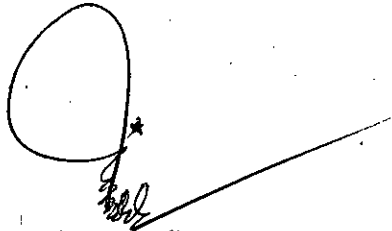


17.01.2022

Petitioner with counsel present. Mr. Muhammad Adeel Butt,
Additional Advocate General for respondents present.

The respondent department has issued order dated 07th January 2022 where under the service Tribunal judgement dated 24.12.2019 has been implemented and the petitioner is appointed as Junior Clerk (BS-11) on regular basis. Learned counsel for the petitioner is satisfied with the said notification and does not want to further pursue the execution petition. The execution petition is, therefore, disposed off. File be consigned to the record room.

Announced
17.01.2022



(Mian Muhammad)
Member (E)

E. P. No. 104/2020

Asif

03.01.2022

Petitioner (Asif Ali) alongwith his counsel present. Mr. Kabirullah Khattak, AAG alongwith Qazi Naeem Assistant for respondents present.


Learned counsel for the petitioner stated that the judgment of this Tribunal has not been implemented in its letter and spirit. Furthermore, he submitted that department is not interested in obeying the orders of this Tribunal hence strict action may be taken against them.

Perusal of the record shows that judgment has two parts, firstly, demotion of the private respondents to the post of Naib Qasid from Junior Clerk which has been implemented. Secondly, as per the operative part of the judgment the appeal has been accepted and wherein the petitioner has prayed in his service appeal No. 1308/2018 *“On the acceptance of this appeal that all the impugned order/action of the respondent department may kindly be set aside and be declared null and void and the appellant may kindly be promoted from Naib Qasid (Class-IV) to junior Clerk with all back benefits for which the appellant is entitled under the law”* but the petitioner has not been promoted from the post of Naib Qasid to Junior Clerk.

On inquiring from the representative of the respondent department regarding the status of CPLA before august Supreme Court of Pakistan, he stated at the bar that respondent department has not filed CPLA. Hence they are left with no option but to promote the petitioner from the post of Naib Qasid to Junior Clerk.

Respondent department is strictly directed to submit the implementation report positively as last chance, failing which coercive measure will be taken against them.

To come up for implementation report on 17.01.2022 before
S.B


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



Sports are essential for the development of happy, healthy & vigorous society

DIRECTORATE GENERAL OF SPORTS

KHYBER PAKHTUNKHWA

PESHAWAR SPORTS COMPLEX, PESHAWAR CANTT.

Ph: # 9212767, Fax: # 9212766

Dated Peshawar, 07th January, 2022

OFFICE ORDER

No. 1/Court Case/Asif Ali/2019: In compliance of Service Tribunal Khyber Pakhtunkhwa Peshawar order passed on 24-12-2019 in Service Appeal No. 1308/2018 titled Mr. Asif Ali versus Government of Khyber Pakhtunkhwa and Execution Petition No. 104/2020 order passed on 03-01-2022, the Competent Authority is pleased to Appoint **Mr. Asif Ali S/O Niaz Ali, R/O Gharibabad, City Railway Station, Tehsil & District Peshawar**, against the vacant post of Junior Clerk (BPS-11), in the office of Directorate of Sports Merged Areas, Peshawar, on regular basis, w.e.f judgment of Honorable Service Tribunal of Peshawar, Khyber Pakhtunkhwa date 24/12/2019.


DIRECTOR GENERAL

Endst: No. 1/Court Case/Asif Ali/2019

Dated 07th January, 2022

Copy forwarded for Information & Necessary action to the:

1. Registrar Service Tribunal Peshawar, Khyber Pakhtunkhwa.
2. Advocate General, Service Tribunal Peshawar, Khyber Pakhtunkhwa.
3. Accountant General Peshawar, Khyber Pakhtunkhwa.
4. Section Officer (Sports), Sports & Youth Affairs Department, Khyber Pakhtunkhwa.
5. Mr. Asif Ali S/O Niaz Ali, R/O Gharibabad, City Railway Station, Tehsil & District Peshawar,
6. Personal File of the official concerned.


DIRECTOR GENERAL

7/1/22

EP 104/20

16.08.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Hanif Khan, AD for the respondents present.

Representative of the respondents submitted written reply, copy whereof handed over to petitioner. His counsel is not in attendance today. To come up for objections/arguments on 18.10.2021 before S.B.


Chairman

18.10.2021

Petitioner in person and Mr. Kabirullah Khattak, Addl. AG alongwith Hanif Khan, AD for the respondents present.

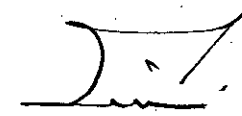
Due to general strike of the bar, Learned counsel for the petitioner is not in attendance. To come up for objections/arguments on 15.11.2021 before S.B.


Chairman

15.11.2021

Petitioner alongwith his counsel present. Mr. Hanif Khan, Assistant Director Sports alongwith Mr. Kabirullah Khattak, Additional Advocate General for the respondents present.

Learned counsel for the petitioner requested that time may be granted to him for filing of objections on written reply filed by the respondents. Adjourned. To come up for filing of objections as well as arguments before the S.B on 03.01.2022.


(Salah-Ud-Din)
Member (J)


E.P. No. 104/2020
Asif Ali vs Govt

29.03.2021

Petitioner in person present. Addl. AG alongwith Hanif Khan, A.D for official respondents and private respondent No. 5 in person present.

Representative of official respondents has submitted copy of order dated 16.03.2021, whereby, private respondent No. 5 has been reverted to the post of Naib Qasid with immediate effect.

The official respondents have partly implemented the judgment. They are expected to expedite the matter under the law and implement the judgment dated 24.12.2019 in Service Appeal No. 1308/2018 in letter & spirit in a shortest possible time. To come up for compliance report positively on 06.07.2021 before S.B.


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

06.07.2021

Counsel for the petitioner, Addl. AG alongwith Hanif Khan, A.D (Lit) for official respondents and private respondent No. 5 in person present.

The respondents seek time to produce the implementation report positively on next date. Request is accorded with strict direction that no excuse, whatsoever, will be allowed to further delay the execution of judgment of this Tribunal at credit of the petitioner. To come up for implementation report on 16.08.2021 before S.B.


Chairman

27.01.2021

Counsel for petitioner is present. Mr. Kabirullah Khattak, Additional Advocate General alongwith representative of the department Mr. Kaleem Ullah, Office Assistant, for official respondents and private respondent No. 5, are also present.

According to the learned counsel representing petitioner the respondent-department has not given effect to the judgment of this Tribunal passed on 24.12.2019 in its letter and spirit and submitted that the relief granted to the petitioner may please be ensured by making of appropriate order.

On the other hand, learned Additional Advocate General submitted that the issue pertains to private respondents No. 5 who filed CPLA in the Hon'ble Supreme Court of Pakistan which is still pending and application for early hearing has already been submitted. Unless and until the judgment passed by this Tribunal is suspended or set-aside the process of execution till its implementation has to continue till its implementation, therefore, respondents are directed to give effect to the judgment in its letter and spirit by submitting implementation report alongwith others documents on 29.03.2021 before S.B.

(MUHAMMAD JAMAL KHAN)
MEMBER (JUDICIAL)

26.10.2020

Nemo for petitioner

Being first date of hearing in the instant execution proceedings, both the parties be put on notice for 07.12.2020 for implementation report, before S.B.



(Rozina Rehman)
Member (J)

07.12.2020

Petitioner in person present.

Kabir Ullah Khattak learned Additional Advocate General alongwith Hanif A.D representative of respondents No.1 to 4 present. Respondent No.5 is not in attendance.

Notice be issued to respondent No.5. Reportedly, CPLA has been filed in the Apex Court. File to come up for relevant documents and implementation report on 27.01.2021 before S.B.

