	
1.	CT-312 Bridge Engineering	P- 50 T- 50	55	
2.	CT-333 High Ways, Air Ports & Traffic Engineering	P- 50 T-100	70	
3.	CT-342 Irrigation Engineering	P- 50 T- 50	60	
4.	CT-353 Public Health Engineering	P- 50 T-100	78	
5.	CT-365 Concrete Tech: & R.C.C. Design	P-100 T-150	131	
6.	CT-372 Railways Docks and Harbours	P- 50 T- 50	68	
7.	CT-382 Soil Mechanics	P- 50 T- 50	65	
8.	CT-321 Civil Engineering Project	P- 50	36	
9.	GEN-331 Islamiat/Pak. Study	T- 50	21	
Total Marks		3400	1908	One thousand nine hundred & eight

Prepared by _____
Checked by _____

[Signature]
SECURITY OFFICER

(Errors & omissions are excepted)

(Better Copy)

OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. S/06/E-4/PHE
Dated Pesh: the 23/02/2011.

22

To

Mr. Abdullah Noor S/o Haji Shalozan,
R/o Tehsil Mir Ali Village Hassu Khel,
North Waziristan Agency.

Subject:

Officer of Appointment as Sub Engineer (BPS-11) on Contract basis in PHE Department Khyber Pakhtunkhwa.

You are hereby offered a post of Sub Engineer in the Public Health Engineering Department Khyber Pakhtunkhwa purely on Contract basis in BPS-11 with usual allowances as admissible under the rules from time to time on the following terms and conditions:-

- 13) You will get pay at the minimum of BPS-11 (Rs. 4115-275-12365) including usual allowances as admissible under the rules. You will also be entitled to annual increments as per existing policy.
- 14) You shall be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
- 15) You shall, for all intents and purposes, be Civil Servant except for purpose of pension or gratuity, in lieu of pension and gratuity, you shall be entitled to receive such amount contributed by him towards Contributory Provident Funds (C.P.F) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
- 16) Your employment in the PHE Department is purely temporary and your services are liable to be terminated without assigning any reason at fourteen One month notice or on the payment of one month salary in lieu of the notice. In case you wish to resign at any time, one month notice will be necessary or in lieu thereof one month pay will be forfeited.
- 17) You shall, initially, be on probation for a period of two years extendable upto 3 years.
- 18) You shall produce a medical certificate of fitness from Medical Superintendent, District HQ Hospital Shangla before reporting your-self for duty to the Executive Engineer PHE Division Shangla, as required under the rules.
- 19) You have to join duty at your own expenses.
- 20) Your services on contract basis shall be regular under the terms & conditions of contract appointment of the Provincial Government.
- 21) You should not claim your seniority in the regular cadre of Sub Engineers of the Department.
- 22) You shall be liable to serve any wherein Khyber Pakhtunkhwa including agencies and Tribal areas.
- 23) You shall not make any request for transfer from the PHE Division where you are posted.
- 24) Your services shall be terminated on arrival of recommendations of the Public Service Commission.

If you accept the post on above conditions, you should report for duty to the Executive Engineer PHE Division Shangla within one month of the receipt of this offer of appointment.

CHIEF ENGINEER

Copy to the:-

- 6) Section Officer (Estt.) PHE Department Peshawar.
- 7) Chief Engineer (North) PHE Department Peshawar.
- 8) Superintending Engineer PHE Circle Swat.
- 9) Executive Engineer PHE Division Shangla.
- 10) District Accounts Officer Shangla.
- 11) Personal File of the Official Concerned.

CHIEF ENGINEER

Abdullah Noor
by

OFFICE OF THE CHIEF ENGINEER(SOUTH)
PUBLIC HEALTH ENGG:DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 06 / E-4 / PHE

Dated Pesh: the 27 / 02 / 2011.

Annexure-V

21

To

Mr. Abdullah Noor S/O Haji Shalozan,
R/O Tehsil Mir Ali Village Hassu Khel,
North Waziristan Agency.

Subject:- Offer of Appointment as Sub Engineer (BPS-11) on Contract basis in PHE Department Khyber Pakhtunkhwa.

You are hereby offered a post of Sub Engineer in the Public Health Engineering Department Khyber Pakhtunkhwa purely on Contract basis in BPS-11 with usual allowances as admissible under the rules from time to time on the following terms and conditions:-

- 1) You will get pay at the minimum of BPS-11 (Rs.1115 - 275 - 12365) including usual allowances as admissible under the rules. You will also be entitled to annual increment as per existing policy.
- 2) You shall be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
- 3) You shall, for all intents and purposes, be Civil Servant except for purpose of pension or gratuity. In lieu of pension and gratuity, you shall be entitled to receive such amount contributed by him towards Contributory Provident Funds (C.P.F) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
- 4) Your employment in the PHE Department is purely temporary and your services are liable to be terminated without assigning any reason at fourteen One month notice or on the payment of one month salary in lieu of the notice. In case you wish to resign at any time, one month notice will be necessary or in lieu thereof one month pay will be forfeited.
- 5) You shall, initially, be on probation for a period of two years extendable upto 3 years.
- 6) You shall produce a medical certificate of fitness from Medical Superintendent, District HQ Hospital Shangla before reporting your-self for duty to the Executive Engineer PHE Division Shangla, as required under the rules.
- 7) You have to join duty at your own expenses.
- 8) Your services on contract basis shall be regular under the terms & conditions of contract appointment of the Provincial Government.
- 9) You should not claim your seniority in the regular cadre of Sub Engineers of the Department.
- 10) You shall be liable to serve anywhere in Khyber Pakhtunkhwa including agencies and Tribal areas.
- 11) You shall not make any request for transfer from the PHE Division where you are posted.
- 12) Your services shall be terminated on arrival of recommendees of the Public Service Commission.

If you accept the post on above conditions, you should report for duty to the Executive Engineer PHE Division Shangla within one month of the receipt of this offer of appointment.

CHIEF ENGINEER

Copy to the :-

- 1) Section Officer (Estt) PHE Department Peshawar.
- 2) Chief Engineer (North) PHE Department Peshawar.
- 3) Superintending Engineer PHE Circle Swat.
- 4) Executive Engineer PHE Division Shangla.
- 5) District Accounts Officer Shangla.
- 3) Personal File of the official concerned.

CHIEF ENGINEER

The entries in this page should be renewed or re-attested at least every five years and the 7, 8, 9 and 10 should be dated.

23

Name: Abdullah Noor S/O Haji Shalozan

Race: Afghan

Residence: Teh: Miraki Vill: Hazzu Khel Naarkh Waziristan Agency

Father's name and residence: Haji Shalozan ad abene

Date of birth by Christian era as nearly as can be ascertained: 3rd March 1930 (Third March on Thero: 'Nine hundred & Eighty)

Exact height by measurement: 5-9"

Personal marks for identification:

Left hand thumb and finger impression of (Non-Gazetted) officer:



Signature of Government Servant:

[Handwritten signature]

Signature and designation of the Head of the Office, or other Attesting Officer.

[Handwritten signature]

Executive Engineer
Public Health Engineer Division Shandha

1 Name of post	2 Whether substantive or officiating and whether permanent or temporary	3 If officiating, state (i) sub-section appointment, or (ii) whether service (bonds for premium under Act 271 C.S.R.	4 Pay in substantive post	5 Additional pay in officiating	6 Other emolument (allowance for leave)	7 Date of appointment	8 Signature of Government Servant	9 Signature and Designation of the head of the office in which the appointment is effected in accordance with column 1, 2, 3, 4, 5, 6, 7, 8, 9.
Sub Engineer 4115-275-12365 Abdul Rasheed	Offic.		R. 4115/2 PM			25-2-2011		Re
								on 25
								Fractal Health En
								Fre
								Ver
6600-460-20400								
6600-460-20400 11		R.	6600/2 PM			31-7-2011		

7 Date of appointment	8 Signature of Government Servant	9 Name and Designation of head of the office or attesting officer (nos 1 to 8)	10 Date of termination or appointment	11 Reason of termination such as promotion, transfer, dismissal, etc.)	12 Signature of the head of the office or other attesting officer.	13 Leave		14 Signature of the head of the office or other attesting officer	15 Reference to any recorded punishment or censure or praise of the Government Servant
						Nature and duration of leave taken.	Allocation of period of leave on average pay upto four months for which leave salary is debitible in another Government.		
						Period	Government to which debitible		
6/8/11				Reported absent on 6/8/2011					
12/2011				Granted Annual increment					
12/2011				Granted Annual increment					
12/2012				Granted Annual increment					

Reported absent on 6/8/2011

[Signature]
Executive Engineer
Public Health Dept: FATA Division
M.W. Agency Miranshah

Period: 20/2/2011 to 30/4/2011

Government to which debitible: M.W. Agency Miranshah

[Signature]
Executive Engineer
Public Health Dept: FATA Division
M.W. Agency Miranshah

[Signature]
Executive Engineer
Public Health Dept: FATA Division
M.W. Agency Miranshah

Period: 12/2/2011 to 30/4/2011

Government to which debitible: M.W. Agency Miranshah

Granted Annual increment

[Signature]
Executive Engineer
Public Health Dept: FATA Division
M.W. Agency Miranshah

Period: 1/2/2011 to 30/11/2012

Government to which debitible: M.W. Agency Miranshah

[Signature]
Executive Engineer
Public Health Dept: FATA Division
M.W. Agency Miranshah

[Signature]

The Secretary,
Govt. of Khyber Pakhtunkhwa,
Public Health Engineering Department.

Annexure-VII

28

SUBJECT: RESTORATION OF SERVICE

Sir,

Respectfully it is submitted that we the following five Nos. Sub-Engineers were appointed vide Chief Engineer (South) PHE Order Dated:23.02.2011 (copies of orders attached at Annexure-I). We continued to serve at different PHE Divisions quite satisfactory i.e., to the entire satisfaction of our superiors for continuous 02-Years and 4-months.

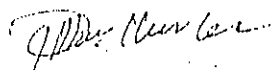
2. Unfortunately the Chief Engineer (South) vide Order Dated:01.07.2013 (Annexure-II) terminated our services, unheard & without giving any cogent reasons for termination as required under the rules except that the Public Service Commission has furnished names of selected persons for the posts of Sub-Engineers which is not true. As there has been 44-Nos posts of Sub-Engineers lying vacant in the department, whereas the public service commission has made recommendation of only 18-candidates for appointment as Sub-Engineers.

3. Moreover, the Govt. of Khyber Pakhtunkhwa vide Finance Department circular letter (Annexure-III) has regularized all the Civil Servants appointed to a service or post on or after 01st July 2001. In response to the said circular letter the respective audit offices have started deduction of G.P Fund from our paybills at prescribed rates regularly.

4. In view of the above, it is very humbly prayed that the above unlawful/impugned order of Chief Engineer (South) PHE Department may very kindly be set-aside/withdrawn for which we shall be highly obliged.

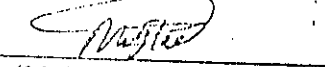
Dated Peshawar the 03.07.2013

yours faithfully,



(ABDULLAH NOOR)
SUB-ENGINEER


(SHAHID KHAN)
SUB-ENGINEER


(MUJTABA QURESHI)
SUB-ENGINEER


(SHAHID IQBAL)
SUB-ENGINEER


(USMANULLAH)
SUB-ENGINEER

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

(29)

Writ Petition No. 244-P/2013

Abdullah Noor S/o Haji Shulozan
R/o H.No.911, Street No.25, Sector E-5,
Phase-VII, Hayatabad, Peshawar.

Versus

1. Chief Engineer (South), Public Health Engineering Department, KPK, Peshawar.
2. Superintending Engineer, Public Health Engineering Circle, Peshawar.
3. Executive Engineer, Public Health Engineering Division,
4. Chief Engineer FATA, Works and Services Department, Peshawar now Public Health Engineering Department, Peshawar.
5. Secretary, Govt. of KPK, Public Health Engineering Department, Peshawar. Respondents

⇔ <=> ⇔ <=> ⇔ <=> ⇔ <=> ⇔

WRIT PETITION UNDER ARTICLE 199
OF THE CONSTITUTION OF ISLAMIC
REPUBLIC OF PAKISTAN, 1973.

⇔ <=> ⇔ <=> ⇔ <=> ⇔ <=> ⇔

Respectfully Sheweth:

1. That on 23/02/2011, petitioner was appointed as Sub Engineer, BPS-11 on contract basis with usual allowances as admissible under the Rules by R.No.1

FILED TODAY

Deputy Registrar



ATTESTED

EXAMINER
Peshawar High Court

30 OCT 2014

- after advertising he said post and by selecting him as such through prescribed manner. (Copy as annex "A")
2. That Service Book of the petitioner was maintained and every year his pay was increased by allowing him annual increments, CP fund was deducted and was allowed other monetary benefits, meaning thereby, that he was a regular employee of the department. (Copy as annex "B")
 3. That on 17/01/2013, the Govt. of KPK, issued an Act wherein servants appointed to a service or post on or after 1st July 2001, shall be deemed to have been appointed on regular basis. (Copy as annex "C")
 4. That as per letter dated 20.06.2013, issued by Administrative Officer of the department, 44 posts of Sub Engineers, BPS-11 are still lying vacant with the department. (Copy as annex "D")
 5. That after serving the department for about 3 years, office order dated 01.07.2013 was issued by R.No.1 whereby services of petitioner alongwith others were terminated with immediate effect. (Copy as annex "E")
 6. That on 3-7-13, petitioner alongwith others submitted representation before the authority which met dead response till date. (Copy as annex "F")

Hence this Writ Petition, inter alia, on the following grounds:-

GROUND S:

- a. That petitioner was appointed on contract basis in prescribed manner.

FILED FOR
Deputy Registrar
26 JUL 2013

ATTESTED
EXAMINER
Reserve High Court.
30 OCT 2014

Competent Authority, the Appellants were appointed against various posts in the Cell; initially on contract basis for a period of one year, extendable subject to satisfactory performance in the Cell. On 6.10.2008, through an Office Order the Appellants were granted extension in their contracts for the next one year. In the year 2009, the Appellants' contract was again extended for another term of one year. On 26.7.2010, the contractual term of the Appellants was further extended for one more year, in view of the Policy of the Government of KPK, Establishment and Administration Department (Regulation Wing). On 12.2.2011, the Cell was converted to the regular side of the budget and the Finance Department, Govt. of KPK agreed to create the existing posts on regular side. However, the Project Manager of the Cell, vide order dated 30.5.2011, ordered the termination of services of the Appellants with effect from 30.6.2011.

32

3. The Appellants invoked the constitutional jurisdiction of the learned Peshawar High Court, Peshawar, by filing Writ Petition No.196/2011 against the order of their termination, mainly on the ground that many other employees working in different projects of the KPK have been regularized through different judgments of the Peshawar High Court and this Court. The learned Peshawar High Court dismissed the Writ Petition of the Appellants holding as under :-

"6. While coming to the case of the petitioners, it would reflect that no doubt, they were contract employees and were also in the field on the above said out of date but they were project employees, thus, were not entitled for regularization of their services as explained above. The august Supreme Court of Pakistan in the case of Government of Khyber

ATTESTED

ATTESTED

[Signature]

Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

[Handwritten scribbles]

Pakhtunkhwa Agriculture, Live Stock and Commerce
Department through its Secretary and others vs. Ahmad
Din and another (Civil Appeal No.687/2014 decided on
24.6.2014), by distinguishing the cases of Government of
NWFP vs. Abdullah Khan (2011 SCMR 989) and
Government of NWFP (now KPK) vs. Kaleem Shah (2011
SCMR 1004) has categorically held so. The concluding para
of the said judgment would require reproduction, which
reads as under :-

"In view of the clear statutory provisions the respondents cannot seek regularization as they were admittedly project employees and thus have been expressly excluded from purview of the Regularization Act. The appeal is therefore allowed, the impugned judgment is set aside and writ petition filed by the respondents stands dismissed."

7. In view of the above, the petitioners cannot seek regularization being project employees, which have been expressly excluded from purview of the Regularization Act. Thus, the instant Writ Petition being devoid of merit is hereby dismissed.

4. The Appellants filed Civil Petition for leave to Appeal No.1090 of 2015 in which leave was granted by this Court on 01.07.2015.

Hence this Appeal.

5. We have heard the learned Counsel for the Appellants and the learned Additional Advocate General, KPK. The only distinction between the case of the present Appellants and the case of the Respondents in Civil Appeals No.134-P of 2013 etc. is that the project in which the present Appellants were appointed was taken over by the KPK Government in the year 2011 whereas most of the projects in which the aforesaid Respondents were appointed, were regularized before the cut-off date provided in North West Frontier Province (now KPK) Employees (Regularization of Services) Act, 2009. The present Appellants were appointed in the year 2007 on contract basis in the project and after completion of all the requisite codal formalities, the period of their contract appointments was extended from

ATTESTED

Court Associate
Supreme Court of Pakistan
Islamabad

ATTESTED

ATT

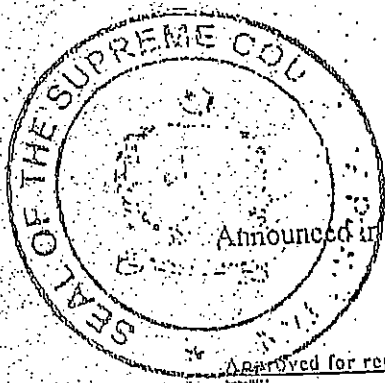
Government. It appears that the Appellants were not allowed to continue after the change of hands of the project. Instead, the Government by cherry picking, had appointed different persons in place of the Appellants. The case of the present Appellants is covered by the principles laid down by this Court in the case of Civil Appeals No.134-P of 2013 etc. (Government of KPK through Secretary, Agriculture vs. Adnanullah and others), as the Appellants were discriminated against and were also similarly placed project employees.

(38)
(34)

7. We, for the aforesaid reasons, allow this Appeal and set aside the impugned judgment. The Appellants shall be reinstated in service from the date of their termination and are also held entitled to the back benefits for the period they have worked with the project or the KPK Government. The service of the Appellants for the intervening period i.e. from the date of their termination till the date of their reinstatement shall be computed towards their pensionary benefits.

Sd/- Anwar Zaheer Jamali, HCJ
Sd/- Mian Saqib Nisar, J
Sd/- Amir Hani Muslim, J
Sd/- Iqbal Hameedur Rahman, J
Sd/- Khilji Arif Hussain, J

Certified to be True Copy



Announced in open Court on 3/5/16

Court Associate
Supreme Court of Pakistan
Islamabad

Approved for reporting.

11685/16
GR No:
Date of Filing: 6.6.16
No of Pages: 15
Requesting: (Signature)
Copy Fee to: 2000
Court Fee: 10000
Date of Payment: 6-6-2016
Date of Issuance: 6-6-2016

M. S. Khatun, AOR

ATTESTED

ATTESTED

Office of the
District Population Welfare Officer Mardan.
Near Irum Colony opposite Railway Station Near Khubsorat Plaza.

Ph# 0937-9230035

F.No. 1(5)/2013-14-Admn
Dated Mardan the 13/06/2014.

To

Yousaf Khan (Chowkidar)
S/O Sabzali Khan
Village Dheri Katlang
Mardan.

Subject:-

COMPLETION OF ADP PROJECT i.e. PROVISION FOR POPULATION WELFARE
DEPARTMENT KHYBER PAKHTUNKHWA.

The subject project is going to be completed on 30.6.2014, therefore, the enclosed Office Order No. 4(35)/2013-14/Admn: dated 13.6.2014 may be treated as fifteen days notice in advance for the termination of your services as on 30.6.2014 (A.N).

(NOWSHERAWAN)
DISTRICT POPULATION WELFARE OFFICER
MARDAN

Copy to :-

1. Accountant (local Office) for necessary action.
2. Personal File of the Official concerned.

DISTRICT POPULATION WELFARE OFFICER
MARDAN

ATTESTED

(36)

30	Zia Muhammad	Chowkidar	Mardan
31	Amreen Bibi	Aya / Helper	Mardan
32	Gulshan Zari	Aya / Helper	Mardan
33	Nageen Begum	Aya / Helper	Mardan
34	Hastia Begum	Aya / Helper	Mardan
35	Safia Naz	Aya / Helper	Mardan
36	Bastia Begum	Aya / Helper	Mardan
37	Reshma	Aya / Helper	Mardan

All pending liabilities of ADP Project employees must be cleared before 30.06.2014 positively under intimation to this office.

