

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

S.A. NO.1646/2023

Zahid Hussain

.....(Appellant)

VERSUS

Secretary Transport & Mass Transit, Khyber Pakhtunkhwa

..... (Respondents)

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Dated: 28/09/2023

DEPONENT

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

S.A. NO.1646/2023

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.....(Appellant)

VERSUS

Secretary Transport & Mass Transit, Khyber Pakhtunkhwa

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PARAWISE COMMENTS ON BEHALF OF RESPONDENTS No. 02 and 03

Respectfully Sheweth,

Khyber Pakhtunkhwa
Service Tribunal

That the respondents submit as under: -

Diary No. 8045**Preliminary Objections:**Dated 3/10/23

1. That the appellant has got no cause of action to file the instant appeal.
2. That the appellant is estopped by his own conduct to file the instant appeal.
3. That the appeal is bad in its present shape and is not maintainable in its present form.
4. That the instant appeal is false, frivolous and vexatious and is liable to be dismissed with special compensatory costs.
5. That with utmost respect this Honorable Tribunal has got no jurisdiction to entertains the present appeal.
6. That the appeal is bad for non-joinder and miss-joinder of necessary parties.
7. That the appellant has got no locus standi to file the instant appeal.
8. That the present appellant has concealed the material facts from this Hon'ble Tribunal.
9. That the instant appeal is barred by Law and limitation

ON FACTS:

- 1) Para 1 of the appeal pertains to record.
- 2) Para 2 of the appeal pertains to record.
- 3) Para 3 of the appeal is correct to the extent that the services of the appellant was regularized with effect from 08-10-2019 under the Khyber Pakhtunkhwa Employees of Transport & Mass Transit Department Act 2019. In section 3 of the said Act, it is clearly mentioned that "***the regularization of the employees shall be considered from the date of the commencement of this Act***". (Copy of the Act already Annexed with main appeal as Annex-B) In addition to this it is also clearly mentioned in the joint office order dated 26-05-2021 at the last para, that "***in light of the recommendation of the scrutiny committee and consequent upon its approval, the competent authority is pleased to***

appoint the appellant along with other employees of Vehicle Emission Testing Station with effect from the date of commencement of the Act i.e. 08th-10-2019". (Copy of the Order already Annexed with main appeal as Annex-C) In addition of the above, it is further submitted that vide rule-3(x) of the notification dated: 02.12.2022 issued by the Government of Khyber Pakhtunkhwa, Planning & Development Department regarding policy for all approved development projects of the Government, it is clearly mentioned that **"the staff appointed by initial recruitment in a project shall not be entitled for pension or GP Fund. They shall also not be treated as Civil Servants". (Annex-A)**


- 4) In reply to Para 4 it is submitted that before commencement of the regularization Act, 2019 the appellant was serving on contract, daily wages and temporary basis/Fixed pay. **(Copy of appointment letter is already Annexed with appeal as Annex-A).**
- 5) In reply to Para 5 of the appeal, it is submitted that the appellant was not entitled for any legal remedy and the appeal of appellant was not covered by any law or rules, therefore, not entertained, hence filed.
- 6) The appellant has no cause of action to file the instant appeal, hence having no grounds.


Grounds

- A. Ground A is incorrect, as already submitted that the appellant was serving in the project of VETs and his service was regularized under the Regularization Act-2019. Therefore, he will be entitled for the benefits of pay protection and pensionary benefits after the promulgation of the said Act.
- B. Ground B is incorrect. The detail reply is already submitted at Para-3.
- C. Ground C is incorrect. The appellant was serving on contract and temporary basis therefore, no credit can be granted towards his pay and pension protection.
- D. Ground D is incorrect. The detail reply has already been submitted.
- E. Ground E is incorrect, as replied above.
- F. Ground F is incorrect. The circumstances and facts in the appeal mentioned by appellant are different from the instant case and is subject to proof by the appellant.

- G. In reply of the Ground G, it is submitted that each and every case is decided in the light of its own facts and circumstances, hence the same is not applicable upon the case of appellant.
- H. In reply of the Ground H, it is submitted that each and every case is decided in the light of its own facts and circumstances, hence the same is not applicable upon the case of appellant.
- I. Ground I is incorrect. Detail reply has already been submitted.
- J. Ground J is incorrect. No such relief was granted to any employees of the answering respondent.
- K. Ground K is incorrect. Detail reply has already been submitted.
- L. Ground L is incorrect. At Para-v of the said notification annexed by the appellants as Annex-F, it is clearly mentioned that ***“the service rendered on contract basis shall not qualify for pension/gratuity”***.
- M. In reply to Ground M, it is submitted that each and every case is decided in the light of its own facts and circumstances, hence the same is not applicable upon the case of appellant.
- N. Ground N is incorrect. The appellant was treated according to law and rules.
- O. In reply of Ground O, it is submitted that the respondents seek leave to raise additional grounds at the time of arguments.

