

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 824/2023.

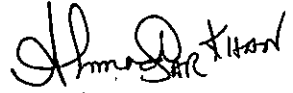
Muhammad Bilal(Appellant)

VS

Government of Khyber Pakhtunkhwa through Chief Secretary & Others (Respondents)

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DEPONENT

Ahmad Yar Khan
Assistant Director (Lit)

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PARA-WISE REPLY/COMMENTS ON BEHALF OF THE RESPONDENTS

Respectfully Sheweth,

PRELIMINARY OBJECTIONS.

1. The appellant has got no cause of action and locus standi.
2. The appeal is not based on facts.
3. The appellant has not come to the Tribunal with cleaned hands.
4. The appellant has concealed material facts from this Honorable Tribunal.
5. After the merger of erstwhile FATA with Khyber Pakhtunkhwa, the Provincial Government declared employees, appointed by erstwhile FATA Secretariat, as "Surplus" and placed them in the surplus pool of Establishment and Administration Department.
6. That the Provincial Government has draft and enacted a policy known as Provincial Surplus Policy, 2001 and the appellant was the appellant was adjusted against the post of Junior Scale Stenographer (BS-14) in Directorate of Population Welfare under the policy ibid.
7. That the appellant is estopped by his own conduct.
8. That Departmental appeal of the appeal was hopelessly time barred.
9. That the Execution Petition may not be pressed as it could open a floodgate of merged and regularized employees of other project into Secretariat for Provincial Government as its strength is only 3000 employees and the other devolved, regularized & merged employees is more than 6000.
10. That such out of turn adjustment could kill the merit and could pave the way for other project employees as well.

ON FACTS.

1. Pertains to record, hence no comments.
2. Pertains to record, hence no comments.
3. Pertains to record, hence no comments.
4. **Correct** to the extent that respondents have already filed CPLA in the Apex Court against the judgment/ decision of Khyber Pakhtunkhwa, Service Tribunal dated 14.01.2022, and only conditionally implemented the impugned decision/ judgment subject to the decision of Supreme Court of Pakistan.(Copy of Surplus Pool Policy is attached at **Annex-I**)
5. **Incorrect as laid.** In pursuance of Khyber Pakhtunkhwa Service Tribunal Judgment in S.A No. 1227/2020, the following 05 Assistants of Erstwhile FATA have conditionally been adjusted in Establishment Department subject to final outcome of the CPLA filed in the Supreme Court of Pakistan which has not yet got finality, therefore, the plea of appellant to treat him at par with them is pre-mature:
 - i. Mr. Hanif Ur Rehman, Assistant (BS-16)
 - ii. Mr. Zahid Khan, Assistant (BS-16)

- iii. Mr. Shoukat Khan, Assistant (BS-16)
- iv. Mr. Ashiq Hussain, Assistant (BS-16)
- v. Mr. Qaiser Khan, Assistant (BS-16)

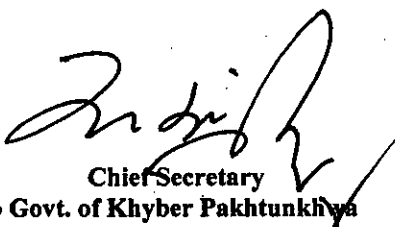
- 6. **Incorrect as laid.** The fact is that neither the appellant falls in the definition of similarly placed persons nor his representation was within time-limit rather was hopelessly time-barred.
- 7. **Incorrect.** The said order was quite detailed and reasonable.
- 8. **Pertains to record,** hence no comment.

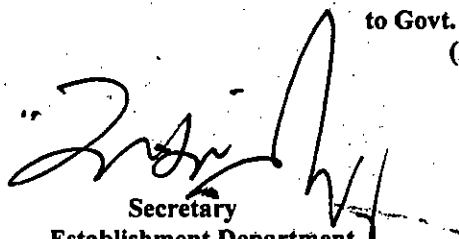
ON GROUNDS:

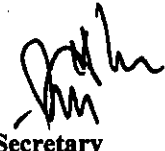
- A. **Incorrect,** hence denied. The fact that appellant was duly adjusted in Population Welfare Department vide order dated 05.10.2022 (**Annex-II**) of the Writ Petition, while rejection of Departmental Appeal order was passed due to the reason already mentioned therein i.e. The judgment which the appellant has quoted as precedent has not got finality yet.
- B. **Incorrect,** hence denied. Respondents are Government Departments where each and every step is taken under certain law, rules, regulation or policy, and everyone including appellant were treated equally.
- C. **Incorrect,** hence denied. It is settled principle of Civil Service that when a Department devolves, all the staff is placed in Surplus Pool and after adjustment such staff placed at the bottom of seniority.
- D. **Incorrect as laid.** The true picture is fully explained in proceeding Paras.
- E. **Incorrect as laid.** The true picture is fully explained in proceeding Paras.
- F. No comments.