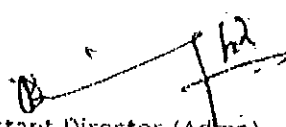
Sd/-
(Project Director)

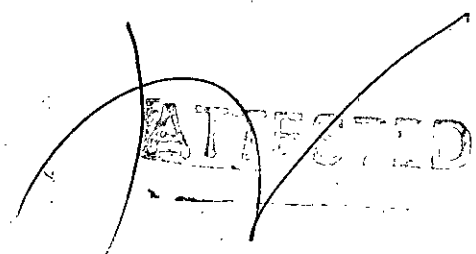
F.No.4 (35)/2013-14/Admn

Dated Peshawar the 13/6/2014.

Copy forwarded to the:-

1. Director Technical, PWD, Peshawar.
2. District Population Welfare Officer, Mardan.
3. District Accounts Officer, Mardan.
4. Chief Health P&D Department, Khyber Pakhtunkhwa.
5. PS to Advisor to Chief Minister for Population Welfare, Khyber Pakhtunkhwa.
6. PS to Secretary to Govt: of Khyber Pakhtunkhwa, Finance Department, Peshawar.
7. PS to Secretary to Govt: of Khyber Pakhtunkhwa, Population Welfare Department, Peshawar.
8. PS to Director General, PWD, Peshawar.
9. Officials concerned.
10. Master File.


Assistant Director (Admn)


ADP/STED

Government of Khyber Pakhtunkhwa,
Directorate General Population Welfare
Post Box No. 235

PC Trust Building, Achhi Masjid Road, Peshawar Cantt. Ph: 091-9211536-38

37

Dated Peshawar: the 13/6/2014

OFFICE ORDER

F.No.4(35)/2013-14/Admn:- On completion of the ADP Project No. 903-821-790/110622 under the scheme provision of Population Welfare Programme Khyber Pakhtunkhwa. The services of the following ADP Project employees stands terminated w.e.f. 30.06.2014 as per detail below:-

S.No.	Name	Designation	District /Institution.
1	Azra Wali	FWW	Mardan
2	Ghazala Begum	FWW	Mardan
3	Bushra Gul	FWW	Mardan
4	Saira Shah	FWW	Mardan
5	Asma Mir	FWW	Mardan
6	Raitoon Bibi	FWW	Mardan
7	Tahira Naz	FWW	Mardan
8	Naeem-ur-Rehman	FWA (M)	Mardan
9	Muhammad Aslam	FWA (M)	Mardan
10	Syed Junaid Shah	FWA (M)	Mardan
11	Muhammad Rashid	FWA (M)	Mardan
12	Farhad Khan	FWA (M)	Mardan
13	Ibrarud Din	FWA (M)	Mardan
14	Qasim Ali	FWA (M)	Mardan
15	Sharafat	FWA (F)	Mardan
16	Samina Aslam	FWA (F)	Mardan
17	Riffat Jehangir	FWA (F)	Mardan
18	Nihar Raza	FWA (F)	Mardan
19	Noor Begum	FWA (F)	Mardan
20	Samina Jalil	FWA (F)	Mardan
21	Roveeda Begum	FWA (F)	Mardan
22	Nasra Bibi	FWA (F)	Mardan
23	Musarrat	FWA (F)	Mardan
24	Imtiaz Ali	Chowkidar	Mardan
25	Khairul Abrar	Chowkidar	Mardan
26	Wiqar Ahmad	Chowkidar	Mardan
27	Arshid Ali	Chowkidar	Mardan
28	Yousaf Khan	Chowkidar	Mardan
29	Muhammad Naeem	Chowkidar	Mardan

~~MAINTENANCE~~

وکالت نامہ

بعدالت: K.P.K. Service Tribunal Bahawal

لوسف خان نام K.P.K. حکومت وکالت

مخانب سائل / 188 دعویٰ S. Appeal. تاریخ

باعث تحریر آنکہ مقدمہ مندرجہ بالا عنوان اپنی طرف سے واسطے پیروی و محرم ابھی

بمقام لوسف خان کیلئے جاوید اقبال گل بیلہ اینڈ وکیٹ ہائی کورٹ کو روٹوں کے مطابق

مقرر کیا ہے۔ کہ میں ہر پیشی کا خود یا بزرگیہ مختار حاصل رو بروعدالت حاضر ہوتا رہوں گا اور بوقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کرونگا، اگر پیشی پر من مظهر حاضر نہ ہوا اور مقدمہ میری غیر حاضری کی وجہ سے

کسی طور پر میرے برخلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہونگے۔ نیز وکیل صاحب موصوف صدر مقام کچہری کی کسی اور جگہ یا کچہری کے مقررہ اوقات سے پہلے یا پیچھے یا بروز تعطیل پیروی کرنے کے ذمہ دار نہ ہونگے۔ اگر

مقدمہ علاوہ صدر مقام کچہری کے کسی اور جگہ سماعت ہونے یا بروز تعطیل یا کچہری کے اوقات کے آگے پیچھے پیش ہونے پر من مظهر کو کوئی نقصان پہنچے تو اس کے ذمہ دار یا اس کے واسطے کسی معاوضہ کے ادا کرنے یا مختار نہ واپس کرنے کے بھی

صاحب موصوف ذمہ دار نہ ہونگے۔ مجھے کوکل ساختہ پرداختہ صاحب موصوف مثل کردہ ذات خود منظور و قبول ہوگا۔ اور صاحب موصوف کو عرضی دعویٰ و جواب دعویٰ اور درخواست اجراء ڈگری و نظر ثانی اپیل و نگرانی ہر قسم کی درخواست پر دستخط و

تصدیق کرنے کا بھی اختیار ہوگا اور کسی حکم یا ڈگری کے اجراء کرانے اور ہر قسم کے روپیہ وصول کرنے اور رسید دینے اور داخل کرنے اور ہر قسم کے بیان دینے اور سپروٹاشی و راضی نامہ فیصلہ برخلاف کرنے اقبال دعویٰ دینے کا بھی اختیار ہوگا۔ اور

بصورت اپیل و برآمدگی مقدمہ یا منسوخی ڈگری یکطرفہ درخواست حکم انتہائی یا ترقی یا گرفتاری قبل از اجراء ڈگری بھی موصوف کو بشرط ادا ایگ علیحدہ مختار نہ پیروی کا اختیار ہوگا۔ اور بصورت ضرورت صاحب موصوف کو بھی اختیار ہوگا یا مقدمہ مذکورہ یا

اس کے کسی جزو کی کاروائی کے واسطے یا بصورت اپیل، اپیل کے واسطے دوسرے وکیل یا پیرسٹر کو بجائے اپنے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کے ہر امر وہی اور ویسے ہی اختیارات حاصل ہونگے جیسے کے صاحب موصوف کو حاصل

ہیں۔ اور دوران مقدمہ میں جو کچھ ہر جانہ التواء پڑے گا۔ اور صاحب موصوف کا حق ہوگا۔ اگر وکیل صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کرونگا تو صاحب موصوف کو پورا اختیار ہوگا کہ مقدمہ کی پیروی نہ کریں اور ایسی صورت

میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا۔ لہذا مختار نامہ لکھ لیا کہ سند رہے۔ مضمون مختار نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے۔

لو سف خان ولد سبزی خان سکنہ ماٹنگ بلع سلطان

ایک وکیل

Handwritten signatures and initials at the bottom of the page.

بخدمت جناب سروس ٹریپیونل خیبر پختونخواہ
پشاور

۱۱/۱۶/۱۱

لوسف تہاہ بنام پارکسٹن

جناب عالی! سائل حسب ذیل عرض رساں ہے۔

۱۔ یہ کہ سائل کے کیس میں آج کی تاریخ پیشی فیکس ہے۔

۲۔ یہ کہ سائل نے بوجہ مجبوری کورٹ فیس عدالت حضور میں جمع نہیں کرائی۔ برائے مہربانی سائل کو فیس جمع کروانے کے لئے ایک ہفتے کا ٹائم دیا جائے۔

سائل نذر علیہ عمل لڈانہ کرا
آف طاویدہ رہنماں کلمہ اردو دکنہ

Before the Khyber Pakhtunkhwa Services Tribunal Peshawar

Appeal No.1121/2017

Yousaf Khan.....Appellant.

V/S

Government of Khyber Pakhtunkhwa, through Chief Secretary,
Khyber Pakhtunkhwa Peshawar and others.....Respondents.

(Reply on behalf of respondent No. 4)

Preliminary Objections.

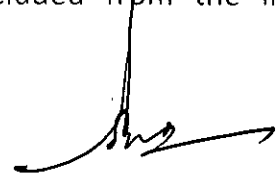
- 1). That the appellant has got no cause of action.
- 2). That the appellant has no locus standi.
- 3). That the appeal in hand is time barred.
- 4). That the instant appeal is not maintainable.

Respectfully Sheweth:-

Para No. 1 to 11:-

That the matter is totally administrative in nature and relates to respondent No.1,2,3 & 5 and they are in better position to satisfy the grievances of the appellant. Besides, the appellant has raised no grievances against respondent No. 4.

Keeping in view the above mentioned facts, it is therefore humbly prayed that the respondent No.4, may kindly be excluded from the list of respondent.



**ACCOUNTANT GENERAL
KHYBER PAKHTUNKHWA**

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

In Service Appeal No.1121/2017.

Yousaf Khan, Chowkidar (BPS-01)

(Appellant)


VS

Govt. of Khyber Pakhtunkhwa and others

(Respondents)

Index

S.No.	Documents	Annexure	Page
1	Para-wise comments		1-3
2	Affidavit		4



Deponent
Sagheer Musharraf
Assistant Director
(Lit)

**IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR.**

In Service Appeal No.1121/2017.

Yousaf Khan, Chowkidar (BPS-01) (Appellant)

VS

Govt. of Khyber Pakhtunkhwa and others (Respondents)

Joint para-wise reply/comments on behalf of the respondents No.2, 3&5.

Respectfully Sheweth,

Preliminary Objections.

1. That the appellant has got not locus standi to file the instant appeal.
2. That no discrimination / injustice has been done to the appellant.
3. That the instant appeal is bad in the eye of law.
4. That the appellants has not come to the Tribunal with clean hands..
5. That re-view petition is pending before The Supreme Court of Pakistan, Islamabad.
6. That the appeal is bad for non-joinder & mis-joinder of unnecessary parties.
7. That the tribunal has no jurisdiction to adjudicate the matters.

On Facts.

1. Incorrect. That the appellant was initially appointed on project post as Chowkidar in BPS-01 on contract basis till completion of project life i.e. 30/06/ 2014 under the ADP Scheme Titled "Provision for Population Welfare Program in Khyber Pakhtunkhwa (2011-14)". It is also pertinent to mention that during the period under reference, there was no other such project in / under in Population Welfare Department with nomenclature of posts as Chowkidar in BPS-01. Therefore name of the project was not mentioned in the offer of appointment.
2. Incorrect. As explained in para-1 above.
3. Incorrect. The project in question was completed on 30/06/2014, the project posts were abolished and the employees were terminated. According to project policy of Govt. of Khyber Pakhtunkhwa on completion of scheme, the employees were to be terminated which is reproduced as under: "On completion of the projects the services of the project employees shall stand terminated. However, they shall be re-appointed on need basis, if the project is extended over any new phase of phases. In case the project posts are converted into regular-budgetary posts, the posts shall be filled in according to the rules, prescribed for the post through Public Service Commission or The Departmental Selection Committee, as the case may be. Ex-Project employees shall have no right of adjustment against the regular posts. However, if eligible, they may also apply and compete for the post with other candidates. However keeping in view requirement of the Department, 560 posts were created on current side for applying to which the project employees had experience marks which were to be awarded to them."
4. Correct to the extent that after completion of the project the appellant alongwith other incumbents were terminated from their services as explained in para-3 above.

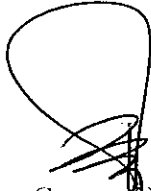
5. Incorrect. Verbatim based on distortion of facts. The actual position of the case is that after completion of the project the incumbents were terminated from their posts according to the project policy and no appointments made against these project posts. Therefore the appellant alongwith other filed a writ petition before the Honorable Peshawar High Court, Peshawar.
6. Correct to the extent that the Honorable Court allowed the subject writ petition on 26/06/2014 in the terms that the petitioners shall remain on the post subject to the fate of C.P No.344-P/2012 as identical proposition of facts and law is involved therein. And the services of the employees neither regularized by the Court no by the competent forum.
7. Correct to the extent that the CPLA No.496-P/2014 was dismissed but the Department is of the view that this case was not discussed in the Supreme Court of Pakistan as the case was clubbed with the case of Social Welfare Department, Water Management Department, Live Stock etc. in the case of Social Welfare Department, Water Management Department, Live Stock etc. the employees were continuously for the last 10 to 20 years while in the case of Population Welfare Department their services period during the project life was 3 months to 2 years & 2 months.
8. No comments.
9. No comments.
10. Correct. But a re-view petition No.312-P/2016 has been filed by this Department against the judgment dated:24/02/2016 of the larger bench of Supreme Court of Pakistan on the grounds that this case was not argued as it was clubbed with the cases of other Department having longer period of services. Which is still pending before the Supreme Court of Pakistan.
11. Correct to the extent that the appellant alongwith 560 incumbents of the project were reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition pending in the August Supreme Court of Pakistan. During the period under reference they have neither reported for nor did perform their duties.
12. Correct to the extent that a re-view petition is pending before the Apex Court and appropriate action will be taken in light of the decision of the Supreme Court of Pakistan.
13. No comments.

On Grounds.

- A. Incorrect. The appellant alongwith other incumbents reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition pending the August Supreme Court of Pakistan.
- B. Correct to the extent that the employees entitled for the period they have worked with the project but in the instant case they have not worked with the project after 30/06/2014 till the implementation of the judgment. Anyhow the Department will wait till decision of re-view petition pending in the Supreme Court of Pakistan.
- C. As explained in para-7 of the grounds above.
- D. Incorrect. The Department is bound to act as per Law, Rules & Regulation.
- E. Incorrect. After the judgment dated:26/06/2014 of PHC, Peshawar this Department filed Civil Petition No.496/2014 in the Apex Court of Pakistan. Which was decided by the larger bench of Supreme Court of Pakistan where dismissed all the civil petitions filed by the Govt. of Khyber Pakhtunkhwa on 24/02/2016 and now the Govt. of Khyber Pakhtunkhwa filed a re-view petitions in the Apex Court of Pakistan against the decision referred above. Which is still pending. The appellant alongwith other incumbents reinstated against the sanctioned regular posts, with immediate effect, subject to the fate of re-view petition pending in the August Supreme Court of Pakistan.

- F. Incorrect. Verbatim based on distortion of facts. As explained in Ground-E above.
- G. Incorrect. They have worked against the project post and the services of the employees neither regularized by the court nor by the competent forum. hence nullifies the truthfulness of their statement.
- H. Incorrect. The appellant alongwith other incumbents have taken all the benefits for the period, they worked in the project as per project policy.
- I. The respondents may also be allowed to raise further grounds at the time of arguments.

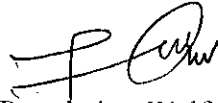
Keeping in view the above, it is prayed that the instant appeal may kindly be dismissed in the Interest of merit as a re-view petition is still pending before the Supreme Court of Pakistan.



Secretary to Govt. of Khyber Pakhtunkhwa
Population Welfare, Peshawar.
Respondent No.2



Director General
Population Welfare Department
Peshawar
Respondent No.3



District Population Welfare Officer
District Mardan
Respondent No.5

IN THE HONORABLE SERVICE TRIBUNAL, KHYBER PAKHTUNKHWA,
PESHAWAR.

In Service Appeal No.1121/2017.

Yousaf Khan, Chowkidar (BPS-01) (Appellant)

VS

Govt. of Khyber Pakhtunkhwa and others (Respondents)

Counter Affidavit

I Mr. Sagheer Musharraf, Assistant Director (Litigation), Directorate General of Population Welfare Department do solemnly affirm and declare on oath that the contents of para-wise comments/reply are true and correct to the best of my knowledge and available record and nothing has been concealed from this Honorable Tribunal.



Deponent

Sagheer Musharraf
Assistant Director
(Lit)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No:

1313/2014

Abdullah Noor S/O Haji Shalawzan (Appellant)

VERSUS

1. Chief Secretary Government of Khyber Pakhtunkhwa
2. Secretary PHE Department Khyber Pakhtunkhwa.
3. Chief Engineer (South) PHE Department Khyber Pakhtunkhwa (Respondents)

WRITTEN REPLY ON BEHALF OF RESPONDENTS No. 1, 2 & 3

Respectfully Sheweth!

Para wise comments of Respondents No. 1, 2 and 3 are as under:

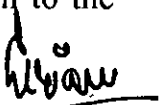
Preliminary Objections:-

1. That the appellant has got no cause of action.
2. That the appellant has been estopped by his own conduct to bring the instant appeal.
3. That the present appeal is not maintainable in its present form.
4. That the appellant has got no locus standi.
5. That the appellant has not come to the Tribunal with clean hands.
6. That the appeal is bad for non-joinder of necessary and mis-joinder of un-necessary parties.
7. That the appeal is barred by Law & limitation.
8. That this honourable Service Tribunal has got no jurisdiction to entertain the present appeal.



FACTS:-

1. Needs no comments it pertains to the domicile and educational qualification of appellant.
2. Correct to the extent that appellant was appointed on contract basis while advertisement published on 22.4.2010 in "Daily Mashriq" (Annexure-I) it has clearly been mentioned that appointment of Sub Engineers will be made on adhoc basis for a period of one year or till the arrival of the selectees of Public Service Commission whichever is earlier. The petitioner was illegally appointed by the then Chief Engineer PHED on contract basis however in the appointment order in clause-12 it has clearly been mentioned that his services shall be terminated on arrival of candidates, recommended by the Public Service Commission. According to the appointment order the services of appellant were terminated when Public Service Commission made recommendation of the suitable persons. The petitioner was illegally appointed without recommendations of the Public Service Commission as the appointment of Sub Engineer comes within the purview of Public Service Commission vide ESTA Code (Annexure-II), Public Service Commission Ordinance (Annexure-III) Recruitment Policy (Annexure-IV) and as per advice of Establishment Department dated 17.3.2014 (Annexure-V). Therefore the then Chief Engineer was not competent to appoint the appellant. This was the reason that the name of the appellant was never included in the seniority list of Sub Engineer and the same was never challenged by the appellant. (Copy of Seniority list as Annexure-VI). Furthermore, the Honorable Peshawar High Court in the writ Petition No.271-P of 2013 dated 2.10.2013 and honourable Supreme Court of Pakistan in Civil Petition No. 2026 & 2029 2013 dated 15.1.2014 declared the appointment of similar person as illegal and also directed action against such persons and the dealing hands vide judgment passed in similar cases. Copy of the judgments is enclosed as Annexure-VII & VIII.
3. Correct to the extent that appellant was appointed on contract basis and as explained in reply to Para 2 of the facts of appeal that it was provided in clear terms that the services of appellant will be terminated on receipt of candidates selected by the Public Service Commission. The appellant is responsible for not appearing in test and interview conducted by Public Service Commission for the post of Sub Engineer in 2011 and 2012 advertised on 7.4.2011 (Annexure-IX) Furthermore, the Honorable Supreme Court of Pakistan issued direction to the



department in connected cases that action shall be taken against the illegal appointments made in the department. In addition to action taken against the persons appointed illegally, also action was taken against those who made the illegal appointments Annexure-X.