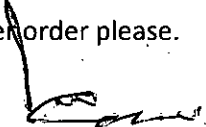

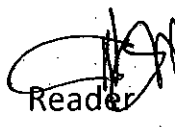


(Rozina Rehman)
Member (J)

Form- A
FORM OF ORDER SHEET

Court of _____

Execution Petition No. 104 /2020

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1	07.07.2020	<p>The execution petition of Mr. Asif Ali submitted today by Mr. Habibullah Mohmand Advocate may be entered in the relevant register and put up to the Court for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-		<p>This execution petition be put up before S. Bench on <u>21/08/2020</u>.</p> <p style="text-align: right;"> CHAIRMAN</p>
	21.08.2020	<p>Due to public holiday on account of 1st Moharram, the case is adjourned to 26.10.2020 for the same as before.</p> <p style="text-align: right;"> Reader</p>

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 104 /2020

Asif Ali(Appellant)

V E R S U S

Government of Khyber Pkahtukhw through Chief Secretary
and others.....Respondents)


I N D E X

S.No.	Description of Documents	Annex	Pages
1.	Application		1-4
2.	Affidavit		5
3.	Copy of Service Appeal and order dated 24/12/2019	A	6- 10 -13
4.	Wakalat Nama		13 14


Appellant

Through

Dated: 07/07/2020


Habib Ullah Mohmand
Advocate High Court,
Peshawar.
Cell No. 0321-9087842

1

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**



Service Appeal No. 104 /2020

Asif Ali S/o Niaz Ali R/o Gharib Abad, City Railway, Tehsil and District Peshawar.....(Appellant)

V E R S U S

1. Government of Khyber Pkahtukhw through Chief Secretary Civil Secretariat, Peshawar.
2. Secretary Sport and Youth Affairs Civil Secretariat, Peshawar.
3. Director General Sport and Youth Affairs Civil Secretariat, Peshawar.
4. Director Sport and Culture of Merged Areas, Civil Secretariat, Peshawar.
5. Muhammad Nazir (Junior Clerk BPS-11) S/o Jan Zada R/o Mohallah Haji Abad No. 2 (C) Tehsil and District Nowshera.....(Respondents)

**APPLICATION FOR IMPLEMENTATION/
EXECUTION OF THE ORDER OF THIS
HON'BLE TRIBUNAL DATED 24/12/2019
PASSED IN THE SERVICE APPEAL NO.
1308/2018 TITLED "ASIF ALI..VS..THE
ADDITIONAL CHIEF SECRETARY FATA, FATA
SECRETARIAT AND OTHERS"**

2

Respectfully Sheweth:

The petitioner humbly submits as under:

1. That the applicant filed Service Appeal No. 1308/2018 titled "Asif Ali..VS..the Additional Chief Secretary Fata, Fata Secretariat and Others" before this Hon'ble Tribunal, which was allowed vide order dated 24/12/2019 in favour of applicant/appellant. (Copy of Service Appeal and order dated 24/12/2019 are attached as annexure "A").

2. That that in decision of this Hon'ble Tribunal it was observed that:

"Foregoing in view, the appeal is accepted, impugned order dated 26/06/2013 is set aside to the extent of private respondent No. 4 and respondents are directed to make fresh appointment strictly in accordance with law/rules."

3. That even after lapse of 6 and half months till today no action with regard to the decision of this Hon'ble

Tribunal has been taken/honour by the respondents which is against law.

4. That the act of the respondents against the law and natural justice as well as the order of this Hon'ble Tribunal.
5. That order of respondent No. 5 has been set aside by this august Tribunal, but despite of that the respondent No. 5 he has not been demoted/removed from service nor action has been taken against him and still getting the salary of Junior Clerk post which is against the law and also against order of this Hon'ble Tribunal, furthermore i.e. come under the domain definition of Contempt of Court.
6. That the respondents department also admitted that the instant Service Appeal is not fit for filing of appeal before the August Supreme Court of Pakistan, but despite of that the order of this Hon'ble Tribunal has not been implemented with later and spirit which is against the law and also against the norms of justice.

4

7. That the applicant also requested so many times to implement with the order of this Hon'ble Tribunal but in vain, hence this application.

It is, therefore most humbly prayed on acceptance of this application, the respondents may kindly be directed to implement/execute the order of this Hon'ble Tribunal dated 24/12/2019 with later and spirit and proceed them according to law and further mover the applicant/appellant may also be promoted to the post of Junior Clerk for which the applicant/ appellant is eligible under the law.


Appellant

Through



Dated: 07/07/2020

Habib Ullah Mohmand
Advocate High Court,
Peshawar.

5

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Service Appeal No. _____/2020

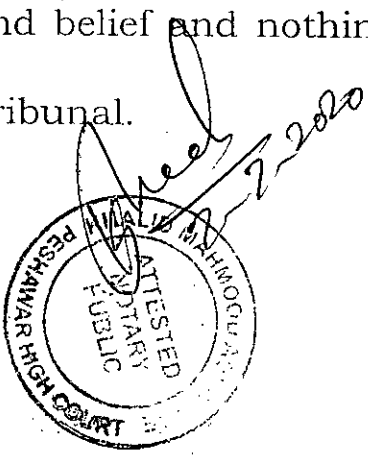
Asif Ali(Appellant)

V E R S U S

Government of Khyber Pkahtukhw through Chief Secretary
and others.....Respondents)

AFFIDAVIT

I, Asif Ali S/o Niaz Ali R/o Gharib Abad, City Railway,
Tehsil and District Peshawar, do hereby solemnly affirm and
declare on oath that the contents of the accompanying
Application are true and correct to the best of my knowledge
and belief and nothing has been concealed from this Hon'ble
Tribunal.



Asif Ali

DEPONENT
CNIC: 17301-0678631-5

6



**GOVERNMENT OF, KHYBER PAKHTUNKHWA,
SPORTS, TOURISM, ARCHAEOLOGY, MUSEUMS &
YOUTH AFFAIRS DEPARTMENT.**

13-A, KHYBER ROAD, PESHAWAR CANTT:



091- 9223448.



091-9212535.



Sportslitigation@gmail.com

D.No. 87 - 1/Court Case/Asif Ali
Date: 4.2.20
The Director General of Sports
KPK Peshawar Cantt.

NO. SO(LIT)/S&TD/1- 310/2020/Asif Ali /2960-61
Dated Peshawar the, 4th February, 2020.

The Director General Sports,
Khyber Pakhtunkhwa, Peshawar

Subject: SEEKING OF LEGAL OPINION I SERVICE APPEAL NO. 1308/2018 ASIF ALI
APPELLANT VS ADDITIONAL SECRETARY FATA AND OTHERS
RESPONDENTS

Dear Sir,

I am directed to refer to your letter No. 1/Court Case/Asif Ali/2019 dated 28-01-2020 on the subject noted above and to state that judgment dated 24-12-2019 passed by Khyber Pakhtunkhwa Service Tribunal, Peshawar is against the private respondent No.04 and not the Government, therefore, there seems no need to file Appeal/ CPLA against the same.

Yours faithfully,

Section Officer (Litigation)

A copy is forwarded for information to PS to Secretary, Sports & Tourism Department.

Section Officer (Litigation)

ADCLIT

4/2/20

ATTESTED

7



DIRECTORATE OF SPORTS, CULTURE AND YOUTH AFFAIRS
MERGED AREAS SECRETARIAT, PESHAWAR

No: 1496

Dated: 14/01/2020

To

The Director General of Sports
Khyber Pakhtunkhwa Peshawar.

Subject: **SEEKING OF LEGAL OPINION IN SERVICE APPEAL NO. 1308/2018 ASIF ALI APPELLANT VERSUS ADDITIONAL CHIEF SECRETARY FATA AND OTHERS RESPONDENTS.**

Enclosed find herewith a copy of Judgment of Honorable Service Tribunal Khyber Pakhtunkhwa, dated 24/12/2019 in Service Appeal No. 1308/2018, for perusal and onward submission to the worthy Secretary Sports to approach law department Khyber Pakhtunkhwa for legal opinion/filing of case in the High appellate court of Pakistan in the subject Service Appeal please.

o/c

for


Director Sports
Merged Areas

ATTESTED

8

WORKING PAPER

SERVICE APPEAL NO.1308/2018 ASIF ALI VERSUS ADDITIONAL CHIEF SECRETARY FATA AND OTHERS.