PRAYER

It is, therefore, most humbly prayed that the instant Service Appeal under reply, being devoid of merit, may very graciously be dismissed with cost.


 Chief Secretary
 to Govt. of Khyber Pakhtunkhwa
 (Respondent No.1)


 Secretary
 Establishment Department
 (Respondent No.2)


 Secretary
 Finance Department
 (Respondent No.3)


 Director General
 Population Welfare
 Khyber Pakhtunkhwa
 (Respondent No.4)

(3)

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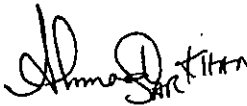
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AFFIDAVIT

I Mr. Ahmad Yar Khan, Assistant Director (Litigation) Directorate General of Population Welfare, do solemnly affirm and declare that the contents of Para-wise comments are true and correct to the best of my knowledge and belief and that nothing has been concealed therein from this Honorable Court.



DEPONENT

CNIC: 17301-1165852-9

Cell No.0345-9023308

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Surplus Pool Policy

Policy for declaring government servants as surplus and their subsequent absorption/ adjustment.

I am directed to refer to the subject noted above and to say that the Provincial Government has been pleased to make the following policy for absorption/adjustment of Government Servants declared as surplus in view of the transition of District System and resultant re-structuring of the Government Organizations/Departments etc.

POWER WITH REGARD TO THE DECLARATION OF POSTS AS SURPLUS. The

Finance Department in consultation with Department concerned and with the approval of competent authority would decide with regard to the declaration of a particular organization, set up or individual post as redundant or inessential.

CREATION OF SURPLUS POOL

There will be a surplus pools cell in the E&AD. After abolition of such posts in the concerned department, duly notified by the Finance Department, equal number of posts in the corresponding basic pay scales would be created in the E&AD for the purpose of drawl of pay and allowances etc by the employees declared surplus as such.

IMPLEMENTATION/MONITORING CELL

For the purpose of coordination and to ensure proper and expeditious adjustment/ absorption of surplus staff, the Government of NWFP has been pleased to constitute the following committee:-

Additional Secretary(Establishment) E&AD.....Chairman.
Deputy Secretary LG&RD Department.....Member
Deputy Secretary Finance Department.....Member
Deputy Secretary(Establishment) E&AD.....Secretary

CRITERIA FOR DECLARING A GOVERNMENT SERVANT AS SURPLUS AS A RESULT OF ABOLITION OF POST.

Consequent upon the abolition of a post in a particular cadre of a department, the junior most employee in that cadre would be declared as surplus. Such posts should be abolished in the respective departments and created in the surplus pool as indicated in para 2 above for the purpose of drawl of pay and allowances and also for consideration for subsequent adjustment.

PROCEDURE FOR ADJUSTMENT OF SURPLUS EMPLOYEES

Notwithstanding anything contained in any other law, rules or regulation to the contrary, for the time being in force, the following procedure for the adjustment of surplus staff would be followed:-

Before transferring an employee to the surplus pool, he should be given option by the concerned department.

to proceed on retirement with normal retiring benefits under the existing rules;

OR

to opt for readjustment/absorption against a future vacancy of his status/BPS which may not necessarily be in his original cadre/department.

Those who opt for retirement would be entitled for usual pension and gratuity according to the existing Government Servants Pension and Gratuity Rules of the Provincial Government. Those who opt for absorption/re-adjustment, a category-wise seniority list will be caused in the surplus pool for their gradual adjustment against the future vacancies as and when occurred in any of the Government Departments. These adjustments shall be on seniority-cum-fitness basis. For this purpose, the seniority list will be caused category-wise with reference to their respective dates of appointment in the cadre. In case where dates of appointment of two or more persons are the same, the person older in age shall rank senior and shall be adjusted first.