4. Correct to the extent that appellant joined duty on contract basis. Furthermore, the appointment of Sub-Engineer BPS-11 falls within the purview of Public Service Commission and respondents have got no power of making direct appointment on regular basis against such posts according to ESTA Code, Public Service Commission Ordinance, Recruitment Policy, as per advice of Establishment Department and Local Govt Ordinance 2001 Part-C, Para 23 & 24 (Annexure-XI). The Honorable Supreme Court of Pakistan issued directions to the department that action shall be taken against such illegal appointment made in the department.
5. Incorrect, the Honorable Supreme Court of Pakistan has declared the appointment so made as illegal and also directed action against such persons and the dealing hands.
6. Correct to the extent that the appellants served the department more than the stipulated period of one year on contract basis. However, later on it came to light that the appointment of appellant and other was totally illegal, and the Honorable Supreme Court of Pakistan took adverse notice of such appointments and directed the respondents of taking action against concerned employees.
7. Correct to the extent that the services of appellant and others were terminated on receipt of candidates recommended by the Public Service Commission. Furthermore, the impugned action was taken in compliance of directions of the Honorable Supreme Court of Pakistan mentioned above.
8. Incorrect, there was no weight age in the departmental appeal of appellant.
9. Correct to the extent that the Writ Petition No.2146-P/2013, filed by appellant was dismissed in limine by the Honorable High Court (Annexure-XII)



10. Correct to the extent that the Civil Petition filed against the order of Honorable Court mentioned above was disposed of by the Honorable Supreme Court of Pakistan that the appellant shall approach proper forum.
11. Incorrect, there was no force in the departmental appeal of appellant.
12. Incorrect the appeal of appellant is badly time barred as the impugned order was passed on 01.07.2013 and the service appeal was filed on 10.11.2014. Furthermore, ignorance of law is no excuse. The appeal of appellant is also not maintainable on the ground advanced in the appeal.

GROUND:

- I. Incorrect, the impugned order is just, legal and have been passed in accordance with law and rules while following the directions of the Honorable Supreme Court of Pakistan.
- II. Incorrect, the impugned order was passed by the appointing/competent authority.
- III. Incorrect, appellant was appointed on contract basis by unlawful authority without recommendation of Public Service Commission. Later on it came to light that the appointment order was made illegally. Therefore, the illegal appointment order creates no right in favour of appellant.
- IV. Incorrect, appellant has never been discriminated and the respondents have terminated all those who were appointed illegally against the posts falling in the jurisdiction of Public Service Commission in compliance with the directions of Honorable Supreme Court of Pakistan.
- V. Incorrect, the appointment of the appellant was illegally made against the post falling within the jurisdiction of Public Service Commission. Therefore, the impugned order was passed in accordance with law and rules.



- VI. Incorrect, the entire proceedings of appointment of appellant and others were against the rules and merit policy as made without the recommendation of the Public Service Commission as per ESTA Code, Public Service Commission Ordinance, Recruitment Policy and advice of Establishment Department. Furthermore, the Honorable Supreme Court of Pakistan directed action against the persons appointed through backdoors. Further if appellant was eligible he should have apply for the same through Public Service Commission.
- VII. Incorrect, as explained above the very appointments of appellant and others was found against the rules and merit policy. Furthermore, the Honorable Supreme Court of Pakistan took adverse notice of such illegal appointments and directed the respondents for action against such employees.
- VIII. Incorrect, If the post in PBS-1 to 15 were district cadre post then the Chief Engineer being a Provincial Head of PHE Department, had wrongly exercised his powers to make recruitment of appellant against district cadre post while recruitment of district cadre fall in the purview of District Coordination Officer(DCO) under the local Govt Ordinance 2001. But the posts of appellant and others were falling within the jurisdiction of Public Service Commission as per ESTA Code, Public Service Commission Ordinance, Recruitment Policy, and Local Govt Ordinance 2001 Part-C, Para 23 & 24 and the Honorable Supreme Court of Pakistan declared all such appointment orders void abinitio and issued directions to the respondents for taking action against the illegally appointed persons and dealing hands.
- IX. Incorrect, this Para of the ground is mere repetition of Para VIII of the ground of appeal.
- X. Incorrect, the appointment order of the appellant and others were found illegal therefore, the services of appellant and others were terminated.
- XI. Incorrect, the case of appellant was not identical to those whose services were regularized.
- XII. Incorrect, appellant was treated in accordance with law and rules.



- XIII. Incorrect, the appointment order of appellant was found illegal void ab-initio and according to law and rules void and illegal order creates no right of appellant.
- XIV. Incorrect, the appointment order of appellant was found illegal void ab-initio and according to law and rules void and illegal order create no right of appellant.
- XV. Incorrect, the appointment of the appellant being illegal was terminated.
- XVI. Incorrect, the appellant was appointed illegally, and the Honorable Supreme Court of Pakistan also directed the respondent for taking action against the persons appointed illegally.
- XVII. Incorrect, order once passed does not become irrevocable and past and closed transaction if the order is illegal. No perpetual right can be gained on the basis of illegal order. Therefore, principle of locus poenitentiae is not invoked.
- XVIII. Incorrect, action has been taken against those who made the illegal appointments.
- XIX. Incorrect, appellant was appointed illegally which confer no right on appellant.
- XX. Incorrect, the impugned order was passed in compliance with directions of the Honorable Supreme Court of Pakistan passed in CP No.2026 & 2029. It is well settled principle of law that directions of the Honorable Supreme Court of Pakistan are binding irrespective of the fact that anyone was party to the litigation or not.
- XXI. The respondents also seek permission of the Honorable Tribunal of raising other grounds during hearing of the case.

costs

Chief Engineer (South)
Public Health Engineering
Khyber Pakhtunkhwa, Peshawar
(Respondent No.3)

Secretary
Public Health Engineering
Khyber Pakhtunkhwa, Peshawar
(Respondent No.1&2)

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR

Service Appeal No.

1313/2014

Abdullah Noor S/O Haji Shalawzan (Appellant)

VERSUS

1. Chief Secretary Government of Khyber Pakhtunkhwa
2. Secretary PHE Department Khyber Pakhtunkhwa.
3. Chief Engineer (South) PHE Department Khyber Pakhtunkhwa (Respondents)

AFFIDAVIT

I, Sanobar Khan, Chief Engineer (South) PHE Department Khyber Pakhtunkhwa Peshawar do hereby solemnly affirm that the contents of the accompanying written statements are true and correct to the best of my knowledge and nothing has been concealed from this honourable this tribunal.


DEPONENT

OFFICE OF THE CHIEF ENGINEER(SOUTH)
PUBLIC HEALTH ENGG. DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.

No. 06 / E / PHE

Dated Pesh: the 23 / 02 / 2011.

Annexure - 4

21

Mr. Abdullah Noor S/O Haji Shalozan,
R/O Tehsil Mir Ali Village Hassu Khel,
North Waziristan Agency.

Subject:- Offer of Appointment as Sub Engineer (BPS-11) on Contract basis in PHE Department Khyber Pakhtunkhwa.

You are hereby offered a post of Sub Engineer in the Public Health Engineering Department Khyber Pakhtunkhwa purely on Contract basis in BPS-11 with usual allowances as admissible under the rules from time to time on the following terms and conditions:-

- 1) You will get pay at the minimum of BPS-11 (Rs. 4115 - 275 - 12365) including usual allowances as admissible under the rules. You will also be entitled to annual increment as per existing policy.
- 2) You shall be governed by the NWFP Civil Servants Act 1973 and all the laws applicable to the Civil Servants and Rules made there under.
- 3) You shall, for all intents and purposes, be Civil Servant except for purpose of pension or gratuity. In lieu of pension and gratuity, you shall be entitled to receive such amount contributed by him towards Contributory Provident Funds (C.P.F) alongwith the contributions made by Government to his account in the said fund, in the prescribed manner.
- 4) Your employment in the PHE Department is purely temporary and your services are liable to be terminated without assigning any reason at fourteen One month notice or on the payment of one month salary in lieu of the notice. In case you wish to resign at any time, one month notice will be necessary or in lieu thereof one month pay will be forfeited.
- 5) You shall, initially, be on probation for a period of two years extendable upto 3 years.
- 6) You shall produce a medical certificate of fitness from Medical Superintendent, District HQ Hospital Shangla before reporting your-self for duty to the Executive Engineer PHE Division Shangla, as required under the rules.
- 7) You have to join duty at your own expenses.
- 8) Your services on contract basis shall be regular under the terms & conditions of contract appointment of the Provincial Government.
- 9) You should not claim your seniority in the regular cadre of Sub Engineers of the Department.
- 10) You shall be liable to serve anywhere in Khyber Pakhtunkhwa including agencies and Tribal areas.
- 11) You shall not make any request for transfer from the PHE Division where you are posted.
- 12) Your services shall be terminated on arrival of recommendees of the Public Service Commission.

If you accept the post on above conditions, you should report for duty to the Executive Engineer PHE Division Shangla within one month of the receipt of this offer of appointment.

CHIEF ENGINEER

Copy to the :-

- 1) Section Officer (Estt) PHE Department Peshawar.
- 2) Chief Engineer (North) PHE Department Peshawar.
- 3) Superintending Engineer PHE Circle Swat.
- 4) Executive Engineer PHE Division Shangla.
- 5) District Accounts Officer Shangla.
- 6) Personal File of the official concerned.

CHIEF ENGINEER

ESTA CODE

(Establishment Code)

Khyber Pakhtunkhwa

Rs. 875

Law Books Publishers

- S
- (viii) Shirani Area.
 - (ix) Merged Areas of Hazara and Mardan Division and Upper Tanawal.
 - (x) Swat District.
 - (xi) Upper Dir District.
 - (xii) Lower Dir District.
 - (xiii) Chitral District.
 - (xiv) Buner District.
 - (xv) Kala Dhaka Area.
 - (xvi) Kohistan District.
 - (xvii) Shangla District.
 - (xviii) Gadoon Area in Swabi District.
 - (xix) Backward areas of Mansehra and District Batagram.
 - (xx) Backward areas of Haripur District, i.e. Kalanjar Field, Kanungo Circle of Tehsil Haripur and Amazai Field, Kanungo circle of Tehsil Ghazi.

RECRUITMENT INCLUDING AGE RELAXATION POLICY

Subject:- RECRUITMENT POLICY FOR THE PROVINCIAL SERVICES AGE RELAXATION FOR SPECIAL POSTS.

I am directed to refer to this Department circular letter of even number dated 1st February, 1993, on the subject cited above, and to say that new recruitment policy has been reviewed by the Provincial Government. It has been decided to revise the existing policy as under:-

- (a) Recruitment to posts in BPS-16 and above as well as the posts of Assistant Sub-Inspectors of Police, Naib Tehsildars, Zilladars and Sub-Engineers will continue to be made through the NWFP Public Service Commission. However, the Commission may make efforts to finalize the recruitment within six months of the receipt of the requisition duly completed from the Administrative Department.
- (b) Recruitment to posts in the various Government Departments as indicated below will also henceforth be made by the NWFP Public Service Commission:-
 - (i) **All Departments including Board of Revenue, NWFP-**
 - (1) Senior Scale Stenographer(B-15)
 - (2) Data Processing Supervisor(B-14)
 - (3) Junior Scale Stenographer(B-12)
 - (4) Assistant (B-11)
 - (5) Draftsman(B-11)
 - (ii) **Board of Revenue-**
 - (1) Sub-Registrar(B-14)
 - (2) Excise and Taxation Inspector(B-11)



EXTRAORDINARY

REGISTERED NO. P. 1111

GOVERNMENT

GAZETTE



North-West Frontier Province

Published by Authority

PESHAWAR, FRIDAY, 9TH AUGUST, 2002

GOVERNMENT OF THE NORTH WEST FRONTIER PROVINCE
LAW DEPARTMENT

NOTIFICATION

9th August, 2002

No. LEGIS-1(20)/73/6131.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information.

THE NORTH WEST FRONTIER PROVINCE
PUBLIC SERVICE COMMISSION (AMENDMENT)
ORDINANCE, 2002

N.W.F.P. ORDINANCE NO. XXVII OF 2002

AN
ORDINANCE

*for further to amend the North West Frontier Province
Public Service Commission Ordinance, 2002*

WHEREAS it is expedient further to amend the North West Frontier Province Public Service Commission Ordinance, 1978 (N.W.F.P. Ord. No XI of 1978), for the purposes hereafter appearing;

AND WHEREAS the Governor of the North West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW THEREFORE in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended up to date, and the Provisional Constitution Order No. 1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North West Frontier Province is pleased to make and promulgate the following Ordinance:

9



6. Amendment of section 7 of N.W.F.P. Ord. No. 21 of 1978.—(1) In the said Ordinance, for section 7, the following shall be substituted, namely:

7. Functions of the Commission.—(1) The functions of the Commission shall be—

(a) to conduct tests and examinations for recruitment of persons to—

(i) the civil services of the Province and civil posts in connection with the affairs of the Province in basic pay scales 16 and above or equivalent, and

(ii) posts in basic pay scales 11 to 15 or equivalent specified in following Departments (except the District cadre posts)—

1. Civil Secretariat (through Establishment Department)
2. Board of Revenue;
3. Police Department;
4. Prison Department;
5. Services and Works Department;
6. Irrigation Department;
7. Industries, Labour and Manpower Department;
8. Health Department;
9. Education Department;
10. Local Government and Rural Development Department;
11. Excise and Taxation Department;
12. Food Department;
13. Physical Planning and Environment Department including Urban Development Board; and
14. Organizations, except autonomous bodies, under the Health and Education Departments.

(b) to advise the Governor—

(i) on matters relating to qualifications for, and method of recruitment to, services and posts referred to in clause (a);

(ii) on the principles to be followed in making—

- (1) initial appointments to the services and posts referred to in clause (a);
- (2) appointments by promotion to posts in BPS-17 and above; and
- (3) transfer from one service to another, and

(iii) on any other matter which the Government may refer to the Commission.

Explanation.—In this section, recruitment means initial appointment other than by promotion or transfer.

(2) Recruitment to the following posts shall be outside the preview of the Commission:

(i) post in the Governor's House;

(ii) posts to be filled on ad hoc basis for a period of six months or less, provided that before filling the post, prior approval shall be obtained from the Commission;

(iii) posts to be filled by re-employment as retired officers, provided that the re-employment is made for a specified period not exceeding two years in a post not higher than the post in which the person was employed on regular basis before recruitment.

7. **Insertion of Section 10A of Ordinance XI of 1973.**—In the said Ordinance after section 10, the following new section shall be inserted, namely:

10A. Power of the Commission to make regulation.—Subject to the provisions of this Ordinance and the rules made thereunder, the Commission may make regulations for carrying out the purposes of this Ordinance.

8. **Addition of Schedule to the N.W.F.P. Ordinance XI of 1973.**—In the said Ordinance, the following Schedule shall be added at the end, namely:

SCHEDULE

[Section 4A]

I, _____ do solemnly swear that I will bear true faith and allegiance to Pakistan. That as a Chairman (or Member) of the North-West Frontier Province Public Service Commission, I will discharge my duties and perform my functions honestly, to the best of my ability, and faithfully in accordance with the Constitution of the Islamic Republic of Pakistan and the law and always in the interest of the solidarity, integrity and well-being and prosperity of Pakistan.

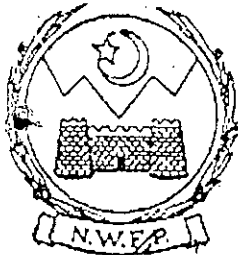
That I will not allow any personal interest to influence my official conduct or my official decisions and that in the performance of my functions whether in the selection of persons for recruitment or appointment or in any other way, I will act without fear or favour, affection or ill-will."

Peshawar,
Dated the 6th August, 2002

Lt. Gen. (Rtd.) IFTIKHAR HUSSAIN SHAH
Governor of the North-West Frontier Province

SALIM KHAN,
Secretary to Government of North-West Frontier Province,
Law Department

Printed by the Controller,
P.G. 23 State Deptt. NWFP Pesh.



GOVERNMENT OF NWFP
ESTABLISHMENT & ADMINISTRATION
DEPARTMENT

(REGULATION WING)

No. SOR-VI/E&AD/1-10/2005/Vol:IV
Dated Peshawar, the 15th November, 2007

To

The Accountant General
NWFP, Peshawar.

Subject: NEW RECRUITMENT POLICY/PROCEDURE OF
CONTRACT EMPLOYEES.

Dear Sir,

I am directed to refer to your letter No.T-23(48)Vol-VIII/2559-60 dated 30-10-2007 on the subject noted above and to enclose herewith copies of the following letters as desired:-

- 1.No.SORI(S&GAD)1-117/91(C) dated 12-10-93
- 2.No.SORVI(E&AD)1-10/2005 dated 9-5-2006
- 3.No.SORVI(E&AD)1-3/2007 dated 22-3-2007

Yours faithfully,

(MUHAMMAD MASOOD)
SECTION OFFICER (REG-VI)

OFFICE OF THE ACCOUNTANT GENERAL NWFP, PESHAWAR.
No.T-23(48)/CoA/Vol-VIII/3012

Dated:-11-12-2007

Copy alongwith its enclosure forwarded for information and necessary action to:-

1. PA to Addl: AG NWFP.
2. All DAGs in Main Office.
3. All DAOs/AAOs in NWFP.
4. All Pay Roll in AG Office.

11/12/07
ACCOUNTS OFFICER (C&M)
NWFP PESHAWAR

GOVERNMENT OF N.W.F.P.
SERVICES & GENERAL ADMINISTRATION DEPARTMENT
(REGULATION WING)

Subject:

RECRUITMENT POLICY FOR THE PROVINCIAL SERVICES AGE RELAXATION
FOR SPECIAL POSTS

I am directed to refer to this Department circular letter of even number dated 1st February, 1993, on the subject cited above, and to say that new recruitment policy has been reviewed by the Provincial Government. It has been decided to revise the existing policy as under:-

- (a) Recruitment to posts in BPS-16 and above as well as the posts of Assistant Sub-Inspectors of Police, Naib Tehsildars, Zailadars and Sub-Engineers will continue to be made through the NWFP Public Service Commission. However, the Commission may make efforts to finalize the recruitment within six months of the receipt of the requisition duly completed from the Administrative Department.
- (b) Recruitment to posts in the various Government Departments as indicated below will also henceforth be made by the NWFP Public Service Commission:-
- (i) All Department including Board of Revenue, NWFP-
- (1) Senior Scale Stenographer (B-15)
 - (2) Data Processing supervisor (B-14)
 - (3) Junior Scale Stenographer (B-12)
 - (4) Assistant (B-11)
 - (5) Draftsman (B-11)
- (ii) Board of Revenue-
- (1) Sub-Registrar (B-14)
 - (2) Excise and Taxation Inspector (B-11)
- (iii) Home & Tribal Affairs Department-
- (a) Police Department:
- (1) Prosecuting Sub Inspector (B-14)
- (b) Inspectorate of Prisons:
- (1) Assistant Jail Superintendent (B-11)
- (c) Reclamation and Probation Department:
- (1) Parole/Probation Officer (B-11)
- (iv) Industries, Commerce, Mineral Development, Labour and Transport Department-
- (a) Directorate of Industries:
- (1) Assistant Industrial Development Officer/Assistant Price Stabilization Officer (B-11)
 - (2) Royalty Inspector (B-11)
 - (3) Surveyor (B-11)
- (b) Directorate of Manpower Training:
- (1) Instructor T.T.C (B-14)
- (v) Cooperative Societies:
- (1) Inspector (B-11)

- (v) Cooperative Societies:
(1) Inspector (B-11)
- (vi) Communication and Works Department:
(1) Assistant Architectural Draftsman (B-14)
(2) Senior Draftsman (B-13)
- (vii) Irrigation Department:
(1) Computer Supervisor (B-14)
- (viii) Public Health Engineering Department:
(1) Motivation Officer (B-15)
(2) Assistant Motivation Officer (B-14)
(3) Lady Health Educator (B-12)
- (ix) Electric Inspectorate:
(1) Sub-Inspector (B-11)
- (x) Food Department:
(1) Assistant Food Controller (B-8)
(2) Food Grain Inspector (B-6)
- (xi) Directorate of Archives and Libraries:
(1) Preservation Assistant (B-11)
(2) Cataloguer/Classifier (B-11)

(c) Initial recruitment to posts in BPS-15 and below other than the posts in the purview of the Public Service Commission, in all the departments shall continue to be made in accordance with Rules 10, 11 and 12 (Part-III) of the NWFP Civil Servants (Appointment, Promotion and Transfer) Rules, 1989, the criteria as laid down in SGAD letter No. SORI(S&GAD)4-1/75, dated 11.2.1987 and the zonal allocation formula contained in S&GAD notification No. SOS-III(S&GAD)3-39/70, dated 2.10.1973 as amended from time to time.