It is submitted that Mr. Asif Ali (Appellant) was Initially appointed as a Naib Qasid on contract basis on 13/12/2007 and his services were placed against SNE post on june 26th,2013. The private respondent no. 4 (Muhammad Nazir) was initially appointed as a Naib Qasid on contract basis on February 15th,2012 later on his services were placed on SNE post june 26th 2013, and was regularized as a Junior Clerk while the appellant as a Naib Qasid.

Though the appellant was senior to private respondent when they were serving in Project. But after regularization, both appellant and respondent No. 4 have different cadre and different seniority lists of both cadre are maintained.

The appellant filed service appeal no.1308/2018 before the august service tribunal Khyber Pakhtunkhwa.

The august service tribunal Khyber Pakhtunkhwa decided the service appeal on dated 24/12/2019, in favour of appellant on the following grounds.

1. The present case has all the ingredients to be decided on merit and to uphold the cause of justice, equity fairness and rule of law. Discriminatory attitude of the respondents towards the appellant was established beyond the shadow of doubt. It cannot be dislodged on the point of limitation, as article 25 of the constitution provides for equal treatment. Our view point is backed by 2002 SCMR 71, 2007 SCMR 410 and 2010 SCMR 1933. It is high time for the respondents to fill these posts strictly in accordance with law and rules and till that time it shall be deemed to be vacant.
2. Foregoing in view, the appeal is accepted impugned order dated 26/06/2013 is set aside to the extent of private respondent no.4 and respondents are directed to made fresh appointment strictly in accordance with law/rules.

Therefore, it is requested to please approach the next appellate forum in order to safeguard public interest (record annexed for ready reference).

ATTESTED

(9) (9)

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

**BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR**

Khyber Pakhtunkhwa
Service Tribunal

Service Appeal No. 1308 /2018

Diary No. 1475

Dated 26/9/2018

Asif Ali S/o Niaz Ali R/o Gharib Abad, City Railway, Tehsil and
District Peshawar.....(Appellant)

V E R S U S

1. Additional Chief Secretary FATA, FATA Secretariat Warsak Road, Peshawar.
2. Secretary Sport and Youth Affairs of FATA, FATA Secretariat Warsak Road, Peshawar.
3. Director Sport and Youth Affairs of FATA, FATA Secretariat Warsak Road, Peshawar.

4. Muhammad Nazir (Junior Clerk BPS-11) S/o Jan Zada R/o Mohallah Haji Abad No. 2 (C) Tehsil and District Nowshera...at...respondent...Dep't...FATA...(Respondents)

secretariat warsak Road
Peshawar

SERVICE APPEAL UNDER SECTION 4 OF

KHYBER PUKHTUNKHWA SERVICE TRIBUNAL

ACT 1974, AGAINST THAT ALL THE

IMPUGNED ORDER/ ACTION PASSED BY THE

RESPONDENTS DEPARTMENT OF KPK/FATA

SECRETARIAT WHEREBY THE APPELLATE

WAS IGNORED AND BYPASSED FROM RIGHT

OF PROMOTION BY THE RESPONDENT

Filed to-day

Registrar

26/9/18

ATTESTED

KHYBER
Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1308/2018

Date of Institution ... 26.09.2018

Date of Decision ... 24.12.2019

Asif Ali S/O Niaz Ali R/O Gharibabad, City Railway, Tehsil and District Peshawar.
... (Appellant)

VERSUS

The Additional Chief Secretary FATA, FATA Secretariat Warsak Road, Peshawar
and three others. ... (Respondents)

- MR. HABIB ULLAH MOHMAND, Advocate — For appellant.
- MR. MUHAMMAD JAN, Deputy District Attorney — For official respondents.
- MR. MUHAMMAD NAZIR In person — Private respondent no.4.
- MR. AHMAD HASSAN — MEMBER (Executive)
- MR. MUHAMMAD HAMID MUGHAL — MEMBER (Judicial)

JUDGMENT:

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

ARGUMENTS:

Learned counsel for the appellant argued that he was appointed as Naib Qasid in the respondent-department on contract basis vide order dated 13.12.2007. That his services were regularized through order dated 26.06.2013. On the other hand private respondent no.4 was initially appointed as Naib Qasid on 15.02.2012 but his services were regularized as junior clerk illegally vide impugned order dated 26.06.2013. The appellant agitated his legitimate grievances through numerous applications but to no avail. Private respondent no.4 was promoted as junior Clerk

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

/ 11

in violation of laid down criteria notified by the provincial government. He exerted political influence/pressure and the said order smacked of malafide on the part of the respondents. The appellant as a last resort submitted an application under Right to Information Act on 18.05.2017 for provision of relevant record which failed to any bear fruit. Finally, departmental appeal filed by the appellant on 30.05.2018 also failed to evoke any response from the respondents, hence, the present service appeal. Reliance was placed on case law reported as 2019 PLC (C.S) 507, 2019 PLC (C.S) 771, 2006 SCMR 1938, 2006 PLC (C.S) 1159 and PLD 2014 338.

03. Learned Deputy District Attorney argued raised preliminary objection that departmental appeal was barred by time, therefore, the present service appeal was not maintainable in its present form. He further argued that it was not disputed that the appellant was initially appointed as Naib Qasid on contract basis on 13.12.2007. Though, private respondent no.4 was appointed as Naib Qasid on contract basis on 15.02.2012 but as a sequel to approval of the competent authority his services were regularized as junior clerk vide order dated 26.06.2013. The appellant and private respondent belong to separate cadres. No vacant post of junior clerk was available to accommodate the appellant.

04. Private respondent no.4 relied on the arguments advanced by the learned Deputy District Attorney for official respondents.

CONCLUSION:

05. The appellant in the present service was appointed as Naib Qasid on contract basis vide order dated 13.12.2007. His services were regularized through order dated 26.06.2013. On the other hand private respondent no.4 was appointed as Naib

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

12

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Qasid on contract basis vide order dated 15.02.2012 and vide order dated 26.06.2013, he was appointed/promoted as Junior Clerk. This act of the respondents was not only blatant violation of law/rules but also worst form of nepotism and favoritism. They miserably failed to pinpoint any rules under which his appointment was covered. Attention is invited to Section-5 of Khyber Pakhtunkhwa Civil Servants Act, 1973, wherein it is mentioned that appointment should be made in the prescribed manner. Similarly, Section-7 of the act abid provides procedure for conformation. Appointments/promotions are made under Rule-5 of the Khyber Pakhtunkhwa Government Servants (Appointment, Promotion and Transfer) Rules 1989 on the recommendation of DPC/DSC.

06. Learned DDA remained unable to rebut the laws/rules quoted above and his arguments were not convincing. He also could not defend how after one year of appointment as Naib Qasid private respondent no.4 was adjusted against the post of Junior Clerk? When he failed to defend illegalities committed by the respondents on merit, then took shelter under technicalities like limitation etc. We cannot condone illegalities at the cost of substantial justice. <The present case has all the ingredients to be decided on merit and to uphold the cause of justice, equity fairness and rule of law. Discriminatory attitude of the respondents towards the appellant was established beyond the shadow of doubt. It cannot be dislodged on the point of limitation, as Article-25 of the Constitution provides for equal treatment. Our view point is backed by 2002 SCMR 71, 2007 SCMR 410 and 2010 SCMR 1933. It is high time for the respondents to fill these posts strictly in accordance with law and rules and till that time it shall be deemed to be vacant.>

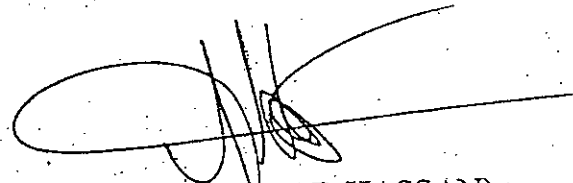
ATTESTED


MEMBER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ATTESTED

(13)

07. Foregoing in view, the appeal is accepted, impugned order dated 26.06.2013 is set aside to the extent of private respondent no. 4 and respondents are directed to make fresh appointment strictly in accordance with law/rules. Parties are left to bear their own costs. File be consigned to the record room.