Adjustment shall be made on vacant post pertaining to initial recruitment quota from those in the surplus pool in the following manner:-

In case of occurrence of vacancies in their corresponding posts in any Government Department/ Organization, the senior most employee in the surplus pool should be adjusted first.

In case of cross cadre adjustment, the persons with such minimum qualification as prescribed in the relevant Service Rules for the post in question shall be adjusted keeping in view their seniority position.

If an employee possesses the basic academic qualification but lacks the professional/technical qualification, he may be adjusted against such post, subject to imparting the requisite training.

(a) The surplus employees holding such posts which fall to promotion quota in about all the Departments, he shall remain in the surplus pool till the availability of a post in the parent department.

OR

Where no equivalent post is available the civil servant may be offered a lower post in such manner, and subject to such conditions, as may be prescribed and where such civil servant is appointed to a lower post the pay being drawn by him in the post immediately preceding his appointment to a lower post shall remain protected.

84 In case an employee already adjusted against a lower post is declared surplus again, he shall regain his original pay scale.

85 Surplus employees, who voluntarily opt, may be allowed adjustment in Autonomous/Semi-autonomous bodies with the concurrence of these bodies, where the job is pensionable. The Government will pay pension contribution for the period they rendered regular service under the Government.

If no suitable person is available in the surplus pool to be adjusted against the vacant/revised post, such a post would be filled up by initial recruitment manner after getting clearance from the E&AD.

⁸⁶ Surplus Staff in BPS-01 to 15 shall not be adjusted in the district other than their district of domicile.

To facilitate the adjustment of surplus staff, it will be incumbent upon the Administrative Department to take up the case with Finance Department for revival of the essential posts so retrenched as a result of general directive issued by Finance Department from time to time, giving cogent reasons/justification. Against the resultant revival/restoration of the post, the concerned Department will place a requisition on the E&AD for transferring of suitable surplus employee against the said post.

Unless the surplus employees in Class-IV are fully adjusted/ absorbed against their respective graded posts in various Government Departments/Organizations, the general policy of the Finance Department regarding conversion of BPS-1 & 2 posts to posts in fixed salary @ Rs.2000/- per month for contractual appointed should be restricted to the above extent.

FIXATION OF SENIORITY

The inter-se seniority of the surplus employees after their adjustment in various Departments will be determined according to the following principles:-

In case a surplus employee could be adjusted in the respective cadre of his parent Department he shall regain his original seniority in that cadre.

In case, however, he is adjusted in his respective cadre but in a Department other than his parent Department, he shall be placed at the bottom of seniority list of that cadre.

In case of his adjustment against a post in a corresponding basic pay scale with different designation/nomenclature of the post, either in his parent Department or in any other department, he will be placed at the bottom of seniority list.

⁸⁷ In case of adjustment against a post lower than his original scale, he shall be placed at the top of seniority list of that cadre, so as to save him from being rendered surplus again & becoming junior to his juniors.

(3) Sub para (e) added to para 5 vide circular letter No.SORVI/E&AD/5-1/2005, dated 19.1.2007.

Sub para d added to para 6 vide circular letter No. SORVI(E&AD)5-1/2005, dated 15.2.2006

NOTE:-

In case the officer/official declines to be adjusted/absorbed in the above manner in accordance with the priority fixed as per his seniority in the integrated list, he shall lose the facility/right of adjustment/absorption and would be required to opt for pre-mature retirement from Government service

Provided that if he does not fulfill the requisite qualifying service for premature retirement he may be compulsorily retired from service by the competent authority.

COMPETENT AUTHORITY TO NOTIFY/ORDER ADJUSTMENT/ABSORPTION.

After the transfer of services of surplus employee to a Department for adjustment/absorption against a vacant/revived post, the Competent Authority to notify/order his absorption/adjustment, shall be the respective appointing authority under the relevant rules for the post.

Provided that the decision of adjustment/absorption of surplus employees by the E&AD shall be binding upon the respective appointing authorities.

(Authority: letter NO.SOR-I(E&AD)1-200/98, Dated 8th June, 2001)

Decision of the meeting of chief secretary with district coordination officers, on the issue of surplus pool.