(d) No adhoc appointment against any post in any pay scale shall be made.

(e) Relaxation in maximum age limit may be allowed to candidates for various posts having prescribed qualifications in specific fields upto a period of 5 years by the Competent Authority and for not more than 10 years by the S&GAD. The details of such posts are indicated in the annexure to this letter.

The age relaxation in respect of posts other than posts mentioned above may be confined to 5 years only. The Competent Authority may allow relaxation upto 2 years whereas the S&GAD may relax the age upto a period of 5 years.

*The age limit in respect of Govt. Servants who have completed at least four years service in the Government, on the closing day for submission of applications for the posts, shall be automatically relaxed by 10 years or a number of years an officer/official has actually served, whichever is less.

All the proposals for the grant of relaxation in upper age shall continue to be accompanied by:-

- (i) Full justification in support of the proposal; and
- (ii) A certificate to the effect that no eligible candidate within the prescribed age limits are/were available.

** An over age candidate shall be entitled to only one age concession whichever is beneficial to him.

- 351 ✓
- (f) The Regional/Zonal quota if not filled will be carried forward till suitable candidates are available from the Region/Zone concerned. No. "Substitute" recruitment shall be made. Existing backlog, if any, in respect of any zone will not be carried forward and the Commission shall take a fresh start in respect of the posts under its purview. However, this condition will not be applicable in respect of posts which have already been advertised by the NWFP Public Service Commission.
- (g) The vacancies in all the Departments shall be advertised in leading newspapers on ~~****~~ Simlāys. The advertisement in electronic media should be to the extent of drawing attention of all concerned to the relevant newspapers in which the vacancies are advertised.
- (h) Initial Recruitment to all the vacant posts shall be made on regular known periodic intervals in February and August each year after proper advertisement through electronic and national/regional media. After advertisement, a minimum period of 30 days should be allowed for receipt of applications. A waiting list of the eligible candidates shall be maintained for a period of six months.
- (i) [Deleted].
- **** (j) 2% quota for disabled persons already fixed earlier shall stand and should be enforced strictly. However, 2% quota has also been fixed for female candidates in all the services which are filled up through initial recruitment. The Commission shall revise the Requisition Form for all such posts for specifying the women's quota in the available vacancies and the Administrative Department shall indicate the quota for women in the Requisition Form accordingly. The 2% quota shall be over and above the selection of women, if any, under general quota of merit etc. This quota shall, however, be restricted to those Departments where no separate female cadres exist.
- (k) For initial appointment to posts in BPS-17 and below in the Autonomous Bodies/Corporations, the zonal allocation formula applicable for Provincial Services may be adopted. The method of recruitment shall also conform to sub-para (c) above.
- (l) The Provincial Government have already agreed that recruitment to the post of PTC in Education Department in various districts shall be made on constituency-wise basis. For this purpose, the existing districts have been divided into various zones. Each zone shall correspond to the area of constituency of the Provincial Assembly. However, recruitment to the posts shall, in each case, be 50% on merit in open competition on district basis and 50% on constituency basis.

2. I am directed to request that the above decisions of the Provincial Government may be brought to the notice of all concerned for strict compliance.

Government of NWFP, S&GAD's
letter No.SORI(S&GAD)1-117/91(C) dated.12.10.93

- * Added vide No.SOR-I(S&GAD)1-117/91(C)Vol-I dated 7.1.1999
- ** Added vide No.SOR-I(S&GAD)1-117/91(C)Vol-I dated 8.10.1999
- *** Substituted vide No.SOR-I(S&GAD)1-117/91(C) dated 22.11.1997
- **** Substituted vide No.SOR-I(S&GAD)4-1/80(III) dated 19.2.1999

Annex-D ✓

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

No.SOR-V(E&AD)/15-3/2009
Dated 17th March, 2014

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
PHE Department.

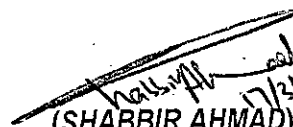
Subject: ADVICE REGARDING STATUS OF APPOINTMENT.

f-112/c

Dear Sir,

I am directed to refer to your letter No.SO(Estt)/PHED/1-90/2012-13/321 dated 04-3-2014 on the subject noted above and to state the post of Sub Engineer is Provincial Cadre post and fall under the purview of Public Service Commission. The Department is not empowered to fill the post without the recommendation of Public Service Commission. Therefore the person so appointed on the post of Sub Engineer BPS-11, his appointment is irregular, illegal. However the Department should initiate disciplinary action against the officer/officers who was/were involved in appointment of such illegal appointment of Sub Engineers and brought him/them to the justice.

Yours faithfully,


(SHABBIR AHMAD)
SECTION OFFICER (REG-V)


RECEIVED
SECRETARY
PHE DEPT
18/3/14

18/3/14

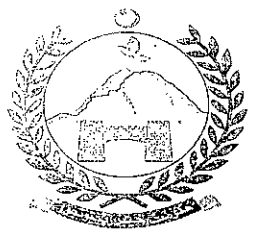
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Put up on

relevant file


Administrative/Court Case



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

No.SOR-V(E&AD)/15-3/09
Dated 30th January, 2014

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
PHE Department.

Subject: APPOINTMENT OF SUB ENGINEERS

Dear Sir,

I am directed to refer to your letter No.SO (Estt)PHED/1-90/2012-13 dated 22-1-2014 on the subject noted above and to state that the appointment, promotion and transfer rules 1989 and recruitment policy of the Provincial Government is quite clear and the Department may look/examine the appointment of Sub Engineer in the light of the rules and policy of the Provincial Government and firm up their views for final decision and take necessary action if the appointment proved illegal and apprise the Supreme Court of Pakistan accordingly. Moreover the Department should also initiate disciplinary action against the officers who was/were involved in appointment of illegal Sub Engineer and brought him/them to the justice.

DSC(A)
SO(E)

Yours faithfully,

(Signature)
30-1-14
(SHABBIR AHMAD)
SECTION OFFICER (REG-V)

Ru W/a

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SO(E)

Public Health Engineering Department

Final Seniority List of Sub Engineer (BPS-11) as stood on 31.08.2013

S.No	Name	Father Name	Home District	Qualification	Date of Birth	Date of Commencement of Service	Date of Appointment to Present Post	Remarks
1	Saleem Khan	Sohrab Khan	Lakki	DAE	11.12.1959	13.09.1980	08.09.1980	
2	Fazle Mabood	Habib ur Rehman	Malakand	DAE (C)	10.04.1961	26.07.1981	06.05.1982	
3	Sajjad Ali	Rahim Dad	Swabi	DAE	01.03.1962	08.09.1981	06.05.1982	
4	Mushtaq Ahmad	Khushal Khan	Mansehra	DAE (C)	20.10.1956	17.10.1981	06.05.1982	
5	Alam Zeb	Sar Biland Khan	FR Bannu	DAE (C)	24.08.1960	16.03.1982	06.05.1982	
6	Allah Nawaz	Shah Nawaz	Bannu	DAE (C)	05.12.1959	27.03.1982	06.05.1982	
7	Khurshid Anwar	Haji Fateh ullah	D.I.Khan	DAE (C)	04.03.1960	04.04.1982	06.05.1982	
8	Muhammad Ilyas	Fazal Razaq	Dir Upper	DAE (C)	08.09.1958	15.04.1982	06.05.1982	
9	Karamat Ullah	Khan Azam	Bannu	DAE (C)	15.03.1961	18.05.1982	18.05.1982	
10	Laiq Zaman	Gul Shaib Khan	Bannu	DAE (C)	27.01.1959	03.07.1982	23.06.1982	
11	Asif Farooq	Karim Nawaz	Karak	DAE (C)	02.01.1960	22.11.1982	20.11.1982	
12	Inamul Haq	Lal Ghaffar	Karak	DAE (C)	18.03.1963	06.04.1983	06.04.1983	
13	Khurshid Iqbal	H.Abdul Rashid	Haripur	DAE (C)	03.01.1959	01.12.1984	20.11.1984	
14	Umer Hayat	H.Gulam Nabi	Bannu	DAE (C)	25.03.1962	24.11.1984	20.11.1984	
15	Hassan Khan	Sar Biland Khan	Malakand	DAE (C)	08.02.1963	22.11.1984	20.11.1984	
16	Arif Saeed	Amal Rehman	Karak	DAE (C)	03.04.1963	01.12.1984	20.11.1984	
17	Lajbar Khan	Zabata Khan	Mardan	DAE (C)	18.04.1963	01.12.1984	20.11.1984	
18	Falak Naz	Shah Nam Raza	Swat	DAE (C)	03.01.1957	31.12.1984	23.12.1984	
19	Muhammad Yousaf	Muhammad Ibrahim	D.I.Khan	DAE (M)	20.05.1964	25.04.1985	08.04.1985	
20	Muhammad Pervez	Faqir Muhammad	D.I.Khan	DAE (C)	01.10.1960	06.07.1985	03.07.1985	
21	Sahib Zarin	Mohayoud Din	Dir Lower	DAE (C)	22.07.1958	18.12.1985	18.12.1985	
22	Samiullah Jan	Danish Khan	Peshawar	DAE (C)	16.06.1959	18.12.1985	18.12.1985	

36 June 1

Access
Page 1/20

Public Health Engineering Department

Final Seniority List of Sub Engineer (BPS-11) as stood on 31.08.2013

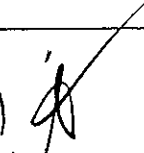
S.No	Name	Father Name	Home District	Qualification	Date of Birth	Date of Commencement of Service	Date of Appointment to Present Post	Remarks
23	Muhammad Ali	Muhammad Zaman	Swat	DAE (C)	21.04.1964	26.12.1985	18.12.1985	
24	Muhammad Riaz	Muhammad Khan	Malakand	DAE (C)	01.01.1965	30.12.1985	18.12.1985	
25	Shahid Saeed	Saeed ur Rehman	Mansehra	DAE (C)	26.08.1965	23.12.1985	18.12.1985	
26	Allaud Din	Muhammad Ajun Khan	Mansehra	DAE (C)	21.06.1961	10.07.1986	09.07.1986	
27	Anwar Khan	Ghulam Khan	Mansehra	DAE (C)	06.04.1963	19.07.1986	09.07.1986	
28	S.Abid Hussain Shah	Syed Pir Zaman Shah	Abbottabad	DAE	13.03.1964	17.07.1986	09.07.1986	
29	Bashir Ahmad	Wazir Zada	Dir Lower	DAE (C)	08.12.1964	23.10.1986	23.10.1986	
30	Aziz ur Rehman	Mehmood Khan	Bannu	DAE (C)	15.12.1960	28.10.1981	18.04.1987	
31	Zoor Ali	Said Muhammad	FR Bannu	DAE (C)	05.03.1960	11.01.1982	18.04.1987	
32	Mekail Khan	Muhammad Shebli	Bannu	DAE (C)	09.10.1961	27.12.1982	18.04.1987	
33	Najeeb ur Rehman	Abdur Rehman	Karak	DAE (C)	02.02.1963	09.02.1983	18.04.1987	
34	Khuzb ur Rehman	Mir Abas	FR Bannu	DAE (C)	10.03.1964	18.05.1987	18.05.1987	
35	Abbas Khan	Ali Akbar Khan	Abbottabad	DAE (C)	01.02.1966	18.05.1987	18.05.1987	
36	Rashid Ahmad	H.Muhammad Saddique	Lakki	DAE (C)	14.03.1959	09.06.1987	09.06.1987	
37	Said Faisal	Syed Wahid Shah	Swabi	DAE (C)	03.01.1959	29.05.1979	29.05.1979	
38	Muhammad Shafiq Shah	Abdul Hamid Shah	SWA	DAE (C)	01.05.1963	20.10.1987	20.10.1987	
39	Abdur Rehman	Mehar Dil Khan	Tank	DAE (C)	06.09.1963	11.10.1987	08.10.1987	
40	Nisar Ali	Haji Gujar Khan	Swat	DAE (C)	01.04.1964	10.10.1987	10.10.1987	
41	Aslat Khan	Muhammad Azim	Mardan	DAE (C)	06.02.1965	14.10.1987	14.10.1987	
42	Muhammad Yaseen	Faqir Shah	Swabi	DAE (C)	04.03.1964	14.10.1987	14.10.1987	
43	Muhammad Ashraf	Amir Zada	Peshawar	DAE (C)	02.11.1967	18.10.1987	18.10.1987	
44	Islam Gul	M.Sahib Gul	Karak	DAE (C)	10.09.1963	26.10.1987	21.10.1987	
45	Muhammad Younis	Rehan ud Din	Sawbi	DAE (C)	02.01.1959	29.08.1989	29.08.1989	
46	Khalid Wahab	Dost Muhammad	Karak	DAE (C)	15.07.1961	29.08.1989	29.08.1989	
47	Karim Nawaz	Gul Daraz	D.I.Khan	DAE (C)	01.03.1962	09.06.1985	29.08.1989	
48	Irshad Ahmad	Malik Elahi Bakhsh	D.I.Khan	DAE (C)	28.03.1962	03.03.1986	29.08.1989	
49	Bahre Karam	Rahmat Shah	Malakand	DAE (C)	15.04.1958	15.04.1986	29.08.1989	

*See (s)
Page no*

Public Health Engineering Department

Final Seniority List of Sub Engineer (BPS-11) as stood on 31.08.2013

S.No	Name	Father Name	Home District	Qualification	Date of Birth	Date of Commencement of Service	Date of Appointment to Present Post	Remarks
50	Khalid Afzal	Mir Sahib Jan	NWA	DAE	20.02.1960	29.08.1989	29.08.1989	
51	Muhammad Yousaf Jan	Abdullah jan	D.I.Khan	DAE (G)	01.04.1961	18.10.1987	29.08.1989	
52	Muhammad Hamayun	Dure Marjan	Karak	DAE (C)	10.09.1963	29.08.1989	29.08.1989	
53	Muhammad Kamal	Hazrat Jamal	Mardan	DAE (C)	01.04.1962	13.01.1988	29.08.1989	
54	Sikandar Azam	Amir Daraz Khan	NWA	DAE (C)	15.11.1961	12.12.1989	06.12.1989	
55	Muhammad Iqbal	Abdul Rahim	Bajaur	DAE (C)	01.08.1964	11.12.1989	06.12.1989	
56	Muheet Khan	Rias Khan	Karak	DAE (C)	08.06.1965	10.12.1989	06.12.1989	
57	Syed Zia ur Rehman	S.Hidayat ur Rehman	Mardan	DAE (C)	01.04.1965	09.12.1989	06.12.1989	
58	Hazrat Hussain	Muhammad Hanif	Swat	DAE (C)	15.03.1960	22.08.1987	06.12.1989	
59	Sardar Ijaz Anwar	Muhammad Yaqoob	Abbottabad	DAE (C)	01.04.1966	09.12.1989	06.12.1989	
60	Iftikhar Ahmad	Dr. M.Zakir Khan	Mansehra	DAE (C)	02.05.1965	09.12.1989	06.12.1989	
61	Akhtar Hussain	Amir Amanullah Khan	Swat	DAE (C)	05.01.1968	14.12.1989	06.12.1989	
62	Muhammad Tahir	Aibat Khan	Kohat	DAE (C) Bs.C	16.03.1965	31.03.1990	26.03.1990	
63	Walayat Said		Dir Lower	DAE (C)	15.09.1967	05.04.1990	05.04.1990	
64	Syed Haleem Shah	S.Imdad Hussain Shah	Mansehra	DAE (C)	11.04.1965	01.04.1990	26.03.1990	
65	Misal Khan		D.I.Khan	DAE (C)	15.07.1966	06.05.1990	06.05.1990	
66	Imdad Hussain Shah	Syed M.Afzal shah	Mansehra	DAE (C)	25.04.1971	14.11.1992	12.11.1992	
67	Muhammad Amjad		Bannu	DAE (C)	18.04.1969	16.09.1993	16.09.1993	
68	Saqi Muhammad	Amir Muhammad	Swabi	DAE (C)	19.04.1969	25.09.1993	16.09.1993	
69	Nasir Nawaz Khan	M.Nawaz Khan	Mansehra	DAE (C)	01.02.1973	06.03.1996	26.02.1996	
70	Mehboob ur Rehman	Habib ur Rehman	Haripur	DAE	10.04.1971	11.04.1996	26.02.1996	

C.E. (S) 
P.O. No.

Public Health Engineering Department

Final Seniority List of Sub Engineer (BPS-11) as stood on 31.08.2013


S.No	Name	Father Name	Home District	Qualification	Date of Birth	Date of Commencement of Service	Date of Appointment to Present Post	Remarks
71	Jehanzeb	Shadi Gul	NWA	DAE@BE(E)	01.04.1971	27.02.1996	26.02.1996	
72	Amir Zada	Bahadar Khan	Mardan	DAE (C)	14.05.1965	04.03.1996	26.02.1996	
73	Ishfaq Ahmad	Zarbat Shah	FR Kohat	DAE (C)	01.05.1970	26.02.1996	26.02.1996	
74	Muhammad Khan	Sher Ahmad Khan	Haripur	DAE (C)	23.01.1954	27.11.1988	19.05.2008	absorbed in PHED on 13.3.2008
75	Amanullah		Peshawar	DAE (C)	02.03.1955	22.11.1988	19.05.2008	absorbed in PHED on 13.3.2008
76	Abdul Hameed	Abdul Latif	Kohat	D.A.E	18.09.1959	24.11.1988	19.05.2008	absorbed in PHED on 13.3.2008
77	Intizar Muhammad		Swabi	DAE (C)	20.12.1960	22.11.1988	19.05.2008	absorbed in PHED on 13.3.2008
78	Dilawar Khan	Muhammad Rehman	SWA	DAE (C)	23.02.1962	22.11.1988	29.03.2008	absorbed in PHED on 13.3.2008
79	Muhammad Ilyas	Khanza Gul	NWA	DAE (C)	25.03.1962	28.11.1988	22.05.2008	absorbed in PHED on 13.3.2008
80	Aziz ur Rehman		Khyber	DAE (C)	08.10.1962	22.11.1988	19.05.2008	absorbed in PHED on 13.3.2008
81	Muhammad Rais	Hazrat Khan	SWA	DAE (C)	20.04.1963	26.11.1988	31.05.2008	absorbed in PHED on 13.3.2008
82	Tariq Khan		Swat	DAE (C)	01.04.1964	22.11.1988	19.05.2008	absorbed in PHED on 13.3.2008
83	Muhammad Nazif	Muhammad Hussain	Nowshera	DAE (C)	05.01.1964	30.11.1988	28.03.2008	absorbed in PHED on 13.3.2008
84	Abdali Shah	Haji Sufaid Shah	Malakand	DAE (C)	01.02.1966	26.11.1988	26.03.2008	absorbed in PHED on 13.3.2008
85	Arif Qayum Khan	Abdul Qayum	Bannu	DAE (C)	12.10.1966	23.11.1988	29.03.2008	absorbed in PHED on 13.3.2008
86	AminGul		Malakand	DAE (C)	15.10.1966	22.11.1988	19.05.2008	absorbed in PHED on 13.3.2008
87	Asghar Hussain	Gul Akbar	Khyber	DAE (C)	14.11.1968	22.11.1988	31.03.2008	absorbed in PHED on 13.3.2008
88	Mislah-ud-Din	Sharif Ullah	Dir Lower	DAE (C)	20.02.1965	24.11.1988	26.03.2008	absorbed in PHED on 13.3.2008
89	Atta Muhammad	Muhammad Younas	Mansehra	DAE (C)	10.04.1971	08.09.1997	01.07.2008	
90	Raheel Shahzad	Muhammad Farid	Mansehra	DAE (C)	16.09.1976	30.08.1997	01.07.2008	
91	Sheikh Islam ud Din	Sheikh Nizam-ud-Din	D.I.Khan	DAE (C)	08.03.1961	29.08.1987	11.02.2009	
92	Farid Ullah	Sherin Dad	Bannu	DAE (C)	10.01.1962	01.09.1987	11.02.2009	

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Public Health Engineering Department

Final Seniority List of Sub Engineer (BPS-11) as stood on 31.08.2013

S.No	Name	Father Name	Home District	Qualification	Date of Birth	Date of Commencement of Service	Date of Appointment to Present Post	Remarks
93	Mumtaz Khan	Zardad Khan	Bannu	DAE (C)	01.03.1963	27.12.1987	11.02.2009	
94	Imtiaz Muhammad	Hazrat Wali	Swabi	DAE (C)	09.01.1971	20.12.1994	11.02.2009	
95	Shujaul Mulk	Shahi Mulk	Swat	DAE (C)	01.04.1970	03.10.1995	11.02.2009	
96	Shahid Ayaz	Mir Shad Ali	Karak	DAE (M)	03.03.1963	07.02.1990	11.02.2009	
97	Zahid Ullah		Dir	DAE (C)	11.08.1972	28.06.1995	11.02.2009	
98	Farman Ullah	Farid Gul	Bannu	DAE (C)	04.04.1971	26.09.1995	11.02.2009	
99	Abdul Salam	Mir Khalim Khan	D.I.Khan	DAE (C)	25.08.1968	02.07.1995	30.07.2009	


Chief Engineer (South)
Public Health Engg: Department
Khyber Pakhtunkhwa Peshawar

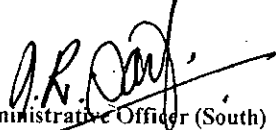
Endstt: No. 05/E-16/PHE

Dated Peshawar the

28/10/2013

Copy of the Seniority List is forwarded to the: -

- 1 - Chief Engineer (North) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar.
- 2 - All Superintending Engineers in Public Health Engg: Department Khyber Pakhtunkhwa.
- 3 - All Executive Engineers in Public Health Engg: Department Khyber Pakhtunkhwa.
- 4 - Section Officer (Estt) Public Health Engg: Department Khyber Pakhtunkhwa Peshawar


Administrative Officer (South)
Public Health Engg: Department
Khyber Pakhtunkhwa Peshawar

Annex VII
OG RS.