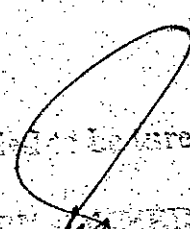

(AHMAD HASSAN)
Member



(MUHAMMAD HAMID MUGHAL)
Member

ANNOUNCED
24.12.2019

Certificate of Bare copy


Khatun Gulistan
Secretary
Peshawar

Date of Presentation of Application 24-12-2019
Number of Words 2000
Copying Fee 22
Urgent —
Total 22
Name of Copyist —
Date of Completion of Copy 10-1-2020
Date of Delivery of Copy 10-1-2020


ATTESTED

وکالت نامہ

بعدالت پشاور ہائی کورٹ پشاور

	S No	5720
	BC No	
	Sign	

14

مورخہ
مقدمہ
دعویٰ
جرم

آصف علی سے منجانب
بنام ایڈووکیٹ
باعت تحرے آنکہ

مقدمہ مندرجہ عنوان بالا میں اپنی طرف سے واسطہ پیروی و جواب وہی وکل کاروائی، متعلقہ

آن مقام کے پٹنہ صاحب کیلئے حبیب اللہ منڈا بٹو لڈ

مقرر کر کے اقرار کیا جاتا ہے۔ کہ وکیل موصوف کو مقدمہ کی کل کاروائی کا مکمل اختیار حاصل ہوگا اور

نیز وکیل صاحب کو عرضی دعویٰ داخل کرنے، جواب دعویٰ، اپیل، نظر ثانی کا بھی اختیار حاصل ہوگا۔

گائز وکیل صاحب بصورت ڈگری برخلاف من اختیار دہندہ اپیل، نگرانی، نظر ثانی از عدالت ابتداء

تا عدالت انتہا یعنی سپریم کورٹ آف پاکستان دائر کر سکتا ہے وکیل موصوف بصورت عدم پیروی

کاروائی یکطرفہ یا ڈگری یکطرفہ کیخلاف درخواست دائر کر سکتا ہے اور وکیل موصوف میری جانب

سے مقدمہ میں بصورت ڈگری چیک یا نقد روپیہ کی شکل میں وصولی کر سکے گا اور مزید یہ کہ وکیل

موصوف مقدمہ متذکرہ کی کل یا جزوی کاروائی کیلئے اپنی بجائے دیگر وکیل بھی اپنے ساتھ مقرر کر سکتا

ہے جس کو بھی وہ جملہ اختیار حاصل ہونگے جو کہ وکیل موصوف کو حاصل ہیں مجھے اس صورت میں

تمام ساختہ پر داختم منظور و قبول ہوگا لہذا میں نے وکالت نامہ ہذا تحریر کر کے اس پر دستخط انشان

انگشت ثبت کر دیا ہے تاکہ سند رہے۔

Petitioner/Appellant

المرقوم ماہ 20



وہ ال کے لئے منظور ہے۔

بمقام

آصف علی ولد پٹنہ صاحب کیلئے

KHYBER PAKHTUNKWA SERVICE TRIBUNAL, PESHAWAR

No. 4130 /ST Dated 28/12/2020

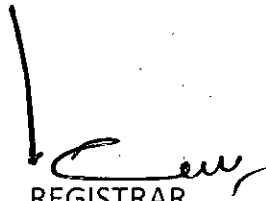
To

Mr. Muhammad Nazir (Junior Clerk BPS-11) S/O Jan Zada
R/O Mohallah Haji Abad No. 2 (C) Tehsil & District
Nowshehra.

SUBJECT: - ORDER IN APPEAL NO. 104/2020, MR. ASIF ALI.

I am directed to forward herewith a certified copy of order dated
07.12.2020 passed by this Tribunal on the above subject for strict compliance.

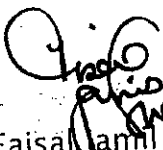
Encl: As above


REGISTRAR
KHYBER PAKHTUNKHWA
SERVICE TRIBUNAL
PESHAWAR.

S. #	Name of incumbent	Designation with BPS	Remarks
1.	Obaid-ur-Rahman	Office Assistant BPS-14	Approval is solicited to issue appointment Order on regular side against the sanctioned post.
2.	Hayat-uz-Zaman	Key Punch Operator (K.P.O) BPS-12	
3.	Jamil Khan	Key Punch Operator (K.P.O) BPS-12	
4.	Muhammad Nazir	Junior Clerk BPS-07	Mohammad Nazir CL-IV is already working against the vacant post of Junior Clerk, Hence approval is solicited to issue appointment Order on regular side against the sanctioned post.
5.	Taza Gul	Driver BPS-04	Approval is solicited to issue appointment Order on regular side against the sanctioned post.
6.	Asif Ali	Naib Qasid BPS-01	
7.	Israr Ahmad	Naib Qasid BPS-01	
8.	Rehmat Elahi	Naib Qasid BPS-01	
9.	Sajid Masih	Naib Qasid BPS-01	

Director Sports FATA
Diary No. 4758
Date 29/6/13

4. The proposal contained in para-3/N above is submitted for approval please.


(Faisal Jamil Shah)
Director Sports FATA

PSTGKPK/Secretary Education FATA

50 (Edn)
No 824

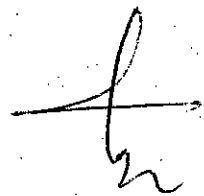
DT 24-6-2013

As per meeting, Approved.



Dir (Sport)



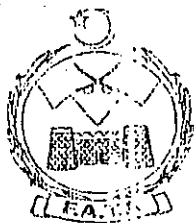


24/6/2013

NOTE FOR THE PRINCIPAL SECRETARY TO GOVERNOR KHYBER PAKHTUNKHWA
GOVERNOR'S SECRETARIAT, PESHAWAR

Subject: Regularization of FATA Sports Project Employees.

1. Directorate of Sports FATA has been established in the year 2006-07 to develop the sports activities at grassroots level in FATA. The Federal Government has been pleased to create 18 posts of different categories in July, 2012 for the establishment of Directorate of Sports FATA. Copy of the sanction is placed at **Flag-A**.
2. It would be relevant to mention here that the Governor Khyber Pakhtunkhwa has been pleased to approve the following parameters for regularization of project employees working in FATA with immediate effect and as one time dispensation as evident from para-3, sub para-i, iii & iv (**Flag-B**), reproduced as under:
 - That corresponding SNEs with the same nomenclature and grade stand approved on the regular side.
 - That the employees working against the project posts have been appointed in strict accordance with rules and procedure and is fully qualified.
 - That the employee is having minimum 2 years continuous service in the project and she/he performed satisfactorily.
3. Keeping in view the above mentioned directions, the appointment of the following incumbents already working in the project against the regular posts in the relevant categories and scales against the sanctioned posts in the Directorate of Sports FATA with immediate effect in the best interest of public service as all of them fulfill the conditions referred to therein para-2/N above.



Finance Department

**FATA SECRETARIAT
(FINANCE DEPARTMENT)
WARSAK ROAD PESHAWAR**

No.SO(F-II)FD/FA/SNE/2010-11/Vol-III
Dated Peshawar the 26th July, 2012

To
The Additional Accountant General,
Pakistan Revenues, Sub Office,
Peshawar.