I am directed to refer to the subject noted above and to say that a meeting was held on 4.8.2001 in the Cabinet Room Civil Secretariat under the Chairman of Chief Secretary, NWFP to discuss the issues relating to adjustment of employees rendered surplus due to restructuring of the Government Departments and Devolution of Power Plan, 2000. The following decisions were taken in the said meeting:-

Administrative Departments may reconsider adjustments already made against the available posts at District level. The guiding principle for reviewing the adjustment would be aimed at avoiding dislocation of the employees to the possible extent.

The DCOs will maintain the surplus pool of the employees, declared surplus in the District cadres and their subsequent adjustment against the vacant posts (District Cadres). It must be ensured that only the junior most employees in the scale in the cadre be declared surplus. At the stage of adjustment of Class-IV posts, the senior most be adjusted first. However, for the other posts besides seniority, the background of the individual and requisite experience of the posts shall be kept in view. The surplus pool of Divisional cadres be maintained by the DCOs posted at divisional headquarters.

The surplus pool of the employees of the Head Offices be maintained by the Head of the concerned Attached Department. Declaring employees surplus and their subsequent adjustment be made strictly according to the spirit of the policy of the Provincial Government issued vide circular letter No.SORI (S&GAD)1-200/98, dated 8.6.2001.

The surplus pool of the Secretariat be maintained by the Establishment Department in consultation with the Department concerned.

The salaries of the surplus employees be disbursed through their relevant offices for the time being.

It was also felt that the sanctioned staff for the office of DCO and other offices is not sufficient. The ministerial staff has no appropriate tiers for the purpose of control and promotion i.e. Senior Clerk and Superintendent etc. The post of Chowkidar/ Sweeper does not exist in the office of DCOs and other offices. Even the other required staff does not meet the bare minimum. The DCOs will, therefore, forward the required proposal for consideration of Finance Department. The budget for the same can be arranged from the available savings due to phasing away of magistracy etc.

The LR&RD Department may reconsider the adjustment of the employees of the Local Council Board, so as to find out whether any such employees have been adjusted against the regular Government posts funded from the Provincial Consolidated Fund.

For adjustment of regular Class-IV (BS 1- 4) Government Servant in surplus pool, Finance Department may consider conversion of fixed pay/ contract posts into regular.

It is requested that decisions taken during the meeting held on 4.8.2001 may kindly be implemented by all concerned in letter and spirit and compliance report be furnished accordingly.

(Authority; letter NO.SOR-I(S&GAD)1-200/98 (Vol.I), Dated 13th August, 2001)



GOVERNMENT OF KHYBER PAKHTUNKHWA
DIRECTORATE GENERAL POPULATION WELFARE
Plot No.18, Sector E-8, Phase-7,
Hayatabad, Peshawar

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Dated Peshawar the 05 /10/2020.

OFFICE ORDER:-

[No.4(35)/2019/HR/Admn:-] Consequent upon the transfer of services of Mr. Muhammad Bilal, Junior Scale Stenographer (BPS-14) from the Surplus pool maintained in the office of Deputy Commissioner Nowshera vide No.5891-94/E.A-8/DC/NSR/2020 dated 21.09.2020, the competent authority is pleased to absorb Mr. Muhammad Bilal, Junior Scale Stenographer (BPS-14) in Population Welfare Department Khyber Pakhtunkhwa. He is posted against the vacant post of Junior Scale Stenographer (BPS-14) and attached with litigation section of this Directorate with immediate effect.

(Director General)
Population Welfare Department

Copy Forwarded to the :-

1. The Accountant General, Khyber Pakhtunkhwa Peshawar.
2. Deputy Commissioner Nowshera with reference to letter No. quoted above.
3. Assistant Director (Admn).
4. PS to Secretary PWD, Khyber Pakhtunkhwa Peshawar.
5. PS to Director General, Population Welfare Deptt: Peshawar.
6. Muhammad Bilal Junior Scale Stenographer (BPS-14) C/O Deputy Commissioner Nowshera.
7. HR Assistant.
8. Master File.

Assistant Director (HR)

(10)

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AUTHORITY LETTER

Mr. Ahmad Yar Khan Assistant Director (Litigation), Directorate General Population Welfare Khyber Pakhtunkhwa is hereby authorized / nominated on behalf of respondent to submit comment/reply in the Honorable Khyber Pakhtunkhwa Service Tribunal Peshawar.



Director General
Population Welfare Department
Khyber Pakhtunkhwa
(Respondent No.4)

Director General
Population Welfare Deptt:
Govt: of Khyber Pakhtunkhwa
Peshawar.