IN THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 277-19/2013

- 1. Mr. Justice Anwar-ul-Hasnain, Chief Justice of the Peshawar High Court
- 2. Mr. Justice Ijaz Ahmad, Judge
- 3. Mr. Justice Ijaz Ahmad, Judge
- 4. Mr. Justice Ijaz Ahmad, Judge
- 5. Mr. Justice Ijaz Ahmad, Judge
- 6. Mr. Justice Ijaz Ahmad, Judge
- 7. Mr. Justice Ijaz Ahmad, Judge
- 8. Mr. Justice Ijaz Ahmad, Judge
- 9. Mr. Justice Ijaz Ahmad, Judge
- 10. Mr. Justice Ijaz Ahmad, Judge

ATTESTED
EXAMINED
 Peshawar High Court
 20 FEB 2014

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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT, PESHAWAR.
JUDICIAL DEPARTMENT

W.P. 271-P of 2013 with interim relief (N).

JUDGMENT

Date of hearing: 2.10.2013.

Petitioner/Mushtaq Ahmad etc. by Mr. Shah Nawaz
Khan, advocate.

Respondent/*Govt. Mr. Rehmanullah W.P. 663-P*

MUSARRAT ULALI, J. This judgment shall also decide
W.P. 663-P of 2013 entitled "Muhammad Nisar Khan Vs.
Govt." as common question of law and fact is involved in
both these petitions.

2. According to the petitioners, they obtained Diploma
of Associate Engineer in the year, 1995 in different
technologies and since then are working in various
Government Organizations/Projects. However, on 2.1.2011
they were appointed as Sub-Engineers in the
respondent/department on ad-hoc basis after due process.
They were still in service when the respondents re-appointed
them vide office order dated 8.1.2012. Prior to the
appointment of petitioners, the Provincial Government
promulgated Act No. XVI of 2009 vide which services of all

ATTESTED

EXAMINER
Peshawar High Court.

20 FEB 2014

the adhoc/contract employees of the Province were regularized, however, the same benefit was not extended to the petitioners. Moreover, services of some six Sub-Engineers have been regularized after appointment of the petitioners. The petitioners preferred an application/appeal to the competent authority as well as to the Human Rights Cell of this court. In this respect, a letter dated 21.12.2013 was addressed to Human Rights Cell by the respondents, wherein, it was stated that Sub-Engineers, namely, Sher Hayat and Musatag Ahmad, who were 38 and 39 years old, respectively and were debarred from future employment in any institution of the Provincial/Federal Government for the reasons beyond their control. Nevertheless, handsome share of posts of Sub-Engineers were lying in the department and as a gesture of good will, the petitioners can be accommodated on regular basis. According to the petitioners, they waited for some time but did not receive any fruitful result from the respondents whereas their tenure is going to expire, hence necessitated the filing of instant constitutional petitions.

3. Learned counsel for petitioners contends that the respondents have acted mala fide by regularizing the services of other employees similarly placed, who were appointed after the petitioners but the same benefit has been

EXAMINER
Peshawar High Court,
20 FEB 2014

denied to the petitioners, thus, the treatment meted out to them is discriminatory, which is not tenable in law. He was of the view that the petitioners and their families will stand in long line of jobless people and would face hardship, if not regularized. He maintained that the act of respondents is in violation of judgments of superior courts rendered in various cases. Further contended that the petitioners have become overage for appointment in any institution of the Provincial/Federal Government, which fact is beyond their control and if not regularized will spoil their future. Also contended that there are vacant posts available against which the petitioners can be accommodated. According to the learned counsel, the impugned act of respondents is in violation of Article 25 (2) of the Constitution, therefore, they be directed to regularize the services of the petitioners like other similarly placed employees.

4. Learned AAG controverted the arguments from other side and straight away referred to the advertisement dated 23rd April, 2010 against which the petitioners were appointed as Sub-Engineers, wherein it was clearly mentioned that the term of appointment would be on adhoc basis for one year or till the arrival of the recommendees of the Public Service Commission or whichever is earlier. He was of the view that as the period of one year has elapsed,

ATTESTED
EXAMINED
FRESH
20 FEB 2014

whichever is earlier. The petitioners amongst others also participated in the test/interview. However, after due process, they were appointed on 3rd January, 2010. On 28.2.2012, the petitioners were re-appointed as Sub-Engineers as a stop-gap arrangement.

6. The petitioners are taking the shelter behind Act No.XVI of 2009 and can be pressed into service in case of those adhoc employees, who were holding the posts on 31st December, 2008 or till the commencement of the Act, which is not the case in hand, therefore, the plea taken is of no help to them. Moreover, the learned AAG produced a copy of the letter dated 1.7.2013 showing that those employees, who were retained by the respondent/department have also been terminated after the arrival of candidates from Public Service Commission.

Keeping in view the above discussion, we are of the considered opinion that the petitioners have failed to make out a case for interference in the constitutional jurisdiction of this court, hence this petition being without any legal substance is hereby dismissed.

Sd/- Nisar Hussain Khan - J
Sd/- Ms. Misarret H. Badi - J

CERTIFIED TO BE TRUE COPY

Examiner
 Peshawar High Court,
 Authorised Under Art.
 The Qanun-e-Shahadat

20 FEB 2014

20-02-14

announced:
 10.2.2013.

Ph: 9082235
Fax: 9220406

REGISTERED
Nos. C.P. 2026 & 2029 of 2013 - SCJ
SUPREME COURT OF PAKISTAN.

Islamabad, dated 16/11 2014.

The Registrar,
Supreme Court of Pakistan,
Islamabad.

The Registrar,
Peshawar High Court,
Peshawar.

Subject: **CIVIL PETITION NOS. 2026 & 2029 OF 2013.**
Mushtaq Ahmed & another ...in C.P. 2026/2013
Muhammad Nasir Ali & others ...in C.P. 2029/2013
VERSUS
Government of Khyber Pakhtunkhwa through Chief Secretary,
Peshawar & others ...in both cases

**On appeal from the Judgment/Order of the
Peshawar High Court, Peshawar dated
02.10.2013 in W.P. 271-P & 663-P/2013**

Dear Sir,

I am directed to enclose herewith a certified copy of the Order of this Court dated 15.01.2014 **dismissing** the above cited civil petitions with **directions** for information and further necessary action.

I am also to invite your attention to the directions of this Court contained in the enclosed Order.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order

Yours faithfully,



(NAZAR ABBAS)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

Copy with a certified copy of the Order of this Court dated 15.01.2014 is forwarded to Mr. Sikandar Khan, Chief Engineer, Public Health Engineering Department, Khyber Pakhtunkhwa, Peshawar for immediate necessary action and report compliance.

Encl: Order



ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI.
MR. JUSTICE EJAZ AFZAL KHAN.

C. Ps. No. 2026 and 2029 of 2013.

(On appeal against the judgment
dt. 2.10.2013 passed by the
Peshawar High Court, Peshawar in
W. Ps. No. 271-P and 663-P of 2013).

Mushtaq Ahmed and another.
Muhammad Nasir Ali and others.

(in CP. 2026/13)

(in CP. 2029/13)

...Petitioners

Versus

Government of KPK through Chief Secretary,
Peshawar and others.

(in both cases)

...Respondents

For the petitioners: Mr. Ghulam Nabi Khan, ASC.
Syed Safdar Hussain, AOR.

For the respondents: Sikandar Khan, Chief Engineer, PHEK, KPK.
(on court notice)

Date of hearing: 15.01.2014.

ORDER

ANWAR ZAHEER JAMALI, J. - After hearing the arguments
of the learned ASC for the petitioners and careful perusal of the case
record particularly the reasons assigned in the impugned judgment,
we are satisfied that no case for grant of leave to appeal is made out,
including the plea of discrimination raised by the petitioners, as one
wrong or any number of wrongs, cannot be made basis to justify an
illegal action under the garb of Article 25 of the Constitution. Both
these petitions are, therefore, dismissed. Leave is refused.

2. So far as some other illegalities in the appointments
brought to our notice is concerned, in response to our earlier order
dated 09.01.2014, Mr. Sikandar Khan, Chief Engineer, Public Health
Engineering, Department, KPK is present in Court, he states that

ATTESTED

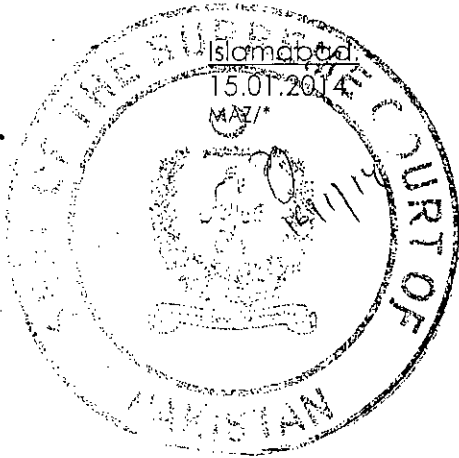
Superintendent
Supreme Court of Pakistan
Islamabad

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although many other illegal appointees in his department have been removed from service, but against many others such action is in process at various stages and they are still in service.

3. In view of the above statement, he is directed to finalize the action against such illegal appointees within one month from today and submit his report through Registrar of this Court. In case, he faces any difficulty in this regard, those difficulties may also be brought to our notice so that appropriate orders may be passed.

Sd/- Anwar Zaheer Jamali, J
Sd/- Ejaz Afzal Khan, J



Certified to be True Copy

Supintendent
Supreme Court of Pakistan
Islamabad

GR No:	640/14	Civil/Criminal
Date of Presentation:	15-1-14	
No. of Words:	600	
No. of Pages:	6	
Requisition Fee Rs:	5.00	
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Court Fee stamps:	8.00	
Date of Completion of Copy:	18-1-14	
Date of delivery of Copy:	18-1-14	
Compared by (P. No. and S. No.):		
Received by:	Zahid Jan	

KHYBER PAKHTUNKHWA PUBLIC SERVICE COMMISSION**2- Fort Road Peshawar Cantt:****Website: www.nwfppsc.gov.pk****Tele: Nos. 091-9214131, 9213563, 9213750, 9212897**Dated: 07.04.2011**ADVERTISEMENT No. 02 / 2011.**

Applications, on prescribed form, are invited for the following posts from Pakistani citizens having domicile of Khyber Pakhtunkhwa / F.A.T.A by **07.05.2011** (candidates applying from abroad by **21.05.2011**). Incomplete applications and applications without supporting documents required to prove the claim of the candidates shall be rejected without intimation to the candidates.

AGRICULTURE, LIVESTOCK & CO-OPERATIVE DEPTT:

1. **FIVE (05) POSTS OF FEMALE LIVESTOCK PRODUCTION OFFICER (HEALTH) IN L&DD DEPTT:**

QUALIFICATION: (i) B.Sc (Hons) Animal Husbandry from a recognized University; OR (ii) Doctor of Veterinary Medicine (DVM) or equivalent qualification in veterinary sciences from a recognized university and registered with Pakistan Veterinary Medical Council.

AGE LIMIT: 22 to 35 years. **PAY SCALE:** BPS-17 **ELIGIBILITY:** Female.
ALLOCATION: Two to Zone-1 and One each to Zone-2, 3 and 5.

2. **THREE (03) POSTS OF SOIL CONSERVATION ASSISTANT**

QUALIFICATION: (a) M.Sc Agriculture (Soil Science) from a recognized University, OR (b) B.Sc (Hons) Agriculture with Soil Science as major subject obtained after four years of academic instructions after F.Sc from a recognized university; OR (c) B.sc Agriculture Engineering from a recognized university.

AGE LIMIT: 21 to 35 years. **PAY SCALE:** BPS-17 **ELIGIBILITY:** Both Sexes.
ALLOCATION: One each to Merit, Zone-1 and 5.

3. **ONE (01) POST OF BIO-CHEMIST**

QUALIFICATION: Doctor of Veterinary Medicine (DVM) or equivalent qualification in veterinary sciences with M.Sc in Biochemistry or M.Sc (Hons) in Animal Nutrition recognized by Pakistan Veterinary Medical Council.

AGE LIMIT: 25 to 32 years. **PAY SCALE:** BPS-17 **ELIGIBILITY:** Both Sexes.
ALLOCATION: Merit.

C & W DEPARTMENT

4. **THIRTEEN (13) POSTS OF JUNIOR SCALE STENOGRAPHER.**

QUALIFICATION: (i) Intermediate or equivalent qualification from recognized a Board. (ii) A speed of 60 words per minute in Shorthand in English and 35 words per minute in typewriting in English and knowledge of Computer in using MS Word and MS Excel.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-12 **ELIGIBILITY:** Both Sexes.
ALLOCATION: Three to Zone-1, Five each to Zone- 3 and 5.

69.	<p>EIGHT (08) POSTS OF MALE SURVEYOR IN MINES AND MINERALS DEPTT:</p> <p>QUALIFICATION: F.SC Pre Engineering or equivalent qualification from recognized Board of Intermediate and Secondary Education with (a) Mine Surveyor Competency Certificate under Mines Act 1923 and (b) Certificate in Auto cad from a recognized institute</p> <p>AGE LIMIT: 18 to 30 years. PAY SCALE: BPS-11 ELIGIBILITY: Male ALLOCATION: Two each to Zone-1,2,3 and One each to Zone-4 & 5.</p>
70.	<p>THREE (03) POSTS OF COMPUTER OPERATOR IN DIRECTORATE GENERAL OF TECHNICAL EDUCATION AND MANPOWER TRAINING</p> <p>QUALIFICATION: (a) Bachelor Degree from a recognized University and (b) Diploma of one year duration in Information Technology from a recognized Institute.</p> <p>AGE LIMIT: 20 to 32 years. PAY SCALE: BPS-11 ELIGIBILITY: Male ALLOCATION: One each to Zone-1, 2 and 3.</p>
PUBLIC HEALTH ENGINEERING DEPTT:	
71.	<p>TWO (02) POSTS OF RESEARCH OFFICER/ HYDRO-GEOLOGIST.</p> <p>QUALIFICATION: Second Division M.Sc (Hydro-Geology) OR B.Sc (Civil/ Agriculture Engineering) with two years relevant experience Or Second Division M.Sc (Water Resources/ Civil Engineering) from a recognized University.</p> <p>AGE LIMIT: 21 to 32 years. PAY SCALE: BPS-17 ELIGIBILITY: Both Sexes ALLOCATION: One each to Merit and Zone-1.</p>
72.	<p>EIGHTEEN (18) POSTS OF ASSISTANT SOCIAL ORGANIZER.</p> <p>QUALIFICATION: Second Class Master Degree in Social Sciences from a recognized University.</p> <p>AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Both Sexes ALLOCATION: Five to Merit, Three each to Zone-1, 2, 3 and Two each to Zone-4&5.</p>
73.	<p>TWO (02) POSTS OF ASSISTANT SOCIAL ORGANIZER (WOMEN QUOTA).</p> <p>QUALIFICATION: Second Class Master Degree in Social Sciences from a recognized University.</p> <p>AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Female ALLOCATION: Merit.</p>
74.	<p>SEVEN (07) POSTS OF ASSISTANT RESEARCH OFFICER (WATER QUALITY).</p> <p>QUALIFICATION: Second Division B.Sc (Microbiology or Chemistry) from a recognized University.</p> <p>AGE LIMIT: 21 to 30 years. PAY SCALE: BPS-16 ELIGIBILITY: Both Sexes. ALLOCATION: One each to Merit, Zone-2, 3, 4, 5 and Two to Zone-1</p>

EIGHT (08) POSTS OF JUNIOR SCALE STENOGRAPHER.

QUALIFICATION: (i) 2ND Class Intermediate/ D.com or equivalent qualification from recognized a Board; and (ii) A speed of 50 words per minute in English Shorthand and 35 words per minute in English Typing.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-12 **ELIGIBILITY:** Both Sexes
ALLOCATION: Two each to Zone-1, 2 & 3 and One each to Zone-4 and 5..

76. **EIGHTEEN (18) POSTS OF SUB ENGINEER CIVIL.**

QUALIFICATION: Three years Diploma of Associate Engineering Civil from a recognized Institute.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-11 **ELIGIBILITY:** Male
ALLOCATION: Four each to Zone-1, 2, 3 and Three each to Zone-4 and 5.

77. **TWO (02) POSTS OF SUB ENGINEER CIVIL (WOMEN QUOTA).**

QUALIFICATION: Three years Diploma of Associate Engineering Civil from a recognized Institute.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-11 **ELIGIBILITY:** Female
ALLOCATION: Merit.

78. **FOUR (04) POSTS OF DRAFTSMAN.**

QUALIFICATION: (i) Second Division Secondary School Certificate from a recognized Board and (ii) Two years duration Certificate Course in Civil Draftsmanship from a recognized Board of Technical Education.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-11 **ELIGIBILITY:** Both Sexes
ALLOCATION: One each to Zone-1, 2, 3 and 4.

PROVINCIAL PUBLIC SAFETY AND POLICE COMPLAINT COMMISSION

79. **ONE (01) POST OF FEMALE JUNIOR SCALE STENOGRAPHER CUM COMPUTER OPERATOR**

QUALIFICATION: (i) FA/ F.SC in second division from recognized Board (ii) One year diploma in Computer Science from an institute recognized by the Board of Technical Education. (iii) A speed of 60 words per minute in English Shorthand and 35 words per minute in English Typewriting.

AGE LIMIT: 18 to 30 years. **PAY SCALE:** BPS-12 **ELIGIBILITY:** Female
ALLOCATION: Merit

SPORTS, TOURISM, CULTURE, ARCHAEOLOGY & MUSEUMS DEPARTMENT

80. **ONE (01) POST OF ADMINISTRATOR**

QUALIFICATION: Bachelor Degree from a recognized university with at least five years experience in management / administration.

AGE LIMIT: 21 to 35 years: **PAY SCALE:** BPS-17 **ELIGIBILITY:** Male
ALLOCATION: Zone-1

Detail Marks Certificates for all the examinations shall necessarily be required and these should be attached with the application forms.