Subject:- CREATION OF (18) EIGHTEEN POSTS FOR ESTABLISHMENT OF SPORTS DIRECTORATE, FATA

I am directed to convey sanction of Finance Division, Government of Pakistan Islamabad received vide UO letter No.5(1)/2011-DFA(S), dated 21.6.2012 for creation of 18 temporary posts for Establishment of Sports Directorate, FATA with the following break-up with immediate effect:-

S.No	Designation	BPS	No of posts
1	Director Sports, FATA	18	1
2	Assistant Director Sports, FATA (Training)	17	1
3	Assistant Director Infrastructure (Dev)	17	1
4	Assistant Director Sports (Finance)	17	1
5	Superintendent	16	1
6	Stenographer	15	1
7	Assistant (Male)	14	2
8	Assistant (Female)	14	1
9	Key Punch Operator (Male)	12	2
10	Key Punch Operator (Female)	12	1
11	Junior Clerk	07	1
12	Driver	04	1
13	Naib Qasid	01	4
Total			18

The expenditure involved will be debitible to the major head 08-Recreation, Culture and Religion, 081-Recreational and Sporting Services, 0811- Recreational and Sporting Services, 081101- Stadium and Sports Complexes for Establishment of Sports Directorate, FATA within the Sanction Budget Grant under demand No.101-FATA in the current financial year 2012-13 subject to observance of all codal formalities under intimation to Finance Department, FATA Secretariat and Additional Accountant General, Pakistan Revenue, Sub Office, Peshawar.

[Signature]
Section Officer (FATA-II)

1776
2012
Verified by

[Signature]
(Muhammad Sulaiman Khan)
Dy. Financial Adviser FATA

Copy forwarded to:-

- 1) PS to Additional Chief Secretary, FATA.
- 2) PS to Secretary Social Sector, FATA
- 3) PS to Finance Secretary, FATA.
- 4) PS to Deputy Secretary (Finance), FATA.

DE / Dir Sports

27/7/12

[Signature]
Section Officer (FATA-II)



GOVERNOR'S SECRETARIAT,
Khyber Pakhtunkhwa, Peshawar

No. SO-I/1-1/GS/2012/10935-59
May 28, 2013 *W/E*

To

1. All the Secretaries (FATA).
2. All the Directors (FATA).

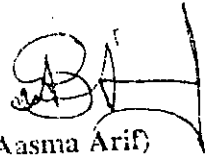
Subject: REGULARIZATION OF EMPLOYEES WORKING IN FATA.

Dear Sir,

I am directed to refer to the subject cited above and to enclose herewith a copy of note containing approval of Governor in Para 3/N for regularization of project employees working in FATA for necessary action as desired by the competent authority.

Yours faithfully,


Encl: As above.


(Aasma Arif)
Section Officer-I

Copy to:-

- PS to Principal Secretary to Governor Khyber Pakhtunkhwa.

Section Officer-I

Director's Office FATA
Diary No. 770
Received Date 29/05/2013
Sign 

Governor's Secretariat N. W. F. I.

Subject: REGULARIZATION OF EMPLOYEES WORKING IN FATA

Numerous applications of low paid employees, and delegations arguing on their behalf, have come to me during my last three months as Governor Khyber Pakhtunkhwa requesting for regularization of their services after having worked on project posts for quite number of years and, importantly, being duly appointed through a valid process and contributing to the satisfaction of their superiors.

2. I had to take the following facts into consideration also:

- [i]. Presidential Order No.13 of 1972 enunciates that employees working for the affairs of FATA would be employees of the Provincial Government of Khyber Pakhtunkhwa. However, over a period of time such cadre have come forward which are not available in Khyber Pakhtunkhwa such as after formulation of district cadre from BS-1 to BS-15, correspondent Agency cadre with appointing authorities within Agency officers. Similarly the employees of Finance & Planning Cells in Agencies in FATA have been regularized under the Judgment of Peshawar High Court dated 17.6.2010 when they were appointed solely by the FATA Secretariat albeit in accordance with proper procedure and laws.
- [ii]. Similarly employee working in Community Schools, Model Schools have also been decided as regularized by the then Governor in exercise of powers conferred under Presidential SRO dated 16.9.2007 which states that Governor as Agent to the President shall exercise immediate executive authority for FATA.
- [iii]. I am also cognizant of the fact that employees working in Population Welfare against a PSDP Project have also been given the status of separate regular cadre of FATA on the basis of their lengths of service as well as the grant of same status to their counterparts in the province.
- [iv]. Furthermore there are various sub offices/cells for which there is no parallel set up in the Province such is SAP employees in P&D FATA, the Directorate General of Projects, EMIS Cell in Education Directorate, Directorate of Sport, FATA Investment Facilitation Authority etc.

Governor's Secretariat N.W.F.P.

[v]. I have also gone through 3 laws promulgated by the Provincial Government i.e. the NWFP Adhoc Civil Servants (Regularization of Services) Act, 1987, The NWFP Civil Servants (Regularization of Services) Act, 1988 and the NWFP Employees on contract basis (Regularization of services) Act, 1989.

[vi]. The spirit and meaning of the laws is crystal clear that employees after having been appointed strictly in accordance with relevant procedure i.e. advertisement, selection committee and criteria and approval of the competent authority, their services have been treated as regularized.

[vii]. In case of FATA employees I am fully aware that in some cadres where the jurisdiction of Khyber Pakhtunkhwa Public Service Commission is evident such as Lecturers, Medical Officers, Agricultural Officers etc, I should not tread. However it is very clear that in cases where no parallel cadre is available in the Khyber Pakhtunkhwa departments, SNE have been created, the employees have properly been appointed against the project posts as per procedure and the SNE so created is in the equivalence grade and nomenclature, these employees can be considered for regularization against the regular posts in view of their service as well as fact that they have performed their duties in harsh and dangerous environment which is prevalent in FATA.

3. I, therefore, as Governor Khyber Pakhtunkhwa do hereby approve **in principle** the following parameters for regularization of project employees working in FATA with immediate effect and as a one time dispensation:

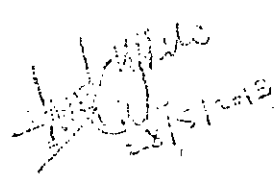
- [i]. That corresponding SNEs with the same nomenclature and grade stand approved on the regular side.
- [ii]. That the posts/cadres are not available on the Provincial side of Khyber Pakhtunkhwa.
- [iii]. That the employees working against project posts have been appointed in strict accordance with rules and procedure and is fully qualified.
- [iv]. That the employee is having minimum 2 years continuous service in the project and she/he performed satisfactorily.

Governor's Secretariat N.W.F.P.

[v]. That such employee should be junior most in that particular grade in case senior regular employee(s) is already available. In case of more than one project employees of the same nomenclature and post their inter-se-seniority shall be determined as per prevalent policy.

[vi]. Such employees so regularized would have non-transferable service from the organization/cell/office concerned and their claim of promotion, as and when occurring, will be in line in the same organization in which they were initially appointed.

4. FATA Secretariat may take necessary action accordingly.


Governor

ACS (FATA)



SPORTS BRING PEACE & COMMUNITY EMPOWERMENT

DIRECTORATE OF SPORTS, MERGED AREAS, PESHAWAR

ORDER :-

In pursuance of decision of Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.1308/2018 dated 24.12.2019 followed by C.O.C No.104/2020 dated 27.01.2021, the competent authority has been pleased to order the reversion of Muhammad Nazir Junior Clerk (BS-11) to the post of Naib Qasid (BS-3) in the Directorate of Sports Merged Areas, Peshawar with immediate effect.

SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
SPORTS, TOURISM, CULTURE, YOUTH AFFAIRS,
ARCHAEOLOGY & MUSEUMS DEPARTMENT

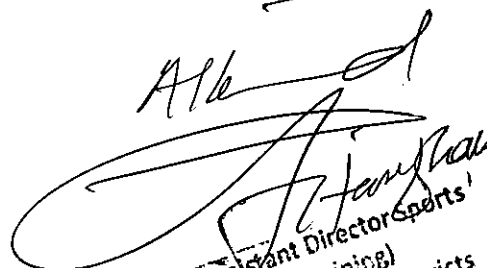
No.DS(MAs)/2-2/Admn/2020-21/

Dated 16/3/2021

Copy to:-

1. Accountant General Khyber Pakhtunkhwa
2. Director General Sports Khyber Pakhtunkhwa
3. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
4. Assistant Director (Training/Litigation), Directorate of Sports Merged Areas
5. Assistant Director (Sports/Admn), Directorate of Sports Merged Areas
6. PS to Secretary Sports, Tourism, Culture, Youth Affairs, Archaeology & Museums Department Khyber Pakhtunkhwa
7. PA to Additional Secretary-II, Sports, Tourism, Culture, Youth Affairs, Archaeology & Museums Department Khyber Pakhtunkhwa
8. Official concerned
9. Personal File


Director Sports
& Merged Areas


Assistant Director Sports
(Training)
Merged Tribal Districts

BEFORE THE HONOURABLE SERVICE TRIBUNAL, KHYBER

PAKHTUNKHWA PESHAWAR.

In Execution No. 104/2020

In Service appeal No 1308/2018

Asif Ali

VERSUS

Government of Khyber Pakhtunkhwa & Others

WRITTEN REPLY ON BEHALF OF RESPONDENTS NO.2 TO 4 ARE

AS UNDER

Respectfully Sheweth,

Preliminary objections: -

1. *That the applicant/appellant has filed the instant execution petition in the light of judgment of this Hon,ble Tribunal which is untenable in the eyes of law.*
2. *That the this Hon,ble Tribunal decided the appeal of the applicant with the terms mentioned in the last para of Judgment which has been implemented by the answering respondents with letter and spirit.*
3. *That the instant execution is not maintainable in its present form.*
4. *That prior to the merger of FATA, the Applicant was serving under the Directorate of Sports FATA and after Merger the said Department merged into KPK Sports Department, prior to that the Department of Sports FATA was having no service rules/Service Structure. The case of the employees of Sports Erstwhile FATA is under process in the Department of Sports Khyber Pakhtunkhwa in order to streamline their seniority and service rules. After finalization of their seniority and service rules the Department will seek whether the question post of*

Junior Clerk falls within the purview of Departmental promotion 33% quota of Class-IV or the post shall be filled through initial recruitment.

5. *That as per the operative part of judgment of this Hon,ble Court, the impugned order of the competent authority had been set aside and further the answering respondents were directed with the direction as under **“for going in view, the appeal is accepted, impugned order dated 26/06/2013 is set aside to the extent of private respondent no 4 and respondents are directed to make fresh appointment strictly in accordance with law /rules”**, therefore, the answering respondents had implemented the judgment of this Hon,ble Tribunal and withdrawn/ cancelled the appointment order of the private respondent No 4 (Mr Muhammad Nazir) and he has been reverted to his original post of Naib Qasid.*
6. That the judgment of this Hon,ble Tribunal has been implemented/executed to the extent of vacation of Junior Clerk position as Mr Muhammad Nazir has been reverted to his original position. i.e. Naib Qasid.
7. That the Hon,ble Tribunal has not directed the department to appoint the applicant/appellant as Junior clerk, rather it has been directed that the post of Junior Clerk be filled through prescribed procedure/rules.
8. That in order to implement the judgment of this Hon,ble Tribunal, the department has to follow the rules and to scrutinize the facts as to whether the question post falls with in the purview of departmental 33% promotion quota of class IV or the post shall be filled through initial recruitment.
9. That in case, the post to be filled through 33% quota, in such situation, seniority list of those class-IV employees, who are on

the strength of the Directorate of Sports Merged Areas are eligible under 33% Class-IV quota as per notification; is to be prepared.

10. That the Departmental promotion committee is to be held, which is the competent forum for promotion, it has to consider all eligible candidates and to promote one.
11. The competent authority shall pass an order of promotion of the recommended candidate.
12. *That the applicant/appellant along with private respondent no 4 as well as other class-IV employees were initially appointed on contract basis and thereafter in the year 2013 all were regularized on same date and the previous order of the private respondent No.4 on the post of Junior clerk was not made in the capacity of promotion, rather it was made against the regular vacant post of Junior Clerk, however the applicant/appellant misled/misconceived the facts and figure of the other class-IV employees filed the instant execution petition. (Copies of the relevant record is attached as annexure "A")*
13. That in case the subject post falls under quota for initial appointment then,
 - (a) The advertisement of the post+ applications to be submitted.
 - (b) Constitution of departmental Selection Committee.
 - (c) Test and interview of candidates.
 - (d) Recommendations.
 - (e) Appointment.

After going through such process the judgment of the Tribunal could only be satisfied.

Parawise Replies: -

1. Correct.

2. Correct. But, it is added here for clarification that the judgement has two separate but connected parts: (a) to set aside the impugned order dated 26-06-2013 to the extent of private respondent no. 4 and (b) to make fresh appointment strictly in accordance with law/ rules. Action on Part (b) under the relevant law / rules requires the following:

(a) After the merger of FATA with the Khyber Pakhtunkhwa the Directorate of Sports FATA was merged with the Directorate of Sports, Khyber Pakhtunkhwa. This entails that all the employees will be placed in the corresponding seniority lists of employees in the Sports Directorate of Khyber Pakhtunkhwa;

(b) There is no notified seniority list of the respondent and the Petitioner for the post of Naib Qasid, which will need formulation, circulation and subsequent notification. The process on which has been initiated;


(c) Similarly, the question of whether Respondents and Petitioners be placed in seniority list of Khyber Pakhtunkhwa at the bottom of the list or at the place that falls from their date of initial recruitment in comparison to their Khyber Pakhtunkhwa counterparts;

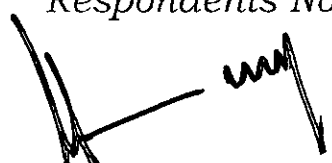
(d) Moreover, the post of junior clerk falls within the ambit of Public Service Commission (PSC), and thus, fresh appointment according to law/rules enunciates sending requisition to the PSC. Or, whether it shall be filled through promotion (33%). Here again the seniority position of the employees within that seniority will determine who will get promoted to the post, as employees of Khyber Pakhtunkhwa will also be included in the list, if the post falls within the quota earmarked for the promotion to the post.

(e) All the above processes will take time for implementation of the part (b) of the judgement of Honourable Service Tribunal.

3. *Incorrect. The Directorate of Sports has substituted the impugned notification in pursuance of the judgement of the Service Tribunal (copy enclosed).*
4. *Incorrect. Part (a) of the judgement of the Honourable Service Tribunal has been implemented and the impugned order dated 26-06-2013 has been withdrawn.*
5. *Incorrect. As stated above, respondent no. 5 has been demoted to the post of Naib Qasid, as explained above.*
6. *Incorrect to the extent that the part (a) of judgement of Honourable Service Tribunal has been implemented.*
7. *Incorrect. The petitioner has locus standi for the instant Execution Petition, as the part (a) has been implemented and part (b) is being implemented according to the judgement of Honourable Service Tribunal.*
8. *That the applicant/appellant has filed the instant execution petition in the light of judgment of this Hon,ble Tribunal which is untenable in the eyes of law.*
9. *That the this Hon,ble Tribunal decided the appeal of the applicant with the terms mentioned in the last para of Judgment which has been implemented by the answering respondents with letter and spirit.*

It is, therefore, most humbly prayed that on acceptance of the instant written Reply, the instant execution petition served its purposes may kindly be dismissed.