In reply to the prayer, it is most humbly prayed that on acceptance of the instant Parawise comments, the instant Service appeal may graciously be dismissed, please.


Secretary (R-02)
Transport & Mass Transit
Department
Govt. of Khyber Pakhtunkhwa


Director (R-03)
Directorate of Transport
Khyber Pakhtunkhwa

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

S.A. NO.1646/2023

04

Zahid Hussain

.....(Appellant)

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Secretary Transport & Mass Transit, Khyber Pakhtunkhwa

..... (Respondents)

AFFIDAVIT

I **Hamdullah**, Assistant Director (Legal), on behalf of Respondents-1&2, do hereby solemnly declare on oath that the contents of the Parawise Comments of the foregoing titled Service Appeal are true and correct to the best of my knowledge and belief and nothing has been kept secret from this honorable Court.

Dated: 28.09.2023

DEPONENT

CNIC No. 17301-1507414-7

Cell No. 0301-8892842

Identified By:

Advocate General
Khyber Pakhtunkhwa





Annex 'A'

05

**GOVERNMENT OF KHYBER PAKHTUNKHWA
PLANNING & DEVELOPMENT DEPARTMENT**

Dated Peshawar, December 02, 2022.

NOTIFICATION:

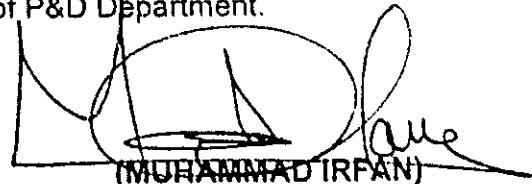
No. SO(E)P&D/3-4/PIP/2022. In pursuance of the Rule-3(3) read with entries 3 & 8 under Planning & Development Department, Schedule-II (dealing with distribution of business amongst departments) of Khyber Pakhtunkhwa, Government Rules of Business, 1985, in exercise of the powers conferred to P&D Department under the said rules and in supersession of the Khyber Pakhtunkhwa Project Policy, 2008, the Provincial Cabinet, Khyber Pakhtunkhwa has been pleased to approve Project Implementation Policy, 2022 as a guiding paradigm/policy for all approved development projects of the Government of Khyber Pakhtunkhwa. Planning & Development Department will be the custodian of the subject policy.

**SECRETARY
P&D DEPARTMENT**

ENDST: NO. & DATE EVEN.

Copy forwarded to the;

1. Senior Member Board of Revenue, Revenue & Estate Department.
2. Principal Secretary to Governor, Khyber Pakhtunkhwa.
3. Principal Secretary to Chief Minister, Khyber Pakhtunkhwa.
4. All Administrative Secretaries to Govt. of Khyber Pakhtunkhwa.
5. PSO to Chief Secretary, Khyber Pakhtunkhwa.
6. All Divisional Commissioners in Khyber Pakhtunkhwa.
7. All Deputy Commissioners in Khyber Pakhtunkhwa.
8. All Senior Chief of Sections/Chief of Sections in P&D Department.
9. All Heads of Attached Departments.
10. Incharge, Resource Centre, P&D Department with the request to upload the Project Implementation Policy on official web-site of P&D Department.


(MUHAMMAD IRFAN)
DEPUTY SECRETARY-I

06

(3) PROCEDURE TO FILL THE POST

If the competent authority decides to make appointment to a project post through initial recruitment, the following procedure shall be followed:

- (i) Applications for the posts shall be invited through wide publicity in the print media. The advertisement shall be published in at least two leading newspapers having wide circulation as well as through the official website of the project / concerned administrative department.
- (ii) A reasonable time not less than fifteen (15) days may be given in the advertisement inviting applications for the posts to provide adequate opportunity to eligible candidates to apply and to ensure maximum competition. However, in case of urgency, to be determined by the Administrative Secretary concerned, time for inviting applications can be reduced to seven (7) days from the date of publication of the advertisement. In case the last date for receipt of applications falls on a public holiday, the last date shall stand extended to the next working day. Urgency can be declared in such cases wherein expeditious implementation/execution is desired in the best public interest. Without prejudice to the generality of the aforesaid, urgency can be declared if one or more of the following circumstances exist:
 - (a) Security issues/Projection of counter narrative
 - (b) Disaster Management/Health Issues
 - (c) Projects involving seasonal factors
 - (d) Signature/pilot project
 - (e) Projects at the verge of completion
- (iii) The terms and conditions for appointment including but not limited to following shall be clearly advertised:
 - (a) Nomenclature of the posts
 - (b) Pay scale or Pay Package
 - (c) Number of vacancies
 - (d) Minimum Qualification Required
 - (e) Minimum Experience Required
 - (f) Age limit at the time of closing date
 - (g) Duration of Appointment
 - (h) Nature of Appointment
 - (i) Mode of Appointment (Testing Service etc.)
 - (j) Duties & Responsibilities
 - (k) Station of duty etc.