- (iii) Ex-armed Forces Personnel must send copy of Discharge Certificate with their applications. Govt. / Semi Govt. / Autonomous / Semi Autonomous Bodies employees may apply direct but their Departmental Permission Certificates should reach within 30 days of the closing date.
- (iv) Applications should be on the prescribed application form obtainable from the listed below branches of the NATIONAL BANK OF PAKISTAN. Application Fee is Rs.285/- (Rupees Two Hundred Eighty Five only) for all the candidates. In addition to the application fee, the candidates will have to pay Rs.15/- (rupees fifteen only) on account of Bank Charges. Separate application form will be required for each advertised category of posts. Application forms obtained other than the specified branches of the National Bank will be considered invalid and such applications will not be entertained. The applications on plain paper or Photostat shall not be accepted. Incomplete and late applications shall also be ignored.
- (v) Applications must be submitted within time as no extra time is allowed for postal transit. The applications if submitted on the last date for receipt of applications must reach the Commission's office by the closing hours.
- (vi) Applicants married to Foreigners are considered only on production of the Govt. Relaxation Orders.
- (vii) No applicant shall be considered in absentia on paper qualifications unless, he/she possesses exceptionally higher qualifications than the minimum prescribed qualification for a particular post(s).
- (viii) Govt. reserves the right not to fill any or fill more or less than the advertised post(s).
- (ix) Candidates who have already availed three chances by physical appearance before the Commission and have failed for the post(s) having one and the same qualifications and scale of pay shall be ineligible.
- (x) Experience wherever prescribed shall be counted after the minimum qualifications for the post(s), if not specifically provided otherwise against the advertised post(s).
- (xi) In case the number of applications of candidates is disproportionately higher than the number of posts, short listing will be made in anyone of the following manner: -
 (a) Written Test in the Subject.
 (b) General Knowledge or Psychological General Ability Test.
 (c) Academic and/or Professional record as the Commission may decide.

SPECIFIED BRANCHES OF THE NATIONAL BANK OF PAKISTAN.

- (1) Main Branches of:
 Parachinar, Mardan, Swabi, Malakand, Shangla, Chitral, Timargara, Daggar, D.I.Khan, Bannu, Karak, Kohat, Hangu, Lakki Marwat, Abbottabad, Haripur, and Mansehra
- (2) Saddar Road Branch, Tehkal Payan Branch, and G.T Road (Nishtar Abad) Branch Peshawar.
- (3) Tehsil Bazar Branch Charsadda, Nowshera Cantt. Branch, Bank Square Branch Mingora and City Branch Tank

Note: -The candidate who apply for the post(s) are advised to make sure that they are eligible for the post in all respects because eligibility of the candidate will be determined strictly according to the rules after conduct of all essential tests.

(ATTA-UR-REHMAN)
 Secretary
 Khyber Pukhtoonkhwa
 Public Service Commission
 Peshawar

Annex-8

**OFFICE OF THE CHIEF ENGINEER(SOUTH)
PUBLIC HEALTH ENGG:DEPARTMENT
KHYBER PAKHTUNKHWA PESHAWAR.**

No. 11 / E-4 / PHE
Dated Pesh: the 11 / 07/2013.

To

The Secretary to Govt. of Khyber Pakhtunkhwa,
Public Health Engineering Department,
Peshawar.

Subject:- **ILLEGAL APPOINTMENT OF SUB ENGINEERS**

It is intimated that the then Chief Engineer (South) PHE Department Mr. Ghulam Mujtaba appointed the following Five Sub Engineers on 23.02.2011 on contract basis without observing procedure and formalities as mentioned in Esta Code:-

1. Mr. Abdullah Noor Ex-Sub engineer PHE Miranshah.
2. Mr. Shahid Khan Ex-Sub Engineer PHE Koht.
3. Mr. Mujtaba Ex-Sub Engineer PHE Nowshera.
4. Mr. Shahid Iqbal Ex-Sub Engineer PHE Karak.
5. Mr. Usman Ullah Ex-Sub Engineer PHE Nowshera.

The above named Sub Engineers have been terminated on 01.07.2013 on receiving list of recommendees of Public Service Commission.

The said posts were not advertised in the press. No test and interview were conducted. No departmental selection committee was constituted. Copies of the appointment letters are sent herewith for your perusal. Inquiry in this regards may be initiated against the then Chief Engineer for making illegal appointment of Sub Engineers.

Encl: As above.

CHIEF ENGINEER
[Signature]
10/7



OFFICE OF THE CHIEF ENGINEER (SOUTH)
PUBLIC HEALTH ENGG: DEPARTMENT
KHYBER PAKHTUNKHWA, PESHAWAR

No. 04 /E-13/SOUTH /PHE.

Dated Peshawar, the 27 /02/2014

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To
The Secretary to Govt of Khyber Pakhtunkhwa,
Public Health Engineering Department,
Peshawar

Subject: ENQUIRY INTO ILLEGAL APPOINTMENT

Reference: Your letter No.SO(E)/PHE/8-27/2013/242-2

In this regard it is submitted that illegal appointments in PHE Department have been made in various times by various officers as under please:

A. The Departmental Selection Committee comprising of the following have recommended approved illegal selection of the appointments of Sub Engineers/Steno typists/Stenographer and Data Entry Operators which were in purview of Public Service Commission by violating all rules.

- | | |
|---|------------|
| 1. Mr. Allaudin Khan (Retired) Chief Engineer | Chairman |
| 2. Mr. Syed Bakar Shah S.O (E=II) W&SD | Member. |
| 3. Mr. Abdul Bashir ADO (SE HQ) | Member. |
| 4. Mr. Afsar Ali Qureshi Admn: officer | Secretary. |

B. Five No. Sub Engineers were illegally appointed by Mr. Ghulam Mujtaba the then Chief Engineer PHED directly without involvement of A.O or any staff Member. Similarly one Junior Clerk Mr. Farhanullah has also been promoted to the post of Sub Engineer by Mr. Ghulam Mujtaba the then Chief Engineer singed fake promotion letter with fake dispatch number without involvement of any staff member.

Chief Engineer (South)

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Annex - XI
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**GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE
LOCAL GOVERNMENT, ELECTION AND RURAL DEVELOPMENT
DEPARTMENT**

NOTIFICATION

Dated Peshawar the 30th October, 2001

No. ADMN(LG)/DG/1(28)-2001. --- In exercise of the powers enforced by section 191 of the North-West Frontier Provincial and Local Government Ordinance, 2001 (N.-W.F.P. Ord. XIV of 2001) read with section 31 thereof, the Government of the North-West Frontier Province is pleased to make the following rules, namely:-

**THE NORTH-WEST FRONTIER PROVINCE DISTRICT
GOVERNMENT RULES OF BUSINESS, 2001.**

**PART A
GENERAL**

1. **Short title and commencement.**--- (1) These rules may be called the North-West Frontier Province District Governments Rules of Business, 2001.

(2) It shall come into force at once.

2. **Definitions.**--- (1) In these rules, unless the context other-wise requires,-

1. "body corporate" means a body having perpetual succession and a common seal, with power to sue and be sued;
2. "budget" means an official statement of income and expenditure for a financial year;
3. "business" includes all work done by a local government;
4. "component" means the offices mentioned in column 2 of Schedule I to the Ordinance;

(211)

4. **Organization of Offices.**--- (1) The Organization of various offices shall be the same as provided in the Ordinance or, where the Ordinance has not so provided, as determined by Government.

(2) The Executive District Officer shall, by means of standing orders, distribute the work of the office among the officers subordinate to him.

(3) The cases enumerated in Schedule II shall be submitted to the Zilla Nazim before issuance of orders;

(4) Reports on any of the matters specified in Schedule III shall be submitted to the Zilla Nazim for his information;

5. **Secretariat of District Government.**--- (1) There shall be a secretariat of the District Government headed by the District Coordination Officer and comprising of the decentralized departments or groups of departments as shown in the First Schedule to the Ordinance.

(2) Each decentralized group of departments shall be headed by an Executive District Officer appointed or nominated by the Government for the purpose.

(3) Each Executive Officer shall be responsible to Zilla Nazim through the District Coordination Officer and shall channelize his correspondence through him.

6. **Deputation of civil servants and power of District Coordination Officers.**---

(1) The civil servants posted in the decentralized departments shall continue to be civil servants for all intents and purposes of the relevant civil servants laws and the rules framed thereunder with the modification that-

(a) all civil servants in BPS-16 to BPS-20 shall be appointed by Government or the Federal Government, as the case may be, and posted in decentralized Departments from time to time.

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(b) the District Coordination Officer shall have the powers of the appointing authority in respect of the officers/officials in BPS-1 to BPS-15:

Provided that no vacancies are to be filled in by way of direct recruitment or transfers and the officers/officials of the surplus pool are to be absorbed/adjusted against the vacancies:

Provided further that even after the said period ban on recruitment shall continue till it is lifted by Government in the Finance Department.

(2) No civil servant shall be transferred from his post in a district except under the orders of the Government:

Provided that the District Coordination Officer, or as the case may be, the Executive District Officer, may, suo moto or on the initiation of the Nazim, initiate disciplinary proceedings against a civil servant for his inefficiency or malpractices and submit the outcome of the proceedings to competent authority for decision.

(3) In disciplinary matters, the Zilla Nazim, in case of officers in BPS-19, and District Coordination Officer, in the case of officers in BPS-16 to BPS-18, shall refer the cases to the competent authority for decision under the North-West Frontier Province Removal from Service (special Powers) Ordinance 2000 (N.-W.F.P. Ord. No. V of 2000), through the administrative Secretary concerned.

7. **General procedure for disposal of business.**--- (1) The channel for obtaining or transmitting the orders of the Zilla Nazim is the Executive District Officer or an officer specifically authorized in this behalf by the District Coordination Officer.

(2) All orders shall be passed in writing, where a verbal order is given, it should be reduced to writing at the earliest opportunity by the officer receiving it.

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(3) If any doubt or dispute arises as to the Department to which a case properly pertains, the matter shall be referred to the District Coordination Officer for decision.

(4) Detailed instructions for the disposal of business in the District administration shall be issued by the District Coordination Officer.

(5) If any order happens to contravene a law, rule or policy, it shall be the duty of the next below officer to point out this to the authority passing the order.

(6) While submitting a case for the orders of the Zilla Nazim, it shall be the duty of the Executive District Officer/District Coordination Officer to suggest a definite line of action.

8. **Office administration and record.**--- The manual of instructions for Provincial Civil Secretariat issued by the Chief Secretary of Government from time to time shall, mutates mutandis, be applicable to the secretariat of the District Government and the District Coordination Officer shall have the powers to issue instructions in addition there to and not in derogator of the instructions already issued.

9. **Official language.**--- (1) The official language of the District Government for official correspondence with the Provincial Government and Federal department shall be English and efforts shall be made to conduct the correspondence with the people representative and public in general in Urdu.

(2) All notices affecting the citizens shall be published at least in two Urdu dailies having wide circulation in the local area.

10. **Zilla Nazim.**--- (1) A Zilla Nazim shall assume the charge of his office from the date on which he takes upon himself the oath of such office.

(2) Government shall notify the dates of assumption of the offices of the Zilla Nazim in the Official Gazette.

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11. **District Coordination Department.**— (1) An officer appointed as District Coordination Officer shall, on assuming charges, as such, exercise such powers and perform such functions and duties as are mentioned in section 28.

12. **District Police Officer.**— (1) The District Police Officer shall keep the Zilla Nazim generally informed of all matters affecting public tranquillity. He shall, in particular, submit reports through the Zilla Nazim, to Provincial Government of all cases likely to have major political repercussions.

(2) The District Superintendent of Police shall coordinate with the Zilla Nazim for the maintenance of law and order in the district and shall comply with all of his orders.

PART-B

DEPARTMENTAL PROCEDURE

13. **Enforcement and interpretation of rules.**— (1) The Executive District Officer shall be responsible for the careful observance of these rules in his Department/Component of offices assigned to him and if any doubt or dispute arises as to the interpretation of these rules, it shall be referred to Government through District Coordination Officer, whose decision shall be final. The District Coordination Officer shall obtain the orders of the Zilla Nazim, where necessary.

(2) Instructions ancillary to these rules shall, wherever considered necessary, be issued by the District Coordination Officer:

Provided that any special or general orders required to be made by the Departments in terms of these rules may be issued by them in consultation with the District Coordination Officer.

14. **Authentication of orders, instruments, agreements, contract, etc.**— (1) All executive action of a District Government shall be expressed to be taken in the name of the Nazim of the respective District Government.

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- iii. interpretation of rules and orders relating to service matters, other than rules and orders issued by the District Government; and
- iv. any change in the terms and conditions of service or the statutory rights and privileges of Federal/Provincial Government Servants serving in the District.

(4) No order in respect of the emoluments, promotion or condition of service of any officer employed in the Finance and Planning Department shall be passed and no expenditure proposal relating to that Department shall be sanctioned without prior concurrence of the Coordination Department. The District Coordination Officer shall exercise in respect of such matters, the functions of the Executive District Officer, Finance and Planning Department.

17. Consultation with Finance and Planning Departments.--- (1) No Department shall, without previous consultation with the Finance and Planning Department, authorize any orders, other than orders in pursuance of any general or special delegation made by the Finance and Planning Department, which directly or indirectly affects the finances of the District, or which in particular involves-

- (a) relinquishment, remission or assignment of revenue, actual or potential, or grant of guarantee against it or grant of lease of land or mineral, forest or water power rights;
- (b) expenditure for which no provision exists;
- (c) levy of taxes, duties, fees, or cesses;
- (d) re-appropriation within budget grants; and
- (e) alteration in financial procedure or in the method of compilation of accounts or of the budget estimates.

(2) No amendment or interpretation of the District Services Rules, if any, as have no financial implication shall be made or issued by the Finance and Planning Department without the prior concurrence of the Coordination Department.

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(3) No proposal, which requires previous consultation with the Finance and Planning Department under sub-rule (1) but in which the Finance and Planning Department has not concurred, shall be proceeded with, unless a decision to that effect has been taken by the Zilla Council. Formal order shall, nevertheless, issue only after the Finance and Planning Department has exercised scrutiny over the details of the proposal.

(4) Except to the extent that power may have been delegated to Departments under rules framed by the Finance and Planning Department, every order of a Department conveying a sanction to be enforced in audit shall be communicated to the audit authorities through the Finance and Planning Department.

18. Consultation with Provincial Law, Parliamentary Affairs and Human Rights Department.— (1) The Provincial Law, Parliamentary Affairs and Human Rights Department shall be consulted by the District Government—

- (a) on all legal questions arising out of any case;
- (b) on the interpretation of any law;
- (c) before instituting criminal or civil proceedings in a court of law in which Government is involved; and
- (d) wherever criminal or civil proceedings are instituted against District Government.

The Public Prosecutor, Government Pleader, Additional Public Pleader and Additional Government Pleader shall conduct civil and criminal cases against a District Government on behalf of that Government on a case-to-case basis, by the District Coordination Officer or the District Government.

Government shall adopt and follow the model bye-laws and any other bye-laws under the ordinance, not in conformity with the model bye-laws, which shall be sent to the Law and Order Department and may, after such vetting and approval,

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19. **Consultation between the District Departments and Provincial Offices.**— Cases requiring the approval of the Provincial Government shall be referred in as complete form as possible to the Administrative Department concerned by the Heads of District Departments through District Coordination Officer and shall ordinarily be settled in personal discussion between the Head of the District Department and the Secretariat Officers dealing with the case.

20. **Relations with Provincial Local Government Commission.**— (1) The Zila Nazim shall cooperate with the Provincial Local Government Commission in the due discharge of its functions under Article 132 of the Ordinance.

(2) Between any department of Government and the District Government or between two District Governments, the Nazim shall cause to prepare a complete case with all the documents required and require the District Coordination Officer to forward the same to the secretariat of the Provincial Local Government Commission;

Provided that if the dispute is not amicably resolved, the aggrieved party may move the case before the Chief Executive of the Province for resolution through the Chief Secretary of Government and the decision of the Chief Executive thereon shall be final.

21. **Executive District Officers' Committee.**—(1) There shall be constituted an Executive District Officers' Committee with the District Coordination Officer as its Chairman, to facilitate coordination amongst Government Departments, to provide a venue for the consideration of matters of common interest and to tender advice on any case that may be referred to it by the Zilla Nazim or the Zilla Council.

(2) An Executive District Officer who wishes that a particular matter be discussed in the Executive District Officers' Committee meeting shall inform the Coordination Department of his intention of doing so and forward twenty copies of a brief note on the subject which would form the basis of discussion.

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(3) The Coordination Department shall issue notice of a meeting, together with the agenda, well in advance of the meeting, except that urgent items may be considered at short notice.

(4) Executive District Officers' Committee meeting shall be attended only by Executive District Officers and Assistant Executive District Officers of District Departments, or such other officers as may be required by the District Coordination Officer.

(5) Minutes of the meeting shall be recorded by an officer of the Coordination Department, who shall attend the meeting for the purpose, and shall be circulated, after approval by the District Coordination Officers as soon as possible.

(6) Conclusion reached at the meeting of the Executive District Officers' Committee shall not be taken as decision of the District Government. Any further action required shall be taken by the Department concerned in accordance with the rules.

22. Relations of the District Government and Zilla Council.— (1) The District Government shall present all the bye-laws prepared under the Ordinance to the Zilla Council for approval.

(2) The District Government shall obtain approval of the Zilla Council for imposition of taxes on the subjects specified in Para-1 of the Schedule-II.

(3) The District Government shall get approval of the Zilla Council for long term and short term development plans, annual and supplementary, budgetary proposals of the District Government and where required intra-district fiscal transfers.

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PART-C

SERVICES

23. **Public Service Commission.**— The advice of the Public Service Commission shall ordinarily be accepted by the District Government(s) in all matters where it is obligatory to consult the Commission under any rules or regulations for the time being in force. If it is proposed not to accept the advice of the Commission, it shall be submitted to the Chairman, Local Government Commission, who may give an opportunity to the Public Service Commission of further justifying its recommendation before a final decision is taken.

24. **Selection Board.**— (1) District Government may constitute one or more Selection Boards and specify the appointments and promotions to posts, other than those to be made on the advice of the Public Service Commission, to be made on the advice of such Selection Boards, under the District Service Rules, when framed.

(2) In case, a Department does not propose to accept the advice of Selection Board in regard to a matter in which its advice is required under sub-rule (1), the case shall be returned to the Selection Board for reconsideration, and the Selection Board shall reconsider such case. If on reconsideration the difference still persists, the case shall be submitted to the Zilla Nazim through the Coordination Department, for his orders.

25. **Posting and transfer.**— (1) Posting/Transfer of Officers/Officials shown in Column 2 of Schedule-IV shall be made by the authorities shown against such officers/officials in column 3 thereof.

(2) the District Coordination Department of the District shall consult Government if it is proposed to-

(a) transfer the holder of a tenure post before the completion of his tenure or extend the period of his tenure; and

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PART-D

ZILLA COUNCIL

26. **Manner of submission of cases to the Zilla Nazim.**— (1) The Executive District Officer of the Department concerned shall transmit to the District Coördination Officer, a concise and lucid memorandum of the cases (hereinafter referred to as the "Summary") giving the background and relevant facts, the points for decision and the recommendation of the Executive District Officer, for appropriate orders of the Zilla Nazim.

(2) The summary shall be self-contained as far as possible, and may include as appendices such relevant papers as are necessary for the proper appreciation of the case.

(3) Where a case concerns more than one Department, the summary shall not be forwarded to the Zilla Nazim unless the case has been considered by all the Departments concerned. In the event of a difference of opinion, the points of difference between them, shall be clearly stated in the Summary, a copy of which shall be sent by the sponsoring Department to other Department concerned simultaneously with the transmission of the Summary to the Zilla Nazim.

(4) No Summary containing a proposal involving financial implications shall be submitted to the Zilla Nazim unless the Finance and Planning Department has been consulted and its views incorporated in the Summary.

(5) The Coördination Department shall satisfy itself that the papers submitted by the Executive District Officer are complete and in appropriate form. It shall ordinarily return a case which does not meet the requirements of these rules, or any other instructions on the subject.