Secretary
Sports, tourism, Culture,
Archaeology Museums &
Youth Affairs Department.
(Respondent No. 2)

Respondents No.2 to 4

Director General Sports
Khyber Pakhtunkhwa
Peshawar
(Respondent No. 3)

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE TRIBUNAL, PESHAWAR

Khyber Pakhtunkhwa Service Tribunal

Diary No. 1475

Dated 26/9/2018

Service Appeal No. 1308/2018

Asif Ali S/o Niaz Ali R/o Gharib Abad, City Railway, Tehsil and District Peshawar..... (Appellant)

VERSUS

1. Additional Chief Secretary FATA, FATA Secretariat Warsak Road, Peshawar.

2. Secretary Sport and Youth Affairs of FATA, FATA Secretariat Warsak Road, Peshawar.

3. Director Sport and Youth Affairs of FATA, FATA Secretariat Warsak Road, Peshawar.

4. Muhammad Nazir (Junior Clerk BPS-11) S/o Jan Zada R/o Mohallah Haji Abad No. 2 (C) Tehsil and District Nowshera. at Respondent Deptt. FATA. (Respondents)

Secretariat Warsak

SERVICE APPEAL UNDER SECTION 4 OF

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL

ACT 1974, AGAINST THAT ALL THE

IMPUGNED ORDER/ ACTION PASSED BY THE

RESPONDENTS DEPARTMENT OF KPK/FATA

SECRETARIAT WHEREBY THE APPELLATE

WAS IGNORED AND BYPASSED FROM RIGHT

OF PROMOTION BY THE RESPONDENT

Filed to-day

Registrar
26/9/18

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal
Peshawar

ATTESTED

10

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

Service Appeal No. 1308/2018

Date of Institution ... 26.09.2018

Date of Decision ... 24.12.2019

Asif Ali S/O Niaz Ali R/O Gharibabad, City Railway, Tehsil and District Peshawar
(Appellant)

VERSUS

The Additional Chief Secretary FATA, FATA Secretariat Warsak Road, Peshawar
and three others. (Respondents)

MR. HABIB ULLAH MOHMAND, Advocate — For appellant.

MR. MUHAMMAD JAN, Deputy District Attorney — For official respondent.

MR. MUHAMMAD NAZIR In person — Private respondent no. 4

MR. AHMAD HASSAN — MEMBER (Executive)
MR. MUHAMMAD HAMID MUGHAL — MEMBER (Judicial)

JUDGMENT:

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

ATTESTED

ARGUMENTS:

EMANUEL
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

Learned counsel for the appellant argued that he was appointed as Naib Qasid in the respondent-department on contract basis vide order dated 13.12.2007. That his services were regularized through order dated 26.06.2013. On the other hand private respondent no.4 was initially appointed as Naib Qasid on 15.02.2012 but his services were regularized as junior clerk illegally vide impugned order dated 26.06.2013. The appellant agitated his legitimate grievances through numerous applications but to no avail. Private respondent no.4 was promoted as junior Clerk

ATTESTED

2 (11)

in violation of laid down criteria notified by the provincial government. He exerted political influence/pressure and the said order smacked of malafide on the part of the respondents. The appellant as a last resort submitted an application under Right to Information Act on 18.05.2017 for provision of relevant record which failed to any bear fruit. Finally, departmental appeal filed by the appellant on 30.05.2018 also failed to evoke any response from the respondents, hence, the present service appeal. Reliance was placed on case law reported as 2019 PLC (C.S) 507, 2019 PLC (C.S) 771, 2006 SCMR 1938, 2006 PLC (C.S) 1159 and PLD 2014-338.

03. Learned Deputy District Attorney argued raised preliminary objection that departmental appeal was barred by time, therefore, the present service appeal was not maintainable in its present form. He further argued that it was not disputed that the appellant was initially appointed as Naib Qasid on contract basis on 13.12.2007. Though, private respondent no.4 was appointed as Naib Qasid on contract basis on 15.02.2012 but as a sequel to approval of the competent authority his services were regularized as junior clerk vide order dated 26.06.2013. The appellant and private respondent belong to separate cadres. No vacant post of junior clerk was available to accommodate the appellant.

04. Private respondent no.4 relied on the arguments advanced by the learned Deputy District Attorney for official respondents.

ATTESTED

CONCLUSION:

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

05. The appellant in the present service was appointed as Naib Qasid on contract basis vide order dated 13.12.2007. His services were regularized through order dated 26.06.2013. On the other hand private respondent no.4 was appointed as N

ATTESTED

12 3

Qasid on contract basis vide order dated 15.02.2012 and vide order dated 26.06.2013, he was appointed/promoted as Junior Clerk. This act of the respondents was not only blatant violation of law/rules but also worst form of nepotism and favoritism. They miserably failed to pinpoint any rules under which his appointment was covered. Attention is invited to Section-5 of Khyber Pakhtunkhwa Civil Servants Act, 1973, wherein it is mentioned that appointment should be made in the prescribed manner. Similarly, Section-7 of the act abid provides procedure for conformation. Appointments/promotions are made under Rule-5 of the Khyber Pakhtunkhwa Government Servants (Appointment, Promotion and Transfer) Rules 1989 on the recommendation of DPC/DSC.

06. Learned DDA remained unable to rebut the laws/rules quoted above and his arguments were not conyincing. He also could not defend how after one year of appointment as Naib-Qasid private respondent no.4 was adjusted against the post of Junior Clerk? When he failed to defend illegalities committed by the respondents on merit, then took shelter under technicalities like limitation etc. We cannot condone illegalities at the cost of substantial justice. (The present case has all the ingredients to be decided on merit and to uphold the cause of justice, equity fairness and rule of law. Discriminatory attitude of the respondents towards the appellant was established beyond the shadow of doubt. It cannot be dislodged on the point of limitation, as Article-25 of the Constitution provides for equal treatment. Our view point is backed by 2002 SCMR 71, 2007 SCMR 410 and 2010 SCMR 1933. It is high time for the respondents to fill these posts strictly in accordance with law and rules and till that time it shall be deemed to be vacant.)

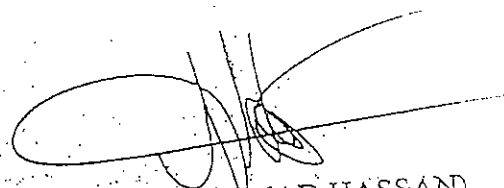
ATTESTED

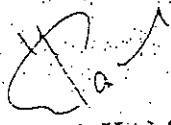
SECRETARY
Khyber Pakhtunkhwa
Tribunal
Peshawar

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13

07. Foregoing in view, the appeal is accepted, impugned order dated 26.06.2013 is set aside to the extent of private respondent no. 4 and respondents are directed to make fresh appointments strictly in accordance with law/rules. Parties are left to bear their own costs. File be consigned to the record room.


(AHMAD HASSAN)
Member


(MUHAMMAD HAMID MUGHAL)
Member

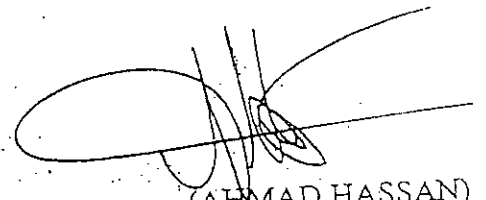
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24.12.2019

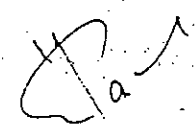

Certified to be true copy
Secretary
Peshawar

Date of Presentation of Application 24-12-2019
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Date of Completion of Copy 10-1-2020
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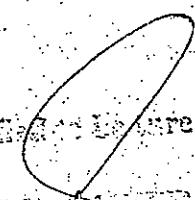

ATTESTED

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(AHMAD HASSAN)
Member


(MUHAMMAD HAMID MUGHAL)
Member

ANNOUNCED
24.12.2019


Certified true & correct copy
10/1/2020
Peshawar

Date of Presentation of Application 24-12-2019
Number of Words 2000
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Total 22
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Date of Completion of Copy 10-1-2020
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①

BEFORE THE HON'BLE KHYBER PAKHTOON KHWA SERVICE
TRIBUNAL, PESHAWAR

Service Appeal No. 104 /2020

Asif Ali S/o Niaz Ali R/o Gharib Abad, City Railway, Tehsil and
District Peshawar.....(Appellant)