*Note: Applicants with incomplete documents shall not be entertained.
Minimum qualification shall be specified clearly against which clear scoring can be made.*

- (iv) The appointing authority / administrative department, before advertising the posts, keeping in view the anticipated number of the applicants and scoring matrix approved for the posts, shall assign the conduct of test to Khyber Pakhtunkhwa Educational Testing and Evaluation Agency (ETEA) and in case of refusal by ETEA to conduct such test, services of a suitable and registered testing agency to be hired after getting NOC from ETEA. MoU signed with the testing service agency shall clearly mention passing marks in terms of percentage for a particular post. Passing score for a post in a test should not be less than 40%.
- (v) Applications received for a post shall be scrutinized by the shortlisting committee (Para-8) constituted for the purpose. After thorough scrutiny of record, list of shortlisted candidates will be finalized, duly signed by all the members of shortlisting committee containing marks obtained in minimum required academic qualification, higher qualification, relevant experience, test score if any, training, age limit and other conditions strictly according to selected scoring matrix.
- (vi) The appointing authority/administrative department shall ensure competition in the hiring process. However, it may shortlist 03 to 05 applicants against one post for interview by the concerned Selection Committee. Furthermore, the number of candidates to be called for interviews should not be less than 03 per post in the case of posts falling in specialized

categories. Reasonable time may be given to the candidates to appear for the interview. The names of those candidates who do not appear for the interview shall be dropped from the selection process.

- (vii) Selection Committee (Para-7) shall interview the qualified and eligible candidates and shall devise a merit list on the basis of weightages assigned to each component of the scoring matrix: academic qualification, higher qualification, relevant experience, test score, professional skills as well as marks obtained in the interview.
- (viii) The list containing order of merit of the candidates must be signed by all members of the Committee including its chairman and forwarded to the Secretary of the department concerned to process the case for approval of appointing authority.
- (ix) The appointing authority shall approve appointment, in order of merit, on the recommendations of the Selection Committee and orders in this regard shall be issued within 10 days. In case, the first candidate on the merit list does not join service within a period of one month, his offer shall stand cancelled, after ensuring that appointment order was duly received by the candidate, and offer of appointment may be extended to the next candidate on the merit list. After completion of the hiring process in a project, a waiting list duly signed by all members of the selection committee shall be maintained. Such waiting list will be valid for 06 months from the date of issuance and any candidate on merit can be appointed during the period from the list if a post is fallen vacant due to the following reason:
 - (a) Failure to report arrival before the stipulated deadline
 - (b) Resignation from the post
 - (c) Disqualification due to disciplinary action
 - (d) Disqualification due to procedural lapse in recruitment
 - (e) Disqualification due to non-verification of documents
 - (f) Disqualification due to Unsatisfactory / Negative Police Report
 - (g) Disqualification due to being medically unfit
- (x) Staff appointed by initial recruitment in a project shall not be entitled to pension or GP fund. They shall also not be treated as "Civil Servants".
- (xi) Project employees will receive medical allowance as per medical attendance rules of the Provincial Government.
- (xii) They shall be entitled to TA/DA in accordance with the TA rules of the Provincial Government.
- (xiii) Project employees shall be entitled to avail leave as given below:
 - (a) **Casual Leave:** 15 days once in a calendar year (lapsable). Maximum of 5 days casual leave can be granted at a time by the competent authority.
 - (b) **Long Leave:** 45 days without pay, during the whole project cycle subject to cogent justification and at the discretion of the competent authority.
 - (c) **Maternity Leave:** Admissible to the female employees as per Khyber Pakhtunkhwa Civil Servants Revised Leave Rules, 1981.
- (xiv) Additional Charge of project posts of mega projects (Rs. 3 Billion and Above) shall not be allowed to officers of line Department. For projects less than Rs. 3 Billion additional charge of project posts may be allowed to nominees of line departments on case by case basis, for a specified period, to be determined by the committee, headed by Additional Chief Secretary P&D comprising Secretaries of Finance, Establishment and concerned Department. The additional Charge Allowance will be 100% of the running basic pay. No additional charge will be allowed below BS-17 in any case. Additional charge of the post shall not be given for a period of more than 06 months.
- (xv) If the competent authority decides to make an appointment to a project post through deputation, the procedure given in para-4 shall be followed.