27. **Procedure regarding meetings of the Zilla Council.**— (1) Regular meetings of the Zilla Council to discuss ordinary business shall normally be held once a month on a day and time to be fixed by the Zilla Nazim;

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Provided that the Zilla Nazim may direct any variation in day and time, may call for special meetings of the Zilla Council at any time on any day to discuss urgent business.

(2) All drafts of bye-laws or orders having the force of law shall be submitted to the Zilla Council after the same have been vetted by the Law Department, and no changes shall be made therein except with the knowledge of the Law Department.

(3) No case for inclusion in the agenda shall be accepted unless it reaches the Convener of the Zilla Council at least four clear days in advance of the meeting.

(4) The Convener of the Zilla Council shall ordinarily issue notices to the members of the Zilla Council at least three days in advance of a meeting, the agenda of the meeting together with the summaries relating to the items on agenda. In the case of special meetings, the circular notice may be issued less than three days in advance.

(5) The Executive District Officer concerned with a case shall attend the meeting of the Zilla Council in which the case is under discussion. He shall, however, take no part in the discussion unless invited to do so.

(6) The District Coordination Officer shall attend all meetings, prepared record of the discussion and submit the same for approval of the Zilla Nazim.

28. Action on the decisions of the Zilla Council.— (1) When a case has been decided by the Zilla Council, the Department concerned shall take prompt action to give effect to the decision.

(2) To ensure implementation of the Zilla Council's decisions, the Executive District Officer of each Department shall keep a record of all the decisions conveyed to him and shall watch progress of action until it is completed. It shall be his responsibility, as Executive District Officer of the Department sponsoring the

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case, to consult or inform any other Department concerned, in order to ensure full implementation of the decision.

(3) The District Coordination Officer shall watch the implementation of each decision of the Zilla Council, and the Executive District Officer in the Department concerned shall supply to the District Coordination Officer such documents as the latter may, by general or special request, require to enable him to complete his record of the case.

(4) Each Department shall maintain record of cases submitted to the Zilla Council.

(5) The Governor and the Chief Minister of the North-West Frontier Province may require to submit for their consideration any matter on which a decision has been taken by the Zilla Nazim or the Zilla Council, as the case may be.

29. Procedure regarding Committees of the Zilla Council.-- (1) Meetings of the Committees of the Zilla Council shall be convened by the District Coordination Officer under the direction of the Convener/Chairman of the Committee, who shall preside over the meeting(s).

(2) Officers/Officials of the Department concerned may be associated with the deliberations of the Committees as and when considered necessary.

(3) The provision of rule 20, 21, and 22 shall apply mutatis mutandis to the manner of submission of cases to, and the procedure for the meetings of the Committees.

PART-E

MISCELLANEOUS PROVISIONS

30. **Protection and Communication of Official Information.**--- (1) No information, acquired directly or indirectly from official documents or relating to official matters, shall be communicated by a District Government servant to the press, to non-official or officials belonging to other Government offices, unless he has been generally or specially empowered to do so.

(2) Detailed instructions shall be issued by the District Coordination Officer for the treatment and custody of official documents and information of a confidential character.

(3) Ordinarily all official news and information shall be conveyed to the press through the Public Relation Officer to the Zilla Nazim and the manner in which this may be done shall be prescribed, generally or specially in each case by the District Coordination Officer. The District Coordination Officer and such officers as may be authorized, shall act as official spokesman of the District Government.

31. **Channels of communication.**--- (1) Correspondence with the Provincial Government shall be conducted directly by the Departments in respect of subjects allocated to them, and it shall ordinarily be addressed to the Head of the Attached Department concerned.

(2) All correspondence between District Governments and the Secretary of the Provincial Government Departments shall be conducted through the Heads of the Attached Department concerned.

(3) All inter District correspondence shall be conducted by the Executive District Officer of the Departments through the District Coordination Officer.

(4) All correspondence within a District between the Departments shall be conducted through the Executive District Officers.

(IFTIKHAR ALI SHAH)
SECRETARY, LOCAL GOVERNMENT &
RURAL DEVELOPMENT DEPARTMENT,
NORTH-WEST FRONTIER PROVINCE

SCHEDULE - I

See rule 3 (2)

DISTRIBUTION OF BUSINESS AMONG GROUPS OF DISTRICT OFFICES

Sr. No.	Group of District Offices	Allocated Business
1.	Agriculture	Agriculture (Extension, Livestock, On Farm Water Management, Soil Conservation, Cooperatives, Wild Life, Fisheries and Forests).
a:	<u>Agriculture (Extension)</u>	<ol style="list-style-type: none">(1) Administration, financial and technical control of the field formation in the district.(2) Achievement of area and production targets of crops.(3) Implementation of crop production strategy including agronomy and plant protection prepared by the Provincial Agriculture Department.(4) Preparation of detailed training schedule of all trainers within the frame work of phases decided by Provincial Agriculture Department and dissemination of production technology through training programme in every village of the district.(5) Feedback of researchable problems to Provincial Agriculture Department.(6) Identification, preparation and implementation of projects approved by competent authorities.(7) Implementation, preparation and implementation of projects approved by

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- competent authorities.
- (8) Implementation of Agriculture laws.
 - (9) Management of agriculture extension farms and gardens.
 - (10) Service matters relating to the district cadre.
 - (11) Maintenance of government buildings.
 - (12) Purchase of stores and capital goods.
 - (13) Participation alongwith requisite data in review meetings held by Provincial Agriculture Department.
 - (14) Feedback to Provincial Agriculture Department on all the above, as per time to time instructions.
 - (15) Implementation of crop production strategy including agronomy and plant protection.
 - (16) Achievement of area and production targets of all crops.

b: Livestock

Matters relating to:

- (1) Artificial Insemination
- (2) Promotional efforts for establishment of Dairy Farms in Private Sector.
- (3) Promotional efforts for establishment of Poultry Farms in Private Sector.
- (4) Prevention of animal/poultry diseases, extension services.
- (5) Training of Villagers on:
 - (i) Prophylactic vaccination
 - (ii) Management aspects
 - (iii) First Aid Treatment
- (6) Enforcement of Prevention of Cruelty to Animals Act, 1890.
- (7) Prophylactic Vaccination.

Annex-III

(12)

BEFORE THE PESHAWAR HIGH COURT, PESHAWAR

Writ Petition No. 21461/2013

Abdullah Noor

Versus

Chief Engineer & others

ADDRESSES OF THE PARTIES

PETITIONER:

Abdullah Noor S/o Haji Shulozan

R/o H.No.911, Street No.25, Sector E-5,

Phase-VII, Hayatabad, Peshawar.

RESPONDENTS:

1. Chief Engineer (South), Public Health Engineering Department, KPK, Peshawar.
2. Superintending Engineer, Public Health Engineering Circle, Peshawar.
3. Executive Engineer, Public Health Engineering Division, FATA. *Robert by*
4. Chief Engineer FATA, Works and Services Department, Peshawar now Public Health Engineering Department, Peshawar.
5. Secretary, Govt. of KPK, Public Health Engineering Department, Peshawar.

City Registrar
20 JUL 2013

Dated: .07.2013

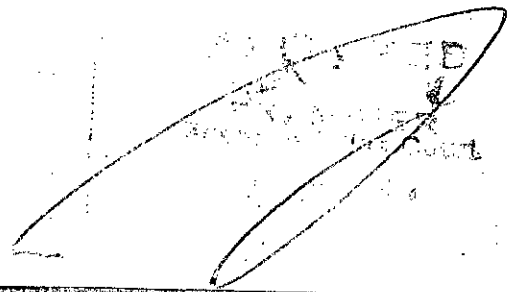
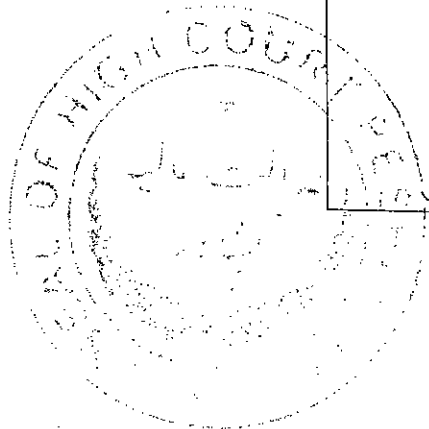
Through *Sa* Petitioner
Sa Saadullah Khan Marwat
11 m
Arbab Saif-ul-Kamal
& *Rbina*
Robina Naz,
Advocates,

PESHAWAR HIGH COURT, PESHAWAR.

FORM 'A'
FORM OF ORDER SHEET

Date of order.	Order or other proceedings with the order of Judge
11.9.2014.	<p><u>W.P. 2146-P of 2013.</u></p> <p>Present: Mr.Saadullah Khan Marwat, advocate for petitioner.</p> <p>Syed Qaisar Ali Shah, AAG for Provincial Government.</p> <p>-----</p> <p><u>MUSARRAT HILALI, J.-</u> This petition is with the prayer to declare the impugned order of respondent No.1 dated 1.7.2013 as illegal, improper, unjust, arbitrary, discriminatory, without lawful and of no legal effect with direction to the respondents to reinstate and regularize the services of the petitioner with all back benefits.</p> <p>2. According to the petitioner, he was appointed as Sub-Engineer (BPS-11) on contract basis, however, after serving for about three years, his services alongwith others were dispensed with vide order dated 1.7.2013. Feeling aggrieved, the petitioner alongwith others preferred</p>

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Representation/Departmental Appeal before the appellate authority but with no fruitful result, hence this petition.

3. The main plea of the petitioner is that after appointment on contract basis as Sub-Engineer (BPS-11) by respondent No.1, he served the department for about three years when all of a sudden his services alongwith others were terminated by the respondents vide the impugned order without serving any notice upon them or holding proper regular inquiry in the matter. He alleged that after promulgation of the Khyber Pakhtunkhwa Civil Servants (Amendment) Act, 2013 his services require to be automatically regularized, which has not been done, thus, the treatment meted out to him is against the spirit of the said Act.

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4. Comments were asked from respondent No.1, which have been received, wherein, it is stated that the petitioner was appointed as Sub-Engineer on adhoc basis for a period of one year or till the arrival of

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recommendees of the Public Service Commission whichever is earlier. It is further stated that the Act relied upon by the petitioner is not applicable to contract employees.

5. Heard. As the petitioner was appointed as Sub-Engineer on adhoc basis (BPS-11) for a period of one year or till the arrival of the recommendees of Public Service Commission whichever is earlier. The said terms and conditions were mentioned in the offer of appointment issued to the petitioner. Moreover, the petitioner is taking shelter behind the Act of 2013, however, the same is not applicable in the matter of contract employees. Moreover, the impugned action was taken by the respondents after arrival of recommendees of the Public Service Commission.

6. This court while dealing with similar plea raised by the petitioners in W.P.271-P of 2013 with interim relief has declined to interfere in the impugned action of respondents vide judgment dated 2.10.2013. The said view was affirmed by the august Supreme Court

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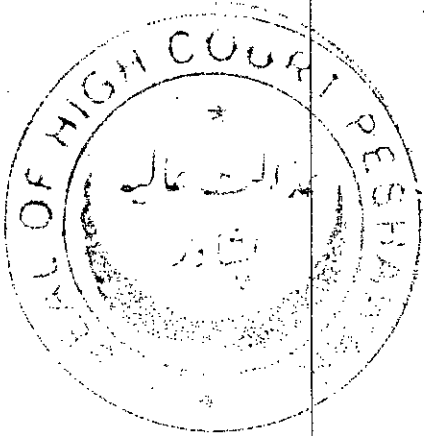
while deciding Civil Petitions bearing No.2026 & 2029 of 2013 vide order dated 15.1.2014.

7. Thus, in the circumstances particularly the judgment of this court as well as the order of apex court in similar situation, we are firm in our view that the respondents have no committed no illegality while taking the impugned action of dispensing with the services of the petitioner, hence no case for issuance of a writ is made out.

Resultantly, instant petition being devoid of legal merits is dismissed in limine.

Sd/- Yaqub Shikhi
Sd/- Ms. Musarat H. Khatun

Sadiq Shah



CERTIFIED TO BE TRUE COPY

Examiner
Peshawar High Court, Peshawar
Authorized Signatory Order 19
The Cantonment, Peshawar

03 OCT 2014

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Date of Filing of Petition: 16-9-14
No of Pages: 10P
Copying fee: /
Urgent fee: 20:00
Date of Filing of Affidavit: 03-10-14
Date of Filing of Counter Affidavit: 03-10-14
Date of Delivery of Copy: 10-10-14
Received by: M. Yaqub

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR**

In Re: Service Appeal No. 1313 /2014

Abdullah Noor s/o Haji Shalawzan

(Sub-Engineer, Public Health Engineering Department, Peshawar)

R/o House No. 911, Street No. 25, Section E-5,

Phase-VII, Hayatabad, Peshawar

.....*Appellant*


Versus

Government of Khyber Pakhtunkhwa & 2 Others

.....*Respondents*

Rejoinder to Parawise Comments
filed by Respondents-1 to 3.

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S. No.	Description	Pages
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2.	<u>Annexes:</u>	
I.	Copy of the list/Detail of 45 Employees appointed in 2009 by the same procedure and is still working	11-13
II.	Copy of the list/Detail of 80 Employees appointed in 2009 by the same procedure and is still working	14-16


Isaac Ali Qazi
ASC

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**BEFORE THE KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR**

In Re: Service Appeal No. 1313 /2014

Abdullah Noor s/o Haji Shalawzan

(Sub-Engineer, Public Health Engineering Department, Peshawar)

R/o House No. 911, Street No. 25, Section E-5,

Phase-VII, Hayatabad, Peshawar

.....*Appellant*

Versus

Government of Khyber Pakhtunkhwa & 2 Others

.....*Respondents*

Rejoinder to Parawise Comments
filed by Respondents-1 to 3

Respectfully Sheweth,

The Appellant humbly submits as under:

Preliminary Objections:

1. Misconceived, frivolous, thus, denied. The Appellant has been dismissed from service without any lawful cause and authority.
2. Denied. Instead it is the Respondents who have estopped by their own conduct as the Appellant has been appointed and kept remained in service for almost three years.
3. Denied. Appeal is in proper form, thus, has been admitted for full hearing.

4. Denied for being misconceived. The Appellant *locus standi* infatal.
5. Frivolous, thus, denied. As the allegations in the Show Cause Notice with all due respect pointing towards the short comings of the Respondents.
6. Misconceived, thus, denied. All necessary parties have been arrayed as necessary party.
7. The Appeal is in accordance with law and within time, hence, the objection is not maintainable.
8. Misconceived, thus, denied. Under the law and the orders of the Honourable High Court and apex Supreme Court of Pakistan per se suggest that no Court or Forum other than this honourable Service Tribunal is to entertain this Appeal.

On the Facts:

Para-1. Having offered no comments by the Respondents; though need not any re-joinder, however, it is re iterated that the qualifications and credentials of the Appellant have been admitted by the Respondents which depicts that Appellant is highly skilled and qualified.

Para-2. Admitted to the extent that Appellant was appointed against duly advertised post to be appointed within a period of one year or till the arrival of selectees of Public Service Commission whichever is earlier. Within the stipulated period of one year none of the selectee was arrived. Thus, beyond that stipulated period of Appellant job was continued for about 2^{1/2} years. Thus, by all implications otherwise duly qualified the condition arrival of selectees of Public Service Commission has

become void. The Respondent Department is estopped by its own conduct/omission to do away with the services of the Appellant who is now been regularized after completion of probation period. Now the condition of the agreement regarding one year employment stand automatically revoked after regularization of the services of the appellant by the Department.

The comments as drafted are highly misconceived. In fact the Respondents; concealed the facts narrated from Para-2 where in the Appellant without any resistance has gone through all the due process and procedure through which Appellant has been asked for by the Department; that include advertisement, test & interview, the recommendation of the DSC and terms and conditions of appointments, the period of employments and satisfactory service performance, the length of service of almost 3 years. It may also be noted that on the post of Appellant no selectee has been appointed as yet. The seniority list attached with the Parawise comments is invalid and distorted as well as hardly relevant but substantiate the fact that the Appellant were being discriminated. As regards inclusion of the name of the appellant in the seniority list. The same list is updated by the department from time to time as and when convenient to them. The names of the newly appointed incumbents however are included in list after completion of their probation period. As stated earlier that Peshawar High Court or Supreme Court of Pakistan has never declared the appointment of the Appellant as illegal, as he was appointed after fulfilling all the codal formalities such advertisement, test & interview, selection by Departmental Selection Committee etc.

Para-3. The Respondents already admitted the fact that the Appellant was appointed on Contract basis; **the rest of the para is highly misconceived, thus, denied.** The Appellant was not required to appear in test & interview conducted by the PSC for the post of Sub-Engineer in 2012 as the appellate was appointed on contract by the Competent Authority against the properly advertised posts after test & interview conducted by Departmental Selection Committee and he had completed his probation period of 2 years and had become a regular employee of the department as per departmental practice. Where an appointment is made on properly advertised post after test and interview, how illegality can be attributed to such an appointment?

Para-4. Incorrect. Para-4 of the reply of the Respondents is self-contradictory—on one hand the respondents are admitting the status of the Appellant as a contract employee on the other hand they are pleading that the Chief Engineer has no authority to make appointments on regular basis. As the appointment of the appellate was not made on regular basis but on Contract basis but after Appellant's service of about 3 years with completion of his probation period the appellate became a regular employee of the department. As stated earlier that the Supreme Court of Pakistan has never issued any direction with regard to the termination of the Appellant.

Para-5. As stated in the earlier Para that the Honourable Supreme Court of Pakistan has never issued any direction with regard to the termination of the Appellant.

Para-6. As the Appellant was appointed after observing all the codal formalities i.e. Advertisement, test, and interview etc. How such an appointment can be termed as an illegal appointment?

Para-7. As stated in Para-2 & 3 above.

Para-8 Not correct the Appeal lodged by the Appellant was having proper weightage which has been admitted by the honourable Service Tribunal for regular hearing.

Para-9 **Denied for being misconceived.**

Para-10. **Denied for being misconceived.**

Para-11. As per Para-8

Para-12. **Incorrect and highly misconceived.** It is an established practice of the Honourable Tribunal; that the honourable Service Tribunal generally condones the limitation period for the Appellant who approach the wrong forums in Service Cases.

Grounds:

- I. **Incorrect.** The Order of termination passed by the Respondent-3 is illegal and unlawful. As the required legal formalities such as Show Cause Notice, Charge Sheet, Formation of Enquiry etc., have not been fulfilled which is a clear violation of Civil Servant Act, 1973. The Supreme Court of Pakistan has never directed the respondents to terminate to the Appellant.
- II. The department has admitted that the Chief Engineer as Competent Authority. Since the

appointment of the Appellant as Sub Engineer was issued by the same authority then how it can be taken as illegal appointment. The department has adopted double standard policy in the case of the appellant and respondents are estopped by their own conduct.

III. **Misconceived, thus, denied.** The appellant was appointed as Sub Engineer by the Chief Engineer (who according to the Respondents Ground-II of the reply is a Competent Authority) after due process through Departmental Selection Committee and has completed his probation period and his termination was illegal and there was no formality of enquiry and charge sheet as required under the rules were fulfilled.

IV. The Respondent failed to deny the fact that the way of the appointment of the Appellant was infact a standard practice of the Department and there are still more than 250 employees working in the Department who have been appointed in the same manner and "standard practice" through which the Appellant was appointed, thus, the Appellant has been proceeded in insolation, therefore, the impugned Order of termination of the Appellant is not only hit by Article 25 of the Constitution but principle of Estopple is also attached.

Copy of the list/Detail of 45 Employees appointed in 2009 by the same procedure and is still working at Annexure-I.

Copy of the list/Detail of 80 Employees appointed in 2009 by the same procedure and is still working at Annexure-II

Note: Further it is worth to add that 30 Employees appointed in 2013 with many others from time to time through the same procedure and are still working.