V E R S U S

1. Government of Khyber Pkahtukhw through Chief Secretary
Civil Secretariat, Peshawar.
2. Secretary Sport and Youth Affairs Civil Secretariat, Peshawar.
3. Director General Sport and Youth Affairs Civil Secretariat,
Peshawar.
4. Director Sport and Culture of Merged Areas, Civil Secretariat,
Peshawar.
5. Muhammad Nazir (Junior Clerk BPS-11) S/o Jan Zada R/o
Mohallah Haji Abad No. 2 (C) Tehsil and District
Nowshera.....(Respondents)

APPLICATION FOR IMPLEMENTATION/
EXECUTION OF THE ORDER OF THIS
HON'BLE TRIBUNAL DATED 24/12/2019
PASSED IN THE SERVICE APPEAL NO.
1308/2018 TITLED "ASIF ALI..VS..THE
ADDITIONAL CHIEF SECRETARY FATA, FATA
SECRETARIAT AND OTHERS"

2

Respectfully Sheweth:

The petitioner humbly submits as under:

1. That the applicant filed Service Appeal No. 1308/2018 titled "Asif Ali..VS..the Additional Chief Secretary Fata, Fata Secretariat and Others" before this Hon'ble Tribunal which was allowed vide order dated 24/12/2019 in favour of applicant/appellant. (Copy of Service Appeal and order dated 24/12/2019 are attached as annexure "A").
2. That that in decision of this Hon'ble Tribunal it was observed that:

"Foregoing in view, the appeal is accepted, impugned order dated 26/06/2013 is set aside to the extent of private respondent No. 4 and respondents are directed to make fresh appointment strictly in accordance with law/rules."
3. That even after lapse of 6 and half months till today no action with regard to the decision of this Hon'ble

Tribunal has been taken/honour by the respondents which is against law.

4. That the act of the respondents against the law and natural justice as well as the order of this Hon'ble Tribunal.
5. That order of respondent No. 5 has been set aside by this august Tribunal, but despite of that the respondent No. 5 he has not been demoted/removed from service nor action has been taken against him and still getting the salary of Junior Clerk post which is against the law and also against order of this Hon'ble Tribunal, furthermore i.e. come under the domain definition of Contempt of Court.
6. That the respondents department also admitted that the instant Service Appeal is not fit for filing of appeal before the August Supreme Court of Pakistan, but despite of that the order of this Hon'ble Tribunal has not been implemented with later and spirit which is against the law and also against the norms of justice.

4

7. That the applicant also requested so many times to implement with the order of this Hon'ble Tribunal but in vain, hence this application.

It is, therefore most humbly prayed on acceptance of this application, the respondents may kindly be directed to implement/execute the order of this Hon'ble Tribunal dated 24/12/2019 with later and spirit and proceed them according to law and further mover the applicant/appellant may also be promoted to the post of Junior Clerk for which the applicant/ appellant is eligible under the law.

Appellant

Through



Habib Ullah Mohmand
Advocate High Court,
Peshawar.

Dated: 07/07/2020



Sports are essential for the development of a happy

US Society

Directorate of Sports & Youth Affairs (FATA)

NOTIFICATION:

No. SO/I/I-I/GS/2012/10935-52; Consequent upon the Directives of the Govt of Khyber Pakhtunkhwa, the competent authority has been pleased to order the regularization of the following project incumbents, against the sanctioned SNE posts created for Directorate of Sports FATA with effect from 01-07-2013 on the terms & conditions mentioned below in the interest of public service.

S.#	Name with designation	Appointed against post
01.	Mr. Obaid -ur-rahman Siddiqui, S/O Amjic Hussain	Office Assistant (BPS-14) (8,000-610-26,300)
02.	Mr. Hayat uz Zaman S/O Abdul Karim	Computer Operator (BPS-12) (7,000-500-22,000)
03.	Mr. Jamil Khan S/O Shah Mehmood Khan	Computer Operator (BPS-12) (7,000-500-22,000)
04.	Muhammad Nazir S/O Jehan Zada	Junior Clerk (BPS-07), (5,800-320-15,400)
05.	Mr. Taza Gul S/O Meher Gul	Driver (BPS-04), (5,200-230-12,100)
06.	Mr. Asif Ali Khan S/O Niaz Ali Khan	Naib Qasid (BPS-01), (4,800-150-9,300)
07.	Mr. Israr Ahmad S/O Saïd Muhammad	Naib Qasid (BPS-01), (4,800-150-9,300)
08.	Mr. Rehmat Elahi S/O Faqir Hussain	Naib Qasid (BPS-01), (4,800-150-9,300)
09.	Muhammad Rafaqat S/O Muhammad Rafiq	Naib Qasid (BPS-01), (4,800-150-9,300)

1. Their regularization will be governed under Rule-10 sub rule-2 of Khyber Pakhtunkhwa Civil Services (Appointment, Promotion and Transfer) Rule, 1989.
2. They will get their pay at the minimum of the relevant Basic Pay Scale including allowance as admissible, or to be admissible, to the Civil Servants under the rules will be entitled to Annual Increment, falls on 1st of December of each year, in relevant BPS, as per existing policy.
3. They shall be governed by the Khyber Pakhtunkhwa under the relevant Civil Servants Rules, 1973 (now called as Khyber Pakhtunkhwa Government Servants Efficiency & Discipline Rules, 2011).
4. In case they wish to resign from service, at any time, one month's notice will be necessary or in lieu thereof one month pay will be forfeited.
5. The GPF will be deducted from them, as per Government rates.

-Sd-

(MUHAMMAD ABID MAJEED)
Principal Secretary to Governor KPK/
Secretary Education FATA

Endst: No.4790-4811/Appointment order Dated: 26 /06/2013.

Copy for information to:-

1. Additional Accountant General (PR) Sub Office, Peshawar.
2. Section Officer (B&A) Admn. FATA Secretariat, Peshawar.
3. Secretary Finance FATA, FATA Secretariat Peshawar.
4. Section Officer (B&A), FATA Secretariat, Peshawar.
5. Section Officer -I Governor's Secretariat, Peshawar w/r to her letter No. quoted above.
6. PS to Additional Chief Secretary FATA, FATA Secretariat Peshawar.
7. PS to Secretary (A, I&C) Department, FATA Secretariat, Peshawar.
8. Director Education FATA, FATA Secretariat, Peshawar.
9. Section Officer (Education) FATA, FATA Secretariat Peshawar.
10. Account officer local Directorate.
11. Officials concerned
12. Personal Files.

(Faisal Jamil Shah)
26/6/13



SPORTS BRING PEACE & COMMUNITY EMPOWERMENT
DIRECTORATE OF SPORTS, MERGED AREAS, PESHAWAR

ORDER :-

In pursuance of decision of Khyber Pakhtunkhwa Service Tribunal Peshawar in Service Appeal No.1308/2018 dated 24.12.2019 followed by C.O.C No.104/2020 dated 27.01.2021, the competent authority has been pleased to order the reversion of Muhammad Nazir Junior Clerk (BS-11) to the post of Naib Qasid (BS-3) in the Directorate of Sports Merged Areas, Peshawar with immediate effect.


**SECRETARY TO GOVT. OF KHYBER PAKHTUNKHWA
SPORTS, TOURISM, CULTURE, YOUTH AFFAIRS,
ARCHAEOLOGY & MUSEUMS DEPARTMENT**

No.DS(MAs)/2-2/Admn/2020-21/3752

Dated 16/3/2021

Copy to:-

1. Accountant General Khyber Pakhtunkhwa
2. Director General Sports Khyber Pakhtunkhwa
3. Registrar, Khyber Pakhtunkhwa Service Tribunal, Peshawar
4. Assistant Director (Training/Litigation), Directorate of Sports Merged Areas
5. Assistant Director (Sports/Admn), Directorate of Sports Merged Areas
6. PS to Secretary Sports, Tourism, Culture, Youth Affairs, Archaeology & Museums Department Khyber Pakhtunkhwa
7. PA to Additional Secretary-II, Sports, Tourism, Culture, Youth Affairs, Archaeology & Museums Department Khyber Pakhtunkhwa
8. Official concerned
9. Personal File


**Director Sports
Merged Areas**