- V. As per Ground-III.
- VI. As already discussed above.
- VII. Already replied above.
- VIII. **Incorrect.** The department was devolved in the Year 2001 i.e. after promulgation of Local Government Ordinance but since the District Governments were not so strengthened to handle the matters of appointments and to keep their service record of seniority for the purpose of their promotion transfer and posting. Therefore the Chief Engineer South in the capacity of Head of the Department to run affairs of the Department in smooth manner made appointments in the better public interest. Also the Supreme Court of Pakistan has never ordered for the termination of the Appellant.
- IX. No Comments.
- X. **Incorrect.** The appellant was appointed as Sub-Engineer on Contract basis by the Competent Authority after observing all the codal formalities. He has completed about 2-1/2 years' service and completed his probation period satisfactorily, thus, he had become a regular employee of the department and his termination without proper enquiry and fulfillment of formalities such Show Cause, charge sheet and opportunity of personal

hearing etc. is illegal unlawful and based on *mala fide*.

- XI. **Incorrect.** After continue service of about 2^{1/2} Years and completion of probation period the civil servant became a regular employee of the department.
- XII. **Incorrect.** As no law or rules were applied in the process of termination of the Appellant and no enquiry has been conducted. No Show Cause Notice, charge sheet or opportunity of personal hearing has been provided. Hence the order is illegal and unlawful.
- XIII. Since the appointment order of the Appellant as Sub Engineer was issued by the Competent Authority after observing all the codal formalities i.e. advertisement, test & interview etc. by Departmental Selection Committee, hence, cannot be termed as illegal as the same shall not be challenged by any quarter.
- XIV. It is just a duplication of Para-XIII above. Hence, need no reply.
- XV. The appointment order was issued by the Competent Authority and was legal. In fact the termination of the appellant was illegal as it was issued without any enquiry or charge sheet and personal hearing etc. which are the pre requisite in disputing cases against the employees.

XVI. The Appellant was legally appointed by the Competent Authority and the honourable Supreme Court of Pakistan has never directed the respected Department to terminate the Appellant.

XVII. **Not correct.** As the Appellant was appointed after observing all the codal requirements and due process of law, hence, the appointment order of the Appellant cannot and shall not be termed as illegal. After his appointment the Appellant had completed his probation period and had become a regular employee of the department. An employee cannot be terminated without Show Cause Notice, Charge Sheet and giving opportunity of personal hearing etc. as no one shall be condemned unheard.

XVIII. **Incorrect.** No action has been taken against any officer and official of the department because the Department observed all codal formalities and rightly appointed the Appellant as per Law and Rules.

XIX. As per Ground-XVIII of the rejoinder.

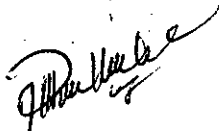
XX. Admitted with reverence up to the extent that Orders of the august Court are binding on the Litigants irrespective of the fact that anyone was party to the litigation or not. But vehemently denied the rest of the para as the appointment of the Appellant was legal and he was appointed after observing all the codal formalities i.e. advertisement, test & interview etc. by the Departmental Selection Committee.

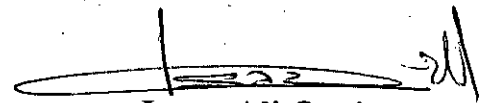
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XXI. Needs no rejoinder.

Prayer: Considering the above submissions, it is, therefore, most respectfully prayed that by way of acceptance of this Appeal, this honourable Court may please set aside the impugned Order of the termination and reinstate the Appellant with all back benefits.

Or any other relief deemed appropriate by this Honourable Tribunal under the circumstances may please also be granted.


Appellant
through



Isaac Ali Qazi
ASC

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Phone 5817132, 5818446, Mobile: 0300 8594555
Email: isaac.ali.qazi@gmail.com
www.isaacclaw.org

Yousaf Khan
AHC

MINIUTES OF THE DEPARTMENTAL SELECTION
COMMITTEE MEETING HELD FROM 02.12.2009
TO 04.12.2009 AT 10:00 A.M. IN THIS OFFICE.

(11)

The vacant posts of Assistant Research Officer (BPS-16), Steno Typist (BPS-12) and Junior Clerks (BPS-07) were advertised in the Press on 28.08.2009 (Annex-I). Applications received in response to the advertisement are enclosed (Annex-II). The applications received for the post of Assistant Research Officer were not considered on account of advertisement of the said post in the Press by the Public Service Commission. The rest of the applicants for the posts of Steno Typist & Junior Clerks were called-up for test / interview conducted by the Committee on 25.11.2009. Thereafter a meeting of the Departmental Section Committee was convened in this office from 02.12.2009 to 04.12.2009 at 10.00 A.M, which was attended by the following:-

- | | | |
|------|---|-----------|
| i) | Mr. Akhtar Ali Khan
Director Design. | Chairman |
| ii) | Mr. Abdul Bashir A.D.O | Member |
| iii) | Haji Ghulam Muhammad
A.D.O | Member |
| iv) | Mr. Afsar Ali Qureshi
Administrative Officer | Secretary |

After detail discussion and examination of the Papers & other connected documents etc; of the candidates, the Committee recommended names of the candidates included in the list (Annex-III) for appointment and the names of the candidates included in the list (Annex-IV) for placement on Waiting list for their subsequent recruitment against future vacancies of such posts, so arising within next 6 months in the Department.

(Abdul Bashir)
A.D.O (Member)

(Haji Ghulam Muhammad)
A.D.O (Member)

(Afsar Ali Qureshi)
Administrative Officer
(Secretary)

(Akhtar Ali Khan)
Director Design
(Chairman)

STATEMENT SHOWING NAMES OF THE APPLICANTS RECOMMENDED
BY THE DEPARTMENTAL SELECTION COMMITTEE FOR APPOINTMENT
AGAINST THE POST NOTED AGAINST EACH.

S.No.	Name & Address	Post
1	Mr. Shakil Ahmaad S/O Farazullah R/O Village & P.O Utmanzai Kali Sar Piran District Charsadda	Junior Clerk
2	Mr. Muhammad Iftikhar S/O Chainar Gul R/O New Charsadda Adah Mohallah Gulbahar District Mardan.	Steno Typist
3	Mr. Malak Asif Khan S/O Malak Aziz Khan R/O Kandy Bla P.O Taro Jaba District Nowshera.	Junior Clerk
4	Mr. Islam Zada S/O Jaffaar Khan R/O Malak Abad Battagram District Charsadda	-do-
5	Mr. Muzafar Khan S/O Shah Jehan R/O House No.685 Mohallah Havili Shakoor Khan District Peshawar	-do-
6	Mr. Abdul Haleem S/O Syed Rahman R/O Village Sherpao District Charsadda	-do-
7	Mr. Attaur Rahman S/O Akbar Khan R/O House No.T-321 Dhelay District Mardan	-do-
8	Mr. Noor Muhammad S/O Janroz Khan R/O Quarter No.F-14 Civil Colony Warsak Road Kabiban Peshawar.	Steno Typist
9	Mr. Muhammad Tahir S/O Fazal Raziq R/O House No.14 Nishterabad Near Gulbahar Police Station Peshawar	Junior Clerk
10	Mr. Muhammad Wasim S/O Abdul Karim Pump Operator O/O DDO WS&S D.I.Khan	-do-
11	Mr. Asad Junaid S/O Saadud-Din R/O House No.C/1095 Mohallah Hayatullah D.I.Khan	-do-
12	Mr. Muhammaad Imran S/O Abdul Hakim R/O Gillani Town D.I.Khan	-do-
13	Mr. Anwar Ali S/O Allah Dad R/O Mina Khel District Lakki Marwat.	-do-
14	Mr. Amjad Subhan Tracer O/O DDO WS&S D.I.Khan	-do-
15	Mr. Aamir Saleem S/O Muhammad Anwar R/O Gillani Town D.I.Khan	-do-
16	Mr. Muhammaad Naeem S/O Muhammad Miskeen R/O Village Pairan District Mansehra.	-do-

(Abdul Basim)
A.D.O (Member)

(Haji Ghulam Muhammad)
A.D.O (Member)

(Afsar Ali Qureshi)
Administrative Officer
(Secretary)

(Akhter Ali Khan)
Director Design
(Chairman)

2

ANNEX-II

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STATEMENT SHOWING NAMES OF THE APPLICANTS RECOMMENDED BY THE DEPARTMENTAL SELECTION COMMITTEE FOR PLACEMENT ON WAITING LIST FOR APPOINTMENT AGAINST FUTURE VACANCIES ARISING WITHIN 6 MONTHS. THE POST NOTED AGAINST EACH.

S.No.	Name & Address	Post
1	Mr. Aziz Ullah S/O Abid Ullah R/O Village Gulan Killa P.O Qamar Killi Tehsil & District Bannu	Steno Typist
2	Mr. Farhanullah S/O Azizullah Pump Operator O/O DDO WS&S Bannu	-do-
3	Mr. Safer Ullah S/O Qamar Zaman R/O Mohallah Sadiq Abad Village & P.O Tarnab Farm Tehsil & District Peshawar.	Junior Clerk
4	Mr. Zeeshan Hussain Qureshi S/O Shaukat Hussain Qureshi R/O Mohallah Bammo Shah D.I.Khan City	-do-
5	Mr. Altaf Khan R/O Muhammad Luban R/O Kotka Abbass Khel P.O Khawaja Mad Mandan Tehsil & District Bannu	-do-
6	Mr. Tahir Ali S/O Arshuallah R/O Lund Khwar District Mardan	-do-
7	Mr. Abdul Rahim S/O Muhammad Ibrahim R/O Village Dheri Allah Dand Malakand	-do-
8	Mr. Farhan Ullah S/O Aman Ullah R/O House No.168 Professor Colony University Campus Peshawar	-do-
9	Mr. Wahid Zaman S/O Umer Niaz Khan R/O Village Amandi Sheikah Amir Tehsil & District Peshawar.	-do-
10	Mr. Syed Ali Shah S/O Sher Baz R/O Deri Sydian Mamsh Khel Tehsil & District Bannu	-do-
11	Mr. Allah Noor S/O Door. Janan R/O Village Qamar Killi Tehsil & District Bannu.	-do-
12	Mr. Asmatullah S/O Asif Khan R/O Village Vehram Khel Tehsil & District Lakki Marwat	-do-
13	Mr. Muhammad Tariq S/O Faaz Muhammad R/O Shahi Payan Tehsil & District Peshawar.	-do-
14	Mr. Muhammad Rafiq S/O Faaz Muhammad R/O Shahi Payan Tehsil & District Peshawar	-do-
15	Mr. Muhammad Javed Khan S/O Muhammad Yousaf Khan R/O Village Behram Khel District Lakki Marwat	-do-
16	Mr. Muhammad Saleem Barkandaz O/O DDO WS&S Tank	-do-
17	Mr. Azherud Din S/O Jalalud Din R/O Village Zairat Kaka Sahib Tehsil & District Nowshera.	-do-
18	Mr. Mirza Muhammad S/O Amir Muhammad R/O Village Dagai District Swabi	-do-
19	Mr. Azmat Shah S/O Jehan Shah R/O C/O DDO WS&S Bannu.	-do-
20	Mr. Gohar Ali Shah S/O Syed Fida Hussain R/O Saidan Yasin Khel Chamkani Tehsil & District Peshawar.	-do-
21	Mr. Rahat Shah Valveman O/O DDO WS&S Nowshera	-do-
22	Mr. Owais Ali S/O Hashim Ali R/O Village Aman Kot tehsil & District Nowshera	-do-
23	Mr. Asim Khan S/O Sharifullah R/O Village Fatma Khan Kalan District Bannu	-do-
24	Mr. Miss Bena Rani D/O Azizullah R/O House No. 83/C, Street No.3, Gulshan Rehman Colony Peshawar.	-do-
25	Mr. Aminullah S/O Hamidullah R/O Village & P.O Ikrampur (Zazi) Tehsil Takht Bhai District Mardan	-do-
26	Mr. Naveedullah S/O Waheed Ullah R/O Mohallah Jogian Wala D..Khan Bannu	-do-
27	Mr. Shaukat Ullah S/O Farhat Ullah R/O Village Mandan Khel Tehsil & District Bannu	-do-
28	Mr. Muhammad Asif S/O Muhammad Saddique R/O Village Derma Khel Tehsil & District Bannu	-do-
29	Mr. Shafi Raz Khan S/O Shaista Khan R/O Village Shah Dev, Tehsil & District Bannu	-do-

(Abdul Bashir)
A.D.O (Member)

(Haji Ghulam Muhammad)
A.D.O (Member)

(Afsar Ali Qureshi)
Administrative Officer
(Secretary)

(Akhtar Ali Khan)
Director Design.

Annexure-II

MINUTES OF THE MEETING DEPARTMENTAL SELECTION COMMITTEE HELD ON 30-01-2012 REGARDING SELECTION OF JUNIOR CLERK (BPS-7) AND TRACERS (BPS-5)

(14)

A meeting of the Departmental Selection Committee consisting the following members/Chairman was held for final selection of the candidates for the post of Junior Clerks/Tracers on 30-1-2012 who were interviewed

- | | |
|---|----------|
| 1. Ghulam Mujtaba Chief Engineer (South Public Health Engg: Department. | Chairman |
| 2. Shabir Ahmad Awan Section Officer (Estt) Office Secretry P.H.E Deptt: | Member |
| 3. Muhammad Bashir S.E (HQ) Office of Chief Engineer (North) P.H.E. Department | Member |
| 4. Mushfiq Ali Administrative Officer, Office of the Chief Engineer (South) P.H.E Department. | Member |

The committee unanimously recommended the following candidates for appointment against the post of Junior Clerks and Tracers.

JUNIOR CLERKS

S.NO	Name /Father name/Distt:
1	Mr. Muhammad Idress S/O Said Raheem District Buner
2	Kafeel Ahmad S/O Syed Karim District Charsada.
3	Nadeem Jan S/O Bashir Ahmad District Charsada.
4	Baber Khan S/O Sher Khan District Mansehra.
5	Gull Fan S/O Ali Asghar District Mansehra.
6	Gull Rahman S/O Khan Gir District Kohistan.
7	Alam Zeb S/O Abdul Ghaffar District Kohistan.
8	Muhammad Raiz S/O Haji Gohar Malik District Kohistan.
9	Tila Jan S/O Jannat Gull District Mardan.
10	Asif Iqbal S/O Khursheed Iqbal District Dir Lower.
11	Jamal Shah S/O Fazal Hadi District Swat.
12	Adnan Khan S/O Sardar Gull District Swat.
13	Syed Alam S/O Suleman District Swat.
14	Ikram Ullah S/O Sher Ali District Swat.
15	Anis Jan S/O Jan Muhammad District Nowshehra.
16	Saqib Jan S/O Jan Muhammad District Nowshehra.
17	Tar-weer Irshad S/O Muhammad Irshad District Nowshehra.
18	Nadeem Khan S/O Fatehmulik Khan District Lower Dir.
19	Qaiser Rehman S/O Muhibur Rehman District Dir Lower.

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- 22 Muhamad Iqbal S/O Mehmood Bakht District Dir Lower.
- 23 Shafiq-Ur-Rehman S/O Muhammad Wazirullah District Chitral.
- 24 Ayub Khan S/O Muttaber Khan District Malakand.
- 25 Muhammad Hamayun S/O Nowshad Wali District Malakand.
- 26 Muhammad Ijaz Khan S/O Muhammad Ishaq District Dir Lower.
- 27 Inam Ullah S/O Haji Nawab District Dir Lower.
- 28 Shakoeel Ahmad S/O Muhammad Jan District Charsada.
- 29 Ahsan Ullah S/O Muhammad Umer District Mardan.
- 30 Khurram Shehzad Awan S/O Shabir Ahmad Awan District Mansehra.
- 31 Asad Sarwar S/O Ali Sarwar District Mansehra.
- 32 Jehanzib S/O Muhammad Irshad District Haripur.
- 33 Qaiser Ali S/O Shah Muhammad Khan District Swat.
- 34 Shahidul Aslam S/O Abdul Salam District Haripur.
- 35 Jawad Rashid S/O Abdur Rashid District Mansehra.
- 36 Rashid Mehmmod S/O Raja District Kohistan.
- 37 Usman Khan S/O Abdul Ghani District Shangla.
- 38 Faisal Zaman S/O Muhammad Zaman District Swabi.
- 39 Sarhad Ali S/O Alamgir District Buner.
- 40 Shahi Faisal S/O Sohrab Khan District Dir Lower.
- 41 Syed Umair Ali Shah S/O Syed Jahanzeb District Mardan.
- 42 Syed Muhammad Farooq S/O Syed Mushfiq Ali District Bannu.
- 43 Waqas Ali Saad S/O Mirjan Ali District Charsada.
- 44 Haroon Badshah S/O Hassan Shah District Karak.
- 45 Faraz Naeem S/O Sardar Halim District Uper Dir.
- 46 Aikhar Azam S/O Sultan Azam Peshawar.
- 47 Jamnoor Jalal S/O Jalaludin (Late) District Charsada.
- 48 Waqas Yousaf S/O Muhammad Yousaf (Late) District Lakki Marwat.
- 49 Muhammad Adil S/O Rahim Bahash District D.I.Khan.
- 50 Muhammad Khalil S/O Ghulam Haider District D.I.khan.
- 51 Waqas-Ur- Rehman S/O Saddiq Rehman District Karak.
- 52 Muhammad Azim S/ O Haroon-Ur- Rashid District Kohat.
- 53 Muhammad Inam S/O Leiaqat Ali District D.I.Khan.
- 54 Babar Younas S/O Muhammad Younas District Abbatabad.
- 55 Moolassar Hussain S/O Zaher Hussain District Kohat.
- 56 Ziaullah S/O Andaz Ali Khan District Bannu.
- 57 Muhammad Halim Khan S/O Muhammad Munir District Dir Lower.
- 58 Junaid Saif S/O Saif-Ur-Rehman District Peshawar.
- 59 Waheed Ahmad S/O Abdur Rashid District Peshawar.
- 60 Ziaullah S/O Taseer Ullah District Peshawar.

Signature

Signature

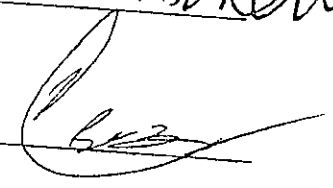
MEMBERS

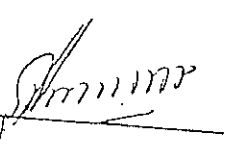
No.	Name /Father name/Distt:
1	Muhammad Faiz S/O Muhammad Ayaz District Charsada.
2	Nezamullah S/O Namdar Khan District Charsada.
3	Naiz Ali S/O Umer Waheed District Swat.
4	Abdul Bari S/O Khan Bahadur District Kohistan.
5	Asghar Javed S/O Abdul Nawaz District Karak.
6	Muhammad Maroof S/O Muhammad Yousaf District Mansehra.
7	Muhammad Usman S/O Shabir Ahmad District Abbotabad.
8	Muhammad Waqas S/O Safiullah District Peshawar.
9	Hafikhar Ahmad S/O Amir Zaman F.R Bannu.
10	Mudassar Hayat S/O Doctor Khan District Karak.
11	Waseem Khan S/O Balqaiz Khan District Bannu.
12	Sanaullah S/O Ikram Ullah District Mardan.
13	Muhammad Saad S/O Abdur Rashid District D.I.Khan.
14	Haroon Rashid S/O Fida Muhammad District Charsada.
15	Fida Hussain S/O Noor Aslam (Late) District Lakki Marwat. (Decease Son)
16	Umer Farooq S/O Asif Farooq District Karak.
17	Khurram S/O Bakhtiar District Malakand.
18	Ahmad Ali Khan S/O Zahoor Ahmad Khan District Abbotabad.
19	Daryal Malik S/O Malik Ayaz District Karak.

Emine

1. Shabir Ahmad Awan Section Officer (Estt)
Office Secretry P.H.E Deptt:
2. Muhammad Bashir S.E (HQ)
Office of Chief Engineer (North)
P.H.E. Department
3. Mushfiq Ali Administrative Officer,
Office of the Chief Engineer (South)
P.H.E Department.
4. Ghulam Mujtaba Chief Engineer (South)
Public Health Engg: Department.

Member 

Member 

Member 

Chairman 